

GAP FINANCING LOAN AGREEMENT

CDBG-DR GAP FINANCING LOAN AGREEMENT

BY AND BETWEEN

VIRGIN ISLANDS HOUSING FINANCE AUTHORITY
As Lender,

And

JDC-MAGENS JUNCTION ASSOCIATES 2, LLLP
As Borrower

March 30, 2020

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**CDBG-DR PROGRAM
GAP FINANCING LOAN AGREEMENT**

THIS GAP FINANCING LOAN AGREEMENT (this “**Agreement**”) is entered into as of the _____ day of March, 2020, (the “**Effective Date**”) by and between the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**, an autonomous instrumentality of the Government of the United States Virgin Islands, (“**VIHFA**”), whose address is 3202 Demarara Plaza, Suite 200, St. Thomas, USVI 00802-6447; and **JDC-MAGENS JUNCTION ASSOCIATES 2, LLLP**, a Virgin Islands limited liability limited partnership (the “**Borrower**”), whose address is PO Box 303217, St. Thomas, VI 00803.

PRELIMINARY RECITALS:

- A. WHEREAS**, VIHFA is providing funds from the United States of America, HUD Community Development Block Grant - Disaster Recovery (“**CDBG-DR**”) Program to qualified borrowers, in accordance with the CDBG-DR Program (the “**Program**”) under the VIHFA Disaster Recovery Action Plan incorporating Amendment 1, approved by HUD and effective March 1, 2019 (collectively, the “**Action Plan**”, and together with any other formal program guidance issued by VIHFA, the “**Program Description**”), to provide needed residential rental property assistance for qualified projects to remedy the loss of residential rental property due to the damage caused by Hurricanes Irma and Maria; and
- B. WHEREAS**, VIHFA has determined to allow CDBG-DR funds to be used for loans pursuant to the Action Plan; and
- C. WHEREAS**, Borrower has submitted an application to VIHFA, including, but not limited to, the completed printed application, any written responses to any deficiency letter issued by VIHFA, and any written attachments, addenda, and amendments pertaining thereto to utilize CDBG-DR funds for the development, rehabilitation, replacement, restoration, construction and/or operation of a multifamily residential rental project (the “**Project**”) located on certain leasehold immovable property more fully described on **Exhibit A - Property Description** attached hereto (the “**Land**”); and
- D. WHEREAS**, based on the Application, Borrower has been awarded a loan by VIHFA as set forth in this Agreement (the “**Loan**”) from funds available under the Action Plan, the proceeds of which shall be used for the Project, as set forth in the Project-Specific Award Agreement between the Borrower and VIHFA dated March 30th, 2020 (“**Award Agreement**”); and
- E. WHEREAS**, in order to secure the Loan awarded to the Borrower, the parties have entered into a certain Leasehold Mortgage (Construction Security Interest), Assignment of Leases and Rents and Security Agreement (the “**Mortgage**”) securing the collateral described therein (the “**Mortgaged Property**”); and

F. **WHEREAS**, in connection with the LIHTCs that have been allocated to Borrower under Section 42 of the Code, a Tax Credit Regulatory Agreement (“**Tax Credit Regulatory Agreement**”) has been or will be executed and recorded as a covenant running with the land that will be enforceable against the Borrower and its successors and that will require rent restrictions and income occupancy restrictions for a minimum 15 year compliance period and rent restrictions for an additional 15 years following the Compliance Period; and

G. **WHEREAS**, the parties desire to enter into this Agreement in order to: (i) evidence the terms and conditions of the Loan, and the security therefor; and (ii) ensure compliance by Borrower with the CDBG-DR Program Description; and (iii) govern the disbursement of the Loan, and the use of such funds by the Borrower.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, VIHFA and Borrower agree as follows:

Recitals and Defined Terms. The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement. As used in this Agreement and the Loan Documents, the following terms shall have the following meanings:

(a) **Affiliate:** With respect to any entity, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or that has a Controlling Interest in, such entity.

(b) **Application:** The application by Borrower to VIHFA for funding under the Action Plan.

(c) **Business Day:** Any day other than a Saturday, Sunday or any other day on which Lender is not open for business.

(d) **CDBG-DR Regulatory Agreement:** The CDBG-DR Regulatory Agreement of even date herewith executed by Borrower in favor of VIHFA.

(e) **Code:** The Internal Revenue Code of 1986, as amended.

(f) **Completed Project:** Projects are considered complete only after all units are a 100% construction complete and certificates of occupancy have been issued.

(g) **Compliance Period:** the period specified in the Tax Credit Regulatory Agreement as the Compliance Period.

(h) **Construction Completion:** that date that all necessary title transfer requirements and construction work have been performed and the final drawdown of CDBG-DR Funds has been

disbursed for the project.

- (i) **Construction Costs:** the construction costs shown on **Exhibit C**.
- (j) **Construction Lender:** Hunt Capital Partners, LLC.
- (k) **Construction Loan:** The [REDACTED] loan made by the Construction Lender to Borrower to finance in part construction of the Project.
- (l) **Construction Loan Mortgage:** That certain Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of July 11, 2019 and recorded in the appropriate registry, encumbering the Project, executed by Borrower in favor of Construction Lender to secure the Construction Loan, including any amendments, modifications and/or supplements thereto.
- (m) **"Controlled by", "under common control with", or "Controlling Interest":** (i) the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of a company (or other entity) and includes the definition of "control" in 24 CFR 401.310(a)(2); or (ii) the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; or (iii) the ability to direct in any manner the election of a majority of a company's (or other entity's) directors, trustees or members; or (iv) the ability to exercise a controlling influence over the company's or entity's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership, and a managing member of a limited liability company is presumed to be in control of that limited liability company.
- (n) **Debt Service Amounts:** Amounts payable under this Agreement, the Note, the Mortgage, or any other Loan Document.
- (o) **Default:** the definition set forth in the Mortgage.
- (p) **Default Rate:** the definition set forth in the Note.
- (q) **Developer:** Jackson Development Company, LLC, a Virgin Islands limited liability company, and its permitted successors and assigns.
- (r) **Disbursement Date:** The date of a disbursement of Loan proceeds pursuant to a Draw Request, it being contemplated by this Agreement that there will be not more than one (1) Disbursement Date per month.
- (s) **Draw Request:** A request for disbursement of a portion of the proceeds of the Loan to provide funds for the payment of a portion of the Total Development Costs; each such Draw Request shall be deemed to be an advance under the Note. The Draw Request shall contain claims for

labor and materials to the date of the last inspection by the Inspector, and not for labor and materials rendered thereafter, and contain the Inspector's determination or confirmation of the percentage of completion of the Project for the purposes of the Draw Request.

(t) **Eligible Costs:** costs of the Project other than Ineligible Costs.

(u) **Ground Lease:** That certain Ground Lease, dated July 11, 2019, between Borrower, as Lessee, and the Developer, as Lessor.

(v) **Guarantor:** One or more persons or entities acceptable to VIHFA, which may include the general partner or managing member of Borrower, or other Affiliate of Borrower, which has an economic interest in Borrower, or which will otherwise obtain a material financial benefit from the Loan, and which will be required to execute the Operating Deficit Guaranty, the Performance and Completion Guaranty (if applicable), and the Guaranty of Exceptions to Non-Recourse Liability, including but not limited to Jackson Development Company, LLC, a Virgin Islands limited liability company and its permitted successors and assigns.

(w) **Identity of Interest:** An identity of interest relationship exists if any officer, director, board member, or authorized agent of any Project team member (consultant, general contractor, supplier, vendor, vendee, attorney, management agent, seller of the land, etc.):

- (i) is also an officer, director, board member or authorized agent of any other Project team member;
- (ii) has any control over or any financial interest in any other Project team member's firm or corporation;
- (iii) is a business partner of an officer, director, board member, or authorized agent of any other Project team member;
- (iv) has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any Project team member; or
- (v) advances any funds or items of value to the Borrower.

(x) **Indebtedness:** The principal of, interest on, or any other amounts due at any time under the Note, this Agreement or the Mortgage, including late charges, default interest, and advances to protect the security of the Mortgage under the terms of the Mortgage, reasonable attorneys' fees and court costs, and other fees and costs due and payable under the Loan Documents.

(y) **Ineligible Costs:** any costs enumerated at 24 CFR §570.207, with the exception of those costs which are permitted under the Territory's waiver, which permits the use of CDBG-DR for new construction.

(z) **Inspector:** The licensed architectural or engineering firm approved or appointed by the Investor (and approved by VIHFA) to inspect the construction and progress thereof prior to disbursements under the Loan.

(aa) **Intercreditor Agreement:** The Intercreditor Agreement entered into by Construction Lender, VIHFA and Borrower, dated of even date herewith.

(bb) **Investor:** The investor limited partner or investor member allocated the Low Income Housing Tax Credits awarded to the Project in return for purchasing an equity interest in the Borrower, as described in the Partnership Agreement.

(cc) **Lender:** The holder of the Note, including without limitation, VIHFA.

(dd) **LIHTC:** Any low-income housing tax credit allowed pursuant to Section 42(h)(4) of the Code.

(ee) **LIHTC Application:** The VIHFA application for LIHTCs in accordance with the QAP.

(ff) **Loan:** The loan to Borrower by VIHFA pursuant to this Agreement.

(gg) **Loan Documents:** The Note; this Agreement; the Mortgage; UCC-Financing Statements covering the fixtures and movable property located at the Project; the CDBG-DR Regulatory Agreement; the Operating Deficit Guaranty; the Performance and Completion Guaranty of even date herewith by Guarantor in favor of VIHFA; the Guaranty of Exceptions to Non-Recourse Liability of even date herewith by Guarantor in favor of VIHFA; the Intercreditor Agreement; the Subordination Agreement; and such other documents, agreements, instruments or certificates as VIHFA and its counsel may require, including such documents as VIHFA in its sole discretion deems necessary or appropriate to evidence or secure the Indebtedness.

(hh) **Mortgage:** The Leasehold Mortgage (Construction Security Interest), Assignment of Leases and Rents, and Security Agreement executed by Borrower in favor of VIHFA, which shall (a) constitute a second lien upon the Project, and (b) constitute a second lien upon and security interest in all fixtures and movable property relating to or located in the Project, and (c) secure Borrower's obligations to VIHFA under the Note.

(ii) **Note:** The CDBG-DR Note, dated the Effective Date, evidencing the Loan.

(jj) **Partnership Agreement:** The Amended and Restated Agreement of Limited Partnership of JDC-Magens Junction Associates 2, LLLP, dated as of July 11, 2019.

(kk) **Operating Deficit Guaranty:** The guaranty from the Guarantor covering operating deficits of Borrower as more fully described in such guaranty executed by Borrower and Guarantor in favor of Lender of even date herewith.

(ll) **Operating Expenses:** The meaning set forth in the Note.

(mm) **Organizational Documents:** The Articles of Organization, Partnership Agreement, and/or any other documents required or existing setting forth the organization and operation of the Borrower.

(nn) **Permanent Lender:** n/a

(oo) **Permanent Loan:** n/a

(pp) **Permanent Loan Agreement:** n/a

(qq) **Permanent Loan Documents:** n/a

(rr) **Plans and Specifications:** The plans and specifications for the construction of the Project as reviewed and approved by VIHFA prior to the initial Draw Request and all amendments and modifications as approved by VIHFA.

(ss) **QAP:** The Qualified Allocation Plan pursuant to which LIHTCs are allowed in accordance with Section 42(h)(4) of the Code.

(tt) **Senior Lender:** Any Construction Lender and any Permanent Lender.

(uu) **Senior Loan:** Any Construction Loan and any Permanent Loan.

(vv) **Senior Loan Agreement:** Any Construction Loan Agreement and any Permanent Loan Agreement.

(ww) **Senior Loan Debt Service:** All sums due or currently required to be paid under the terms of any Senior Loan.

(xx) **Senior Loan Documents:** Means any Construction Loan Document and any Permanent Loan Document.

(yy) **Senior Mortgage:** Any Construction Loan Mortgage and any Permanent Loan Mortgage.

(zz) **Surplus Cash:** The meaning set forth in the Note.

(aaa) **Tax Credit Regulatory Agreement:** The Tax Credit Regulatory Agreement with VIHFA related to the Project.

(bbb) **Territory:** The U.S. Virgin Islands, a territory of the United States of America.

(ccc) **Total Development Cost:** The total costs to develop and construct the Project, including without limitation hard and soft costs and developer fees, as set forth on **Exhibit C - Total Development Costs** attached hereto, as modified and amended from time to time with the consent of VIHFA.

SECTION 1
LOAN AMOUNT AND USE OF FUNDS

1.1 Principal Amount and Interest. The principal amount of the Loan is [REDACTED] and [REDACTED] DOLLARS [REDACTED]), bearing [REDACTED] interest prior to any Default. From and after the occurrence of a Default, the principal amount shall bear interest at the Default Rate. All outstanding principal and accrued interest shall be due and payable by Borrower in accordance with the Note.

1.2 Repayment Term.

(a) **Annual Installments; Place of Payment.** The Loan shall be repaid in accordance with the Note.

(b) **Payment from Surplus Cash.** Notwithstanding the requirement of repayment from Surplus Cash, the Loan shall not be construed as a joint venture, partnership or other association between Borrower and VIHFA, other than a debtor/creditor relationship. VIHFA's right to be paid from Surplus Cash shall terminate at such time as the principal and interest amounts due on the Note are paid in full.

(c) **Surplus Cash and Accounts.**

(i) **Determination of Surplus Cash.** Surplus Cash shall be determined in accordance with the Note.

(ii) **Operating Account and Accounting Requirements.** The Borrower shall establish an Operating Account. During the term of the Loan:

(A) All cash received by the Borrower shall be deposited to the Operating Account, except for (1) proceeds of the Senior Loan and all other development period sources of funds (limited, however, to the amounts included in the Borrower's final Cost Certification provided for Lender's subsidy layering review); and (2) tenant security deposits.

(B) All discounts, rebates, commissions or other payments in connection with the Project shall be credited to the Project and shall be deposited to the Operating Account even if such payments are made to the management agent, the Borrower or any Affiliate.

(C) Borrower agrees that these Operational and Accounting Requirements shall be binding on the Borrower, and that the Borrower has provided these Operational and Accounting Requirements to all other parties providing funds to the Project. The provisions of these Operational and Accounting Requirements shall apply, notwithstanding any provision to the contrary in the Borrower's Organizational Documents and notwithstanding any provision to the contrary in the Borrower's agreements with any investor or with any other lender.

1.3 Expenditure of Funds. Proceeds from the Loan are to be used solely to support the development, rehabilitation, replacement, restoration, and construction of the Project as set forth in the Award Agreement, the Program Description and the Loan Documents. The Loan shall be used solely to reimburse actual Total Development Costs already expended that VIHFA, in its sole but reasonable discretion, determines to be eligible for CDBG reimbursement. Borrower shall use the proceeds of the Loan only for the payment of Eligible Costs. Borrower shall not use any proceeds from the Loan for Ineligible Costs. Borrower acknowledges that VIHFA must comply with the provisions of 2 CFR Part 200 as modified by 24 CFR Section 570.502, and OMB Circular A-87, which allow only costs that are necessary, reasonable, and adequately supported to be charged to the Program. Thus, Borrower acknowledges and agrees that any funds not used in accordance with this standard or applicable CDBG regulations must be repaid to VIHFA by Borrower upon written demand.

1.4 Security. Repayment of the Note shall be secured by the mortgage lien on and security interest in the Mortgaged Property described in the Mortgage.

1.5 Note. The Loan shall be evidenced by the Note.

1.6 Reduction of Loan. Notwithstanding anything to the contrary contained herein, VIHFA may reduce the principal amounts of the Note in accordance with the Note.

1.7 Term. The term of this Agreement shall commence upon the Effective Date and terminate upon payment in full of the Indebtedness. All indemnification obligations of Borrower and all other provisions in this Agreement that provide they shall survive a termination of this Agreement shall remain in full force and effect, notwithstanding such termination.

SECTION 2 BORROWER LIMITATIONS

2.1 Restrictions On Identity-of-Interest Relationships. The Borrower must notify VIHFA in writing prior to contracting with any Identity of Interest entity, and the Borrower must include in its audited annual financial statements a disclosure of all amounts paid to Identity of Interest entities. In addition, VIHFA will have the right, in its sole but reasonable discretion, during the term hereof, to require the cancellation of any contract between the Borrower and any Identity

of Interest entity other than those listed on Schedule 2.1 of the Loan Agreement. If VIHFA approves any Identity of Interest contract, other than those listed on Schedule 2.1 of the Loan Agreement, that does not provide for subsequent cancellation, Borrower agrees, upon VIHFA's request, to cause the contract to be modified to provide for cancellation. All current contracts with Identity of Interest entities are identified on Schedule 2.1, attached hereto. Notwithstanding the foregoing, no Identity of Interest relationship may exist between Borrower and any lender providing secured financing to the Project, unless Borrower has received the prior written consent of VIHFA.

SECTION 3 REQUIRED GUARANTEES AND RESTRICTION ON USE

3.1 Required Guarantees. As a condition to disbursement of proceeds, Borrower shall deliver the executed Operating Deficit Guaranty, the Performance and Completion Guaranty of even date herewith by Guarantor in favor of VIHFA; the Guaranty of Exceptions to Non-Recourse Liability of even date herewith by Guarantor in favor of VIHFA. VIHFA may pursue its remedies against any Guarantor without first exhausting its remedies against the Borrower or the Project, or any other Guarantor.

3.2 CDBG-DR Regulatory Agreement.

(a) As a condition to disbursement of proceeds, Borrower will be required to execute and deliver to VIHFA the CDBG-DR Regulatory Agreement. The CDBG-DR Regulatory Agreement shall be recorded in the real estate records where the Project is located, and shall be subordinate only to those liens and encumbrances agreed to by VIHFA, in its sole discretion.

(b) The CDBG Regulatory Agreement shall have a stated term of thirty-five (35) years.

SECTION 4 REQUIRED RESERVES

4.1 Replacement Reserve.

(a) **Reserve for Repairs.** Borrower shall establish and maintain a reserve (in a custodial account to be maintained by the Senior Lender, if applicable, and otherwise in accordance with requirements of the Investor) ("**Replacement Reserve**") for the payment of costs and expenses incurred by Borrower in connection with fixtures, furniture and equipment, capital improvements, repairs and replacements performed at the Project, including but not limited to, the performance of work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, carpets, appliances, fixtures, elevators, and mechanical and HVAC equipment and the replacement of furnishings, fixtures and equipment in the rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities and other public areas accessible by the public or tenants for regular

use, and such other items as Lender may approve from time to time in its reasonable discretion (collectively, the “Repairs”).

(b) **Required Deposits.** Borrower shall deposit to the Replacement Reserve such amounts as are required by the Investor.

(c) **Disbursement of Reserves.** So long as no Default has occurred and is continuing and no circumstance exists, that with the giving of notice, or passage of time, or both, would constitute a Default, (i) all sums in the Replacement Reserve shall be held in the Replacement Reserve to pay and/or reimburse Borrower for the costs and expenses of Repairs, and (ii) to the extent funds are available for such purpose in the Replacement Reserve, Lender shall provide written consent to reimbursement to Borrower of the amount paid or incurred by Borrower in performing such Repairs within ten (10) days following: (a) the receipt by Lender of a written request from Borrower for consent to disbursement from the Replacement Reserve and a certification by Borrower to Lender that the applicable item of Repair has been completed; (b) the delivery to Lender of invoices, receipts or other evidence verifying the cost of performing the Repairs; and (c) for disbursement requests (i) in excess of \$10,000.00 with respect to any single Repair, or (ii) for any single Repair that is structural in nature, delivery to Lender of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Project have been paid all amounts due for labor and materials furnished to the Project; (2) a certification from an inspecting architect or other third party acceptable to Lender describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (3) a new (or amended) certificate of occupancy for the portion of the Improvements covered by such Repairs, if said new certificate of occupancy is required by law, or a certification by Borrower that no new certificate of occupancy is required by law. Lender shall not be required to consent to reimbursement from the Replacement Reserve more frequently than once in any thirty (30) day period. In consenting to any payment from the Replacement Reserve, Lender shall rely entirely on such request from Borrower, and on any bill, statement, or estimate from any third party, without any inquiry into the accuracy, validity or contestability of any such amount. In the event that the amounts on deposit or available in the Replacement Reserve are inadequate to pay the cost of the Repairs, Borrower shall pay the amount of such deficiency.

SECTION 5 CLOSING AND CONDITIONS TO DISBURSEMENT

5.1 Closing. As used herein, “Closing” shall mean that day on which all of the Loan Documents are executed and delivered by Borrower, and the Mortgage and CDBG-DR Regulatory Agreement are filed for record with the appropriate clerk or recorder of deeds where the Project is located or a gap coverage title policy is released evidencing title and a Lender loan title insurance policy acceptable to Lender. Funding of the Loan will not occur until all of the conditions to funding the Loan have been satisfied.

5.2 Method of Disbursement. The Loan proceeds shall be disbursed at Closing based on invoices presented by Borrower subject to VIHFA CDBG-DR policy requirements and compliance with Section 5.3 and Section 5.4 herein..

5.3 Conditions to be Met Prior to the Disbursement of any Draws. Prior to the disbursement of any draws, the following conditions must be satisfied in the sole and absolute discretion of VIHFA:

(a) VIHFA shall have received executed originals of all of the Loan Documents (including a Loan disbursement statement), in form and substance acceptable to VIHFA.

(b) Commencement of construction of the Project has occurred or will occur immediately upon completion of the Closing.

(c) VIHFA shall have received the financial statements of all Guarantors.

(d) VIHFA shall have received from the Borrower a copy of the construction budget and line item breakdown of Total Development Costs, including hard and soft costs, approved by the Investor, along with a sources and uses of funds in the amount of the Total Development Costs, a draw schedule and estimated development timing assumptions.

(e) VIHFA shall have received certificates of insurance as to Builder's Risk and Hazard Insurance in completed value form with extended coverage in the amount of the full value of the Project, as completed, but which shall, in any case, include such insurance coverage sufficient to meet the standards established in Part V, Section 106 of the Fannie Mae U.S. Guide, effective November 3, 2003, as amended from time to time, unless any of such requirements is waived by VIHFA. Such certificates of insurance shall be issued by a company satisfactory to VIHFA, duly endorsed to show the interest of VIHFA under a standard non-contributing mortgagee clause addressed to VIHFA. The policy shall also provide that such policy will not be canceled without thirty (30) days' notice to VIHFA. Borrower agrees that VIHFA shall have the right to take any action necessary to continue said insurance in full force and effect including, but not limited to, paying premiums. Any funds advanced to continue the policies in full force and effect shall be considered as Draw Requests hereunder and shall bear interest from the date of disbursement at the Default Rate and payment of said funds and interest shall be secured by the Mortgage. Notwithstanding Fannie Mae requirements, VIHFA agrees to waive windstorm coverage for the Project, provided that Borrower submits an engineer's documented Probable Maximum Loss (PML) report showing a PML of 10% or less for the Project, and provided as well that the Investor has waived windstorm coverage.

(f) VIHFA shall have received payment and performance bonds from a U.S. Treasury approved surety in the full amount of the general contractor's contract price which lists VIHFA as a dual obligee.

(g) VIHFA shall have received a copy of the general contractor's contract, the

architect's contract, the development agreement, the management agreement and management plan, the plans and specifications, the site plan and floor plans, an appraisal and market study, utility availability letters, and such other documentation as VIHFA may reasonably require.

(h) VIHFA shall have received a copy of the building permit(s) (or written confirmation from the relevant government authorities that the building permits are ready to be obtained subject only to payment of fees) authorizing construction of the Project together with a certificate from the public official issuing the building permit(s) that the Project will conform to existing zoning laws and specified variances, if any; and all other authorizations, permits or approvals, if any, required by any governmental authorities for the construction and operation of the Project, which are presently procurable.

(i) VIHFA shall have received the vesting deed (act of sale) or ground lease, as applicable, evidencing Borrower's title or interest in the land and a mortgagee's policy of title insurance from a title insurance company or agent acceptable to VIHFA, insuring VIHFA's mortgage lien on the Project, with the standard "preprinted" exceptions deleted, and containing only those exceptions acceptable to VIHFA, in its sole discretion.

(j) VIHFA shall have received an ALTA Survey of the current condition of the Land, certified to VIHFA, showing any buildings or other improvements located thereon and platting building setback lines, servitudes, roads, encroachments, any plattable exceptions that are acceptable to VIHFA in its sole discretion and any other locatable or visible survey or title-related issues affecting the Land together with a statement as to the flood elevation and zoning for the Land and such other requirements and certification as VIHFA may reasonably require.

(k) VIHFA shall have received Borrower's tax identification number, and evidence that Borrower has been awarded Tax Credits for the Project from the VIHFA in the amount stated in the reservation as well as confirmation that Borrower has received a commitment from the Investor to purchase the tax credits pursuant to the Organizational Documents.

(l) VIHFA shall have received: (i) An opinion of Borrower's counsel covering such matters as are reasonably required by VIHFA, including, without limitation, the existence and good standing of Borrower; that the Loan Documents have been duly authorized, executed and delivered by Borrower; the enforceability of the Loan Documents; (ii) copies of Borrower's Organizational Documents; (iii) good standing certificate the United States Virgin Islands for Borrower and the general partner of Borrower executing this Agreement, and (iv) such resolutions, certificates, and consents as VIHFA deems necessary or proper to authorize the execution and delivery by Borrower of the Loan Documents.

(m) VIHFA shall have received federal and state tax lien, judgment, UCC and pending litigation searches for Borrower, and such other parties as VIHFA shall require for each state in which such entity was formed, as well as the Territory in which the Project is located, in each case, dated not more than sixty (60) days prior to the date of the initial disbursement.

5.4 Conditions to be Met for All Draws. The following are conditions for all draws and must be satisfied in the sole and reasonable discretion of VIHFA (it being understood and agreed that subject to the provisions contained in Section 4 of this Agreement, VIHFA may withhold from disbursement any amounts required to fund any reserve required by the terms of the Loan Documents):

(a) Borrower shall supply VIHFA with a Draw Request in the form provided by VIHFA requesting disbursement of Loan proceeds for reimbursement of Eligible Expenses. Each Draw Request shall set forth the amount requested (which in no event shall exceed VIHFA's pari passu share) and shall be accompanied by partial releases of liens from the general contractor and all major subcontractors to the effect that such amount has been paid for labor and materials supplied to the Project for the immediately preceding draw period and that general contractor and the major subcontractors claim no lien on the Project, and such other evidence as may be required by this Agreement or by VIHFA. By executing and delivering a Draw Request to VIHFA, Borrower agrees and acknowledges that such execution and delivery shall constitute a reaffirmation that the warranties and representations in the Loan Documents are correct and true in all material respects, that all the covenants, terms, and conditions of this Agreement are being and have been complied with, and that no Default has occurred and is continuing as of the date of the Draw Request. VIHFA shall have received for its approval the Draw Request for such disbursement, and any other certifications provided for herein or as requested by VIHFA in its reasonable discretion. For all draw requests submitted for payment of any contractor or supplier with an Identity of Interest relationship with the Borrower, the Borrower's Architect shall submit a certification of cost reasonableness, establishing that such costs are reasonable.

(b) All conditions precedent to the funding of the Construction Loan shall have been satisfied to the construction lender's satisfaction and there shall be no defaults or events with which the passage of time could serve as the basis for a default under the Construction Loan.

(c) There shall be at all times undisbursed loan funds, which, when combined with any equity amounts to be funded by the Investor, are sufficient to complete the construction of the Project. Each Draw Request from Borrower shall be deemed to be a certification by Borrower to VIHFA that, taking into account any retainage, there will be sufficient funds to complete the Project. VIHFA shall have received from the Inspector or from Borrower a copy of Inspector's report prior to the date of such Draw Request and such report shall be satisfactory to VIHFA in its sole discretion.

(d) VIHFA shall have received an endorsement to the title insurance policy using standard construction loan disbursement endorsements updating the status of title to the date of the current Draw Request and increasing the insurance coverage to an amount equal to the sum of all prior Draw Requests and the current Draw Request, without additional exceptions or objections, except those specifically approved in writing by VIHFA.

(e) VIHFA shall have received evidence that all certificates of insurance as to Builder's Risk and Hazard Insurance remain in effect.

(f) The warranties and representations contained in the Loan Documents are correct and true, in all material respects, all the covenants, terms and conditions of the Loan Documents remain satisfied, and no uncured Default, default, or circumstances or events which upon the lapse of time, the giving of notice, or both, could become a Default, have occurred as of the date of the Draw Request under the Loan Documents.

(g) VIHFA shall have received a certificate of Borrower included with each Draw Request stating that Borrower has satisfied and is in compliance with all of the terms, covenants and conditions of the Award Agreement, the Program, and all laws, rules, regulations, ordinances and codes applicable to the Project, including without limitation CDBG regulations, to the extent not waived in writing. Such certificate shall state that all of Borrower's representations, warranties and covenants contained in the Application and the Loan Documents are true and correct in all material respects as of the Disbursement Date, and Borrower has performed all of its obligations under the Loan Documents, and no Default, or circumstance or event which with notice or the passage of time, or both would constitute a Default under the Loan Documents shall exist as of the Disbursement Date.

(h) If requested by VIHFA, Borrower shall furnish copies, certified by Borrower to be true and correct, of all subcontracts and purchase orders for the provision of labor and materials for the construction of the Improvements and statements from each subcontractor and supplier: stating the amount of its contract and the amount paid to date; and acknowledging full payment (less retainage) of all sums due and payable for all work done and materials supplied.

(i) If requested by VIHFA, Borrower shall furnish to VIHFA evidence reasonably satisfactory to VIHFA that Borrower and general contractor have obtained or can obtain all necessary materials as and when required for the completion of the Project in accordance with the Plans and Specifications.

5.5 Conditions to be Met Prior to the Disbursement of the Final Draw. When the Project has been completed, Borrower shall supply VIHFA with the following documents and satisfy the following terms and conditions as well as satisfying all of the conditions and supplying all of the information required under the Loan Documents, prior to final disbursement (including any retainage withheld) of Loan proceeds (it being understood and agreed that subject to the provisions contained in Section 4 of this Agreement, VIHFA may withhold from disbursement any amounts required to fund any reserve required by the terms of the Loan Documents):

(a) Certificates of occupancy for each building and unit in the Project, or its equivalent from the applicable governmental authorities for the Territory or locality in which the Project is located.

Certificate from the Borrower's architect or engineering firm that the Project has been completed in substantial compliance with the Plans and Specifications for the Project, and with the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614; the Americans with Disabilities Act of 1990; for existing properties build prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential Lead based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35; and Section 504 of the Rehabilitation Act of 1973.

(b) An acceptable environmental assessment of the Project that complies with the CDBG regulations and requirements and has been approved by VIHFA.

(c) Certificate from the Inspector that the Project has been completed in accordance with the Plans and Specifications in a good and workmanlike manner (the "Certificate of Completion").

(d) An ALTA "As Built" Survey, certified to VIHFA, showing the buildings and improvements comprising the Project to be within lot lines and building setback lines, all easements, roads, rights of way and matters affecting title, and any other information required by VIHFA.

(e) An endorsement to the title insurance policy updating the title insurance policy to the completion date, increasing the insurance coverage to the full amount of the Loan, containing no additional exceptions not previously approved by VIHFA, and evidencing the subordination of any Senior mortgage or lien to the terms and conditions of the CDBG Regulatory Agreement.

(f) A complete set of signed and sealed "as built" Plans and Specifications.

(g) Satisfaction and compliance with all of the terms, covenants and conditions contained in the Application, the Program Description, this Agreement and the other Loan Documents.

(h) Compliance with all laws, rules, regulations, ordinances and codes applicable to the Project, including without limitation CDBG regulations, to the extent not waived in writing, applicable to the Project.

(i) VIHFA shall have approved the Cost Certification Audit (as defined in the Note) from Borrower and shall have completed the final subsidy layering review of the Project costs in accordance the Note.

(j) VIHFA shall have received: (a) current certificates of insurance as required by this Agreement; (b) reserved; (c) an estoppel certificate from any other lenders providing financing for the Project stating that no defaults have occurred and that its loan terms are being complied with; (d) updated financial information from Borrower and each Guarantor, including copies of the most recent year's tax returns and audited financial statement, and such other information as VIHFA deems

necessary; (e) a certificate of Borrower evidencing compliance with all Davis-Bacon requirements; (f) a certificate of Borrower summarizing all actions taken to comply with the Housing and Urban Project Act of 1969 (Section 3); and (f) a warranty from the construction contractor, acceptable to VIHFA in its sole discretion, providing a full guarantee for all workmanship and materials, without regard to whether such work or materials was paid by VIHFA or other funding sources, for a period of not less than twelve (12) months from the date of the Certificate of Completion.

(k) Current good standing certificates and certified copies of the Organizational Documents for Borrower, its general partner(s)/managing member(s), Guarantor(s) and such other parties as required by VIHFA.

(l) Evidence that the Low Income Housing Tax Credits initially awarded to Borrower are still available and committed to Borrower for the Project and evidence of an initial contribution from Investor showing an intent to purchase the tax credits.

(m) A certificate of Borrower reaffirming the representations and warranties contained in the Loan Documents.

(n) Lien-free completion of the Project (as evidenced by final lien waivers in form and substance satisfactory to VIHFA and its counsel from the general contractor and all major subcontractors, which may be conditioned on receipt of payments from the final disbursement of Loan proceeds hereunder), and expiration of the lien periods provided by applicable Virgin Islands law, with no liens being filed against the Project.

(o) Any approval required by any governmental authority to the extent that any such approval is a condition to the lawful use and occupancy of the Project.

(p) A complete list of any contractor(s) or subcontractor(s) who have performed work on, or furnished materials for, the Project.

5.6 Right to Withhold Funding. VIHFA may elect to withhold any Draw Request, notwithstanding the substance of any report of the Inspector, or any documentation submitted to VIHFA in connection with a Draw Request, if there is a Default, or if VIHFA reasonably determines at any time that the actual cost budget or progress of construction differs materially from that as shown on the contractor's cost breakdown, or that the percentage of progress of construction of the Project differs materially from that as shown on the Draw Request for the period in question. Furthermore, if any instrument or document submitted by Borrower in connection with any Draw Request shall not, in the reasonable exercise of VIHFA's discretion, comply in all material respects with the conditions and requirements of this Agreement then VIHFA may amend, reduce or withhold funding of any request, as VIHFA, in its reasonable and timely discretion, shall deem proper under the circumstances.

5.7 Payment of Draw Requests. If all conditions precedent to VIHFA's obligations hereunder and to the Draw Request have been performed to the reasonable satisfaction of VIHFA, Borrower hereby directs VIHFA to make the Draw Request, in accordance with this Agreement, payable to Borrower or as VIHFA may otherwise elect, and VIHFA shall make each Draw Request in the amount justified by the applications, affidavits, certificates and other evidence submitted to VIHFA under Section 3 hereof. Notwithstanding the foregoing, if the draws are made on a pari passu basis, the amount so requested shall not exceed VIHFA's pari passu share of the total amount of the Total Development Costs multiplied by the percentage of completion then attained less the aggregate of all amounts theretofore advanced and soft costs approved by VIHFA. The proceeds of each Draw Request hereunder shall be applied solely and exclusively to payment, or to reimbursement of Borrower for payment, of the Total Development Costs and soft costs approved by VIHFA, and Borrower agrees at any time and from time to time, upon request of VIHFA, to exhibit to VIHFA receipts, vouchers, statements, bills of sale or other evidence satisfactory to VIHFA of actual payment of such Total Development Costs approved by VIHFA. Notwithstanding the foregoing, VIHFA may apply any amounts due Borrower hereunder toward satisfaction of any of the terms or conditions of this Agreement, and amounts so applied shall be part of the Loan and shall be secured by the lien of the Mortgage, and all disbursements from any "contingency" categories shall be made at VIHFA's sole and absolute discretion.

SECTION 6 GAP FINANCING LOAN COMPLIANCE REQUIREMENTS

6.1 Applicable Laws. Borrower agrees to abide by any and all federal, state, parish and municipal laws, codes, ordinances, rules and regulations applicable to the Project, whether presently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes. Borrower agrees to comply with all Program requirements, HUD regulations and the provisions of 24 CFR Part 570, as amended from time to time, and all federal regulations and policies issued pursuant to these regulations.

6.2 Uniform Administrative Requirements. Borrower acknowledges that VIHFA must comply with the Uniform Administrative requirements set forth in 24 CFR Section 570.502, and the Federal Office of Management and Budget "OMB" Circular A-87 and implementing regulations in 2 CFR Part 200, A-128 and A-133. Borrower agrees to supply VIHFA with documentation concerning the Project in order to ensure that VIHFA is in compliance with its responsibilities therein regarding source documentation for all costs incurred.

6.3 Records. Borrower shall comply with 24 CFR Section 570.506 and 2 CFR Part 200 regarding records that must be maintained for the Project. Borrower shall maintain all Project financial records, including source documentation to support how CDBG-DR funds loaned to Borrower hereunder were expended, which includes, but is not limited to, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, and other documentation as may

be required by VIHFA or HUD to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 2 CFR Part 200 or for such other period required by VIHFA or HUD. The records shall be made available to VIHFA, HUD, and/or any of their authorized representatives, who shall have access to and the right to examine any of the Project records during such period. All record keeping requirements set forth in this Agreement or any record keeping requirements mandated by CDBG-DR regulations shall survive termination of this Agreement.

6.4 Monitoring. Borrower will allow on-site monitoring of the Project by VIHFA or an agent on its behalf, at such times as VIHFA or HUD deems necessary or required, and VIHFA and/or HUD shall have the right, but shall be under no obligation, to conduct any reasonable monitoring to determine compliance with the CDBG-DR Regulatory Agreement and this Agreement, including but not limited to the right to enter the Project (upon 48 hours prior written notice to the Borrower) to inspect the Project and to inspect the books and records kept regarding the Project, and the right to inquire and receive responses from Borrower regarding the Project and its operation at any time that may be required by VIHFA or HUD.

6.5 Religious and Political Activities. Borrower is prohibited from using Loan proceeds or personnel employed in the administration of the Program for sectarian or religious activities, lobbying, political patronage and/or nepotism activities. Borrower further agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code (Hatch Act), 24 CFR Section 570.207(a)(3), or 24 CFR Section 570.200(j).

6.1 Section 3 of the Housing and Urban Development Act of 1968. Borrower agrees to comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations contained in 24 CFR Part 135 regarding economic opportunities for low and very low -income persons. Borrower shall also keep records demonstrating compliance with the foregoing regulations, including without limitation the provisions of 24 CFR Section 570.506(g)(5).

6.6 Equal Employment Opportunity. Borrower agrees to comply with 24 CFR Section 570.607, Executive Order 11246, as amended by E.O. 11375, the implementing regulations in 41 CFR Part 60.

6.7 Non-Discrimination. Borrower shall not, on the grounds of race, color, religion, national origin, ethnicity, familial status, sexual orientation or gender, exclude any person from participation in, or deny any person the benefits of, or subject any person to discrimination with respect to, any part of the Project. Borrower shall at all times comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations in 24 CFR Part 1. Borrower shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and the implementing regulations contained in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973, and the implementing

regulations contained in 24 CFR Part 8.

6.8 Fair Housing Act. Borrower shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and implementing regulations in 24 CFR Part 107 and keep all records demonstrating compliance with the foregoing.

6.9 Davis-Bacon Act. Borrower agrees to comply with 24 CFR Section 570.603, and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §3141 *et seq.* as it applies to any construction work financed in whole or in part with CDBG-DR funds. All contracts and subcontracts for construction shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations. Borrower shall maintain documentation and records that demonstrate compliance with hour and wage requirements, including contract provisions and payroll records.

6.10 Copeland "Anti-Kickback" Act. Borrower agrees to comply with the Copeland "Anti- Kickback" Act (18 U.S.C. §874) as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.

6.11 Contract Work Hours and Safety Standards Act. Borrower agrees to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701 to 3708), as supplemented by the Department of Labor regulations contained in 29 CFR Part 5.

6.12 Handicapped Accessibility Requirements. The Project shall be accessible to and usable by individuals with handicaps, in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157), the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614, and the Americans with Disabilities Act of 1990.

6.13 Resident Aliens. Borrower agrees to comply with the requirements set forth in 24 CFR Section 570.613 regarding eligibility restrictions for certain resident aliens.

6.14 Debarment and Suspension. In connection with this Project, Borrower shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. Borrower shall not enter into a contract with any person, agency or entity that is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689. In the event that Borrower has entered into a contract or subcontract with a debarred or suspended party, no CDBG-DR funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor.

6.15 Environmental Review Requirements. No choice limiting action with respect to the Project may commence until Borrower has received written approval of its environmental assessment from VIHFA, pursuant to 24 CFR Part 58. Choice limiting actions include, without

limitation: closing of the Loan, acquisition of the Project site, demolition on the Project site, grading of the Project site, and commencement of construction. In connection with any construction or improvements to the Project, Borrower must submit an environmental report in form and substance acceptable to VIHFA, which must provide an environmental assessment of such construction in accordance with 24 CFR Part 58, and be approved by VIHFA before commencing such work. Violation of this requirement may result in delay, postponement or cancellation of any payment of Loan proceeds.

6.16 Lead Based Paint Prohibited. For existing properties built prior to 1978, Borrower agrees that it shall not use lead-based paint in the Project and shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4831(b)), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35. Borrower shall maintain records demonstrating compliance with the foregoing lead based paint requirements. To the extent that lead-based paint is located in any existing buildings at the Project, Borrower shall provide VIHFA with a plan for handling such lead-based paint in a safe manner, and in accordance with the foregoing regulations, and comply with the plan during any construction at the Project.

6.17 Historic Preservation. To the extent applicable, Borrower agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the Project. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, State, or local historic property list.

6.18 Flood Disaster Protection. Borrower shall obtain a flood zone certificate certifying that the Project is not located in a special flood hazard area ("**Flood Hazard Area**") as identified by Federal Emergency Management Agency ("**FEMA**"), or if located in a Flood Hazard Area, the designation of the Flood Hazard Area in which the Project is located. Borrower shall comply with all requirements listed in the FEMA Special Flood Hazard Area Flood Maps. Borrower agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106) and implementing regulations in 44 CFR Parts 59 through 79 in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement.

6.19 Permits. Borrower agrees to obtain and maintain all necessary permits for intended improvements or activities for the Project, and for the operation of the Project.

6.20 Displacement, Relocation, Acquisition and Replacement of Housing. Borrower shall comply with 24 CFR Section 570.606 and shall keep all records demonstrating compliance with these requirements including, but not limited to, those records required in 24 CFR Section 570.506. Borrower must comply with applicable requirements of the Uniform Relocation Assistance and

Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended. These requirements are explained in HUD Handbook 1378 and specify the procedures for the acquisition of property and the treatment of tenants located in the Project.

6.21 Conflict of Interest. Borrower shall comply with the conflict of interest provisions contained in 24 CFR Section 570.611, Section 84.42 and Section 85.36, as applicable.

6.22 Rehabilitation Act. Borrower shall comply with Section 504 of the Rehabilitation Act of 1973, and the implementing regulations contained in 24 CFR Part 8.

6.23 Program Requirements. Borrower and the Project shall comply with all rules and regulations set forth in the Program Description, or applicable to the use of CDBG-DR funds at all times during the term of this Agreement, the Loan and the CDBG-DR Regulatory Agreement.

6.24 Management. Borrower shall at all times provide for professional management of the Project by a residential rental property manager satisfactory to VIHFA under a contract approved by VIHFA in writing which allows for termination of the manager at will. At any time that Borrower fails to be in compliance with the terms hereof or the CDBG Regulatory Agreement, VIHFA may require that Borrower replace the current manager with a new manager satisfactory to VIHFA.

6.25 Tenants with Relationships with Borrower. Borrower shall not allow any relative (whether by blood, marriage or adoption), employee, officer, agent or consultant of Borrower or Developer, or any relative (whether by blood, marriage or adoption) of any shareholder or member or partner of Borrower or Developer, if Borrower or Developer is an entity, to rent or occupy any unit in the Project without first disclosing such relationship to VIHFA accompanied by assurance and documentation to evidence that (a) such relative, employee, officer, agent or consultant is income-qualified and otherwise meets the screening criteria of the Project, and (b) either (i) such person was occupying the Project prior to the date of the Application or (ii) such person's application was processed in the order in which it was received, with no preference being given, consistent with the Project's resident selection criteria and application processing standards and the availability of units in the Project was adequately advertised to the general public. This provision does not apply to an individual who occupies a non-revenue unit as the project manager or maintenance worker.

SECTION 7 SENIOR LOAN DOCUMENTS

7.1 Senior Loans. VIHFA acknowledges and agrees that Borrower has entered or will enter into the Senior Loan affecting the Project, secured by the Senior Mortgage and evidenced by the Senior Loan Documents. Concurrently with the Closing, VIHFA and the holder of the Senior Loan are entering into a subordination agreement. All liens and encumbrances on the Project, including the lien evidenced by the Senior Mortgage shall remain subject to and subordinate to the CDBG Regulatory Agreement.

7.2 Reserves. To the extent the Senior Loan Documents require deposits by Borrower into a reserve account(s) for the payment of taxes and insurance, or for repair and replacement of the Project units, VIHFA acknowledges and agrees that Borrower's compliance with the reserve requirements under the Permanent Mortgage Loan Documents shall satisfy any similar reserve requirements contained in the Loan Documents.

SECTION 8 BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to VIHFA, as follows:

8.1 Organization and Standing. Borrower is a limited liability limited partnership duly organized and validly existing under the laws of the U.S. Virgin Islands and duly qualified to do business in the U.S. Virgin Islands. Borrower has full limited liability company power and authority to conduct its business as presently conducted, and Borrower has the full power and authority to enter into and perform under the Loan Documents and to carry out the transactions contemplated hereby.

8.2 Authority. The execution, delivery and performance by Borrower of the Loan Documents, and the consummation by Borrower of the transactions contemplated by the Loan Documents, have been duly authorized by all necessary partners. The Loan Documents have been duly executed and delivered by, and constitute valid and binding obligations of Borrower enforceable against it in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

8.3 Noncontravention. The execution of and performance of the transactions contemplated by the Loan Documents and compliance with the provisions hereof by Borrower will not (a) conflict with or violate any provision of the organizational documents of Borrower, (b) require on the part of Borrower any filing with, or any permit, authorization, consent or approval of, any court, arbitrational governmental authority, administrative agency or commission or other governmental authority, (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest or other arrangement to which Borrower is a party or by which Borrower is bound or to which its assets are subject, (d) result in the imposition of any mortgage, lien or security interest upon any assets of Borrower other than in favor of VIHFA, or (e) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Borrower or any of its properties or assets.

8.4 Governmental Consents. No consent, approval, order or authorization of, or

registration, qualification, designation, declaration or filing with, any governmental authority is required on the part of Borrower in connection with the execution and delivery of the Loan Documents that has not been received by Borrower from such governmental authority.

8.5 Title to Project. Subject to and except for the Senior Mortgage and any other Permitted Exceptions (as defined in the Mortgage), Borrower has good leasehold title to the Project, free and clear of any mortgages, liens, or other security interest other than those in favor of VIHFA.

8.6 Compliance. Borrower has, in all material respects, complied with all laws, regulations and orders applicable to its present and proposed business and has or will have all material permits and licenses required thereby.

8.7 Tax Returns, Payments and Elections. Borrower has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects.

8.8 Disclosure. Neither this Agreement nor any other statements, documents or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.

8.9 Construction and Compliance with Laws. To Borrower's knowledge there are no structural defects in the Project and no violation of any applicable zoning, building or any other local, state or federal laws, ordinances and regulations existing with respect to the use and construction thereof; and Borrower shall obtain all licenses, permits and approvals required by all local, state and federal agencies regulating such construction and use and such licenses, permits and approvals shall remain in good standing; and Borrower is and shall remain in compliance, in all material respects, with all laws, regulations, ordinances and orders of all governmental authorities.

8.10 Financial Statements. The financial statements of Borrower and any Guarantor delivered to VIHFA are true and correct in all material respects, and fairly present the respective financial conditions of the parties thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower since the date thereof other than the borrowing contemplated hereby.

8.11 Priority of Lien on Personalty. Except for lien rights of any Senior Mortgage holder, no chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement (except those executed in favor of VIHFA) has been or will be executed with respect to any movable property, chattel or fixture used in conjunction with the construction, operation, or maintenance of the Project as described.

8.12 Pending Litigation. There are no actions, suits or proceedings pending against

Borrower or the Project, or, to the knowledge of Borrower, circumstances that could lead to such action, suits or proceedings against or affecting Borrower or the Project, or involving the validity or enforceability of any of the Loan Documents, before or by any governmental authority, except actions, suits and proceedings that have been specifically disclosed to and approved by VIHFA; and to Borrower's knowledge it is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

8.13 Hazardous Waste. Borrower is in compliance, in all material respects, with all provisions of the Federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("**Superfund**") Act of 1980, the Environmental Protection Act, the Resource Conservation and Recovery Act ("**RCRA**") and Solid Waste Disposal Act, and other similar federal, state and local statutory schemes imposing liability on Borrower relating to underground tanks and other storage facilities, or the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos -containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and orders issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by Borrower. Borrower has paid any environmental excise taxes imposed upon it with respect to the Project pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

8.14 Other Financing. Other than the Senior Loan, the Borrower has not received any other financing for the construction and operation of the Project other than the Loan.

8.15 Use of the Project. To the best of Borrower's knowledge, there is no (a) plan, study or effort by any governmental authority or any non-governmental person or agency that may adversely affect the current or planned use of the Project, or (b) any intended or proposed governmental requirement (including, but not limited to, zoning changes) that may adversely affect the current or planned use of the Project. There is no moratorium or like governmental order or restriction now in effect with respect to the Project and, to the best of Borrower's knowledge, no moratorium or similar ordinance or restriction is now contemplated.

8.16 OSHA Matters. The Borrower has duly complied with, and its properties are in full compliance in all material respects with, the provisions of the Federal Occupational Safety and Health Act, and all rules and regulations thereunder and all similar state and local laws, rules and regulations, and there have been no outstanding citations, notices or orders of noncompliance issued to Borrower relating to its businesses or properties under any such laws, rules or regulations.

8.17 Availability of Utilities. All utility services necessary for the operation of the Project for its intended purpose are available at the boundaries of the Project, including water supply, storm

and sanitary sewer facilities, and gas, electric and telephone facilities, and Borrower has obtained all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the Project.

8.18 Availability of Roads. All roads necessary for the full utilization of the Project for its intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Borrower and such local authorities to assure the complete construction and installation thereof.

8.19 No Default. There is no material default on the part of Borrower under this Agreement or the Loan Documents, or any Permanent Mortgage Loan Documents, and no event has occurred and is continuing that with notice, or the passage of time, or either, would constitute a Default under any provision thereof.

8.20 Continuing Nature of Representations and Warranties. Each of the representations and warranties of Borrower contained in this Loan Agreement shall survive the execution of the Agreement, and shall be continuing until such time as all amounts due VIHFA under the Loan Documents and the other obligations shall have been fully paid.

SECTION 9 AFFIRMATIVE COVENANTS OF BORROWER

9.1 Covenants. While this Agreement is in effect, Borrower covenants and agrees as follows:

- (a) If a Default has occurred and is continuing, Borrower shall deliver to VIHFA upon written demand all books and records relating to the Project or its operation.
- (b) Borrower authorizes VIHFA to obtain a credit report on Borrower at any time.

9.2 Borrower to Maintain Bookkeeping System. Borrower shall maintain a bookkeeping system for the Project in form and content sufficient for VIHFA to conduct reviews, inspections, certifications and reports required by this Agreement. Upon twenty-four (24) hours prior written notification, VIHFA shall have full access during normal business hours to the books, records and contracts pertaining to the Project.

9.3 Further Assurances and Preservation of Security. Borrower will perform all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Agreement as VIHFA shall reasonably require from time to time, and will perform such other acts necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note as VIHFA may reasonably require.

9.4 Current Projections. Until such time as the Loan has been fully funded by VIHFA, whenever there has been any material change in Borrower's estimates of development costs and/or stabilized cash flow for the Project, including timing of equity pay-ins, Borrower shall provide VIHFA with current financial projections for the Project. Borrower shall promptly provide to VIHFA a copy of every financial communication that Borrower provides to, or receives from, any other provider of funding for the Project.

9.5 Costs and Expenses. Borrower shall pay all and reasonable costs and expenses incurred in connection with this Agreement and the Loan, whether or not the Loan is funded, including by way of illustration and not limitation: actual and reasonable fees of VIHFA's attorneys and consultants, recording fees, title insurance costs related to the lender's title policy in favor of VIHFA, escrow fees, flood zone determination fees, survey fees, appraisal costs, environmental and historic property review, and site inspection fees. This obligation shall survive any termination, avoidance or cancellation of this Agreement.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 Assignment. Borrower shall not assign or transfer any interest in this Agreement without the prior written consent of VIHFA. Any attempt to do so shall be deemed null and void ab initio.

10.2 No Grant of Vested Rights. This Agreement shall not be construed as granting or assuring or vesting any land use, zoning, development approvals, permission or rights with respect to property owned by Borrower.

10.3 No partnership or agency. Nothing in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of master/servant, principal/agent, employer/employee or joint venture partner between VIHFA and Borrower. Borrower agrees and acknowledges that it shall be responsible for and shall pay any and all applicable compensation, insurance and taxes, including but not limited to Federal income taxes and Social Security on the salary of any positions funded in whole or in part with the proceeds of the Loan.

10.4 Severability. This Agreement shall be construed in accordance with the laws of the U.S. Virgin Islands. It is agreed by and between the parties that if any covenant, condition, provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.

10.5 Entire Agreement/Modification. This Agreement and all its attachments, and all other Loan Documents supersede (a) all prior agreements between VIHFA and the Borrower with respect to the Indebtedness and (b) any other agreements, all representations or statements heretofore

made by VIHFA or any of its employees, whether oral or verbal or written, with respect to the Indebtedness. This Agreement may only be modified in writing, signed by both of the parties hereto. In the event of a conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall control.

10.6 Notices. All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; or (b) national express air courier, provided such courier maintains written verification of actual delivery. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which the facsimile transmission occurs.

VIHFA: Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200
St. Thomas, USVI 00802-6447
Attn: Daryl Griffith, Executive Director

with a copy to:

Flavia E. Logie, Esq.
Law Office of Flavia E. Logie, P.C.,
P.O. Box 962,
Christiansted, VI 00821

Borrower: JDC-Magens Junction Associates 2, LLLP
c/o Jackson Development Company, LLC
PO Box 303217, St. Thomas, VI 00803

with a copy to:

Kellerhals Ferguson Kroblin PLLC
Royal Palms Professional Building
9053 Estate Thomas

Investor:

Hunt Capital Partners Tax Credit Fund 19, LP
c/o Hunt Capital Partners, LLC
15910 Ventura Boulevard, Suite 1100
Encino, California 91436
Attention: Jeffrey N. Weiss

Any addressee may change its address by giving the other parties hereto notice of such change

of address in accordance with the foregoing provisions.

10.7 Performance on Legal Holidays. In any case where the date of maturity of interest on or principal of the Note shall not be a business day, then payment of such interest and principal, need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption or purchase, and no interest on such payment shall accrue for the period after such date.

10.8 JURY WAIVER. VIHFA AND THE BORROWER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER THE VIHFA OR THE BORROWER AGAINST THE OTHER WHETHER RELATING OR ARISING OUT OF THIS AGREEMENT, THE LOAN DOCUMENTS, OR OTHERWISE.

10.9 Time is of the Essence. Time is of the essence of this Agreement.

10.10 No Third Party Beneficiaries. No creditor of any party to this Agreement and no other person shall be a third party beneficiary of this Agreement or any other Loan Document or any obligation, account, covenant or agreement created or contemplated under this Agreement or any other Loan Document. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of VIHFA to any third party nor shall any third party have a right to enforce against VIHFA any right that Borrower may have under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create an obligation on the part of Borrower to a third party (other than a successor or assignee of VIHFA) nor shall any third party (other than a successor or assignee of VIHFA) have a right to enforce against Borrower any right VIHFA has under this Agreement.

10.11 Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

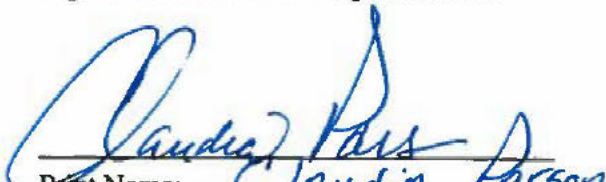
10.12 Conflicts. In the event of a conflict between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.


[Signatures on the following pages]


IN WITNESS WHEREOF, VIHFA has executed this Loan Agreement on this 30th day of March 30, 2020, at St. Thomas, U.S. Virgin Islands, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:
Signed and sealed in the presence of:

Virgin Islands Housing Finance Authority, an autonomous instrumentality of the Government of the United States Virgin Islands,


Print Name: CLAUDIA PARSON

By: 
Daryl Griffith, Executive Director


Print Name: Rosalind M. Estrill

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
) SS:
DIVISION OF ST. THOMAS-ST. JOHN)

On this 30th day of March, 2020, before me the undersigned personally appeared **DARYL GRIFFITH, Executive Director** of the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**, being duly authorized to so act and he acknowledged the foregoing _____ on behalf of the said Authority.

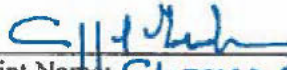

Name _____
Notary Public
My commission expires: _____
NOTARY PUBLIC
Flavia E. Logie, Esq.
Commission Exp. October 19, 2022
LNP-38-18




IN WITNESS WHEREOF, Borrower has executed this Loan Agreement on this 30th day of March, 2020, at St. Thomas, U.S. Virgin Islands in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:

Signed and sealed in the presence of:


Print Name: Clifford Graham


Print Name: Kyrat Hansen

BORROWER:

JDC - MAGENS JUNCTION ASSOCIATES 2, LLLP

By: JDC - Magens Junction 2, LLC,
a U.S. Virgin Islands limited liability company,
its general partner

By: JDC-Magens Junction GP, Inc.,
a Delaware corporation,
sole member

By: 
Robert O. Jackson, President

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
) SS:
DIVISION OF ST. THOMAS-ST. JOHN)

On this 30th day MARCH, 2020 before me personally appeared Robert O. Jackson to me known, who, being by me duly sworn or affirmed, did say that he is the President of the JDC-Magens Junction GP, Inc., sole member of JDC-Magens Junction 2, LLC, a U.S. Virgin Islands limited liability company, general partner of JDC-MAGENS JUNCTION ASSOCIATES 2, LLLP a U.S. Virgin Islands limited liability limited partnership, and that the instrument was signed on behalf of said partnership by authority of its general partners and Robert O. Jackson acknowledged the instrument to be the free act and deed of said limited liability company.

In Witness Whereof I hereunto set my hand.


Printed Name: _____
Notary Public/My Commission Expires:

Gregory J. Ferguson
Notary Public LNP-30-18
Commission Expires 06/13/22
St. Thomas/St. John, USVI

Schedule 2.1
CURRENT CONTRACTS WITH IDENTITY OF INTEREST ENTITIES

None.

EXHIBIT A
Legal Description
Magen's Junction Phase 2

TRACT I

Lease Area 'B' on Remainder Parcel No. 7-1 Estate St. Joseph & Rosendahl and Parcel No. 3A Estate Lovenlund, Nos. 4 & 2 Great Northside Quarters, St. Thomas, U.S. Virgin Islands.

BOUNDARY DESCRIPTION:

Beginning at the western most corner of LEASE AREA B on Parcels No. Remainder 7-1 & 3A at a point common with

Parcel No. 3B and the Public Road R.O.W, the line runs

N 43° 14' 35" E a distance of 8.16' along the Public Road R.O.W. to a point, thence
S 81° 46' 00" E a distance of 83.78' along Parcel No. 3B, Estate Lovenlund, to a
boundpost, thence

N 05° 19' 53" E a distance of 82.31' along Parcel No. 3B, Estate Lovenlund, to a
boundpost, thence

N 86° 04' 30" E a distance of 147.62' along Parcel No. 3B, Estate Lovenlund, to a
boundpost, thence

N 86° 04' 28" E a distance of 210.19' along the 18' Estate Road R.O.W. to a boundpost,
thence

N 73° 50' 23" E a distance of 163.26' along the 18' Estate Road R.O.W. to a boundpost,
thence

S 64° 28' 23" W a distance of 39.28' over Parcel No. 3A, Estate Lovenlund, to a point,
thence

S 83° 54' 45" W a distance of 45.13' over Parcel No. 3A, Estate Lovenlund, to a point,
thence

S 07° 21' 02" W a distance of 80.27' over Parcel No. 3A, Estate Lovenlund, & Remainder
Parcel No. 7-1 to a point, thence

S 56° 57' 28" W a distance of 64.33' over Remainder Parcel No. 7-1 to a point, thence

S 03° 44' 01" W a distance of 58.85' over Remainder Parcel No. 7-1 to a point, thence S
42° 19' 27" W a distance of 43.04' over Remainder Parcel No. 7-1 to a point, thence

N 80° 20' 35" W a distance of 106.55' over Remainder Parcel No. 7-1 to a point, thence N
64° 36' 09" W a distance of 155.74' over Remainder Parcel No. 7-1 to a point, thence

N 70° 22' 29" W a distance of 127.83' over Remainder Parcel No. 7-1 to a point, thence
Northwesterly an arc distance of 85.33' on a curve to the left having a radius of 90.72'
over Remainder Parcel No. 7- 1 to a point, thence

N 16° 28' 51" W a distance of 35.10' over Remainder Parcel No. 7-1 to the point of origin.
The bearings are correlated with D9-6106-T96. The area is 2.426 U.S. Acres.

TRACT 2:

Perpetual easements for ingress and egress and rights of way as more particularly described in:

Warranty Deed from Trans-Caribbean Dairy Corp. d/b/a St. Thomas Dairies, Inc. a/k/a Trans-Caribbean Dairies Corporation, a U.S. Virgin Islands corporation, to Jackson Development Company, LLC, a U.S. Virgin Islands limited liability company, dated November 12, 2015 and recorded in the Office of the Recorder of Deeds for the District of St. Thomas - St. John on December 1, 2015, as Document No. 2015007946; as amended by Amendment to Grant of Easement between Magens Point, Inc., a U.S. Virgin Islands corporation, and Jackson Development Company, LLC, a U.S. Virgin Islands limited liability company, dated November 21, 2016 and recorded in the Office of the Recorder of Deeds for the District of St. Thomas - St. John on December 14, 2016, as Document No. 2016008679.

SUBORDINATION AGREEMENT

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is entered into this 30th day of March, 2020, by and among: Hunt Capital Partners, LLC, a Delaware limited liability company (the "Senior Lender"); the Virgin Islands Housing Finance Authority, an autonomous instrumentality of the Government of the United States Virgin Islands (the "Subordinate Lender"); and JDC - Magens Junction Associates 2, LLLP, a Virgin Islands Limited Liability Limited Partnership (the "Borrower").

PRELIMINARY RECITALS:

A. WHEREAS, the Senior Lender has made or is making a construction loan (the "Construction Loan") to the Borrower in the original principal amount of [REDACTED]. The Construction Loan is or will be secured by a first mortgage lien (the "Construction Loan Mortgage") on a multifamily residential rental project located in St. Thomas, VI 00802 (the "Property"), as more fully described in Exhibit A – Property Description, attached hereto. The Borrower's obligation to repay the Construction Loan is evidenced by a Promissory Note, dated July 11, 2019; and

B. WHEREAS, the Subordinate Lender is making a gap financing loan to the Borrower in the aggregate principal amount of [REDACTED] (the "Subordinate Loan"). The Subordinate Loan will be secured by a second mortgage lien on the Property (the "Subordinate Loan Mortgage"). Borrower's obligations to repay the Subordinate Loan are evidenced by a promissory note (the "Subordinate Note"), in the above stated amount dated March 30th, 2020, which is payable in full on March 1, 2040; and

C. Senior Lender and Subordinate Lender are collectively referred to herein as "Lenders" and individually as a "Lender". The Construction Loan and Subordinate Loan are collectively referred to herein as "Loans" and individually as a "Loan".

D. WHEREAS, the Lenders have agreed to permit each other Lender to make the Loans and to place mortgage liens against the Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce each Lender to permit each other Lender to make the Loans to Borrower, and to place mortgage liens against the Property, and in consideration thereof, the Lenders and the Borrower agree as follows:

1) **Recitals and Defined Terms.** The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.

Notwithstanding any definition to the contrary contained herein, the following additional terms shall have the following meanings:

- a) **Affiliate:** with regard to any entity, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlling, controlled by, under common control with, or which has a controlling interest in such entity; and (b) "controlled by", "under common control with", or which has a "controlling interest" means (i) the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of a company (or other entity) and includes the definition of "control" in 24 CFR 401.310(a)(2); or (ii) the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; or (iii) the ability to direct in any manner the election of a majority of a company's (or other entity's) directors, trustees or members; or (iv) the ability to exercise a controlling influence over the

company's or entity's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership, and a managing member of a limited liability company is presumed to be in control of that limited liability company.

- b) **Borrower:** the Person named as such in the first paragraph of this Agreement and any other Person (other than the Lenders) who acquires title to the Property after the date of this Agreement.
- c) **Business Day:** any day other than Saturday, Sunday or a day on which any Lender is not open for business.
- d) **Construction Loan:** the loan to Borrower by Senior Lender referenced in Preliminary Recital A, which Construction Loan is to be secured by the Construction Mortgage.
- e) **Construction Loan Documents:** the Construction Loan Agreement, the Construction Mortgage, the Construction Loan Note, and any other documents evidencing and securing the Construction Loan.
- f) **Construction Loan Note:** the promissory note executed by Borrower payable to Construction Lender to evidence the Construction Loan.
- g) **Construction Mortgage:** the Mortgage in favor of Senior Lender securing payment of the Construction Loan.
- h) **Default Notice:** a copy of the written notice from a Lender to the Borrower stating that a Loan Default has occurred under such Lender's Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.
- i) **Loan Default:** an Event of Default as such term is defined in a Lender's Loan Documents.
- j) **Loan Documents:** generally, the loan agreements, mortgages, promissory notes and any other documents evidencing, security or otherwise executed and delivered in connection with a Loan.
- k) **Person:** an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.
- l) **Senior Lender:** the Person named as such in the first paragraph of this Agreement, whose lien on the Property is senior in priority to the lien of the Subordinate Loan, as shown on Exhibit B attached hereto.
- m) **Senior Loan:** with respect to a Loan, any Loan which is secured by a lien that is senior in priority to the lien securing the Subordinate Loan.
- n) **Senior Loan Default:** the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.
- o) **Senior Loan Documents:** the Loan Documents of a Senior Lender.
- p) **Senior Loan Mortgage:** the security instrument securing a Senior Loan

- q) **Senior Loan Note:** the promissory note evidencing a Senior Loan.
 - r) **Subordinate Lender:** the Person named as such in the first paragraph of this Agreement and any other Person who becomes the legal holder of the Subordinate Note.
 - r) **Subordinate Loan Default:** the occurrence of an "Event of Default" as that term is defined in the Subordinate Loan Documents.
 - s) **Subordinate Loan Documents:** the Subordinate Note, the Subordinate Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan other than the Disaster Recovery Regulatory Agreement of Virgin Islands Housing Finance Authority (the "Regulatory Agreement".)
 - t) **Subordinate Loan Mortgage:** the Multifamily Mortgage, Assignment of Rents and Security Agreement encumbering the Property as security for the Subordinate Loan, which the Subordinate Lender will cause to be recorded immediately before this Agreement among the applicable land records.
 - u) **Subordinate Note:** the promissory note of even date herewith issued by the Borrower to the Subordinate Lender, or to order, to evidence the Subordinate Loan.
- 2) **Permission to Place Mortgage Lien Against Property.** Each Lender agrees, notwithstanding any prohibition against liens, encumbrances or certain Transfers (as defined in each Lender's mortgage) on the Property that may be contained in the Loan Documents, and subject to the provisions of this Agreement, that each Lender's mortgage and any other recordable Loan Documents are hereby permitted liens and the recording of such documents against the Property shall not be considered a violation under any Lender's Loan Documents.
- 3) **Borrower's and Lender's Representations and Warranties.** Unless otherwise expressly qualified in this Section 3, the Borrower and each Lender make the following representations and warranties to each other Lender:
- a) **Liens Permitted.** Each Lender has expressly consented to the liens created by each other Lender and each Lender's Loan Documents contain adequate and sufficient language permitting such liens and refers to the terms of this Agreement.
 - b) **Relationship of Borrower to Lenders.** No Lender is an Affiliate of the Borrower. No Lender is in possession of any facts that would lead it to believe that any other Lender is an Affiliate of the Borrower.
 - c) **Term.** The term of the Subordinate Loan is twenty (20) years.
 - d) **Loan Documents.** The executed Loan Documents are substantially in the same forms as those submitted to and approved by each Lender prior to the date of this Agreement. Promptly upon execution and delivery of the Loan Documents, Borrower shall deliver to each Lender an executed copy of each set of each Lender's Loan Documents, certified to be true, correct and complete.
- 4) **Terms of Subordination.**
- a) **Agreement to Subordinate.** In accordance with Exhibit B, the Subordinate Lender agrees that:

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

- b) **Subordination of Subrogation Rights.** The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or if by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of any Senior Loan Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Loan Mortgage.
- c) **Payments Before Senior Loan Default.** Notwithstanding subparagraph (a) of this Section, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents until the Subordinate Lender receives a Default Notice from the Senior Lender.
- d) **Payments After Senior Loan Default.** The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Lender's Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Loan Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that after it receives a Default Notice from a Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Loan Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender shall receive written notice from the Senior Lender of any Senior Loan Default that gives rise to the Subordinate Lender's obligation not to accept payments, and Senior Lender shall make commercially reasonable efforts to notify the Subordinate Lender in writing whether such default has been cured, waived, or otherwise suspended by the Senior Lender. In the event of such cure, waiver or suspension, the restrictions on payment in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).
- e) The Lenders agree that the provisions of this Section 4(d) shall be applicable to the Subordinate Lender only for a period of 60 days after the date of a Senior Loan Default, unless prior to the end of such period, either (i) the Senior Lender has accelerated the maturity of the Senior Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Mortgage.

- f) The Lenders further agree that nothing in this Section 4(d) shall prohibit Subordinate Lender from initiating or pursuing to conclusion any remedy to which it is entitled under the Subordinate Loan Documents.
- g) **Remitting Loan Payments to Senior Lender.** If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to its Loan.
- h) **Agreement Not to Commence Bankruptcy Proceeding.** The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing, any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.
- i) However, the parties agree that the Disaster Recovery Regulatory Agreement of Virgin Islands Housing Finance Authority (the "**Regulatory Agreement**") executed by and between Subordinate Lender and Borrower shall not be subordinated in any way to any Lender's Loan Documents and that the liens of the Construction Loan Mortgage and Subordinate Loan Mortgage shall be and remain subject to the Regulatory Agreement. Borrower's rights to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement shall not be restricted in any way by the provisions hereof.

5) Default Under Loan Documents.

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

Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Lender at least sixty (60) days' prior written notice; provided, however, the Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to the Subordinate Lender under the Subordinate Loan Documents (other than commencing foreclosure proceedings or accelerating the Loan) and/or under applicable laws..

- c) **Cross Default.** The Borrower and the Lenders agree that a Loan Default under any Lender's Loan Documents shall constitute a Senior Loan Default under the Senior Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such Senior Loan Default.

6) **Default Under Senior Loan Documents.**

- a) **Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower and Investor. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such notice; provided, however, that the Senior Lender shall be entitled during such 60-day period to continue to pursue its remedies under the Senior Loan Documents. The Subordinate Lender may have up to sixty (60) days from the date of the Default Notice to cure a non-monetary default if during such 60-day period such Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or to Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole but reasonable discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Loan Mortgage.
- b) **Cross Default.** The Lenders agree that, notwithstanding any contrary provision contained in any of the Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under such Loan Documents until either

- i) the Senior Lender has accelerated the maturity of the Senior Loan, or
- ii) the Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Mortgage, or
- iii) 60 days have elapsed since the Senior Loan Default.

At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior Lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Loan Default had never occurred.

- c) **Right to pay Senior Loan.** Notwithstanding anything to the contrary contained herein, in the event of a Senior Loan Default, the Subordinate Lender may pay Senior Lender any prepayment premium, and the outstanding balance due under the Senior Loan, in principal, interest, costs and attorneys' fees, and, in such event Senior Lender shall, at the option of the Subordinate Lender (i) cancel, release or discharge the Senior Loan; or (ii) assign, without warranty, all of its right, title and interest in and to the Senior Loan (including without limitation the assignment of the Senior Loan Documents such Lender) to the Subordinate Lender, in order for the Subordinate Lender to acquire Senior Lender's first priority lien position in the Property under the Senior Loan Documents.
- 7) **Conflict.** The Borrower and the Lenders each agree that, in the event of any conflict or inconsistency between the terms of any Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Lenders in the Property; (b) the timing of the exercise of remedies by the Lenders under their mortgages; and (c) solely as between the Lenders, the notice requirements, cure rights, and the other rights and obligations which the Lenders have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: (x) extend Borrower's time to cure any Loan Default; (y) give the Borrower the right to notice of any Loan Default other than that, if any, provided, under the Loan Documents; or (z) create any other right or benefit for Borrower as against any Lender not expressly provided by this Agreement.
- 8) **Rights and Obligations of the Lenders Under Loan Documents.** Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Loan Documents covering the same subject matter:
- a) **Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of any Senior Lender in each instance, take any action which has the effect of increasing the principal amount of indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 6(c) above and advance funds pursuant to the Subordinate Loan Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

b) **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a “Taking”); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a “Casualty”), at any time or times when a Senior Loan Mortgage remains a lien on the Property the following provisions shall apply:

i) The Borrower hereby agrees to provide each Lender with notice of any proceeding or action relating to a Taking and/or Casualty. The Lenders each hereby agree that its rights (under its Loan Documents or otherwise) to participate in any proceeding or action related to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty, shall be and remain subordinate in all respects to the Senior Lender’s rights under the Senior Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender, approved in writing by the Subordinate Lender, which approval shall not be unreasonably withheld, conditioned, or delayed, it being understood by all parties hereto that Senior Lender at all times has first priority to the proceeds of such settlement or adjustment for the payment of any outstanding indebtedness under the Senior Loan Documents as set forth in Section 8(b)(ii) below. Nothing contained in this subsection and/or anything contained in this Agreement shall limit the rights of any Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

ii) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner provided in the Senior Loan Documents; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, the Subordinate Lender which then acquires the status of Senior Lender in accordance with the applicable provisions of the Subordinate Loan Documents (to the extent of the amounts due under the Subordinate Loan).

c) **No Modification of Loan Documents.** The Borrower and the Lenders each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of any other Loan, increase the required payments due under any other Loan, decrease the term of any other Loan, increase the interest rate on any other Loan, or otherwise amend the any other Loan terms in a manner that creates an adverse effect upon the Senior Lender under the Senior Loan Documents. Any unauthorized amendment of any other Loan Documents or assignment of any other Lender’s interest in a Loan without the Senior Lender’s consent shall be void *ab initio* and of no effect whatsoever, and the Subordinate Lender agrees that it shall not transfer or assign the Subordinate Loan or the Subordinate Loan Documents without the prior written consent of the Senior Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

9) **Modification or Refinancing of Senior Loan.** The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, in connection with a refinancing of or replacement financing for the Senior Loan, subject to the terms of this Agreement. The Subordinate Lender further agrees that: (a) its agreement to subordinate

hereunder shall extend to any new mortgage debt for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); (b) all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; (c) such holder shall assume the obligations of the Senior Lender hereunder; and (d) all references to the Senior Loan, the Senior Loan Note, the Senior Loan Mortgage, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note. Notwithstanding the preceding to the contrary, Senior Lender agrees that: (x) the refinancing or replacement of all or any part of the Senior Loan shall not require the Subordinate Lender to modify the terms of the Subordinate Loan Documents or otherwise extend the term of its Loan, or have a material adverse effect on the Subordinate Loan; and (y) the aggregate principal amount of the Senior Loan due at the time refinancing or modification may not increase beyond the amount necessary to cover reasonable and necessary costs associated with the closing and/or refinancing.

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

11) Notices. Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as “notices” and referred to singly as a “notice”) that is required or permitted pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER: Hunt Capital Partners, LLC
15910 Ventura Boulevard, Suite 1100
Encino, CA 91436
Attn: Jeffrey N. Weiss

SUBORDINATE LENDER: Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200
St. Thomas, USVI 00802-6447
Attn: Daryl Griffith, Executive Director

with a copy to: Flavia E. Logie
Law Office of Flavia E. Logie, P.C.,
P.O. Box 962,
Christiansted, VI 00821

BORROWER: JDC - Magens Junction Associates 2, LLLP
c/o Jackson Development Company, LLC
Robert Jackson, Manager / Sole Member
PO Box 303217, St. Thomas, VI 00803
Office: 340-714-1100; Cell: 305-458-1965

bobjackson@jacksondevelopment.net

Any party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

14) General.

- a) **Assignment/Successors.** This Agreement shall be binding upon the Borrower and the Lenders and shall inure to the benefit of the respective legal successors and assigns of the Lenders.
- b) **No Partnership or Joint Venture.** The Lenders' entry into this Agreement does not constitute any Lender as a joint venturer or partner of any other Lender. No party hereto shall hold itself out as a partner, agent or Affiliate of another party hereto.
- c) **Lender's Consent.** Wherever any Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by such party in its reasonable discretion, unless otherwise expressly provided in this Agreement.
- d) **Further Assurances.** The Lenders and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any Lender in order to evidence the lien priority of the mortgages as established in this Agreement, or to further evidence the intent of this Agreement.
- e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.
- f) **Governing Law.** This Agreement shall be governed by the laws of the State in which the Property is located.
- g) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- h) **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents, except in the case of a refinancing pursuant to Section 9 hereof; (ii) the payment of all of the principal of, interest on and other amounts payable under all Loans other than the Senior Loan, other than by reason of payments which a Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof.
- i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.
- j) **Conflicts.** In the event of a conflict between any provision of this Agreement and any provision of a Lender's Loan Documents, this Agreement shall control.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Borrower has executed this Subordination Agreement on this 30th day of March, 2020, at _____, _____, in the presence of the undersigned competent witnesses and Notary Public, after due reading of the whole.

WITNESSES:

Signed and sealed in the presence of:


Print Name: CLIFFORD GRAHAM


Print Name: Kyra Hansen

BORROWER:

JDC - MAGENS JUNCTION ASSOCIATES 2, LLLP

By: JDC - Magens Junction 2, LLC,
a U.S. Virgin Islands limited liability company,
its general partner

By: JDC-Magens Junction GP, Inc.,
a Delaware corporation,
sole member

By: 
Robert O. Jackson, President

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
) SS:
DIVISION OF ST. THOMAS-ST. JOHN)

On this 30th day MARCH, 2020 before me personally appeared Robert O. Jackson to me known, who, being by me duly sworn or affirmed, did say that he is the President of the JDC-Magens Junction GP, Inc., sole member of JDC-Magens Junction 2, LLC, a U.S. Virgin Islands limited liability company, general partner of JDC-MAGENS JUNCTION ASSOCIATES 2, LLLP a U.S. Virgin Islands limited liability limited partnership, and that the instrument was signed on behalf of said partnership by authority of its general partners and Robert O. Jackson acknowledged the instrument to be the free act and deed of said limited liability company.

In Witness Whereof I hereunto set my hand.


Printed Name: _____
Notary Public/My Commission Expires: _____

Gregory J. Ferguson
Notary Public LNP-30-18
Commission Expires 06/13/22
St. Thomas/St. John, USVI



IN WITNESS WHEREOF, Senior Lender has executed this Subordination Agreement on this ___ day of March, 2020 at _____, _____ the presence of the undersigned competent witnesses and Notary Public, after due reading of the whole.

WITNESSES:

Signed and sealed in the presence of:

Donald B. Matthew
Print Name: Donald B. Matthew

Cherissa Nova
Print Name: Cherissa Nova

SENIOR LENDER:

Hunt Capital Partners, LLC

By: *Dan Kagley*
Name: Dan Kagley

ACKNOWLEDGMENT

_____)
_____) SS:
_____)

On this ___ day _____, 2020 before me personally appeared Robert O. Jackson to me known, who, being by me duly sworn or affirmed, did say that s/he is the _____ of Hunt Capital Partners, LLC, a Delaware limited liability company and that the instrument was signed on behalf of said company by authority of _____ and acknowledged the instrument to be the free act and deed of said limited liability company.

In Witness Whereof I hereunto set my hand.

See Attached

Printed Name:
Notary Public/My Commission Expires:

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Los Angeles

On April 6, 2020 before me, Deborah Matthew, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared DANIEL KAGEY
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Deborah Matthew
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

**EXHIBIT A
PROPERTY DESCRIPTION**

Legal Description
Magen's Junction Phase 2

TRACT I

Lease Area 'B' on Remainder Parcel No. 7-1 Estate St. Joseph & Rosendahl and Parcel No. 3A Estate Lovenlund, Nos. 4 & 2 Great Northside Quarters, St. Thomas, U.S. Virgin Islands.

BOUNDARY DESCRIPTION:

Beginning at the western most corner of LEASE AREA B on Parcels No. Remainder 7-1 & 3A at a point common with

Parcel No. 3B and the Public Road R.O.W, the line runs

N 43° 14' 35" E a distance of 8.16' along the Public Road R.O.W. to a point, thence

S 81° 46' 00" E a distance of 83.78' along Parcel No. 3B, Estate Lovenlund, to a boundpost, thence

N 05° 19' 53" E a distance of 82.31' along Parcel No. 3B, Estate Lovenlund, to a boundpost, thence

N 86° 04' 30" E a distance of 147.62' along Parcel No. 3B, Estate Lovenlund, to a boundpost, thence

N 86° 04' 28" E a distance of 210.19' along the 18' Estate Road R.O.W. to a boundpost, thence

N 73° 50' 23" E a distance of 163.26' along the 18' Estate Road R.O.W. to a boundpost, thence

S 64° 28' 23" W a distance of 39.28' over Parcel No. 3A, Estate Lovenlund, to a point, thence

S 83° 54' 45" W a distance of 45.13' over Parcel No. 3A, Estate Lovenlund, to a point, thence

S 07° 21' 02" W a distance of 80.27' over Parcel No. 3A, Estate Lovenlund, & Remainder Parcel No. 7-1 to a point, thence

S 56° 57' 28" W a distance of 64.33' over Remainder Parcel No. 7-1 to a point, thence

S 03° 44' 01" W a distance of 58.85' over Remainder Parcel No. 7-1 to a point, thence S 42° 19'

27" W a distance of 43.04' over Remainder Parcel No. 7-1 to a point, thence

N 80° 20' 35" W a distance of 106.55' over Remainder Parcel No. 7-1 to a point, thence N 64° 36'

09" W a distance of 155.74' over Remainder Parcel No. 7-1 to a point, thence

N 70° 22' 29" W a distance of 127.83' over Remainder Parcel No. 7-1 to a point, thence

Northwesterly an arc distance of 85.33' on a curve to the left having a radius of 90.72' over Remainder Parcel No. 7-1 to a point, thence

N 16° 28' 51" W a distance of 35.10' over Remainder Parcel No. 7-1 to the point of origin. The bearings are correlated with D9-6106-T96. The area is 2.426 U.S. Acres.

TRACT 2:

Perpetual easements for ingress and egress and rights of way as more particularly described in:

Warranty Deed from Trans-Caribbean Dairy Corp. d/b/a St. Thomas Dairies, Inc. a/k/a Trans-Caribbean Dairies Corporation, a U.S. Virgin Islands corporation, to Jackson Development Company, LLC, a U.S. Virgin Islands limited liability company, dated November 12, 2015 and recorded in the Office of the Recorder of Deeds for the District of St. Thomas - St. John on December 1, 2015, as Document No. 2015007946; as amended by Amendment to Grant of Easement between Magens Point, Inc., a U.S. Virgin Islands corporation, and Jackson Development Company, LLC, a U.S. Virgin Islands limited liability company, dated November 21, 2016 and recorded in the Office of the Recorder of Deeds for the District of St. Thomas - St. John on December 14, 2016, as Document No. 2016008679.

**EXHIBIT B
LIEN PRIORITY**

During the term of the Construction Loan:

1. Construction Loan Mortgage
2. Subordinate Loan Mortgage

IN WITNESS WHEREOF, Subordinate Lender has executed this Subordination Agreement on this 30th day of March, 2020, at St. Croix, V.I., in the presence of the undersigned competent witnesses and Notary Public, after due reading of the whole.

WITNESSES:

Signed and sealed in the presence of:

Claudia Parson
Print Name: CLAUDIA PARSON

Chivonne Moorhead
Print Name: Chivonne Moorhead

SUBORDINATE LENDER:

Virgin Islands Housing Finance Authority, , an autonomous instrumentality of the Government of the United States Virgin Islands,

By: *Daryl Griffith*
Name: Daryl Griffith
Title: Executive Director

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
) SS:
DIVISION OF ST. THOMAS-ST. JOHN)

On this 30th day of March, 2020, before me the undersigned personally appeared **DARYL GRIFFITH**, Executive Director of the VIRGIN ISLANDS HOUSING FINANCE AUTHORITY, being duly authorized to so act and he acknowledged the foregoing _____ on behalf of the said Authority.

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



Flavia E. Logle
Name
Notary Public
My commission expires: **NOTARY PUBLIC Flavia E. Logle, Esq. Commission Exp. October 19, 2022 LNR-38-18**

OPERATING DEFICIT GUARANTY

OPERATING DEFICIT GUARANTY

March 30, 2020 by JDC - MAGENS JUNCTION ASSOCIATES 2, LLLP, a Virgin Islands Limited Liability Limited Partnership, ("Borrower"), and Jackson Development Company, LLC, a U.S. Virgin Islands limited liability company ("Guarantor") to and for the benefit of the VIRGIN ISLANDS HOUSING FINANCE AUTHORITY, an autonomous instrumentality of the Government of the United States Virgin Islands ("Lender").

PRELIMINARY RECITALS:

A. WHEREAS, Lender has agreed to make a gap financing loan (the "Loan") to Borrower to finance the development, rehabilitation, replacement, restoration, and/or construction of a multifamily residential rental project, on certain immovable property in Saint Thomas, U.S. Virgin Islands (the "Land") more fully described on Exhibit A – Property Description attached hereto (the "Project"), under and pursuant to that certain Award Acceptance Agreement dated _____, 2020 (the "Award Agreement"); and

B. WHEREAS, to evidence the Loan, Borrower and Lender have entered into a Gap Financing Loan Agreement ("Loan Agreement"); and

C. WHEREAS, Guarantor will derive material financial benefit from the Loan; and

D. WHEREAS, Lender has relied on the statements and agreements contained herein in agreeing to make the Loan and the execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan by Lender,

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Preliminary Recitals, which Preliminary Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of Lender and its respective successors, transferees, participants and assigns as follows:

SECTION I: DEFINITIONS

1.1 **Definitions.** Except as otherwise defined in this Article 1.1, capitalized terms used but not defined herein shall have the meanings assigned to them in the Loan Agreement. The following terms shall have the meanings ascribed thereto as set forth below:

(a) **"Guaranteed Obligations":** each and every obligation of the Guarantor under and pursuant to this Guaranty, including, without limitation, the obligations specified in Article 3 hereof.

(b) **"Guaranty Period":** the period commencing on the date hereof and ending until the Project has generated positive Surplus Cash for two (2) consecutive fiscal years; provided, however, the Guarantor's obligations under the Guaranty shall (i) not extend more than three (3) years from the date that the Project first achieves "break-even operations", and (ii) be capped at an amount equal to six (6) months of Project Expenses. For purposes of this section, "break-even operations" mean the date upon which (i) the Project achieves 95 percent occupancy, and (ii) the revenues received from the normal operation of the Project equal all accumulated operational costs of the Project for a period of three (3)

consecutive months after completion of construction computed on a cash basis and in accordance with the Loan Documents.

(c) **“Operating Deficit”**: for the applicable period for which Surplus Cash is calculated, negative Surplus Cash as of the last day of such period.

(d) **“Surplus Cash”** has the meaning set forth in the Note.

SECTION 2: REPRESENTATIONS AND WARRANTIES

The Guarantor makes the following representations and warranties which shall be continuing representations and warranties until this Guaranty terminates in accordance with the provisions contained herein:

2.1 Existence and Rights. Guarantor is a person of sound mind and body or an entity duly organized under the laws of the United States Virgin Islands without limitation as to the duration of its existence and is in good standing thereunder. Guarantor has powers and adequate authority, rights and franchises to own its property and to carry on its business as now owned and carried on, and is duly qualified and in good standing in each jurisdiction in which the property owned by it or the business conducted by it makes such qualification necessary, including without limitation, the United States Virgin Islands, and Guarantor has the power and adequate authority to make and carry out this Guaranty.

2.2 Guaranty Authorized and Binding. The execution, delivery and performance of this Guaranty is duly authorized and does not require the consent or approval of any governmental body or other regulatory authority; is not in contravention of, or in conflict with, any law or regulation or any term or provision of the organizational documents of the Guarantor; and this Guaranty is a valid and legally binding obligation of Guarantor enforceable in accordance with its terms.

2.3 No Conflict. The execution and delivery of this Guaranty is not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which any Guarantor is a party or by which any Guarantor or any of the Guarantor's property is or may be bound or affected and does not, and will not, cause any security interest, lien or other encumbrance to be created or imposed upon any such property.

2.4 Litigation. Except as otherwise disclosed to Lender in writing, there is no litigation or other proceeding pending or, to the best of any Guarantor's knowledge, threatened against, or affecting, any Guarantor or the Guarantor's properties which, if determined adversely to any Guarantor, would have a materially adverse effect on the financial condition, properties, businesses or operations of any Guarantor, or which prevents or interferes with or adversely affects any Guarantor's entering into this Guaranty or the validity of this Guaranty or the carrying out of the terms hereof and no Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or other governmental or regulatory authority.

2.5 Financial Condition. Guarantor's financial statements, which have heretofore been submitted in writing by the Guarantor to Lender or Lender's credit underwriter in connection herewith, are true and correct in all material respects as of the date thereof, fairly present the financial condition of the Guarantor for the period covered thereby. Since the date of said financial statements, there has been no materially adverse change in the Guarantor's financial condition. The Guarantor has no knowledge of any liabilities, contingent or otherwise, as of the date of their respective financial statements (and as of the date hereof) which are not reflected in said financial statements; and, other than in the ordinary course of any Guarantor's business, the Guarantor has not entered into any commitments or contracts which are not

reflected in its financial statements or which may have a materially adverse effect upon any Guarantor's financial condition, operations or business as now conducted.

2.6 Solvency. The Guarantor is not Insolvent (defined below) as of the date hereof and the execution and delivery of this Guaranty will not (a) render any Guarantor insolvent under generally accepted accounting principles nor render any Guarantor Insolvent, (b) leave any Guarantor with remaining assets which constitute unreasonably small capital given the nature of the Guarantor's business, and (c) result in the incurrence of Debts (defined below) beyond the Guarantor's ability to pay them when and as they mature. For the purposes of this Section, "Insolvent" means that the present fair salable value of assets is less than the amount that will be required to pay the probable liability on existing Debts as they become absolute and matured. For the purposes of this Section, "Debts" includes any legal liability for indebtedness, whether matured or unmatured, liquidated or unliquidated, absolute or fixed.

2.7 Financial or Other Benefit or Advantage. Guarantor hereby acknowledges and warrants that each Guarantor has derived or expects to derive a financial or other benefit from the Project.

SECTION 3: AGREEMENTS AND GUARANTEED OBLIGATIONS

3.1 Operating Deficits Guaranty. Guarantor hereby covenants and agrees to advance, on the terms set forth below, the funds required to fund any and all Operating Deficits incurred by the Borrower during the Guaranty Period, within 120 days following the end of each fiscal year during the Guaranty Term. If the Borrower anticipates the need to request any Guarantor to make a payment under this Guaranty to fund an Operating Deficit, the Borrower will promptly notify the Guarantor, in writing, with a copy to Lender of the amount of such Operating Deficit (with sufficient supporting documentation to evidence the need to make a payment under this Guaranty). Prior to expiration of the 120-day period, Guarantor shall promptly provide the Borrower with funds sufficient to pay the amount of such Operating Deficit and promptly upon receipt of such funds, the Borrower shall pay the expenses causing such Operating Deficit. Notwithstanding the foregoing, Lender may submit a request directly to the Guarantor (with a copy of such request to Lender), on behalf of the Borrower, to make a payment under this Guaranty upon making a determination of the existence of an Operating Deficit.

Failure of the Borrower to provide such a request and/or notice to Lender or the failure of any Guarantor to pay such Operating Deficit, shall neither impair nor reduce the Guarantor's obligation to pay the amounts due hereunder upon direct demand by Lender. Upon approval of such request of the Borrower by Lender, and payment of such Operating Deficit by the Guarantor, the same shall be credited towards the amounts due by Guarantor under this Guaranty.

This Guaranty shall terminate upon the expiration of the Guaranty Period; this termination does not, in any way, relieve or affect the Guarantor's obligations under this Guaranty arising prior to the expiration of the Guaranty Period, under any completion guaranty or under any other indemnity or guaranty agreement.

Notwithstanding any other provision of this Guaranty, (a) Guarantor shall be deemed to have met its obligations hereunder to the extent that any Operating Deficit is funded through withdrawals from Project Operating Reserves applied to operations in accordance with the Partnership Agreement (as defined in the Note), and (b) Guarantor's obligations to Lender hereunder shall be limited to the payments of principal and interest on the Loan which the Borrower fails to make and Lender's rights hereunder against Guarantor shall be enforceable only after Borrower receives a written notice of Default under the Mortgage resulting from a failure to make a payment of principal and/or interest on the Loan.

3.2 Nature of Guaranteed Obligations. This is a guaranty of payment and performance and not of collection only, and the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances.

3.3 Third Party Beneficiary. The parties hereto acknowledge that Lender is entitled to enforce this Guaranty directly against the Guarantor at any time. Lender is also entitled to enforce any security agreements additional guaranties or other collateral now or hereafter securing this Guaranty at any time against the person or entity providing such security.

3.4 Further Assurances. The Guarantor will, at its expense, execute, acknowledge and deliver all such further documentation, instruments and assurances and the like and take all such further action as Lender shall reasonably require in order to carry out the intentions or facilitate the provisions of this Guaranty.

3.5 Obligations Absolute. The Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be affected or impaired by the following, any of which may be taken without the consent of, or notice to, the Guarantor, nor shall any of the following give any Guarantor any recourse or right of action against Lender:

(a) Any delay, exercise or non-exercise by Lender of any right or privilege under this Guaranty;

(b) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Guarantor (which term shall include any other party at any time directly or contingently liable for any of the Operating Deficit Guaranty) or any affiliate of the Guarantor, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor shall have had notice or knowledge of any of the foregoing;

(c) Any assignment or other transfer of this Guaranty in whole or in part;

(d) Any acceptance of partial funding of the Operating Deficit Guaranty;

(e) Any release or discharge of the Borrower or any general partner from any of its obligations; and

(f) Any subordination, compromise or release of any or all of the property or other collateral, if any, securing the Guarantor's obligations under this Guaranty, or any substitution with respect thereto.

3.6 Waivers. Guarantor unconditionally waives any defense to the enforcement of this Guaranty other than payment or performance, including, without limitation:

(a) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty;

(b) Any right to require Lender to proceed against the Borrower or any other guarantor at any time, or to proceed against or exhaust any security held by Lender at any time, or to pursue any other remedy whatsoever at any time;

(c) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Borrower or the Guarantor or any affiliate of the Borrower or the Guarantor or any action taken with respect to this Guaranty by any trustee or receiver, or

by any court, in any such proceeding, whether or not the Guarantor shall have had notice or knowledge of any of the foregoing;

(d) Any right any Guarantor might have, under U.S. Virgin Islands law, to revoke this Guaranty, it being the intention of the Guarantor that this Guaranty remain in full force and effect until termination, as provided herein;

(e) Any defense based upon an election of remedies by Lender, including, without limitation, any remedies which destroy or impair the subrogation rights of any Guarantor to the Borrower or any general partner for reimbursement or both;

(f) Any duty of Lender to advise the Guarantor of any information known to Lender regarding the financial condition of the Borrower or any general partner or managing member and all other circumstances affecting the ability of the Borrower or any general partner or managing member to perform its obligations to Lender, it being agreed that each Guarantor assumes the responsibility for being and keeping informed regarding such conditions or any such circumstances; and

3.6 Subrogation. Notwithstanding any other provision of this Guaranty to the contrary, until all obligations in favor of Lender hereunder shall have been paid or performed in full, Guarantor hereby waives any claim or other rights which the Guarantor may now have or hereafter acquire against any other guarantor of all or any of the obligations of any Guarantor under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification, any right to participate in any claim or remedy of Lender against the Borrower, any general partner or managing member or any Guarantor or any collateral which Lender now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from the Borrower, any general partner or any Guarantor, directly or indirectly, in cash or other property or by set off or in any other manner, payment or security on account of such claim or other rights.

3.7 Additional Waivers. The Guarantor shall not be released or discharged, either in whole or in part, by Lender's failure or delay to (a) perfect or continue the perfection of any lien or security interest in any collateral which secures the obligations of the Borrower, or (b) protect the property covered by such lien or security interest.

3.8 Dealings with Parties. Lender shall have complete discretion, without giving notice to or obtaining the consent of the Guarantor, the Borrower and each other person or entity who now is or after the date hereof becomes liable in any manner for any of the guaranteed obligations, in such manner as Lender shall decide, and accordingly each Guarantor grants to Lender full authority, in its sole discretion, whether before or after termination of this Guaranty, to do any and all of the following, without limiting the generality of the foregoing: extend credit, make loans and afford such financial accommodation to the Borrower or any general partner at such times, in such amounts and on such terms as Lender may approve; vary the terms or alter, compromise, accelerate and grant extensions or renewals of time or manner of payment of any present or future obligations under this Guaranty, assign or transfer this Guaranty or any other instrument evidencing or securing the obligations under this Guaranty in whole or in part; vary, exchange, release or discharge, wholly or partially the Borrower or any general partner or any other guarantor or obligor of the obligations under this Guaranty, and compromise or make any settlement or other arrangement with the Borrower, any general partner and/or managing member and/or any other guarantor, and if the obligations under this Guaranty are now or hereafter secured, exchange, substitute or release in part or in full all of the security given for the payment and performance of any of the Guarantor's obligations under this Guaranty.

3.9 Bankruptcy No Discharge; Repayments. So long as any of the guaranteed obligations shall be owing to Lender, the Guarantor shall not, without the prior written consent of Lender, as applicable, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against the Borrower or any general partner. Guarantor understands and acknowledges that by virtue of this Guaranty, the Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect the Borrower and any general partner. As an example and not in any way of limitation, a subsequent modification of the guaranteed obligations in any reorganization case concerning the Borrower or any general partner shall not affect the obligation of the Guarantor to pay and perform the guaranteed obligations in accordance with their respective original terms. If a claim is ever made upon Lender for repayment of any amount or amounts received by Lender in payment of the obligations under this Guaranty (whether or not all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Lender) and Lender repays all or any part of said amount, then, notwithstanding any revocation or termination of this Guaranty or the cancellation of any other instrument evidencing the guaranteed obligations, Guarantor shall be and remain liable to Lender for the amount so repaid by Lender, to the same extent as if such amount had never originally been received by Lender.

3.10 Subordination. So long as any of the guaranteed obligations remain unpaid or undischarged, Guarantor agrees that any and all claims it may have against the Borrower or any general partner shall be and hereby are subordinated to the guaranteed obligations and all other claims of Lender against the Borrower or any general partner or managing member. Any indebtedness of the Borrower or any general partner or any managing member to any Guarantor shall be collected and received by the Guarantor as trustee for Lender and be paid over to Lender on account of the indebtedness of the Guarantor to Lender, upon demand by Lender. Notwithstanding the foregoing, so long as no Event of Default shall exist hereunder or under any of the Loan Documents, and no event has occurred which with the passage of time or the giving of notice would constitute a default hereunder or under any of the Loan Documents, Guarantor and/or its affiliates shall be entitled to receive any fees or other payments specifically provided for in the Borrower's partnership agreement.

3.11 Independent and Separate Obligations. The obligations of Guarantor hereunder are independent of any obligation of the Borrower or any general partner or managing member, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any Guarantor whether or not the Guarantor is the alter ego of the Borrower, any general partner, any managing member, or any other guarantor. Lender's rights hereunder shall not be exhausted until the conditions to termination in Section 4.6 below have been satisfied.

3.12 Setoff. Lender shall have a right of setoff against, and Guarantor hereby grants a security interest in, all moneys, securities and other property of the Guarantor now or hereafter in the possession of Lender. Such right is in addition to any right of setoff Lender may have by law. All rights of setoff may be exercised without notice or demand to the Guarantor. No right of setoff shall be deemed to have been waived by any act or conduct on the part of Lender, or by any neglect to exercise such right of setoff, or by any delay in doing so. Every right of setoff shall continue in full force and effect until specifically waived or released by an instrument in writing executed by Lender.

3.13 Payments. The Guarantor shall not be credited for the funding of any of the Guaranteed Obligations payable to Lender unless the required payment is received by Lender in immediately available funds and is made by such Guarantor after a demand made by Lender pursuant to this Guaranty. Guarantor agrees that whenever the Guarantor shall pay any amount to Lender hereunder on account of the liability hereunder, the Guarantor will deliver such payment to Lender at the address provided in Section 4.1 below and notify Lender in writing that such payment is made under this Guaranty for such purpose, with a copy to Lender of such evidence of payment and notice.

3.14 Financial Statements. Guarantor covenants and agrees to provide Lender, on or before May 31 of each year, with financial statements (audited, if available), including a balance sheet, an income statement, a statement of changes in financial position and such other statements as may be required by Lender, prepared in accordance with generally accepted accounting practices consistently applied and certified as true and complete in all material respects by the Guarantor or an officer of the Guarantor.

3.15 Governing Law/Consent to Jurisdiction. This Guaranty shall be governed by and construed in accordance with the laws of the United States Virgin Islands applicable to contracts entered into and entirely to be performed therein. Guarantor hereby irrevocably submits and consents to the jurisdiction of the courts of the United States Virgin Islands and of the United States District Court for the district in which the Project is located in connection with any action, suit or other proceeding arising out of or relating to this Guaranty or any action taken or omitted hereunder, and waives personal service of any summons, complaint or other process and agrees that the service thereof may be made by certified or registered mail directed to the Guarantor at the address for purposes of notices hereunder. If Guarantor, so served, should fail to appear or answer within the time prescribed by law, then the Guarantor shall be deemed in default and judgment may be entered against the Guarantor for the amount or other relief as demanded in any summons, complaint or other process so served. Guarantor agrees that a final judgment in any such action, suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

SECTION 4: MISCELLANEOUS

4.1 Notices. All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; (b) national express air courier, provided such courier maintains written verification of actual delivery; or (c) facsimile. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which the facsimile transmission occurs.

Lender:

Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200
St. Thomas, USVI 00802-6447
Attn: Daryl Griffith, Executive Director

with a copy to:

Flavia E. Logie
Law Office of Flavia E. Logie, P.C.,
P.O. Box 962,
Christiansted, VI 00821

Guarantor:

Jackson Development Company, LLC
Robert Jackson, Manager / Sole Member
PO Box 303217, St. Thomas, VI 00803

with a copy to:

Kellerhals Ferguson Kroblin PLLC
Royal Palms Professional Building
9053 Estate Thomas
Suite 101
St. Thomas, VI 00802
Attn: Ron R. Pennington

4.2 Expenses. The Guarantor agrees to pay all costs and expenses, including reasonable legal fees, which may be incurred by Lender in any effort to collect or enforce any of the obligations of any Guarantor hereunder, whether or not any lawsuit is filed, including, without limitation, all costs and legal fees incurred by Lender in any bankruptcy proceeding (including, without limitation, any action for relief from the automatic stay of any bankruptcy proceeding) and in any judicial or non-judicial foreclosure action.

4.3 Amendments; Successors. Neither this Guaranty nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought, subject to the prior written consent of Lender. All of the terms of this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Guarantor shall not have the right to assign any of the Guarantor's rights or obligations under this Guaranty. All remedies of Lender are cumulative. When the context in which the words are used in this Guaranty indicates that such is the intent, words in the singular number shall include the plural and vice-versa. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective. No delay or failure by Lender to exercise any remedy against any Guarantor will be construed as a waiver of that right or remedy. If more than one person or entity executes this Guaranty as a Guarantor, the obligations hereunder shall be joint and several.

4.4 Assignability by Lender. Lender may, at any time and from time to time, assign, conditionally or otherwise, all of the rights of Lender under this Guaranty in connection with an assignment of the Loan, whereupon such assignee shall succeed to all rights of Lender hereunder. Lender may, at any time and from time to time, assign, conditionally or otherwise, all of the rights of Lender under this Guaranty, whereupon such assignee shall succeed to all rights of Lender hereunder to the extent that such rights may be assigned to it. Lender may give written notice to the Guarantor of any such assignment, but any failure to give, or delay in giving, such notice shall not affect the validity or enforceability of any such assignment.

4.5 Demands. Each demand by Lender for performance or payment hereunder shall be in writing and shall be made in the manner set forth in Section 4.1. Interest shall accrue at the Default Rate on all sums not paid by the Guarantor to Lender within ten (10) days after demand.

4.6 Term. The obligations of the Guarantor under this Guaranty and any instrument which grants collateral to secure such obligations shall continue in full force and effect until the Guarantor has fully performed all of the guaranteed obligations and paid all other amounts payable hereunder in accordance with the terms of this Guaranty and the period of time has expired during which any payment

received by Lender hereunder or any act performed by the Guarantor may be determined to be a preferential or fraudulent transfer under the United States Bankruptcy Code or other similar applicable laws.

4.7 Complete Agreement. This Guaranty supersedes any prior negotiations, discussions or communications between any Guarantor and Lender and constitutes the entire agreement between Lender and the Guarantor with respect to the Guaranteed Obligations.

4.8 Counterparts. This Guaranty may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument.

4.9 Advice of Counsel. The Guarantor represents and acknowledges to Lender that the Guarantor has consulted with attorneys regarding the terms and conditions and waivers set forth in this Guaranty. The Guarantor's attorneys have advised the Guarantor of the true legal consequences of each waiver set forth in this Guaranty, including the rights the Guarantor would have in the absence of such waivers.

4.10 Waiver of Jury Trial. BY EXECUTING THIS GUARANTY, LENDER AND THE GUARANTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHTS OR THE RIGHTS OF THEIR HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HERewith OR WITH THE INDEBTEDNESS OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER'S EXTENDING CREDIT TO THE BORROWER AND NO WAIVER OR LIMITATION OF LENDER'S RIGHTS HEREUNDER SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON LENDER'S BEHALF.

Guarantor acknowledges that the above paragraph has been expressly bargained for by Lender as part of the Loan and that, but for the Guarantor's agreement thereto, Lender would not have extended the Loan secured by this Guaranty.

**COUNTERPART SIGNATURE PAGE FOR
OPERATING DEFICIT GUARANTY**

IN WITNESS WHEREOF, Borrower has caused this Guaranty to be executed and delivered by its duly authorized representatives as of the date first set forth above.

WITNESSES:

Signed and sealed in the presence of:

BORROWER:


JDC - MAGENS JUNCTION ASSOCIATES 2, LLLP

By: JDC - Magens Junction 2, LLC,
a U.S. Virgin Islands limited liability company,
its general partner

By: JDC-Magens Junction GP, Inc.,
a Delaware corporation,
sole member


Print Name: CLIFFORD Graham

By: 
Robert O. Jackson, President

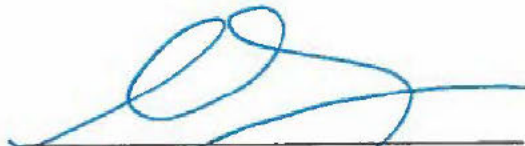

Print Name: Cyra Hansen

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)
DIVISION OF ST. THOMAS-ST. JOHN) SS:

On this 30th day MARCH, 2020 before me personally appeared Robert O. Jackson to me known, who, being by me duly sworn or affirmed, did say that he is the President of the JDC-Magens Junction GP, Inc., sole member of JDC-Magens Junction 2, LLC, a U.S. Virgin Islands limited liability company, general partner of JDC-MAGENS JUNCTION ASSOCIATES 2, LLLP a U.S. Virgin Islands limited liability limited partnership, and that the instrument was signed on behalf of said partnership by authority of its general partners and Robert O. Jackson acknowledged the instrument to be the free act and deed of said limited liability company.

In Witness Whereof I hereunto set my hand.


Printed Name:
Notary Public/My Commission

Gregory J. Ferguson
Notary Public LNP-30-18
Commission Expires 06/13/22
St. Thomas/St. John, USVI



**EXHIBIT A
LEGAL DESCRIPTION**

**Legal Description
Magen's Junction Phase 2**

TRACT I

Lease Area 'B' on Remainder Parcel No. 7-1 Estate St. Joseph & Rosendahl and Parcel No. 3A Estate Lovenlund, Nos. 4 & 2 Great Northside Quarters, St. Thomas, U.S. Virgin Islands.

BOUNDARY DESCRIPTION:

Beginning at the western most corner of LEASE AREA B on Parcels No. Remainder 7-1 & 3A at a point common with

Parcel No. 3B and the Public Road R.O.W, the line runs

N 43° 14' 35" E a distance of 8.16' along the Public Road R.O.W. to a point, thence
S 81° 46' 00" E a distance of 83.78' along Parcel No. 3B, Estate Lovenlund, to a boundpost, thence
N 05° 19' 53" E a distance of 82.31' along Parcel No. 3B, Estate Lovenlund, to a boundpost, thence
N 86° 04' 30" E a distance of 147.62' along Parcel No. 3B, Estate Lovenlund, to a boundpost, thence
N 86° 04' 28" E a distance of 210.19' along the 18' Estate Road R.O.W. to a boundpost, thence
N 73° 50' 23" E a distance of 163.26' along the 18' Estate Road R.O.W. to a boundpost, thence
S 64° 28' 23" W a distance of 39.28' over Parcel No. 3A, Estate Lovenlund, to a point, thence
S 83° 54' 45" W a distance of 45.13' over Parcel No. 3A, Estate Lovenlund, to a point, thence
S 07° 21' 02" W a distance of 80.27' over Parcel No. 3A, Estate Lovenlund, & Remainder Parcel No. 7-1 to a point, thence
S 56° 57' 28" W a distance of 64.33' over Remainder Parcel No. 7-1 to a point, thence
S 03° 44' 01" W a distance of 58.85' over Remainder Parcel No. 7-1 to a point, thence S 42° 19' 27" W a distance of 43.04' over Remainder Parcel No. 7-1 to a point, thence
N 80° 20' 35" W a distance of 106.55' over Remainder Parcel No. 7-1 to a point, thence N 64° 36' 09" W a distance of 155.74' over Remainder Parcel No. 7-1 to a point, thence
N 70° 22' 29" W a distance of 127.83' over Remainder Parcel No. 7-1 to a point, thence
Northwesterly an arc distance of 85.33' on a curve to the left having a radius of 90.72' over Remainder Parcel No. 7-1 to a point, thence

N 16° 28' 51" W a distance of 35.10' over Remainder Parcel No. 7-1 to the point of origin. The bearings are correlated with D9-6106-T96. The area is 2.426 U.S. Acres.

TRACT 2:

Perpetual easements for ingress and egress and rights of way as more particularly described in: Warranty Deed from Trans-Caribbean Dairy Corp. d/b/a St. Thomas Dairies, Inc. a/k/a Trans-Caribbean Dairies Corporation, a U.S. Virgin Islands corporation, to Jackson Development Company, LLC, a U.S. Virgin Islands limited liability company, dated November 12, 2015 and recorded in the Office of the Recorder of Deeds for the District of St. Thomas - St. John on December 1, 2015, as Document No. 2015007946; as amended by Amendment to Grant of Easement between Magens Point, Inc., a U.S. Virgin Islands corporation, and Jackson Development Company, LLC, a U.S. Virgin Islands limited liability company, dated November 21, 2016 and recorded in the Office of the Recorder of Deeds for the District of St. Thomas - St. John on December 14, 2016, as Document No. 2016008679.