RESOLUTION

AUTHORIZING AN AGREEMENT TO RESTRUCTURE THE DEBT OF
CLOCKTOWER HOUSING ASSOCIATES LIMITED PARTNERSHIP

CITY OF NASHUA

In the Year Two Thousand and Sixteen

WHEREAS the city is the holder of two promissory notes, as amended, made by Clocktower Housing Associates Limited Partnership ("Clocktower"), including one in the original principal amount of $10,944,072.02 and one in the original principal amount of $6,259,267 (the "Notes");

WHEREAS the Notes are secured by a housing development grant ("HDG") mortgage, dated September 20, 1989, recorded at the Hillsborough County Registry of Deeds at Book 5169, Page 206, amended on February 9, 1990 and recorded at Book 5169, Page 225, and further amended on December 14, 1995 and recorded at 5685, Page 696 (collectively, the "HDG Mortgage"); and

WHEREAS the HDG Mortgage is recorded in third priority position behind other mortgage security totaling $17,652,000, and Clocktower has the opportunity to refinance and restructure the first and second prior loans by obtaining a new loan in the approximate amount of $13,500,000 ("New Loan") with a new lender provided that the city (i) subordinates the indebtedness evidenced by the Notes to the New Loan, (ii) subordinates the HDG Mortgage to be in second priority position behind a new mortgage which will secure the New Loan and an existing $11,220,000 loan to Clocktower, Phase I (Nashua Plaza Housing Associates Limited Partnership), and (iii) agrees to certain modifications of the Notes, including adjustments to the repayment provisions and an extension of the maturity date of the Notes to June 30, 2056.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to execute the attached "Agreement Regarding HDG Construction Loan Note" to modify the repayment provisions and extend the term for repayment of the Notes, and subordinate the Notes and HDG Mortgage to Clocktower's new lender.
RESOLUTION: R-16-020

PURPOSE: Authorizing an agreement to restructure the debt of Clocktower Housing Associates Limited Partnership

ENDORSER(S): Mayor Jim Donchess

COMMITTEE ASSIGNMENT:

FISCAL NOTE: Upon the close of the debt restructuring transaction, the City of Nashua will move from third priority to second priority position by agreeing to extend the term for repayment by an additional 26 years. The City will also receive at least $500,000 at the time of the refinancing.

ANALYSIS

Clocktower Housing Associates Limited Partnership owes money to the City of Nashua lent to it primarily from Housing Development Grant funds. The City has a mortgage securing that debt, but it is the third lien on the property. Clocktower has an opportunity to refinance the senior debt, but needs the City to extend the terms of its Notes and accept a second secured position. The City will also receive a payment of at least $500,000 at the time of the refinancing. A memorandum from Clocktower’s attorney outlining the transaction is attached to this resolution.

Approved as to form: Office of Corporation Counsel

By:  _______________

Date: March 16, 2016
MEMORANDUM

To: Dorothy Clarke, Esq.
From: Andrew A. Prolman, Esq.
Date: March 9, 2016
Re: Clocktower Place Phase II Refinance

Please disregard my February 2, 2016 Memo to Mayor Donchess; it was prepared prior to Clocktower establishing the structure of its refinancing.

Ed Brice is working toward refinancing Clocktower Place. Current debt is as follows:

1st Mortgage: $4,500,000 +/- Walker & Dunlop, LLC
2nd Mortgage: $13,000,000 +/- Nashua Commercial Loan Holdings, LLC
3rd Mortgage: $10,944,000 City of Nashua

Payment on the 2nd and 3rd Mortgages are only made from “surplus” cash after payment of the first mortgage and costs associated with the property. Payments to the City have been nominal - $10,000 to $25,000 historically, past few years have been $0.

We are trying to structure similar deal as we had in 2011, but with different numbers:

New Loan: $13,500,000 M & T Bank/Fannie Mae
2nd Mortgage: $10,944,000 City of Nashua

Goals:

- Preserve 55 low income housing units
- Payment to City of a portion of the net proceeds in exchange for subordinating to New Loan and modification to HDG Note
- Move the City’s mortgage into second priority position
Proposal:

- Subordinate the City’s Mortgage to the New Loan and the 2015 Clocktower Phase I loan of $11,220,000.
- Modify payment terms and extend the maturity date of the HDG Note
- Pay Nashua not less than $500,000 in consideration of the City’s continued cooperation with Clocktower Place

Thank you.

Cc: Clocktower Place

Attachments:

1. Agreement Regarding HDG Construction Loan Note
2. Exhibit A – Second Amendment to HDG Construction Loan Note
3. Exhibit B – Third Amendment to HDG Construction Loan Mortgage
4. Exhibit B-I – Subordination Agreement
5. Exhibit C – Standby Agreement
6. Exhibit C-I – Estimate of Net Proceeds
7. Exhibit D – First Amendment to Development Note
AGREEMENT REGARDING
HDG CONSTRUCTION LOAN NOTE

This Agreement Regarding HDG Construction Loan Note ("Agreement") is made this _________ day of ____________, 2016 between the City of Nashua, a New Hampshire municipal corporation with an address of 229 Main Street, Nashua, New Hampshire 03060 (the "City") and Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership with an address of P.O. Box 290521, Boston, Massachusetts 02129 ("Clocktower").

RECITALS

A. The City is the holder of the November 20, 1989 HDG Construction Loan Note, made by Clocktower, in the original principal amount of $10,944,072.02, as amended by the First Amendment to HDG Construction Loan Note, dated February 9, 1990 (the "HDG Note");

B. The City's HDG Note is secured by Clocktower's HDG Construction Loan Mortgage, dated September 20, 1989, and recorded at the Hillsborough County Registry of Deeds at Book 5169, Page 206, and as amended by First Amendment to HDG Construction Loan Mortgage, dated February 9, 1990, and recorded at the Hillsborough County Registry of Deeds at Book 5169, Page 225, as further amended by the Second Amendment to HDG Construction Loan Mortgage, dated December 14, 1995, and recorded at the Hillsborough County Registry of Deeds at Book 5685, Page 696 (collectively, the "HDG Mortgage") which covers certain property owned by Clocktower and more thoroughly described therein ("Clocktower Property");

C. The HDG Mortgage also secures the Development Note in the original principal amount of $6,259,267 as further described in Section 7, below.
D. The HDG Mortgage is recorded in third priority position behind: (1) Clocktower’s first mortgage to Walker & Dunlop, LLC in the approximate amount of $4,559,607.67 as of February 28, 2016; and (2) Clocktower’s second mortgage to Nashua Commercial Loan Holdings in the approximate amount of $13,152,910.30 as of December 31, 2015.

E. Clocktower currently has the opportunity to refinance and restructure its debt with M & T Realty Capital Corporation (“New Lender”) through a new loan in the approximate amount of $13,500,000 (“New Loan”) backed by the Federal National Mortgage Association (“Fannie Mae”). Security for the New Loan will include a mortgage on the Clocktower Property (“New Mortgage”). The New Mortgage will also secure a loan in the original principal amount of $11,220,000.00 made by New Lender and assigned to Fannie Mae to provide financing for the property adjacent to the Clocktower Property (“Nashua Loan”). In order to provide the New Loan, New Lender is requiring that the City: (i) subordinate the indebtedness evidenced by the HDG Note and the Development Note to the New Loan, (ii) subordinate the HDG Mortgage to the New Mortgage, and (iii) agree to certain modifications to the HDG Note, the Development Note and HDG Mortgage.

F. The New Loan is intended to fully payoff Walker & Dunlop, LLC, fully pay off Nashua Commercial Loan Holdings, LLC for an agreed sum, and move the City’s HDG Mortgage into a second priority position behind the New Mortgage.

G. Clocktower has requested and the City has agreed to assist in Clocktower’s refinance as set forth below.

NOW THEREFORE, in consideration of the sum of ten ($10) dollars, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:
1. **HDG Note Balance.** Clocktower certifies that as of December 31, 2015, the outstanding balance of principal and accrued interest of the HDG Note is $13,367,098.

2. **Conditional Agreement.** The City’s obligations under this Agreement are subject to approval of the Clocktower refinance by other parties including but not limited to the New Lender and Fannie Mae. The City shall have no obligation to act in accordance with this Agreement unless and until Clocktower’s refinance is approved.

3. **HDG Note Modifications.** The City agrees it will modify the HDG Note payment schedule required by the refinance and extend the term of the HDG Mortgage approximately twenty four years from June 30, 2032 to June 30, 2056. Attached as Exhibit A is the proposed Second Amendment to HDG Construction Loan Note, which Clocktower shall deliver and the City shall accept upon Clocktower’s closing with the New Lender.

4. **HDG Loan Subordination.** The City agrees to subordinate the indebtedness evidenced by the HDG Note, together with the HDG Mortgage and all other security of the HDG Note to the New Loan and the New Mortgage, provided the City will be in a second priority position after subordination. Attached as Exhibit B is the proposed Third Amendment to HDG Construction Loan Mortgage which Clocktower and the City shall accept upon Clocktower’s closing with the New Lender. Attached as Exhibit B-1 is the proposed form of Subordination Agreement. The Subordination Agreement includes the City subordinating its HDG Mortgage to the New Mortgage which secures both the New Loan and the Nashua Loan. The City and Clocktower acknowledge that the New Lender and/or Fannie Mae must approve the attached form and may also require additional documents to be executed with closing to secure the respective positions described in this Agreement, and the parties agree to cooperate to secure the terms of this Agreement and Clocktower’s New Loan.
5. **Payment to City.** In consideration of the City’s assistance and cooperation with Clocktower’s refinance as described in this Agreement, Clocktower shall pay the City ten (10%) percent of the Net Proceeds as defined in Section 7 of the Standby Agreement between Clocktower and Nashua Commercial Loan Holdings, LLC (attached as Exhibit C), but in no case less than $500,000 due at the closing of the refinance. An estimated statement of Net Proceeds from Clocktower’s proposed refinance is attached as Exhibit C-1.

6. **Future HDG Mortgage Subordination.** The City agrees to subordinate the HDG Mortgage to future refinancing of the New Loan provided (a) any future refinancing shall be no greater than the New Loan, plus property capital need expenses, plus typical closing costs; and (b) any future refinancing shall maintain the current number low income housing requirements pursuant to the October 1, 1989 Land Use Restriction Agreement and other such regulatory agreements.

7. **Amendment of Development Note.** Warner Services, Inc., a Massachusetts corporation, as a General Partner of Clocktower earned a development fee for the Clocktower project, reflected in a Promissory Note from Clocktower to Warner Services, Inc., dated August 1, 1991, in the original principal amount of $6,259,267.00 (“Development Note”). On December 14, 1995, Clocktower assigned the Development Note to the City as reflected in the Second Amendment to HDG Construction Loan Mortgage. The parties now agree to amend the Development Note to (1) extend the maturity date to June 30, 2056; and (2) provide that principal and interest payments on the Development Note shall be paid only after the HDG Note is paid in full. Attached as Exhibit D is the Amendment to the Development Note.

8. **Development Loan Subordination.** The City agrees to subordinate the indebtedness evidenced by the Development Note, together with the HDG Mortgage and all
other security for the Development Note to the New Loan and the New Mortgage, provided the
City will be in a second priority position after subordination. The proposed form of
Subordination Agreement attached as Exhibit B-1 includes these subordination provisions. The
City and Clocktower acknowledge that the New Lender and/or Fannie Mae must approve the
attached form and may also require additional documents to be executed with closing to secure
the respective positions described in this Agreement, and the parties agree to cooperate to secure
the terms of this Agreement and Clocktower’s New Loan.

9. **City’s Legal Fees.** Clocktower shall pay the city’s legal fees and costs associated
with this Agreement, to a maximum of $5,000.

*Signature page follows.*
CLOCKTOWER HOUSING ASSOCIATES LIMITED PARTNERSHIP, a New Hampshire limited partnership

______________, 2016

By:

Edward W. Brice, Jr.
General Partner

WARNER SERVICES, INC., a Massachusetts corporation, General Partner

______________, 2016

By:

Edward W. Brice, Jr.
President

CITY OF NASHUA

______________, 2016

James W. Donchess, Mayor
SECOND AMENDMENT
TO
HDG CONSTRUCTION LOAN NOTE

This Second Amendment to HDG Construction Loan Note (the "Second Amendment") is entered into as of the _______ day of ____________________, 2016, by and between The City of Nashua, a municipal corporation under the laws of the State of New Hampshire, 229 Main Street, Nashua, New Hampshire (the "Lender") and Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership, P.O. Box 290521, Boston, Massachusetts 02129 (the "Borrower").

RECITALS

1. The parties entered into an HDG Construction Loan Note dated as of November 20, 1989 for $10,944,072 for the development of the Clocktower Place Apartments, Phase II (the "HDG Note").

2. The parties amended the HDG Note by First Amendment to HDG Construction Loan Note dated as of February 9, 1990 (the "First Amendment") to accommodate certain modifications to said Note as requested by The United States Department of Housing and Urban Development ("HUD").

3. The HDG Note is secured by the HDG Construction Loan Mortgage, (Hillsborough County Registry of Deeds Book 5169, Page 206), as amended by First Amendment (Hillsborough County Registry of Deeds Book 5169, Page 225) and Second Amendment (Hillsborough County Registry of Deeds Book 5685, Page 696) (collectively, the "HDG Mortgage"). Contemporaneously with this Second Amendment to HDG Loan Note, the
parties have entered into the Third Amendment to HDG Construction Loan Mortgage, to be recorded at the Hillsborough County Registry of Deeds.

4. The HDG Construction Mortgage is currently in third priority mortgage position on the subject property behind Walker & Dunlop, LLC (formerly CW Capital, LLC) (HCRD Book 5798, Page 1376) and Nashua Commercial Loan Holdings, LLC (formerly PAMI Mid-Atlantic, LLC) (HCRD Book 6859, Page 2761).

5. In order to accommodate the refinance of the prior mortgages, Borrower has requested and Lender has agreed to make certain modifications to the HDG Construction Loan Note.

AMENDMENT

Accordingly, it is agreed as follows:

1. The HDG Construction Loan Note, as amended below, shall remain secured by (i) the HDG Mortgage, and (ii) the HDG Construction Loan Security Agreement, as amended. Subsection (c) of the Third Paragraph of the HDG Construction Loan Note, as amended by Paragraph 3 of the First Amendment, is amended by removing the date “June 30, 2011” and inserting the date “June 30, 2016” in its place.

2. Subsections (d) and (e) of the Third Paragraph of the HDG Construction Loan Note, as amended by Paragraph 3 of the First Amendment, are deleted in its entirety and replaced with the following:

   d) Beginning June 30, 2017 and on or before June 30 of each year thereafter up to and including June 30, 2055, Borrower shall make a payment equal to the lesser of (i) $25,000, or (ii) fifty percent (50%) of available cash flow after payment of all property expenses including the first mortgage debt service and capital expenditures.
e) The entire outstanding principal amount and any accrued and unpaid interest shall be due and payable on June 30, 2056.

3. The second paragraph added by paragraph 4 of the First Amendment (which begins, “At the option of Lender”) is hereby deleted in its entirety.

4. The HDG Construction Loan Note is amended to add a new paragraph, on Page 4, inserted after the second paragraph as follows:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Multifamily Note (and any schedules) (“Multifamily Note”) dated as of _________________, 2016 in the original principal amount of $13,500,000, executed by Clocktower Housing Associates Limited Partnership (“Borrower”) and payable to the order of M & T Realty Capital Corporation (“Senior Lender”), to the extent and in the manner provided in that certain Subordination Agreement dated as of even date herewith between the payee of this Note, and Senior Lender and Borrower (the “Subordination Agreement”).

The HDG Construction Loan Mortgage (and any exhibits) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing (i) the Multifamily Note and the terms, covenants and conditions of the Multifamily Loan and Security Agreement evidencing the terms of the Multifamily Note, and (ii) the Multifamily Note dated September 30, 2015 from Nashua Plaza Housing Associates Limited Partnership to the order of Senior Lender in in the original principal amount of $11,220,000 and the terms, covenants and conditions of the documents evidencing the terms of that note, all as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the HDG Construction Loan Mortgage (and any exhibits) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder’s acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under the Subordination Agreement.

5. Except to the extent modified herein, the terms of the HDG Construction Loan Note continue in full force and effect.
IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to HDG Construction Loan Note to be executed by their duly authorized officers as of the day and year first written above.

The City of Nashua

Witness

James W. Donchess, Mayor
Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership

Witness

Edward W. Brice, Jr.
General Partner
Warner Services, Inc., a Massachusetts corporation,
General Partner

Witness

Edward W. Brice, Jr.
President
THIRD AMENDMENT
TO
HDG CONSTRUCTION LOAN MORTGAGE

This Third Amendment to HDG Construction Loan Mortgage (the “Third Amendment”) is entered into as of the ______ day of __________________, 2016, by and between The City of Nashua, a municipal corporation under the laws of the State of New Hampshire, 229 Main Street, Nashua, New Hampshire (the “Mortgagee”) and Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership, P.O. Box 290521, Boston, Massachusetts 02129 (the “Mortgagor”).

RECITALS:

1. The Mortgagee received a Housing Development Grant (“HDG”) from the United States Department of Housing and Urban Development (“HUD”), pursuant to Section 17 of the U.S. Housing Act of 1937 and the HDG regulations promulgated thereunder and contained in 24 Code of Federal Regulations Part 850 for the purpose of assisting the development of the Clocktower Place, Phase II Project.
2. The Mortgagee and HUD have entered into a Grant Agreement for the Project Number NH-002-HG-701, setting forth the terms of the HDG, which terms include the grant of a mortgage from the Mortgagor to the Lender. Said Grant Agreement is incorporated herein by reference.

3. The Mortgagor executed the HDG Construction Loan Mortgage dated as of November 20, 1989 recorded in the Hillsborough County Registry of Deeds in Book 5169, Page 206, as amended by the First Amendment to HDG Construction Loan Mortgage dated February 9, 1990, recorded with said Registry of Deeds in Book 5169, Page 225, and as further amended by the Second Amendment to HDG Construction Loan Mortgage dated December 14, 1995 and recorded at the Hillsborough County Registry of Deeds at Book 5685, Page 696 (as amended, the "HDG Construction Loan Mortgage").

4. The HDG Construction Loan Mortgage is currently in third priority mortgage position on the subject property behind Walker & Dunlop, LLC (formerly by CW Capital, LLC) (HCRD Book 5798, Page 1376) and Nashua Commercial Loan Holdings, LLC (formerly by PAMI Mid-Atlantic, LLC/CW Capital, LLC) (HCRD Book 6859, Page 2761).

5. Mortgagor has an opportunity to refinance the prior debt through the M & T Realty Capital Corporation, provided certain amendments are made to the HDG Construction Loan Mortgage.

6. Mortgagor has requested and Mortgagee has agreed to amend the HDG Construction Loan in accordance with this Third Amendment to accommodate Mortgagor's refinancing of the existing debt.

7. Terms not otherwise defined in this Third Amendment have the same meaning as in the HDG Construction Loan Mortgage.
AMENDMENTS:

Accordingly, it is agreed as follows:

1. The HDG Construction Loan Mortgage, as amended hereby, shall secure the performance of all of the Mortgagor's obligations under (i) the HDG Construction Loan Note, as amended by that certain First Amendment to HDG Construction Loan Note dated as of February 9, 1990, and the Second Amendment to HDG Construction Loan Note, dated ______________, 2016, (ii) the Promissory Note in the original amount of $6,259,267 dated as of August 1, 1991 from Borrower to the order of Warner Services, Inc., as endorsed and assigned to Subordinate Lender pursuant to the Second Amendment to HDG Construction Loan Mortgage, dated December 14, 1995, and recorded at the Hillsborough County Registry of Deeds at Book 5685, Page 696, and as amended by the First Amendment to Development Note dated ______________, (iii) the existing Owner/Grantee Agreement, as amended by the First Amendment to Owner/Grantee Agreement dated as of February 9, 1990, and (iv) the existing Agreement of Housing Development Grant Restrictions and Covenants between the Mortgagor and the Mortgagee dated September 13, 1989 and recorded in the Hillsborough County Registry of Deeds in Book 5134, Page 1839.

2. This HDG Construction Loan Mortgage shall be subordinated to the M & T Realty Capital Corporation mortgage and other loan security documents of even date pursuant to the Subordination Agreement executed and recorded contemporaneously to this Third Amendment.

3. The term of the HDG Construction Loan Mortgage is extended to June 30, 2056.
4. Except to the extent modified herein, the terms of the HDG Construction Loan Mortgage shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed by their duly authorized officers as of the day and year first written above.

The City of Nashua

Witness

James W. Donchess, Mayor

Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership

Witness

Edward W. Brice, Jr.
General Partner

Warner Services, Inc., a Massachusetts corporation, General Partner

Witness

Edward W. Brice, Jr.
President
STATE OF NEW HAMPSHIRE  
HILLSBOROUGH COUNTY  

On this date, appeared before me the above-named James W. Donchess, Mayor of The City of Nashua, who executed the foregoing instrument on behalf of The City of Nashua, New Hampshire and acknowledged the same to be his free act and deed and the free act and deed of the said City of Nashua, New Hampshire.

Notary Public  
My Commission Expires:
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. ___________________________________, 2016

On this the _____ day of _____________, 2016, before me, the undersigned Notary Public, personally appeared Edward W. Brice, Jr. General Partner of Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership, proved to me through satisfactory evidence of identification, being (check whichever applies):

☐ Driver’s license or other state or federal governmental document bearing a photographic image,
☐ Oath or affirmation of a credible witness known to me who knows the above signatory, or
☐ My own personal knowledge of the identity of the signatory,

to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized General Partner of Clocktower Housing Associates Limited Partnership.

____________________
Notary Public
My Commission Expires: ________

____________________
Print Name
[Notary Seal]
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. __________________________, 2016

On this the ______ day of________________, 2016, before me, the undersigned Notary Public, personally appeared Edward W. Brice, Jr., President of Warner Services, Inc., General Partner of Clocktower Housing Associates Limited Partnership, proved to me through satisfactory evidence of identification, being (check whichever applies):

☐ Driver’s license or other state or federal governmental document bearing a photographic image,
☐ Oath or affirmation of a credible witness known to me who knows the above signatory, or
☐ My own personal knowledge of the identity of the signatory,

to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized President of Warner Services, Inc., General Partner of Clocktower Housing Associates Limited Partnership.

________________________________________
Notary Public
My Commission Expires: __________

________________________________________
Print Name
[Notary Seal]
SUBORDINATION AGREEMENT
(Conventional)

This SUBORDINATION AGREEMENT (this “Agreement”) dated as of___________, 2016, is executed by and among (i) M & T Realty Capital Corporation a Maryland Corporation (“Senior Lender”), (ii) the City of Nashua, Nashua, New Hampshire, a municipal corporation with a principal place of business of 229 Main Street, Nashua, New Hampshire 03060 (“Subordinate Lender”), and (iii) Clocktower Housing Associates Limited Partnership a New Hampshire limited partnership with a principal place of business at P.O. Box 290521, Boston, Massachusetts 02129 (“Borrower”).

RECITALS:

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Senior Loan Agreement”), Senior Lender has agreed to make a loan to Borrower in the original principal amount of Thirteen Million Five Hundred Thousand and 00/100 Dollars ($13,500,000) (the “Senior Loan”), as evidenced by that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Senior Note”).

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Senior Security Instrument”), encumbering the property described in the Senior Security Instrument as the “Mortgaged Property.”

C. Further in addition to the Senior Loan Agreement, Borrower agreed with Senior Lender to cross-collateralize a certain loan dated September 30, 2015 made by Senior Lender to Nashua Plaza Housing Associates Limited Partnership (“Clocktower Loan I”) in the original
principal amount of $11,220,000 such that the Clocktower I Loan is included in and secured by the Senior Security Instrument and the Mortgaged Property.

D. Borrower has requested Senior Lender to permit two subordinate loans, one in the original principal amount of $10,944,072.02 and one in the original principal amount of $6,259,267.00 (collectively, the "Subordinate Loan") from Subordinate Lender to Borrower, and to allow the Subordinate Loan to be secured by a mortgage lien against the Mortgaged Property.

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

AGREEMENTS:

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

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Definitions.

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

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

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

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

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

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

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

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

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

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

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

"Subordinate Construction Note" means the HDG Construction Loan Note in the original principal amount of $10,944,072 dated as of November 20, 1989 from Borrower to the order of the Subordinate Lender, as amended by the First Amendment to HDG Construction Loan Note dated as of February 9, 1990 between Borrower and Subordinate Lender, as amended by the Second Amendment to HDG Construction Loan Note of even date herewith between Borrower and Subordinate Lender.

"Subordinate Development Note" means the Promissory Note in the original amount of $6,259,267 dated as of August 1, 1991 from Borrower to the order of Warner Services, Inc., as endorsed and assigned to Subordinate Lender pursuant to the Second Amendment to HDG Construction Loan Mortgage, dated December 14, 1995, and recorded at the Hillsborough County Registry of Deeds at Book 5685, Page 696, and as amended by the First Amendment to Development Note of even date herewith between Borrower and Subordinate Lender.

"Subordinate Lender" means the Person named as such in the first paragraph on Page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

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

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

“Subordinate Mortgage” means the HDG Construction Loan Mortgage dated as of November 20, 1989 recorded in the Hillsborough County Registry of Deeds in Book 5169, Page 206, as amended by the First Amendment to HDG Construction Loan Mortgage dated February 9, 1990, recorded with said Registry of Deeds in Book 5169, Page 225, by the Second Amendment to HDG Construction Loan Mortgage dated December 14, 1995 and recorded at the Hillsborough County Registry of Deeds at Book 5685, Page 696, and by the Third Amendment to HDG Construction Loan Mortgage of even date herewith and recorded or intended to be recorded prior hereto.

“Subordinate Note” means, collectively, the Subordinate Construction Note and the Subordinate Development Note.

“Subordinate Security Agreement” means the HDG Construction Loan Security Agreement dated November 20, 1989 from Borrower to and for the benefit of Subordinate Lender, as amended by the ________________________________.

3. Permission to Place Mortgage Lien Against Mortgaged Property.

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

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

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

(a) Subordinate Loan Documents.

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

(b) Subordinate Note.

Each Subordinate Note contains the following provision:
The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Multifamily Note (and any schedules) ("Multifamily Note") dated as of __________________________, 2016 in the original principal amount of $13,500,000, executed by Clocktower Housing Associates Limited Partnership ("Borrower") and payable to the order of M & T Realty Capital Corporation ("Senior Lender"), to the extent and in the manner provided in that certain Subordination Agreement dated as of even date herewith between the payee of this Note, and Senior Lender and Borrower (the "Subordination Agreement"). The HDG Construction Loan Mortgage (and any exhibits) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing (i) the Multifamily Note and the terms, covenants and conditions of the Multifamily Loan and Security Agreement evidencing the terms of the Multifamily Note, and (ii) the Multifamily Note dated September 30, 2015 from Nashua Plaza Housing Associates Limited Partnership to the order of Senior Lender in in the original principal amount of $11,220,000 and the terms, covenants and conditions of the documents evidencing the terms of that note, all as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the HDG Construction Loan Mortgage (and any exhibits) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder’s acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under the Subordination Agreement.

(c) Terms of the Subordinate Loan.

(i) The original principal amount of the Subordinate Construction Note is $10,944,072. Interest on the Subordinate Construction Note accrues at the rate of one percent (1%) per annum, which rate may not be increased without the prior written consent of Senior Lender. The Subordinate Construction Note shall be due and payable in full no sooner than 30 years beyond the term of the Senior Loan ("Construction Loan Maturity"). The principal of the Subordinate Construction Note will have a balloon principal payment due at Construction Loan Maturity, the amount of which will vary depending on the amounts of payments made during the term of the Subordinate Construction Note. The Subordinate Construction Note shall obligate Borrower to make annual payments not to exceed the lesser of $25,000 or 50% of available cash flow after payment of all property expenses including the first mortgage debt service and capital expenditures.

(ii) The original principal amount of the Subordinate Development Note is $6,259,267. Interest on the Subordinate Development Note accrues at the rate of six and one tenth percent (6.1%) per annum, which rate may not be increased without the prior written consent of Senior Lender. The Subordinate Development Note shall be due and
payable in full no sooner than 30 years beyond the term of the Senior Loan ("Development Loan Maturity"). The principal of the Subordinate Development Note will have a balloon principal payment due at Development Loan Maturity, the amount of which will vary depending on the amounts of payments made during the term of the Subordinate Development Note. The Subordinate Development Note shall not obligate Borrower to make any payments of principal or interest until the Construction Loan Note is repaid in full.

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

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

(e) Term.

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

(f) Subordinate Loan Documents.

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

5. Deliveries.

Borrower shall submit the following items to Senior Lender the later of (a) ten (10) Business Days after the date on which the proceeds of the Subordinate Loan are disbursed to Borrower, and (b) the effective date of the Senior Loan Documents:

(a) Title Policy.

A policy of title insurance insuring the lien of the Senior Security Instrument which insures that (1) there are no liens or other encumbrances affecting the Mortgaged Property, other than “Permitted Encumbrances” (as defined in the Senior Security Instrument), the Subordinate Mortgage, and other Subordinate Loan Documents filed or recorded against the Mortgaged Property, (2) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Security Instrument, and (3) this Agreement has been recorded among the applicable land records.

(b) Certification.

A certification from Borrower and Subordinate Lender to Senior Lender that the Subordinate Loan Documents do not contain any changes from the Subordinate Loan Documents submitted to, and approved by, Senior Lender prior to the date of this Agreement.
(c) Loan Documents.

A complete set of the fully executed Subordinate Loan Documents, certified by Borrower to be true, correct and complete upon the later of (1) the execution and delivery of the Subordinate Loan Documents, and (2) the effective date of the Senior Loan Documents.

6. Terms of Subordination.

(a) Agreement to Subordinate.

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

(b) Subordination of Subrogation Rights.

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

(c) Payments Before Senior Loan Default.

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

(d) Payments After Senior Loan Default.

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

(c) Receipt of Payment Not Permitted Hereunder.

If, after Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender receives any payments under the Subordinate Loan Documents, or if Subordinate Lender receives any other payment or distribution of any kind from Borrower or from any other Person in connection with the Subordinate Loan or the Subordinate Loan Documents which Subordinate Lender is not permitted by this Agreement to retain for its own account, Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender’s receipt of such amounts, and that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender, will be promptly remitted, in kind, to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under Senior Loan Documents in such order and in such manner as Senior Lender shall determine in its sole and absolute discretion. Subordinate Lender hereby irrevocably designates, makes, constitutes and appoints Senior Lender (and all Persons designated by Senior Lender) as Subordinate Lender’s true and lawful attorney in fact in the Subordinate Lender’s name, place and stead, with full power of substitution, to (1) take any and all actions as are permitted in this Agreement, including the power to endorse the name of Subordinate Lender upon any checks representing payments referred to in this subsection, and (2) carry out any remedy provided for in this Agreement. The Subordinate Lender hereby acknowledges that the constitution and appointment of such attorney-in-fact is coupled with an interest and is irrevocable.

(f) Notice of Payment from Other Persons.

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

(g) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender’s prior written consent.

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

Subordinate Lender agrees to deliver a Default Notice of each Subordinate Loan Default to Senior Lender within five (5) Business Days after the occurrence of the Subordinate Loan Default. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within the same time period for curing a default which is given to Borrower under the Subordinate Loan Documents, except that Senior Lender’s time period for cure shall begin on the date on which it receives notice of the Subordinate Loan Default. All amounts advanced or expended by Senior Lender to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) Subordinate Lender May Not Exercise Remedies Without Senior Lender’s Written Consent.

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender’s prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan (and enforcing any “due on sale” provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder.

(c) Effect of Foreclosure by Subordinate Lender.

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

(d) Cross Default.

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default.
8. Default Under Senior Loan Documents.
   
   (a) Senior Loan Notices.

   Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender’s rights and remedies under the Senior Loan Documents, nor shall such failure constitute a default by Senior Lender under this Agreement.

   (b) Cross Default.

   Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents (if no other default has occurred under the Subordinate Loan Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior 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 Senior Loan Default had never occurred.


   Borrower and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall control. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower’s time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

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

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

   (a) Subordinate Loan Notices.

   Subordinate Lender shall deliver to Senior Lender a copy of each notice which it delivers to Borrower in connection with the Subordinate Loan simultaneously with the delivery of such notice to Borrower.
(b) Protection of Security Interest.

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, (1) take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents, or (2) appear in, defend or bring any action to protect its interest in the Mortgaged Property.

(c) Condemnation or Casualty.

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

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender’s rights under the Senior Loan Documents, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender;

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

(C) Subordinate Lender agrees to execute and deliver, at no expense to Senior Lender, all documents, instruments, agreements or further assurances required to effectuate the provisions of this subsection.

(d) Insurance.

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

(e) Termination of Subordinate Mortgage.

If, after the occurrence of a Senior Loan Default, Senior Lender acquires title to the
Mortgaged Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise
of a power of sale contained in) the Senior Loan Documents, the lien of the Subordinate
Mortgage and the other Subordinate Loan Documents shall automatically terminate upon Senior
Lender’s acquisition of title.

(f) No Modification of Subordinate Loan Documents.

Borrower and Subordinate Lender each agree that, until the principal of, interest on and
all other amounts payable under the Senior Loan Documents have been paid in full, it will not,
without the prior written consent of Senior Lender in each instance, (1) amend, modify, increase,
extend, renew or replace the Subordinate Loan Documents or (2) assign any interest in the
Subordinate Loan. Any amendment of the Subordinate Loan Documents or assignment of
Subordinate Lender’s interest in the Subordinate Loan without Senior Lender’s consent shall be
void ab initio and of no effect whatsoever.

11. Modification or Refinancing of Senior Loan Documents.

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

12. Default by Subordinate Lender.

If Subordinate Lender defaults in performing or observing any of the terms, covenants or
conditions to be performed or observed by Subordinate Lender under this Agreement, Senior
Lender shall have the right to all available legal and equitable relief. In addition, Subordinate
Lender agrees to indemnify and hold harmless Senior Lender from and against (a) all damage,
loss and liability incurred by Senior Lender as a result of such default, and (b) all costs and
expenses (including reasonable attorneys’ fees and disbursements) incident to the matters
referred to in clause (a), whether or not litigation is commenced.
13. **Reinstatement.**

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

14. **Non-Approval of Subordinate Financing Terms.**

This Agreement does not constitute an approval by Senior Lender of the terms of the Subordinate Loan or limit any of Borrower's rights to negotiate the terms of the Subordinate Loan Documents with Subordinate Lender.

15. **Notices.**

(a) **Process of Serving Notice.**

All notices under this Agreement shall be:

(1) in writing and shall be:
   (A) delivered, in person;
   (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
   (C) sent by overnight courier; or
   (D) sent by electronic mail with originals to follow by overnight courier;

(2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and

(3) deemed given on the earlier to occur of:
   (A) the date when the notice is received by the addressee; or
   (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.
(b) Change of Address.

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

(c) Receipt of Notices.

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


(a) Assignment/Successors.

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

(b) No Partnership or Joint Venture.

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

(c) Senior Lender’s Consent.

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

(d) Further Assurances.

Upon the demand of Senior Lender from time to time, Subordinate Lender agrees to execute and deliver all additional instruments and/or documents required by Senior Lender in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

(e) Amendment.

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

(f) Governing Law.

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result
in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions.

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

(h) Term.

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

(i) Counterparts.

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

(j) Sale of the Senior Loan.

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

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

SENIOR LENDER:

By: ___________________________(SEAL)
Name: ____________________________
Title: ____________________________
Address: ____________________________

With a copy to:
Fannie Mae
Attention: Multifamily Operations - Asset Management
Drawer AM
3900 Wisconsin Avenue, N.W.
Washington, DC 20016

SUBORDINATE LENDER:

By: ___________________________(SEAL)
Title: James W. Donchess, Mayor
Address: City of Nashua
Nashua, NH 03060

BORROWER:

By: ___________________________(SEAL)
Name: Edward W. Brice, Jr.
Title: General Partner
Address: Clocktower Housing Associates
Limited Partnership
On this date, appeared before me the above-named ________________________, who executed the foregoing instrument on behalf of the said M & T Realty Capital Corporation and said corporation and acknowledged the same to be his free act and deed and the free act and deed of the said corporation.

Notary Public
My Commission Expires:

On this date, appeared before me the above-named James W. Donchess, Mayor of The City of Nashua, who executed the foregoing instrument on behalf of The City of Nashua, New Hampshire and acknowledged the same to be his free act and deed and the free act and deed of the said City of Nashua, New Hampshire.

Notary Public
My Commission Expires:
COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.  

On this the _______ day of ________________, 2016, before me, the undersigned Notary Public, personally appeared Edward W. Brice, Jr. General Partner of Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership, proved to me through satisfactory evidence of identification, being (check whichever applies):

☐ Driver's license or other state or federal governmental document bearing a photographic image,
☐ Oath or affirmation of a credible witness known to me who knows the above signatory, or
☐ My own personal knowledge of the identity of the signatory,

to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose, as the duly authorized General Partner of Clocktower Housing Associates Limited Partnership.

Notary Public
My Commission Expires: ________

Print Name
[Notary Seal]
STANDBY AGREEMENT

This Standby Agreement (this “Agreement”) is made by and between Walker & Dunlop, LLC, a Delaware limited liability company (hereinafter “W&D”), Nashua Commercial Loan Holdings, LLC, a Delaware limited liability company (hereinafter “Nashua”), and where W&D and Nashua are collectively referred to as “Lender” and Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership (hereinafter “Borrower”) as of March 7, 2016.

RECITALS

A. Reference is hereby made to (1) a certain Second Mortgage Note dated March 1, 1997 by Borrower in favor of the United States Department of Housing and Urban Development, Lender’s predecessor in interest, in the original principal amount of $6,385,325.39, as the same may have been amended, modified, sold or transferred from time to time (the “Note”), (2) a certain Second Mortgage dated March 1, 1997 by Borrower in favor of the United States Department of Housing and Urban Development, Lender’s predecessor in interest, recorded in Book 5798, page 1397 of the Hillsborough County Registry of Deeds, as the same may have been assigned, amended, modified, sold or transferred from time to time (the “Mortgage”), and (3) any and all other documents executed in connection with the Note or the Mortgage (such documents, collectively with the Note and the Mortgage, are hereinafter referred to as the “Loan Documents”).

B. As a result of certain agreements between the predecessors in interest to Nashua and W&D in the Note, Nashua holds an eighty (80%) percent interest in the Note, and W&D holds a twenty (20%) interest in the Note.

C. Borrower acknowledges receipt of Lender’s election to accelerate the Borrower’s obligations under the Loan Documents in a certain letter dated October 28, 2015; Lender acknowledges that Borrower contests Lender’s right to accelerate the Note.

D. Borrower has requested that Lender stand by and temporarily forego its pursuit of rights available to it under the Loan Documents.

E. Lender has agreed to stand by and temporarily forgo its rights as aforesaid, subject to the terms and conditions of this Agreement.

AGREEMENT

For good and valuable consideration as set forth herein, and other consideration, the receipt and adequacy of which are hereby acknowledged, Lender and Borrower agree as follows:

1. Acknowledgment of Recitals. The recitals set forth above are true, accurate and valid.

2. Acknowledgment of Loan Documents and Obligations. The Borrower’s obligations under the Loan Documents are valid and enforceable according to their terms and the Mortgage
constitutes a valid second position lien on the collateral described therein, in favor of the Lender. Borrower affirms that the balance owing on the Note as of December 31, 2015 was $13,152,910.35.

3. **Reservation of Rights Under The Loan Documents.** The parties reserve all of their respective rights under the Loan Documents, including but not limited to Borrower’s right to contest Lender’s October 28, 2015 acceleration and demand on the Note. This Standby Agreement shall in no way act as a waiver of any of Borrower’s rights, or a statement by Borrower that it lacks any defense to Lender’s claim including any legal or equitable relief to abate, postpone, enjoin or terminate Lender’s enforcement of its rights under the Loan Documents.

4. **Reaffirmation of Loan Documents.** Borrower reaffirms and ratifies the terms of the Loan Documents in all respects. Except as specifically provided herein, Borrower acknowledges that nothing in this Agreement shall (1) be construed to limit or restrict Lender from exercising its rights or remedies under the Loan Documents or with respect to any default by Borrower in the performance of its obligations hereunder, or (2) relieve or release Borrower from any of the Obligations.

5. **Standby Period.** Provided Borrower performs all terms and conditions in this Agreement, and no defaults shall have occurred under the Loan Documents, Lender shall forego exercising its rights under the Loan Documents until 30 days after the City of Nashua approves its necessary agreement to effectuate the M&T Refinance, referenced below, but in no case later than June 30, 2016 (the “Standby Termination Date”). Upon the earliest to occur of (i) the Standby Termination Date, (ii) the occurrence of an additional default under the Loan Documents or (iii) a breach by Borrower of any term or condition of this Agreement, all Obligations shall be immediately due and payable and Lender may immediately exercise all rights and remedies available to it under the Loan Documents, at law and/or in equity, subject to Borrower’s right to contest the same.

6. **Refinance.** During the Standby Period, Borrower shall use diligent efforts to secure a refinancing of the Obligations with M&T Realty Capital Corporation (“M&T”) in an amount not less than $13,500,000.00 (the “M&T Refinance”).

7. **Payments to Lender.** On or prior to the Standby Termination Date, Borrower shall pay Nashua $6,000,000 and W&D $225,000.

8. **Satisfaction.** Upon receipt of the Payments to Lender described in Section 7, above, Lender shall release or assign its interest in the Loan Documents to Borrower, at Borrower’s election. Any assignment shall be made without warranty or recourse of any kind.

9. **Interest Accrual.** Interest on the outstanding Obligations shall continue to accrue as set forth in the Loan Documents.

10. **Standby Fee.** In consideration of the Lender’s execution of this Agreement, Borrower shall pay Nashua a fee of $25,000.00 and such fee shall be fully earned, non-refundable, and due
and payable on the date hereof (the “Standby Fee”). The Standby Fee shall not be credited towards the Payments to Lender described in Section 7, above, in whole or in part.

11. **Conditions Precedent.** Lender’s agreement to enter into this Agreement is expressly conditioned upon Borrower executing and delivering this Agreement and the Standby Fee to Nashua’s counsel on or before March 11, 2016 at 5:00 pm EST.

12. **Default.** Failure by Borrower to comply with all terms and conditions of this Agreement shall constitute a default hereunder, following which Lender may, without notice to Borrower, exercise all rights and remedies available under the Loan Documents, at law and/or in equity.

13. **Representations and Warranties of Borrower.** To induce Lender to execute and deliver this Agreement, Borrower represents and warrants that:

   (a) The execution, delivery and performance by Borrower of this Agreement, and all documents and instruments delivered in connection herewith and therewith, have been duly authorized; and

   (b) Neither the execution, delivery or performance of this Agreement or any of the documents or instruments delivered in connection herewith or therewith, nor the consummation of the transactions contemplated hereby or thereby does or shall contravene, result in a breach of, or violate (i) any provision of Borrower’s governing documents, (ii) any law or regulation or any order or decree of any court or any governmental instrumentality or (iii) any indenture, mortgage, deed of trust, lease agreement or other instrument to which Borrower is a party.

14. **Mutual Release.** Upon receipt of the funds described in Section 7 and the Satisfaction described in Section 8 above, each party hereto, and their respective successors and assigns, hereby agree to forever release any and all claims it has or may have against each other and its successors and assigns related to or arising out of the Loan Documents or this Agreement. These releases shall be self-executing and shall require no further writing by any party. This release shall have no effect on any other loans between the parties and does not relate to or have any bearing on the first loan on the project secured by the Second Mortgage.

15. **Miscellaneous.** This Agreement and the Loan Documents constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede any prior oral or written agreements concerning the same. Should any conflict arise between this Agreement and the Loan Documents, the Loan Documents shall prevail. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same document. This Agreement shall be governed under the laws of the State of New Hampshire.

16. **No Effect On Other Mortgage.** Nothing contained herein relates to or affects the rights of any parties with respect to any other loans or mortgages relating to the property secured by the Second Mortgage or any other property of the Borrower.
Executed as of the date set forth above.

LENDER:
Nashua Commercial Loan Holdings, LLC
By: Gray Diversified Loan Advisors, LLC,
a Delaware limited liability company, its
Operating Member

By: _________________________
Name: John W. Gray, Jr.
Title: Managing Member

BORROWER:
Clocktower Housing Associates Limited
Partnership

By: _________________________
Name: Edward W. Brice, Jr.
Title: General Partner

Walker & Dunlop, LLC

By: _________________________
Name: James Schroeder
Title: Senior Vice President
Executed as of the date set forth above.

LENDER:
Nashua Commercial Loan Holdings, LLC
By: Gray Diversified Loan Advisors, LLC, a Delaware limited liability company, its Operating Member

By: [Signature]
Name: John W. Gray, Jr.
Title: Managing Member

BORROWER:
Clocktower Housing Associates Limited Partnership

By: [Signature]
Name: Edward W. Brice, Jr.
Title: General Partner

Walker & Dunlop, LLC

By: [Signature]
Name: James Schroeder
Title: Senior Vice President
Executed as of the date set forth above.

LENDER:
Nashua Commercial Loan Holdings, LLC
By: Gray Diversified Loan Advisors, LLC,
a Delaware limited liability company, its
Operating Member

By: ________________________________
Name: John W. Gray, Jr.
Title: Managing Member

BORROWER:
Clocktower Housing Associates Limited Partnership

By: ________________________________
Name: Edward W. Brice, Jr.
Title: General Partner

Walker & Dunlop, LLC

By: ________________________________
Name: James Schroeder
Title: Senior Vice President
CLOCKTOWER PLACE REFINANCE
ESTIMATE OF NET PROCEEDS

AS OF MARCH 3, 2016

New Loan $13,500,000.00
Less First Mortgage Payoff -4,500,000.00
   9,000,000.00
Plus Existing Reserves 1,200,000.00
   10,200,000.00
Less Estimated Closing Costs -500,000.00
   9,700,000.00
Less Building Reserves -2,746,900.00
   6,953,100.00
Less Closing Rent Reserves -128,100.00
Less Portion of Second Mortgage Payoff -225,000.00
Net Proceeds 6,600,000.00
Payment to Nashua Commercial Loan Holdings, LLC (2nd Mortgage) -6,000,000.00
Payment to City -600,000.00
Net To Borrower $0.00
FIRST AMENDMENT TO DEVELOPMENT NOTE

This First Amendment to Development Note ("Development Note") is made this ______ day of _________________, 2016 between the City of Nashua, a New Hampshire municipal corporation with an address of 229 Main Street, Nashua, New Hampshire 03060 (the "City") and Clocktower Housing Associates Limited Partnership, a New Hampshire limited partnership with an address of P.O. Box 290521, Boston, Massachusetts 02129 ("Clocktower").

RECITALS

1. On August 1, 1991, Clocktower made a Promissory Note in the original principal amount of $6,259,267 payable to Warner Services, Inc. (the "Development Note"). On December 14, 1995 Warner Services, Inc., endorsed and assigned the Development Note to the City pursuant to the Second Amendment to HDG Construction Loan Mortgage, dated December 14, 1995, and recorded at the Hillsborough County Registry of Deeds at Book 5685, Page 696.

2. Clocktower is refinancing and restructuring certain debts associated with its real property located at 2 Clocktower Place, Nashua, New Hampshire with M & T Realty Capital Corporation ("New Lender") through a Fannie Mae backed loan, provided that, among other things, certain modifications are made to the Development Note.

3. The Development Note matured on October 1, 2010. The City did not demand payment on the Development Note nor declared Clocktower in default.

4. Clocktower and the City now desire to confirm the terms of the Development Note, and make other certain amendments as described below.
AGREEMENT

NOW THEREFORE, the parties agree as follows:

1. Except as amended below, all of the terms and conditions of the Development Note remain in full force and effect.

2. The maturity date of the Development Note is extended from October 1, 2010, to June 30, 2056.

3. The second sentence of the Development Note is deleted in its entirety and replaced as follows:

   The Borrower (Clocktower) shall not be required to make any payments of principal or interest on this Note until such time as the HDG Construction Loan Note, dated November 20, 1989, made by Clocktower to the City, is paid in full. If not sooner paid, the Borrower, after payment of the HDG Construction Loan Note, shall not be required to make any payments of principal or interest on this Note except out of available cash receipts prior to any distributions to and among the Partners.

4. The Development Note is amended to add a new paragraph, on Page 3, inserted after the third paragraph as follows:

   The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Multifamily Note (and any schedules) ("Multifamily Note") dated as of __________, 2016 in the original principal amount of $13,500,000, executed by Clocktower Housing Associates Limited Partnership ("Borrower") and payable to the order of M & T Realty Capital Corporation ("Senior Lender"), to the extent and in the manner provided in that certain Subordination Agreement dated as of even date herewith between the payee of this Note, and Senior Lender and Borrower (the "Subordination Agreement"). The HDG Construction Loan Mortgage (and any exhibits) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing (i) the Multifamily Note and the terms, covenants and conditions of the Multifamily Loan and Security Agreement evidencing the terms of the Multifamily Note, and (ii) the Multifamily Note dated September 30, 2015 from Nashua Plaza Housing Associates Limited Partnership to the order of Senior Lender in in the original principal amount of $11,220,000 and the terms, covenants and conditions of the documents evidencing the terms of
that note, all as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the HDG Construction Loan Mortgage (and any exhibits) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under the Subordination Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Development Note to be executed by their duly authorized officers as of the day and year first written above.

CLOCKTOWER HOUSING ASSOCIATES LIMITED PARTNERSHIP, a New Hampshire limited partnership

____________________, 2016
By: ______________________________
Edward W. Brice, Jr.
General Partner

By: WARNER SERVICES, INC., a Massachusetts corporation, General Partner

____________________, 2016
By: ______________________________
Edward W. Brice, Jr.
President

CITY OF NASHUA

____________________, 2016
James W. Donchess, Mayor