

## Subordination Agreement

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 2502-0598  
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Project Name: **Parkway Manor Apartments**  
HUD Project No: **083-35749**

THIS SUBORDINATION AGREEMENT ("**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and among (i) **Red Mortgage Capital, LLC, a Delaware limited liability company** ("**Senior Lender**"), (ii) **Lexington-Fayette Urban County Government** ("**Subordinate Lender**"), and (iii) **Parkway Manor 2015, LLC** ("**Borrower**").

### Recitals

**WHEREAS**, Borrower is the owner of that certain **180** unit residential rental development known as "**Watterson Lakeview Apartments**" ("**Project**"), located at **431 Rogers Road, Lexington, KY 40505**. Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto ("**Senior Indebtedness**") to Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the Note described in Schedule A ("**Senior Note**"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, "**Senior Security Instrument**"), covering the property described in **Exhibit A** attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior Security Instrument ("**Mortgaged Property**").

**WHEREAS**, Borrower has requested Senior Lender to permit Subordinate Lender to make a subordinate loan to Borrower in the amount of **\$410,000.00** ("**Subordinate Loan**"), pursuant to the Subordinate Loan Documents as defined below, and secured by, among other things, a mortgage lien against the Mortgaged Property.

**WHEREAS**, Senior Lender, with the approval of the U.S. Department of Housing and Urban Development ("**HUD**"), has agreed to permit Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement and in accordance with Program Obligations. "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective

only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that site).

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

**1. 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:

- (a) **"Affiliate"** is defined in 24 C.F.R. 200.215, or any successor regulation.
- (b) **"Bankruptcy Proceeding"** means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
- (c) **"Borrower"** means all entities identified as "Borrower" in the first paragraph of this Agreement, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property, whether or not such entity assumes the Senior Note, provided that the term "Borrower" shall not include Senior Lender in the event that Senior Lender may acquire title to the Mortgaged Property. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Senior Security Instrument.
- (d) **"Business Day"** means any day other than Saturday, Sunday or any other day on which Senior Lender or HUD is not open for business.
- (e) **"Covenant Event of Default"** is defined in the Senior Security Instrument.
- (f) **"Entity"** means an 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.
- (g) **"Monetary Event of Default"** is defined in the Senior Security Instrument.
- (h) **"Non-Project Sources"** means any funds that are not derived from Project Sources.

(i) **"Project Sources"** means the Mortgaged Property (as defined in the Senior Security Instrument), any proceeds of the Senior loan, and any reserve or deposit made with Senior Lender or any other party as required by HUD in connection with the Senior loan.

(j) **"Senior Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Senior Lender under or in connection with the Senior loan or Senior Loan Documents.

(k) **"Senior Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns.

(l) **"Senior Loan Documents"** means the Senior Note, the Senior Security Instrument, and the Regulatory Agreement between Borrower and HUD, as such documents may be amended from time to time and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior indebtedness.

(m) **"Senior Security Instrument Default"** means a "Monetary Event of Default" or a "Covenant Event of Default" as defined in the Senior Security Instrument.

(n) **"Subordinate Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan Documents.

(o) **"Subordinate Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement.

(p) **"Subordinate Loan Documents"** means the Subordinate Notes, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, ~~as identified in Exhibit B.~~

(q) **"Subordinate Loan Enforcement Action"** means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

(r) **"Subordinate Mortgage Default"** means any act, failure to act, event, conditions, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take a Subordinate Loan Enforcement Action.

(s) "Surplus Cash" is defined herein to mean the same as that term is defined in the Regulatory Agreement between Borrower and HUD.

## 2. **Permission to Place Mortgage Lien Against Mortgaged Property.**

Senior Lender consents, subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects to the lien of the Senior Security Instrument) 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. Such consent is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to Borrower. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on the date of this Agreement, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

## 3. **Borrower's and Subordinate Lender's Representations and Warranties.**

Borrower and, with respect to subsections (a) through (d) below, Subordinate Lender each make 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.

(b) **Terms of the Subordinate Loan.** The original principal amount of the Subordinate Note is **\$410,000.00**. Interest on the Subordinate Note accrues monthly at the rate of **0.0%** per annum. The Subordinate Note ~~is~~ due and payable **October 1, 2058** ("Maturity"). The principal of the Subordinate Note will be due at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make ~~payments as follows~~, **no principal or interest payments will be required during the term of the indebtedness as long as the Borrower complies with all terms and conditions of Subordinate Loan Documents,** subject to available Surplus Cash. As long as HUD is the insurer or holder of the Senior Note on FHA Project No. **083-35749** any payments due from project income under the Subordinate Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. No prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note.

(c) **Relationship of Borrower to Subordinate Lender.** Subordinate

Lender is not an Affiliate of Borrower.

**(d) Term.** The term of the Subordinate Note does not end before the term of the Senior Note.

**(e) Subordinate Loan Documents.** The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, HUD prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

**(f) Senior Loan Documents.** The executed Senior Loan Documents are the same forms as approved by HUD prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

#### **4. Deliveries.**

Borrower shall submit the following items to Senior Lender and HUD not later than ten (10) Business Days after the date of the initial disbursement of proceeds of the Subordinate Loan.

**(a) Title Evidence.** Evidence of title (title policy or title policy endorsement, as appropriate) insuring the lien of the Senior Security Instrument which insures that (i) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Mortgage, and (ii) this Agreement has been recorded among the applicable land records.

**(b) Certification.** A certification from Borrower and Subordinate Lender to HUD that the Subordinate Loan Documents do not contain any changes from the Subordinate Loan Documents submitted to, and approved by, HUD, before the date of this Agreement.

**(c) Loan Documents.** A complete set of the Subordinate Loan Documents.

#### **5. Terms of Subordination.**

**(a) Agreement to Subordinate.** Senior Lender and Subordinate Lender agree 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 of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject 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 Security Instrument 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 Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) 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 Security Instrument Default.** Until Subordinate Lender receives a default notice of a Senior Security Instrument Default from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

**(d) Payments After Senior Security Instrument Default.** Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument 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, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Project Sources 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 Mortgage) unless either (i) such payment is being made solely from Non-Project Sources or (ii) such payment is made with Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Security Instrument 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 5 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 5(d).

**(e) Remitting Subordinate Loan Payments to Senior Lender.** If, after Subordinate Lender receives a default notice from Senior Lender in

accordance with subsection (d) above, Subordinate Lender receives any payments under the Subordinate Loan Documents (other than payments permitted under subsection (d) above), Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, 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 the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Mortgage Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

**(f) 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 Proceeding with respect to Borrower, without Senior Lender's prior written consent.

**6. Default Under Subordinate Loan Documents.**

**(a) Notice of Default and Cure Rights.** Subordinate Lender shall deliver to Senior Lender a default notice within five Business Days in each case where Subordinate Lender has given a default notice to Borrower. Failure of Subordinate Lender to send a default notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the limitations set forth in Section 6(b) below.

**(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.** If a Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that 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 with respect to the Mortgaged Property, 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 without Senior Lender's prior written consent. However, the preceding sentence shall not (i) limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources or (ii) preclude Subordinate Lender from exercising or enforcing all

the rights available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable law to enforce covenants and agreements of Borrower relating to income, rent or affordability restrictions.

## **7. Default Under Senior Loan Documents.**

**(a) Notice of Default and Cure Rights.** Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has given a default notice to Borrower (provided that Senior Lender shall have no liability to Borrower, Subordinate Lender or to any other Entity for failure to timely give such notice). Failure of Senior Lender to send a default notice to Subordinate Lender shall not prevent the exercise of Senior Lender's right and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Borrower agrees that Subordinate Lender shall have the opportunity, but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD, whichever date is later. Subordinate Lender acknowledges that Senior Lender shall be entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender shall have the opportunity to cure a Covenant Event of Default during such period described above so long as there is no Monetary Event of Default under the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any default under the Senior Loan Documents shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

**(b) Cross Default.** Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Security Instrument Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents.

## **8. Conflict.**

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate 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 Senior Lender and Subordinate Lender in the Mortgaged Property; and (b) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender 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: extend Borrower's time to cure any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be; give Borrower the right to notice of any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents, as applicable; or create any other right or benefit for



Borrower as against Senior Lender or Subordinate Lender.

**9. Rights and Obligations of Subordinate Lender under the Subordinate Loan Documents and of Senior Lender under the Senior 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) Protection of Security Interest.** Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, 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 to cure Senior Security Instrument Defaults pursuant to Section 7(a) above and advance funds pursuant to the Subordinate Mortgage 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.

**(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 Mortgaged Property (collectively, a "Taking"); or the occurrence of 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:

**(1)** Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating 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 Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by or with the written consent of Senior Lender; and

**(2)** all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (to payment of the costs and expenses of repair and restoration and/or to payment of the Senior Security Instrument) 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 Security Instrument, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Security Instrument shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the

Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower.

**(c) No Modification of Subordinate Loan Documents.** Borrower and Subordinate Lender each agrees 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, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

#### **10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness.**

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, provided however, there shall be no modification of the Senior Loan Documents without the consent of the Subordinate Lender if such modification would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

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 Indebtedness in accordance with Program Obligations (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 Indebtedness, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the indebtedness related to the refinance loan, the refinance note, the security instrument securing the refinance note, all documents evidencing, securing or otherwise pertaining to the refinance note and the holder of the refinance note, provided however, there shall be no refinancing of the Senior Indebtedness without the consent of the Subordinate Lender if such refinancing would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

#### **11. Default by Subordinate Lender or Senior Lender.**

If Subordinate Lender or Senior 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.

## **12. 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") which Senior Lender or Subordinate Lender is required or permitted to give to the other party 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); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day 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 Business Days after mailing in the United States), addressed to the respective parties as follows:

### **SENIOR LENDER:**

**Red Mortgage Capital, LLC  
1717 Main Street, Suite 1100  
Dallas, Texas 75201  
Attn: FHA Servicing**

With a copy to:

**U.S. Department of Housing and Urban Development  
Director - Office of Multifamily Asset Management  
Room 6160  
451 Seventh Street, S.W.  
Washington, DC 20410**

### **SUBORDINATE LENDER:**

**Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
Attention: Division of Grants and Special Programs**

Either 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.

**13. General.**

**(a) Assignment/Successors.** This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of Senior Lender and Subordinate Lender.

**(b) No Partnership or Joint Venture.** Senior Lender's permission for the placement of the Subordinate Loan Documents 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 any other party hereto.

**(c) Senior Lender's and Subordinate 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, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

**(d) Further Assurances; UCC Financing Statements.** Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

**(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 Mortgaged Property is located, except as, so long as the Senior loan is insured or held by HUD, and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts, and with respect to HUD's rights and remedies, federal courts, and governmental authorities in the State in which the Mortgaged Property is located, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Subordinate Loan Documents. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it 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: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 5 hereof; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure; or (iv) 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 Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement. Notwithstanding the foregoing, in the event the Senior Indebtedness is refinanced, the term of this Agreement shall continue and the Subordinate Indebtedness and Subordinate Loan Documents shall be subordinate to any such indebtedness related to the refinance loan as provided in Section 10 above.

**(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.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

RED MORTGAGE CAPITAL, LLC

By: Jeffrey N. Leeth  
Jeffrey N. Leeth, Director

STATE OF OHIO )  
  ) ss.  
COUNTY OF FRANKLIN )

On this 16<sup>th</sup> day of MARCH, 2017, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Jeffrey N. Leeth known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in which this Certificate was first above written.

Traci N. Rucker  
Notary Public in and for the foregoing State and County



**TRACI N. RUCKER**  
Notary Public, State of Ohio  
My Commission Expires  
11/14/2018

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SUBORDINATE LENDER:

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

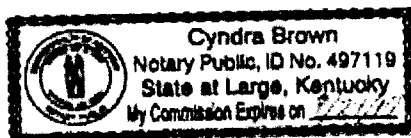
By: [Signature]  
Jim Gray, Mayor

STATE OF Kentucky )  
                                  ) ss.  
COUNTY OF Fayette )

On this 22<sup>nd</sup> day of March, 2017, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Jim Gray known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in which this Certificate was first above written.

[Signature]  
Notary Public in and for the foregoing State and County



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

BORROWER:

PARKWAY MANOR 2015, LLC, a Kentucky limited liability company

By: Parkway Manor MM, LLC, a Kentucky limited liability company, its managing member

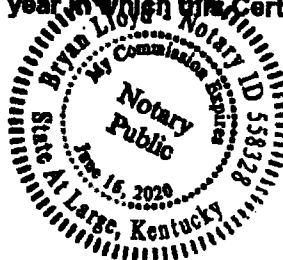
By: The Ezekiel Foundation, Inc., a Kentucky nonprofit corporation, its manager

By: [Signature]  
Mary Anne Simmons  
Board President

STATE OF Kentucky )  
COUNTY OF Fayette ) ss:

On this 20<sup>th</sup> day of March, 2017, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Mary Anne Simmons known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in which this Certificate was first above written.



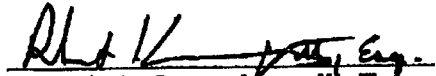
[Signature]  
Notary Public in and for the foregoing State and County

**Warning:**

**Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.**



**THIS INSTRUMENT PREPARED BY:**



**Robert C. Cummings, III, Esq.  
Vorys, Sater, Seymour and Pease LLP  
301 East Fourth Street, Suite 3500  
Cincinnati, OH 45202**

**Exhibit A**  
**Legal Description**

Located in Fayette County, Kentucky, to-wit:

Being all of Tract 3, Block A, Tract 4, Block A, and Lot 2, Block B all of which containing 10.045 acres as depicted on the final record plat of Parkway Plaza as shown by plat of record in Plat Book 25, Page 50, now Plat Cabinet A, Slide 408, in the Fayette County Clerk's Office.

Said property is also described as follows:

**Lot 2-Block B:** All that tract or parcel of land situated in the west side of Rogers Road near Paris Pike in Lexington, Fayette County, Kentucky and more fully described and bounded as follows, to-wit:

Beginning at a point in the west property line of Rogers Road, said point being 307.72 feet north of the division line between Tract 1 and Lot 1 of Parkway Plaza as shown by Plat of Record in Plat Book 25 at Page 50 in the Fayette County Court Clerk's Office; thence S 58° 35' W 119.68 feet to a point in the line of Thoroughbred Acres; thence with the line of Thoroughbred Acres N 29° 33' W 344.47 feet to a point in the line of Mary Todd Elementary School; thence with Mary Todd Elementary School for three calls N 58° 25' E 99.93 feet, N 30° 30' W 193.70 feet and N 30° 42' W 256.17 feet to the line of Parkway Plaza, Inc.; thence with Parkway Plaza, Inc. N 62° 15' E 150.36 feet to the aforesaid west property line of Rogers Road; thence with the west property line of Rogers Road S 30° 31' E 192.43 feet; thence continuing with the west property line of Rogers Road along a curve to the right having a radius of 589.63 feet for a chord measurement of S 18° 12' E 251.55 feet; thence again continuing with the west property line of Rogers Road along a curve to the left having a radius of 885.16 feet for a chord measurement of S 15° 33' E 307.41 feet; thence continuing with the west property line of Rogers Road S 25° 53' E 51.53 feet to the beginning and containing 2.5868 acres and being all of Lot 2, Block B of Parkway Plaza as shown by Plat of Record in Plat Book 2 at Page 50 in the Fayette County Court Clerk's Office.

**Tract 3-Block A:** All that tract or parcel of land situated in the east side of Rogers Road near Paris Pike in Lexington, Fayette County, Kentucky and more fully described and bounded as follows, to-wit:

Beginning at point in the east property line of Rogers Road at the division line between Tract 2 and Tract 3 of the Final Record Plat of Parkway Plaza as shown by plat of record in Plat Book 25 at Page 50 in the Fayette County Court Clerk's Office; thence along the east property line of Rogers Road with a curve to the right whose radius is 825.16 feet for a chord measurement of N 15° 53' W 286.57 feet; thence continuing along the east property line of Rogers Road along a curve to the left whose radius is 649.63 feet for a distance of 81.52 feet to the line of Tract 4; thence with Tract 4, N 59° 28' E 426.76 feet to a point in the line of Robinson; thence with Robinson for two calls, S 30° 37' E 182.40 feet and S 30° 32' E 175.38 feet to the aforesaid line of Tract 2; thence with Tract 2, S 59° 28' W 528.73 feet to the beginning and containing 4.0936 acres and being all of Tract 3, Block A of the final record Plat of Parkway Plaza as shown by Plat of Record in Plat Book 25 at Page 50 in the Fayette County Court Clerk's Office.

**Tract 4-Block A: All that tract or parcel of land situated on the east side of Rogers Road near Paris Pike in Lexington, Fayette County, Kentucky and more fully described and bounded as follows, to-wit:**

**Beginning at a point in the east property line of Rogers Road, said point being in the division line between Tract 3 and Tract 4 of the Final Record Plat of Parkway Plaza as shown by Plat of Record in Plat Book 25 at Page 5-0 in the Fayette County Court Clerk's Office; thence along the east property line of Rogers Road, along a curve to the left whose radius is 649.63 feet for a chord measurement of N 21° 47' W 197.02 feet; thence continuing with the east property line of Rogers Road N 30° 31' W 189.53 feet to a point in the line of Parkway Plaza, Inc.; thence with the line of Parkway Plaza, Inc. N 62° 15' E 396.71 feet to a point in the line of Parkway Plaza, Inc. and a corner to Robinson; thence with Robinson S 30° 37' E 365 feet to a corner with the aforesaid Tract 3; thence with Tract 3 S 59° 28' W 426.76 feet to the beginning and containing 3.4546 acres and being all of Tract 4 Block A of the Final Record Plat of Parkway Plaza as shown by Plat of Record in Plat Book 25 at Page 50 in the Fayette County Court Clerk's Office.**

**15085225 and 15085125**

**Schedule 1**  
**Senior Indebtedness**

The Senior Lender has committed to make a construction loan converting to a permanent loan in the principal amount of \$7,777,100.00 ("Senior Indebtedness").

The Senior Indebtedness shall be evidenced by a Note (Multistate) executed by Borrower in favor of Senior Lender, which shall bear interest at 3.70% with a maturity of 40 years ("Senior Note").

The Senior Indebtedness shall be secured by a first priority deed of trust lien on the Mortgaged Property pursuant to a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (Kentucky) by Borrower for the benefit of Senior Lender ("Senior Security Instrument").