

RESOLUTION NO. 16-24

A RESOLUTION CONSENTING TO THE DELIVERY OF A SUBORDINATION AGREEMENT IN CONNECTION WITH \$35,000,000 AGGREGATE MAXIMUM PRINCIPAL AMOUNT OF TAXABLE INDUSTRIAL REVENUE BONDS (RESIDENCES AT NEW LONGVIEW PROJECT), SERIES 2014 OF THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, the City of Lee's Summit, Missouri (the "City") is a duly organized and existing municipal corporation under the laws of the State of Missouri; and,

WHEREAS, the City issued its Taxable Industrial Revenue Bonds (Residences at New Longview Project), Series 2014 in the aggregate maximum principal amount of \$35,000,000 (the "Bonds"), pursuant to a Trust Indenture dated as of April 1, 2014 (the "Indenture"), by and between the City and BOKF, N.A., as trustee (the "Trustee"), for the purpose of acquiring, purchasing and constructing a commercial project, consisting of an approximately 309-unit commercial multifamily facility, including land, buildings, structures, improvements and fixtures (the "Project"); and,

WHEREAS, the Project was leased by the City to Residences at New Longview, LLC, a Missouri limited liability company (the "Company"), pursuant to a Lease Agreement dated as of April 1, 2014 (the "Lease Agreement"), by and between the City and the Company; and,

WHEREAS, Company desires to sell, transfer and assign its interest in the Project, the Bonds, the Lease Agreement and other bond documents to JVM Residences Apartments, LLC, a Delaware limited liability company (the "Tenant") and Tenant is financing a portion of the acquisition by a loan from JPMorgan Chase, Bank, N.A., a national banking association (the "Lender"); and,

WHEREAS, the Lender is willing to make a loan to Tenant only if the City executes and delivers the Subordination Agreement in substantially the form attached hereto as Exhibit A (the "Subordination Agreement"); and,

WHEREAS, the City desires to authorize the execution and delivery of the Subordination Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LEE'S SUMMIT, MISSOURI, as follows:

SECTION 1. Consent to Subordination Agreement. The Governing Body of the City hereby consents to the execution and delivery of the Subordination Agreement in substantially the form attached to this Resolution.

SECTION 2. Further Authority. The Mayor is hereby authorized and directed to execute and deliver the Subordination Agreement in substantially the same form as the form attached to this Resolution, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution (copies of said documents shall be filed in the records of the City) for and on behalf of and as the act and deed of the City.

The City Clerk is hereby authorized and directed to attest to and affix the seal of the City to the aforementioned document and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

SECTION 3. Effective Date. This Resolution shall take effect and be in full force and effect from and after its adoption by the Governing Body of the City.

PASSED and ADOPTED by the City Council for the City of Lee's Summit, Missouri, and approved by the Mayor of said City this ____ day of _____, 2016.

Mayor *Randall L. Rhoads*

ATTEST:

City Clerk *Denise R. Chisum*

APPROVED AS TO FORM:

City Attorney *Brian W. Head*

EXHIBIT A

FORM OF SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "**Subordination Agreement**") is made by the **CITY OF LEE'S SUMMIT, MISSOURI**, a municipal corporation, with an address at 100 East Santa Fe, Lee's Summit, Missouri 66061 ("**City**"), to and for the benefit of **JPMORGAN CHASE BANK, N.A.**, a national banking association a ("**Lender**"), as of the ____ day of _____, 2016 and is consented to by **JVM RESIDENCES APARTMENTS, LLC**, a Delaware limited liability company ("**Tenant**") and **BOKF, N.A.**, a national banking association, as trustee ("**Trustee**").

RECITALS

A. City is the owner and lessor of the real property in Jackson County, Missouri, which is described on **Exhibit "A"** attached hereto and made a part hereof for all purposes (the "**Property**") pursuant to a certain Lease Agreement dated as of April 1, 2014 by and between City, as lessor, and Residences at New Longview, LLC, a Missouri limited liability company ("**Company**"), which Lease Agreement is to be assigned by Company to Tenant pursuant to that certain Assignment of Lease Agreement, Tenant Leases, Intangibles and Personal Property dated as of December 31, 2012 (as amended and assigned, the "**Lease Agreement**").

Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Lease Agreement. The right, title and interest of Company pursuant to the Lease is hereby referred to as "**Tenant's Interest**".

B. Pursuant to the terms and provisions of a Term Loan and Security Agreement dated as of _____, 2016 by and between Lender and Tenant (the "**Loan Agreement**"), Lender has agreed to make a loan to Tenant (the "**Loan**") to be secured, in part, by the lien and provisions of a certain Leasehold Deed of Trust (the "**Deed of Trust**"), covering the Improvements, all of Tenant's right, title and interest under the Lease Agreement and certain other assets and rights of Tenant. The collateral covered by the Deed of Trust is collectively called the "**Mortgaged Property.**" The Deed of Trust and all of the other documents and instruments which evidence or secure the Loan are sometimes collectively called the "**Loan Documents.**"

C. As a condition to Lender's agreement to make the Loan to Tenant, and as a material inducement to Lender to do so, Lender has required that Tenant obtain this Subordination Agreement.

D. City is the owner in fee simple absolute of the real property and improvements thereon known located at 3301 SW Kessler Drive, Lee's Summit, Missouri as more particularly described on **Exhibit A** attached hereto and made a part hereof by this reference (the "**Premises**").

E. City, Tenant and Lender desire and intend to further secure the Loan by granting to Lender a security interest in the Fee Interest (as hereinafter defined), encumbering the Fee Interest with the Deed of Trust and subjecting the Fee Interest to the lien, terms and conditions of the Deed of Trust such that Lender shall have a valid Deed of Trust lien encumbering the Fee Interest, to the same extent and manner as if City had joined in the Deed of Trust and encumbered the Fee Interest therein.

F. City hereby expressly acknowledges and agrees that: (a) in reliance upon and in consideration of this Subordination Agreement, specific loans and/or advances will be made by

the Lender to the Tenant, and other obligations will be undertaken by the Lender and/or the Tenant, which would otherwise not be made and/or undertaken, but for City's encumbering its Fee Interest as hereinafter set forth; and, (b) City will benefit from the making of the Loan.

NOW, THEREFORE, In consideration of the benefits accruing to the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce Lender to make the Loan, and as security for payment of the Loan, City hereby declares, acknowledges and agrees as follows:

1. The Fee Interest. The term "**Fee Interest**" means all of City's right, title, estate and interest in and to the Premises, including, without limitation, the following:

A. City's fee simple absolute interest in the Premises (which, as a result of the Lease, is a reversionary interest in the Premises);

B. all statutory, common law and contractual rights and liens, if any, at law and equity, that the City has or is entitled to as City under, pursuant to, or as a result of the Lease, including but not limited to, the right to receive Basic Rent and Additional Rent (as such terms are defined in the Lease) (collectively, "**Rent**");

C. all after-acquired interests in the Premises, if any;

D. all buildings and improvements now or hereafter constructed on the Premises, if any, to the extent that City has or will have any interest therein; and

E. all rights to condemnation awards and insurance proceeds relating to the Premises.

2. Encumbering of the Fee Interest.

A. City hereby grants to Lender and conveys, assigns, pledges, encumbers and subjects the Fee Interest together with the appurtenances and all the estate and rights of the City in and to the Fee Interest to the lien, charge, conveyance and encumbrance of the Deed of Trust, in the same manner and extent as if the City had joined in and executed the Deed of Trust, and encumbered the Fee Interest thereby, such that and to the effect that:

(i) the lien and encumbrance of the Deed of Trust is hereby spread to encumber the Fee Interest in addition to the Tenant's Interest and the City hereby agrees not to further encumber the Fee Interest in any manner;

(ii) all of the terms, conditions and provisions of the Deed of Trust (unless specifically excepted in this Subordination Agreement) shall be deemed incorporated herein by reference and shall hereinafter apply to, affect and govern the Fee Interest;

(iii) the Fee Interest stands as equal security in availability for payment of the Loan and performance of the other Loan Documents, in the same manner and to the same extent as the Tenant's Interest;

(iv) the lien encumbering the Fee Interest shall have the same priority as the lien encumbering the Tenant's Interest; and

(v) Lender has all of the rights and remedies, at law and in equity, against the Fee Interest that Lender has against the Tenant's Interest pursuant to the Deed of Trust.

B. City hereby grants to Lender a security interest in the Fee Interest to the same extent that the Deed of Trust grants a security interest in the Tenant's Interest to the Lender.

C. This Subordination Agreement creates a statutory and equitable Deed of Trust on the Fee Interest pursuant to applicable state law.

D. City hereby assigns all of its right, title and interest in and to the Basic Rent to

the Lender, subject to a license back to City to receive and collect the Rent, which license shall automatically terminate upon the occurrence of a default beyond any applicable grace and cure period under the Deed of Trust.

E. City hereby waives all rights of redemption in the event of a foreclosure sale pursuant to the terms of the Deed of Trust.

F. City hereby agrees, that upon notification from Lender that a default has occurred under the Loan Documents, City will enter into a new lease with Lender in substantially the same form as the Lease in order to enable Lender to have the benefits of the Lease, including without limitation the tax abatement provided by the PILOT to be made pursuant to the terms of the Performance Agreement by and between the City and the Company.

3. Limitation on City's Liability. City shall not be personally liable for the payment or performance of the any of the Loan Documents. No judgment for money deficiencies, if any, shall be sought against or obtained from City. City's liability under this Subordination Agreement and the Deed of Trust shall be limited solely to the Fee Interest.

4. Election of Remedies; City not a Surety.

A. Lender: (i) has the right, in its sole and absolute discretion, to elect among its rights and remedies with respect to any or all of the collateral, in whole or in part, encumbered by the Deed of Trust (including without limitation, the Lease, the Tenant's Interest, and the Fee Interest), in such manner, to such extent and in such order as Lender shall determine, in its sole and absolute discretion; and, (ii) has no obligation to proceed against the Tenant, the Lease, Tenant's Interest or any other collateral securing payment or performance of the Loan Documents prior to, in connection with, or instead of the foreclosure of Lender's lien on the Fee Interest.

B. City waives any and all right(s) it may have to: (i) claim suretyship status or suretyship rights; (ii) demand the marshalling of assets, liens or remedies; or, (iii) require Lender to proceed against or exhaust its remedies against any other entity (including, without limitation, Tenant) or property (including, without limitation, the Lease or Tenant's Interest) prior to foreclosing Lender's lien on the Fee Interest.

C. As regards the Lender's rights and remedies under the Note, Deed of Trust and this Subordination Agreement, with respect to the Fee Interest, City is and shall be deemed a principal, not a surety, with respect to the Loan.

D. Notwithstanding the foregoing, as between City and Tenant only, Tenant shall indemnify, defend and hold City harmless from and against any and all claims, costs, liabilities, damages and expenses that City may incur, directly or indirectly, arising out of or relating to this Subordination Agreement (including but not limited to Tenant's default(s), if any, under the Deed of Trust, and City's cure, if any, thereof) and/or Lender's foreclosure of the Fee Interest. Such indemnification shall include reasonable attorneys' fees and expenses incurred by the City, including but not limited to those incurred in defense of any foreclosure action and/or in the enforcement of this indemnification, and shall survive the foreclosure of the Fee Interest and/or the Tenant's Interest, and the expiration or termination of the Lease.

E. This Subordination Agreement shall not alter or impair any rights and remedies that the Lender has or may have under the Deed of Trust or any other Loan Documents against the Tenant, the Lease, or any other collateral security for the Loan.

5. Subordination of Bond Documents. The Trust Indenture dated April 1, 2014 (as defined as the "**Indenture**" in the Lease Agreement), Lease Agreement, leasehold estate created by Lease Agreement, as evidenced by a memorandum of lease, and all other documents executed in connection with the issuance of the Bonds (collectively, the "**Bond**

Documents”) are and will remain subject and subordinate to the lien of the Deed of Trust, including any and all renewals, modifications, consolidations, replacements and extensions thereof, and all of Lender’s rights under the Deed of Trust; *provided, however*, that the obligation of the Tenant to make PILOT Payments to the City pursuant to the Performance Agreement dated as of April 1, 2014 shall not be subordinate to the Deed of Trust.

6. Notice to City and Opportunity to Cure Defaults.

A. All notices given by Lender or Tenant under the Deed of Trust shall also be given in the same manner to City, to the following person(s) at the following addresses:

City of Lee’s Summit, Missouri
City Hall
220 SE Green Street
Lee’s Summit, Missouri 64063
Attention: City Clerk

With a copy to:

Gilmore & Bell, P.C.
2405 Grand Boulevard, Suite 1100
Missouri City, Missouri 64108-2521
Attention: Gary A. Anderson

All notices given by City or Trustee or Tenant under the Lease shall also be given in the same manner to Lender, to the following person(s) at the following addresses:

JP Morgan Chase Bank, N.A.
10 South Dearborn Street, 19th Floor
Chicago, Illinois 60603
Attention: Gian C. Longo

B. In the event of a default under the Deed of Trust, no suit or foreclosure of the Deed of Trust as against the Fee Interest shall be commenced until Lender has given not less than thirty (30) calendar days’ written notice (the “**Notice of Default**”) to City of such default.

C. City shall have the right, but not the obligation, to cure any default under the Deed of Trust (whether before or after receipt of the Notice of Default), prior to the consummation of the foreclosure of the Fee Interest.

D. At the option of City, in its sole discretion, a default beyond any applicable notice and grace period by Tenant under the Deed of Trust (notwithstanding a cure, if any, of such Deed of Trust default by City) shall also be deemed a default beyond any applicable notice and grace period by Tenant under the Lease; provided however, that the City’s sole remedy in the event of such default shall be to enter into a new lease with Lender as provided in Section 2(F) above.

7. Estoppel. City and Trustee hereby certify to Lender:

(a) As of the date hereof, the Lease Agreement is in full force and effect, is binding upon City, as lessor, and Company, as lessee, in accordance with its terms and contains the entire agreement between City and Company. The Lease Agreement has not been further modified, amended, changed, altered or supplemented.

(b) The term of the Lease Agreement commenced on _____, 2014

and is scheduled to expire on December 1, 2025.

(c) Tenant has no purchase options or rights of first refusal with respect to the Property, except the option to purchase contained in Article XI of the Lease Agreement.

(d) The Basic Rent payment due December 1, 2015 in the amount of \$_____ was made on or before December 1, 2015. The next Basic Rent payment is due December 1, 2016 in the amount of \$_____.

(e) As of the date hereof, all Additional Rent has been paid and no Additional Rent is now due and payable.

(f) Construction of the Project Improvements has been completed.

(g) A certificate executed by Company in compliance with the requirements of Section 4.5 of the Lease Agreement has been delivered to the Trustee.

(h) To City's actual knowledge, no default exists under the Lease Agreement on the part of City or, to City's actual knowledge, Company, and, to City's actual knowledge, no event or condition has occurred or exists which, with notice or the passage of time or both, would constitute a default by City or Company under the Lease Agreement. No defense, offset, or counterclaim currently exists in favor of City against Company pursuant to the terms of the Lease Agreement.

(i) City is the sole owner of the Property and of the entire City's interest in the Lease Agreement. Neither the Fee Interest in the Property or any portion thereof, nor City's interest in the Lease Agreement or any portion thereof, has been transferred pledged, mortgaged or encumbered. City has not entered into any agreements to subordinate the Lease Agreement to any future mortgages or other liens on the fee interest in the Property.

(m) City has not received any notice of any sale, assignment, transfer, hypothecation, pledge or encumbrance of the interest of Company in the Lease Agreement or any rights of Company thereunder.

8. Miscellaneous.

A. The Recitals set forth above are deemed agreed to and accepted by all parties hereto.

B. This Subordination Agreement is self-operative. Upon execution and delivery of this Subordination Agreement, City's subjection of the Fee Interest to the lien and encumbrance of the Deed of Trust is absolute, perfected, unconditional and irrevocably consummated. This Subordination Agreement is not executory in any manner. Notwithstanding the foregoing, at any time and from time to time, at the request of Lender, Tenant, City and Trustee shall execute, acknowledge and deliver such additional documentation (including but not limited to an additional Deed of Trust evidencing the encumbering of the Fee Interest) as is reasonable and necessary to fulfill the intent and purpose of this Subordination Agreement.

C. This Subordination Agreement does not create or secure a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the Deed of Trust.

D. The recording of this Subordination Agreement prior to, simultaneously with or subsequent to any of the Loan Documents shall not affect the validity, enforceability or effect hereof.

E. Upon full payment and performance of the Loan Documents, Lender (or its assignee) shall execute and deliver an instrument, in recordable form, releasing the Fee Interest from the lien and conveyance of the Deed of Trust.

F. No modification or amendment of this Subordination Agreement or any of the

other Loan Documents shall be made without the prior written consent of the City, which consent shall not be unreasonably withheld, denied or delayed.

G. No modification or amendment of the Lease or any of the other Bond Documents shall be made without the prior written consent of the Lender, which consent shall not be unreasonably withheld, denied or delayed.

H. Unless specifically set forth herein, this Subordination Agreement shall not be deemed to be: (i) a waiver of any of City's rights or remedies as City under the Lease; or (ii) a consent to any additional encumbering of the Tenant's Interest by the Tenant.

I. This Subordination Agreement shall be deemed a modification of the Deed of Trust. Lender and Tenant join herein for the purposes of acknowledging and agreeing to such modification.

9. Governing Law. The Subordination Agreement shall be governed by the laws of the State of Missouri.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has duly executed and acknowledged this Subordination Agreement as of the date first set forth above.

CITY OF LEE'S SUMMIT, MISSOURI

[SEAL]

By:

Name: Randall L. Rhoads
Title: Mayor

ATTEST:

By: _____
Name: Denise Chisum
Title: City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this _____ day of _____, 2014, before me, the undersigned, a Notary Public, appeared Randall L. Rhoads and Denise Chisum, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the CITY OF LEE'S SUMMIT, MISSOURI, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed on behalf of said City by authority of its governing body, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Typed or Printed Name:

Notary Public in and for said State

[SEAL]

My commission expires: _____

Tenant hereby consents to the execution of this Subordination Agreement by City and acknowledges that City is delivering this Subordination Agreement at the request of the Tenant. Tenant further joins in this Subordination Agreement solely to acknowledge and agree to its obligations and undertakings as specifically stated herein.

JVM RESIDENCES APARTMENTS, LLC, a Delaware limited liability company

By: _____, Manager

ACKNOWLEDGMENT

STATE OF _____) SS.
COUNTY OF _____)

BE IT REMEMBERED that on this _____ day of _____, 2016, before me, a notary public in and for said county and state, came _____ the Manager of JVM RESIDENCES APARTMENTS, LLC, a Delaware limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

[SEAL] Notary Public _____

My commission expires _____.

EXHIBIT A
PROPERTY DESCRIPTION