



CITY OF BURLINGTON

ADMINISTRATION DEPARTMENT
300 N. Pine Street, Burlington, WI, 53105
(262) 342-1161 -- (262) 763-3474 fax
www.burlington-wi.gov

AGENDA COMMUNITY DEVELOPMENT AUTHORITY (CDA) Tuesday, February 7, 2017

224 East Jefferson Street, Burlington, WI
Council Chambers
5:30 p.m.

Bil Scherrer, Chairman
Jeannie Hefty, Mayor
Bob Grandi, Aldermanic Representative
Jack Eckola
Chuck Rule
Jim Spiegelhoff
Thomas Wiemer

1. Call to Order
2. Roll Call
3. Approval of minutes from December 6, 2016
4. Persons desiring to be heard
5. Topic: Approval of a Real Estate Mortgage Subordination Agreement between the City of Burlington and Bear Development, LLC (Fox Crossing Apartments Phase 2)
6. Adjournment

Note: Notice is hereby given that a majority of the members of the Common Council may be present at this meeting. Although this may constitute a quorum of the Council, the Council will not take any action at this meeting.

Note: If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk's Office at 262-342-1161 at least 24 hours prior to the meeting.



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**CITY OF BURLINGTON
COMMUNITY DEVELOPMENT AUTHORITY
MEETING MINUTES
Tuesday, December 6, 2016 at 5:30 p.m.
224 E. Jefferson Street**

1. CALL TO ORDER

Mayor Jeannie Hefty called the meeting of the Community Development Authority to order at 5:30 p.m.

2. ROLL CALL

The following commissioners were in attendance: Mayor Jeannie Hefty, Alderman Bob Grandi, Commissioner Jack Eckola, Commissioner Chuck Rule, Commissioner Tom Wiemer and Commissioner Jim Spiegelhoff. Excused: Chairman Bil Scherrer

Also in attendance: City Administrator Carina Walters, Budget Officer/Treasurer Steve DeQuaker, and Attorney John Bjelajac

3. APPROVAL OF MINUTES FROM NOVEMBER 1, 2016

A motion to approve the minutes from November 1, 2016 was made by Commissioner Wiemer with a second by Commissioner Grandi. With all in favor, the motion carried.

4. CITIZEN COMMENTS

There were no citizen comments.

5. TOPIC: Review and Consideration of Resolution Number 120, "A Resolution Authorizing a \$25,000 Revolving Loan Fund Loan to Fox Crossing Phase 2 Burlington, LLC."

Janelle Topczewski, from RCEDC gave an overview about the status of the Fox Crossing Phase 2 Development. Topczewski stated that the Common Council approved a motion in January 2015, which included the City offering a low interest revolving loan fund in the amount of \$25,000 in order to better qualify for the Wisconsin Housing Economic Development Authority (WHEDA) tax credits, which is critical to the development of the project. Topczewski further stated that the Community Development Authority must approve this loan because the development project is located within the TID district. Topczewski said that RCEDC staff and Loan Committee have reviewed this loan request as well as the performance of the first phase of this project, are recommending approval of the \$25,000 loan.

Commissioner Spiegelhoff motioned, with a second from Commissioner Rule, to approve Resolution 120 as presented.

Roll call: Aye – Hefty, Grandi, Eckola, Rule, Spiegelhoff, Wiemer. Nay – None. Motion carried 6-0

6. ADJOURNMENT

Commissioner Eckola motioned with a second by Commissioner Weimer to adjourn. The meeting was adjourned at 5:37 p.m.


Recording Secretary
Diahnn C. Halbach
Burlington City Clerk



RACINE COUNTY ECONOMIC DEVELOPMENT CORPORATION

To: City of Burlington Community Development Authority
FROM: Janell Topczewski, Compliance/Closing Specialist
DATE: February 7, 2017
RE: Fox Crossing Phase 2 Burlington, LLC- Subordination Request

The purpose of this memorandum is to request the Community Development Authority's (CDA) approval of a subordination agreement related to the \$25,000 Tax Incremental District Revolving Loan Fund (TID RLF) business loan to Fox Crossing Phase 2 Burlington, LLC that was approved by the CDA on December 6, 2016. A copy of that memorandum is attached for reference.

Since the December 6, 2016 approval the City of Burlington has been asked to sign a subordination agreement as a part of this transaction. This was requested by one of the lead lending partners- Citibank whereby in the event of a loan default the City of Burlington will not be allowed to collect any payments on their loan until the Citibank loan has been paid in full. Payment subordination is not typical for a TID RLF; however, given the following information RCEDC staff views this request as minor and recommends the City sign the agreement:

- 1) TID RLF exposure is minimal at \$25,000 especially when considering the real estate taxes that will be generated on the property once completed;
- 2) Principal payments are on a 20 year deferment;
- 3) The TID RLF is needed to support the project and it was a critical component of the WHEDA tax credit award; and
- 4) The loan was structured as an incentive for project to show the City of Burlington's support for the WHEDA tax credit review process.

SUMMARY AND RECOMMENDATIONS

The RCEDC staff recommends the City execute the subordination agreement to ensure the project financing is completed as required by the WHEDA tax credit award.

**SUBORDINATION AND
INTERCREDITOR
AGREEMENT (MIDWEST)**

Document Number

Document Title

Recording Area

Name and Return Address:

Citibank, N.A.
Transaction Management Group /
Post-Closing
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attn: Tanya Jimenez

Fox Crossing Apartments Phase II Deal
ID #23289

[See Exhibit A]

Parcel Identification Number

THIS INSTRUMENT WAS DRAFTED BY:

Andrew L. Kramer, Esq.
Robinson & Cole LLP
Chrysler East Building
666 Third Avenue, 20th Floor
New York, NY 10017

SUBORDINATION AND INTERCREDITOR AGREEMENT
(MIDWEST)

This **SUBORDINATION AND INTERCREDITOR AGREEMENT** (this "**Agreement**") dated as of February __, 2017, is made by and among the **CITY OF BURLINGTON**, a Wisconsin municipal corporation ("**Junior City Lender**"), **CITIBANK, N.A.**, a national banking association ("**Senior Lender**"), as successor in interest to IFF (as hereinafter defined), and as the lender of the Catalyst Loan (as hereinafter defined), and **FOX CROSSING PHASE II BURLINGTON, LLC**, a Wisconsin limited liability company ("**Borrower**").

RECITALS:

A. Borrower has received a loan in the maximum principal amount of \$4,200,000 from IFF (the "**Senior Loan**") for the acquisition, construction, rehabilitation, development, equipping and/or operation of a 32-unit multifamily project located in Burlington, Racine County, Wisconsin, known or to be known as Fox Crossing Apartments Phase II.

B. The Senior Loan is evidenced by the Senior Note, secured by, among other things, that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of February 1, 2016, and recorded in the Official Records of Racine County (the "**Official Records**") on February 9, 2016 as Document No. 2427755, made by Borrower for the benefit of IFF, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented (the "**Senior Security Instrument**"), as assigned by IFF to Senior Lender pursuant to the terms of that certain Assignment of Security Instrument dated as of February 1, 2016, and recorded in the Official Records on February 9, 2016 as Document No. 2427804, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented (the "**Assignment of Security Instrument**"), which Senior Loan will be advanced to Borrower pursuant to the Senior Loan Agreement, as defined below.

C. Citibank, N.A. (together with its successors and assigns, "**Servicer**"), will act as the initial servicer of the Senior Loan.

D. IFF assigned to Senior Lender all rights, title, and interest of IFF in and to the Senior Loan pursuant to the terms of the Assignment of Security Instrument and the Assignment of Collateral Agreements (as hereinafter defined).

E. In addition, Borrower has received a loan in the maximum principal amount of \$416,000 from Senior Lender (the "**Catalyst Loan**"), which Catalyst Loan is evidenced by that certain Multifamily Subordinate Note, dated as of February 8, 2016, in the maximum principal amount of \$416,000 made by Borrower payable to the order of Senior Lender (the "**Catalyst Loan Note**") and by that certain Subordinate Loan Agreement dated as of February 1, 2016 between Borrower and Senior Lender (the "**Catalyst Loan Agreement**"). The Catalyst Loan is secured by, among other things, that certain Subordinate Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of February 1, 2016, and recorded in the

Official Records on February 9, 2016 as Document No. 2427813, executed by Borrower for the benefit of Senior Lender (the "**Catalyst Loan Security Instrument**"; together with the Catalyst Loan Agreement, the Catalyst Loan Note and all other documents executed in connection with the Catalyst Loan, the "**Catalyst Loan Documents**"), which Catalyst Loan Security Instrument encumbers the Property.

F. Borrower has applied to Junior City Lender for: (i) a loan in the maximum principal amount of \$25,000 (the "**Junior City Loan**"), which Junior City Loan will be evidenced by a Business Note dated as of February ____, 2017 made by Borrower to Junior City Lender (the "**Junior City Note**") and secured by the Junior City Security Instrument (as hereinafter defined) to encumber the Property. The Junior City Note, the Junior City Security Instrument, and all other documents evidencing, securing or delivered in connection with the Junior City Loan, together with such modifications, amendments and supplements thereto as are approved in writing by Senior Lender prior to their execution, are collectively referred to herein as the "**Junior City Loan Documents**".

G. Borrower requested and Senior Lender has agreed to allow the Junior City Loan and permit it to be secured by the Junior City Security Instrument but only on the condition that Junior City Lender execute and deliver this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Junior City Lender hereby agrees as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings ascribed thereto in the Senior Security Instrument. As used in this Agreement, the terms set forth below shall have the respective meanings indicated:

"Assignment of Collateral Agreements" means that certain Assignment of Collateral Agreements and Other Loan Documents by IFF to Senior Lender, dated as of February 1, 2016, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented.

"Bankruptcy Proceeding" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

"Casualty" means the occurrence of damage to or loss of any of the Property by fire or other casualty.

"Condemnation" means any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Property, whether direct or indirect.

"Enforcement Action" means the acceleration of all or any part of the Junior City Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of

foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Junior City Note or any other of the Junior City Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Junior City Indebtedness or obligated under any of the Junior City Loan Documents, or the Property.

"Enforcement Action Notice" means a written notice from Junior City Lender to Senior Lender, given following a Junior City Loan Default and the expiration of any notice or cure periods provided for such Junior City Loan Default in the Junior City Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by Junior City Lender.

"IFF" means IFF, an Illinois not for profit corporation.

"Junior City Indebtedness" means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Junior City Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

"Junior City Loan Default" means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an "Event of Default" as defined in the Junior City Security Instrument.

"Junior City Loan Documents" means, collectively, the Junior City Note, the Junior City Security Instrument, and all other documents evidencing, securing or delivered in connection with the Junior City Loan, all of which are listed on Exhibit B attached hereto, together with such modifications, amendments and supplements thereto as are approved in writing by Senior Lender prior to their execution.

"Junior City Security Instrument" means that certain Mortgage dated as of February ____, 2017, made by Borrower for the benefit of Junior City Lender, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented upon receipt of the consent of Senior Lender.

"Loss Proceeds" means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

"Property" means (i) the land and improvements known or to be known as Fox Crossing Apartments Phase II, located in Burlington, Racine County, Wisconsin, which Property is more particularly described on Exhibit A attached hereto, and (ii) all furniture, fixtures and equipment located at such apartments and other property, accounts, deposits and rights and interests of Borrower encumbered by the Senior Security Instrument and/or the other Senior Loan Documents.

"Senior Indebtedness" means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Senior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

“*Senior Loan Agreement*” means that certain Construction Loan Agreement dated as of February 1, 2016 by and between Borrower and IFF, relating to the Senior Loan, and assigned by IFF to Senior Lender pursuant to the Assignment of Collateral Agreements, and as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented.

“*Senior Loan Documents*” means, collectively, the Senior Security Instrument, the Senior Note, the Senior Loan Agreement and all of the other documents, instruments and agreements now or hereafter evidencing, securing or otherwise executed in connection with the Senior Loan, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented in accordance with the provisions of this Agreement.

“*Senior Loan Default*” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Security Instrument.

“*Senior Note*” means the Note, as defined by the Senior Security Instrument, as endorsed by IFF to Senior Lender, and as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented.

2. Junior City Loan and Junior City Loan Documents are Subordinate; Acts by Senior Lender do not Affect Subordination.

(a) Junior City Lender hereby covenants and agrees on behalf of itself and its successors and permitted assigns that the Junior City Indebtedness is and shall at all times continue to be, subordinate, subject and inferior (in payment and priority) to the prior payment in full of the Senior Indebtedness, and that the liens, rights, payment interests, priority interests and security interests granted to Junior City Lender in connection with the Junior City Loan and under the Junior City Loan Documents are, and are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof.

(b) Except as expressly set forth herein, repayment of the Junior City Indebtedness, is and shall be postponed and subordinated to repayment in full of the Senior Loan. Prior to a Senior Loan Default (regardless of whether such Senior Loan Default occurs prior to or during the pendency of a Bankruptcy Proceeding), Junior City Lender shall be entitled to receive and retain payments made pursuant to and in accordance with the terms of the Junior City Loan Documents; provided, however, that no such payment is made more than ten (10) days in advance of the due date thereof. Junior City Lender agrees that from and after such time as it has received from either Senior Lender or Borrower written notice that a Senior Loan Default then exists (which has not been expressly waived in writing by Senior Lender) or otherwise has actual knowledge of such a Senior Loan Default, Junior City Lender shall not receive or accept any payments under the Junior City Loan. If (i) Junior City Lender receives any payment, property, or asset of any kind or in any form on account of the Junior City

Indebtedness (including, without limitation, any proceeds from any Enforcement Action) after a Senior Loan Default of which Junior City Lender has actual knowledge or has been given notice of, or (ii) Junior City Lender receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Senior Lender. Junior City Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Senior Lender. Senior Lender shall apply any payment, asset, or property so received from Junior City Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender shall determine in its sole and absolute discretion.

(c) Without limiting the complete subordination of the Junior City Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness shall first be paid in full in cash before Junior City Lender shall be entitled to receive any payment or other distribution on account of or in respect of the Junior City Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Junior City Lender would be entitled but for this Agreement (whether in cash, property, or other assets) shall be made to Senior Lender.

(d) The subordination of the Junior City Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

(e) The subordination of the Junior City Loan Documents and of the Junior City Indebtedness shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Security Instrument and other Senior Loan Documents and of the Junior City Security Instrument and other Junior City Loan Documents, and (ii) the availability of any collateral to Senior Lender, including the availability of any collateral other than the Property.

(f) By reason of, and without in any way limiting, the full subordination of the Junior City Indebtedness and the Junior City Loan Documents provided for in this Agreement, all rights and claims of Junior City Lender under the Junior City Security Instrument or under the Junior City Loan Documents in or to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of Senior Lender under the Senior Loan Documents in and to the Property or any portion thereof, the proceeds thereof, the Leases

thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto.

(g) If Junior City Lender, by indemnification, subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Junior City Indebtedness and the Junior City Loan Documents are subordinate pursuant to this Agreement.

(h) Junior City Lender hereby acknowledges and agrees that Senior Lender may, without the consent or approval of Junior City Lender, agree with Borrower to extend, consolidate, modify, increase or amend any or all the Senior Loan Documents and otherwise act or fail to act with respect to any matter set forth in any Senior Loan Document (including, without limitation, the exercise of any rights or remedies, waiver, forbearance or delay in enforcing any rights or remedies, the declaration of acceleration, the declaration of defaults or events of default, the release, in whole or in part, of any collateral or other property, including but not limited to the release of the Commercial Unit as defined and contemplated in the Senior Security Instrument, and any consent, approval or waiver), and all such extensions, consolidations, modifications, amendments acts and omissions shall not release, impair or otherwise affect Junior City Lender's obligations and agreements hereunder.

3. Junior City Lender Agreements.

(a) Without the prior written consent of Senior Lender in each instance, Junior City Lender shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Junior City Loan Documents; or (ii) pledge, assign, transfer, convey or sell any interest in the Junior City Loan or any of the Junior City Loan Documents; or (iii) accept any payment on account of the Junior City Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than ten (10) days prior to the due date thereof; or (iv) take any action which has the effect of increasing the Junior City Indebtedness; or (v) appear in, defend or bring any action in connection with the Property; or (vi) take any action concerning environmental matters affecting the Property. Regardless of any contrary provision in the Junior City Loan Documents, Junior City Lender shall not collect payments for the purpose of escrowing for any cost or expense related to the Property or for any portion of the Junior City Indebtedness.

(b) Senior Lender shall have the right, but shall not have any obligation, to cure any Junior City Loan Default until ninety (90) days following Senior Lender's receipt of an Enforcement Action Notice given by Junior City Lender as a consequence of such Junior City Loan Default. Senior Lender shall not be subrogated to the rights of Junior City Lender under the Junior City Loan Documents by reason of Senior Lender having cured any Junior City Loan Default. However, Junior City Lender acknowledges that all amounts advanced or expended by Senior Lender to cure a Junior City Loan Default shall be added to and become a part of the Senior Indebtedness pursuant to the terms of the Senior Security Instrument.

(c) Junior City Lender agrees that in any action commenced to enforce the obligation of Borrower to pay any portion of the Junior City Indebtedness, the judgment shall not be enforceable personally against Borrower or Borrower's assets, and the recourse of Junior City Lender for the collection of the Junior City Indebtedness shall be limited to actions against the Property and the rents, profits, issues, products, and income from the Property.

(d) Junior City Lender shall not commence or join with any other creditor in commencing any Bankruptcy Proceeding involving Borrower, and Junior City Lender shall not initiate and shall not be a party to any action, motion or request, in a Bankruptcy Proceeding involving any other person or entity, which seeks the consolidation of some or all of the assets of Borrower into such Bankruptcy Proceeding. In the event of any Bankruptcy Proceeding relating to Borrower or the Property or, in the event of any Bankruptcy Proceeding relating to any other person or entity into which (notwithstanding the covenant in the first sentence of this clause) the assets or interests of Borrower are consolidated, then in either event, the Senior Loan shall first be paid in full before Junior City Lender shall be entitled to receive and retain any payment or distribution in respect to the Junior City Loan. Junior City Lender agrees that (i) Senior Lender shall receive all payments and distributions of every kind or character in respect of the Junior City Loan to which the Junior City Lender would otherwise be entitled, but for the subordination provisions of this Agreement (including without limitation, any payments or distributions during the pendency of a Bankruptcy Proceeding involving Borrower or the Property), and (ii) the subordination of the Junior City Loan and the Junior City Loan Documents shall not be affected in any way by Senior Lender electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim. In addition, Junior City Lender hereby covenants and agrees that, in connection with a Bankruptcy Proceeding involving Borrower, neither Junior City Lender nor any of its affiliates shall (i) make or participate in a loan facility to or for the benefit of Borrower on a basis that is senior to or pari passu with the liens and interests held by Senior Lender pursuant to the Senior Loan Documents, (ii) not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan (assuming Senior Lender has not exercised its rights hereunder to Junior City Lender's voting rights), and (iii) not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.

(e) Junior City Lender covenants and agrees that the effectiveness of this Agreement and the rights of Senior Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Loan, by any delay, forbearance, failure, neglect or refusal of Senior Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Loan Documents or any other security which may have been given or may hereafter be given for the Senior Loan, by any waiver or failure to exercise any right or remedy under the Senior Loan Documents, or by any other act or failure to act by Senior Lender. Junior City Lender acknowledges that Senior Lender, at its sole option, may release all or any portion of the Property from the lien of the Senior Security Instrument,

and may release or waive any guaranty, surety or indemnity providing additional collateral to Senior Lender, and Junior City Lender hereby waives any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Property by Senior Lender, to require the separate sales of any portion of the Property or to require Senior Lender to exhaust its remedies against any portion of the Property or any other collateral before proceeding against any other portion of the Property or other collateral (including guarantees) for the Senior Loan. Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Junior City Lender. At any time or from time to time and any number of times, without notice to Junior City Lender and without affecting the liability of Junior City Lender, (a) the time for payment of the Senior Indebtedness may be extended or the Senior Indebtedness may be renewed in whole or in part; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Senior Loan Documents, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Indebtedness may be accelerated as provided in the Senior Loan Documents; (d) any Senior Loan Document may be extended, consolidated, modified or amended by Senior Lender and Borrower in any respect, including, but not limited to, an increase in the principal amount; and (e) any security for the Senior Indebtedness may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Senior Indebtedness. If, after the occurrence of a Senior Loan Default, Senior Lender acquires title to any of the Property pursuant to a mortgage foreclosure conducted in accordance with applicable law, the lien, operation, and effect of the Junior City Security Instrument and other Junior City Loan Documents automatically shall terminate with respect to such Property upon Senior Lender's acquisition of title.

(f) Junior City Lender acknowledges that it entered into the transactions contemplated by the Junior City Loan Documents and made the Junior City Loan to Borrower without reliance upon any information or advice from Senior Lender. Junior City Lender made its own underwriting analysis in connection with the Junior City Loan, its own credit review of Borrower, and investigated all matters pertinent, in Junior City Lender's judgment, to its determination to make the Junior City Loan to Borrower. Junior City Lender acknowledges that it is a sophisticated and experienced commercial lender, and was represented by competent counsel in connection with this Agreement.

(g) Junior City Lender hereby represents and warrants that, as of the date hereof, the current principal balance of the Junior City Loan is \$25,000. Junior City Lender hereby further represents and warrants that: (i) Junior City Lender is now the owner and holder of the Junior City Loan Documents; (ii) the Junior City Loan Documents are now in full force and effect; (iii) the Junior City Loan Documents have not been modified or amended; (iv) no default or event which, with the passing of time or giving of notice would constitute a default, under the Junior City Loan Documents has occurred; (v) no scheduled monthly payments under the Junior City Note have been or will be prepaid except with the prior written consent of Senior Lender; (vi) none of the rights of Junior City Lender under any of the Junior City Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise; and

(vii) there are no other Junior City Loan Documents other than those listed on Exhibit B hereto. Borrower further represents and warrants that it has provided to Senior Lender a true, complete, and correct copy of all the Junior City Loan Documents.

4. Standstill Agreement; Right to Cure Senior Loan Default.

(a) Until such time as any of the Senior Indebtedness has been repaid in full and the Senior Security Instrument has been released and discharged, Junior City Lender shall not without the prior written consent of Senior Lender, which may be withheld in Senior Lender's sole and absolute discretion, take any Enforcement Action, including, without limitation, (i) accelerate the Junior City Loan, (ii) exercise any of Junior City Lender's remedies under the Junior City Security Instrument or any of the other Junior City Loan Documents (including, without limitation, the commencement of any judicial or non-judicial action of proceeding (a) to enforce any obligation of Borrower under any of the Junior City Loan Documents, (b) to collect any monies payable to Borrower, (c) to have a receiver appointed to collect any monies payable to Borrower; or (d) to foreclose the lien(s) created by the Junior City Security Instrument) or (iii) file or join in the filing of any involuntary Bankruptcy Proceeding against Borrower or any person or entity which owns a direct or indirect interest in Borrower; provided, however, that such limitation on the remedies of Junior City Lender shall not derogate or otherwise limit Junior City Lender's rights, following an event of default under the Junior City Loan Documents to (a) compute interest on all amounts due and payable under the Junior City Loan at the default rate described in the Junior City Loan Documents, (b) compute prepayment premiums and late charges, and (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Junior City Loan.

(b) Senior Lender shall, simultaneously with the sending of any notice of a Senior Loan Default to Borrower, send to Junior City Lender a copy of said notice under the Senior Loan Documents; provided, however, failure to do so shall not affect the validity of such notice or any obligation of Borrower to Senior Lender and shall not affect the relative priorities between the Senior Loan and the Junior City Loan as set forth herein. Borrower covenants and agrees to forward to Junior City Lender, within three (3) business days of Borrower's receipt thereof, a copy of any notice of a Senior Loan Default Borrower receives from Senior Lender.

(c) Junior City Lender shall have the right, but shall have no obligation, to cure any Senior Loan Default; provided, if Junior City Lender shall elect to cure any such Default, it shall so notify Senior Lender and shall commence and complete such curing within any applicable notice or grace period, if any, as Borrower is permitted by the terms of the Senior Loan Documents to cure such Senior Loan Default. Junior City Lender shall not be subrogated to the rights of Senior Lender under the Senior Loan Documents by reason of Junior City Lender having cured any Senior Loan Default. However, Senior Lender acknowledges that, to the extent so provided in the Junior City Loan Documents, amounts advanced or expended by Junior City Lender to cure a Senior Loan Default may be added to and become a part of the Junior City Lender's Junior City Indebtedness.

(d) Junior City Lender agrees that, notwithstanding any contrary provision contained in the Junior City Loan Documents, a Senior Loan Default shall not constitute a default under the Junior City Loan Documents if no other default occurred under the Junior City Loan Documents.

(e) Junior City Lender acknowledges that any conveyance or other transfer of title to the Property pursuant to a foreclosure of the Junior City Security Instrument (including a conveyance or other transfer of title pursuant to the exercise of a power of sale contained in the Junior City Security Instrument), or any deed or assignment in lieu of foreclosure or similar arrangement, shall be subject to the transfer provisions of the Senior Loan Documents; and the person (including Junior City Lender) who acquires title to the Property pursuant to the foreclosure proceeding (or pursuant to the exercise of a power of sale contained in the Junior City Security Instrument) shall not be deemed to be automatically approved by Senior Lender.

5. **Subordination of the Catalyst Loan.** The indebtedness evidenced by the Catalyst Loan Note and secured by the Catalyst Loan Security Instrument, and all of the rights of Senior Lender and obligations of Borrower under the Catalyst Loan Documents, are subject and subordinate (in payment and priority) to the obligation of Borrower to, and rights of Junior City Lender under the Junior City Loan.

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

7. **Default.** Junior City Lender and Borrower acknowledge and agree that a default by either such party under this Agreement shall, at the sole option of Senior Lender, constitute a default under the Senior Loan Documents. Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. Any action or proceeding with respect to the matters set forth in this Agreement to which Junior City Lender is a party shall be venued in the Circuit Court of Racine County, Wisconsin.

8. **Enforcement Costs.** Borrower agrees to reimburse Senior Lender for any and all costs and expenses (including reasonable attorneys' fees) incurred by Senior Lender in connection with enforcing its rights against the Junior City Lender under this Agreement.

9. **Notices.** Any notice which any party hereto may be required or may desire to give hereunder shall be deemed to have been given and shall be effective only if it is in writing and (i) delivered personally, (ii) mailed, postage prepaid, by United State registered or certified mail, return receipts requested, (iii) delivered by overnight express courier or (iv) sent by telecopier, in each instance addressed as follows:

If to Junior City Lender: City of Burlington
c/o Racine County Economic Development Corporation
2320 Renaissance Boulevard
Sturtevant, Wisconsin 53177
Attention: []
Facsimile: []

If to Senior Lender: Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Transaction Management Group
Re: Fox Crossing Apartments Phase II Deal ID # 23289
Facsimile: (212) 723-8209

With a copy to: Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: Fox Crossing Apartments Phase II Deal ID # 23289
Facsimile: (805) 557-0924

Prior to the Conversion Date, with a copy to: Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Account Specialist
Re: Fox Crossing Apartments Phase II Deal ID # 23289
Facsimile: (212) 723-8209

Following the Conversion Date, with a copy to: Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Re: Fox Crossing Apartments Phase II Deal ID # 23289
Facsimile: (215) 441-0305

With a copy to: Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel's Office
Re: Fox Crossing Apartments Phase II Deal ID # 23289

Facsimile: (646) 291-5754

or at such other addresses or to the attention of such other persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender for failure to be called for.

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

11. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Junior City Loan Documents, other than by reason of payments which Junior City Lender is obligated to remit to Senior Lender pursuant to the terms hereof; (iii) the acquisition by Senior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Security Instrument; or (iv) the acquisition by Junior City Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Junior City Security Instrument, but only if such acquisition of title does not violate any of the terms of this Agreement.

12. **Miscellaneous.**

(a) Junior City Lender shall, within ten (10) business days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Junior City Loan, the aggregate accrued and unpaid interest under the Junior City Loan, and stating whether, to the knowledge of Junior City Lender, any default or event of default exists under the Junior City Loan, and containing such other information with respect to the Junior City Indebtedness as Senior Lender may require. Upon notice from Senior Lender from time to time, Junior City Lender shall execute and deliver such additional instruments and documents, and shall take such actions, as are required by Senior Lender in order to further evidence or effectuate the provisions and intent of this Agreement.

(b) Junior City Lender shall give Senior Lender a concurrent copy of each notice of a Junior City Loan Default or other material notice given by Junior City Lender under the Junior City Loan Documents.

(c) This Agreement shall bind and inure to the benefit of all successors and assigns of Junior City Lender and Senior Lender. Senior Lender may assign its interest in the Senior Loan Documents without notice to or consent of Junior City Lender. Junior City Lender may only assign its rights and interests hereunder upon prior written notice to Senior Lender.

(d) Senior Lender hereby consents to the Junior City Loan and the Junior City Loan Documents; provided, however, that this Agreement does not constitute an approval by Senior Lender of the terms of the Junior City Loan Documents. Junior City Lender hereby consents to the Senior Loan and the Senior Loan Documents; provided, however, that this Agreement does not constitute an approval by Junior City Lender of the terms of the Senior Loan Documents.

(e) This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

(f) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(g) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(h) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(i) Each party hereto hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(j) Borrower hereby acknowledges and consents to the execution of this Agreement, and agrees to be bound by the provisions hereof that are applicable to Borrower. Solely as between Senior Lender and Junior City Lender, all of the signatories below hereby agree that to the extent of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Senior Loan Documents and/or the Junior City Loan Documents respectively, the terms and provisions of this Agreement shall govern and control. By executing this Agreement in the place provided below, Borrower hereby (i) acknowledges the provisions hereof, (ii) agrees not to take any action

inconsistent with Senior Lender's rights or Junior City Lender's rights under this Agreement, (iii) waives and relinquishes to the maximum extent permitted by law any and all rights, defenses and claims now existing or hereinafter accruing relating to Junior City Lender's forbearance from exercising any rights and remedies pursuant to Section 4 of this Agreement, including, without limitation, any defenses based on the statute of limitations or any equitable defenses, such as laches, and (iv) acknowledges and agrees that (A) this Agreement is entered into for the sole protection and benefit of Senior Lender and Junior City Lender (and their respective successors, assigns and participants), and no other person (including Borrower) shall have any benefits, rights or remedies under or by reason of this Agreement, (B) nothing in this Agreement is intended, or shall be construed to, relieve or discharge the obligations or liabilities of any third party (including Borrower under the Senior Loan Documents and the Junior City Loan Documents), (c) neither of them nor any of their affiliates shall be, or be deemed to be, beneficiaries of any of the provisions hereof or have any rights hereunder whatsoever, and (D) no provision of this Agreement is intended to, or shall be construed to, give any such third party (including Borrower) any right subrogating to the rights of, or action against, Senior Lender or Junior City Lender.

(k) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

(l) No party other than Senior Lender and Junior City Lender shall have any rights under, or be deemed a beneficiary of any of the provisions of, this Agreement.

(m) Nothing herein or in any of the Senior Loan Documents or Junior City Loan Documents shall be deemed to constitute Senior Lender as a joint venturer or partner of Junior City Lender.

13. **Attached Exhibits.**

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

Exhibit A – Legal Description

Exhibit B – Junior City Loan Documents

Exhibit C – Modifications to Subordination and Intercreditor Agreement

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

BORROWER:

FOX CROSSING PHASE II BURLINGTON, LLC, a
Wisconsin limited liability company

By: FC2 Manager, LLC, a Wisconsin
limited liability company, its
Managing Member

By: Bear Development, LLC, a
Wisconsin limited liability company,
its Authorized Member

By: _____
Name: Stephen R. Mills
Title: Authorized Member

STATE OF WISCONSIN)
) ss:
COUNTY OF KENOSHA)

Before me, a Notary Public for said County and State, personally appeared Stephen R. Mills as an Authorized Member of Bear Development, LLC, an Authorized Member of FC2 Manager, LLC, the Managing Member of **FOX CROSSING PHASE II BURLINGTON, LLC**, a Wisconsin limited liability company, and acknowledged execution of the foregoing Subordination and Intercreditor Agreement for and on behalf of said Wisconsin limited liability company, and who, having been first duly sworn, stated that the representations contained therein are true.

WITNESS my hand and Seal this ___ day of _____, 2017.

Notary Public

Printed

My Commission Expires:

My County of Residence:

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Burlington, County of Racine, State of Wisconsin, described as follows:

Lot Two (2) of Certified Survey Map No. 3095, located in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 32, Township 3 North, Range 19 East, in the City of Burlington, County of Racine, State of Wisconsin, and recorded in the Office of the Register of Deeds for Racine County, Wisconsin, on September 6, 2013 in Volume 10 of Certified Survey Maps at Page 083 as Document No. 2363639.

TOGETHER with easement established in Restated Reciprocal Access Easement and Maintenance Agreement recorded February 8, 2016 as Document No. 2427735.

EXHIBIT B

JUNIOR CITY LOAN DOCUMENTS

1. Junior City Note.
2. Junior City Security Instrument.
3. Business Loan Agreement dated as of February ____, 2017 between Borrower and Junior City Lender.

EXHIBIT C

**MODIFICATIONS TO
SUBORDINATION AND INTERCREDITOR AGREEMENT**

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

None.

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Agreement.

**COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF BURLINGTON
RACINE COUNTY, STATE OF WISCONSIN**

December 6, 2016

Resolution No. 120

**A RESOLUTION AUTHORIZING A \$25,000 REVOLVING LOAN FUND LOAN TO
FOX CROSSING PHASE 2 BURLINGTON, LLC**

WHEREAS, the City of Burlington operates a Revolving Loan Fund Program for the purposes of economic development; and,

WHEREAS, Fox Crossing Phase 2 Burlington, LLC, currently under contract to purchase the property located at 180 Bridge Street located in the City of Burlington; and,

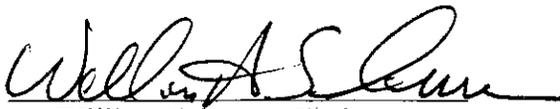
WHEREAS, a Revolving Loan Fund Loan in the amount of \$25,000 will be used by Fox Crossing Burlington, LLC to finance the construction of 32-unit apartment facility at 180 Bridge Street; and,

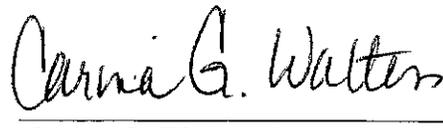
WHEREAS, the Racine County Economic Development Corporation Loan Committee has reviewed and recommended this loan under the terms and conditions listed in the Loan Officer Write-Up attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED that the Community Development Authority of the City of Burlington, Racine County, State of Wisconsin does hereby approve a Revolving Loan Fund Loan in the amount of \$25,000 to Fox Crossing Phase 2 Burlington, LLC to be used for the construction of a 32-unit apartment facility at 180 Bridge Street.

BE IT FURTHER RESOLVED that the Community Development Authority Executive Director is hereby authorized and directed to execute this agreement on behalf of the City.

Dated this 6th day of December, 2016.


William Scherrer, Chairman


Carina G. Walters, Executive Director