

FEE DEFERRAL AGREEMENT

THIS FEE DEFERRAL AGREEMENT (hereinafter the "**Agreement**") is entered into as of this _____ day of _____, 2015, by and between SUNSET COMMONS APTS, LLC, a North Carolina limited liability company (hereinafter the "**Borrower**") and the COUNTY OF BRUNSWICK, NORTH CAROLINA (hereinafter the "**County**").

RECITALS

- A. The Borrower is developing a multifamily rental housing development to be known as Sunset Creek Commons upon certain real property located in the County of Brunswick, North Carolina (hereinafter the "**Development**").
- B. The Borrower requested that the County defer certain fees (*i.e.*, utility, tap, permit...) payable to County with respect to the Development in the amount of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the "**Deferral**").
- C. The County's Board of Commissioners approved the Deferral at its April 21, 2014 regular meeting.
- D. The Borrower and County desire to memorialize the specific terms of the Deferral in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the covenants contained herein, the sum of TEN DOLLARS (\$10.00) in hand paid to each of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the County agree as follows:

- 1. **Incorporation of Recitals and Exhibits.** The recitals set forth above and all exhibits attached hereto are hereby incorporated into the substantive body of this Agreement.
- 2. **Deferment of Fees.** The County agrees to the Deferral in accordance with the terms of this Agreement. Borrower agrees to repay the Deferral amount in accordance with the terms of this Agreement.
- 3. **Repayment Terms.** The Borrower shall repay the amount of the Deferral as follows:
 - a. **Interest.** The interest rate is fixed at two percent (2%) simple interest per annum. Interest shall not accrue until the Development receives final certificates of occupancy for all buildings from the County.
 - b. **Payments.** Borrower shall make payments solely from Excess Cash Flow (hereinafter defined) as follows:

- i. No payments shall be due prior to April 1, 2018.
- ii. Commencing April 1, 2018, the Excess Cash Flow payment for the prior calendar year (subject to the limitations set forth in Section 3.b.iv. below) shall be remitted to the County on or before April 1st of each calendar year to be applied against the outstanding balance of the Deferral amount. All payments shall be applied first in payment of accrued interest and any remainder to payment of principal.
- iii. **"Excess Cash Flow"** shall mean the amount by which x) the actual rents plus other income from the Development exceed y) the Development's total actual operating expenses, asset management fee, debt service, repayment of any deferred developer fee, repayment of any unpaid loans made by an Investor Member (hereinafter defined) of the Borrower and unpaid adjuster amounts due to an Investor Member of the Borrower. Excess Cash Flow shall be determined as of the end of each calendar year for that calendar year. As a point of clarification, the Managing Member shall not get paid any amounts from Excess Cash Flow until after the annual payments hereunder are made to the County.
- iv. Notwithstanding the foregoing, the Borrower shall not be required to make annual Excess Cash Flow payments in excess of:

Nine Thousand One Hundred Six and 00/100 Dollars (\$9,106.00) for payments made on April 1, 2018, April 1, 2019, and April 1, 2020;

Ten Thousand Nine Hundred Seventeen and 00/100 Dollars (\$10,917.00) for payments made on April 1, 2021, April 1, 2022, and April 1, 2023;

Twelve Thousand Six Hundred Eight and 00/100 Dollars (\$12,608.00) for payments made April 1, 2024, April 1, 2025, and April 1, 2026;

Fourteen Thousand Two Hundred Forty-Eight and 00/100 Dollars (\$14,248.00) for payments made April 1, 2027, April 1, 2028, and April 1, 2029; and

Eleven Thousand Five Hundred Forty-Four and 00/100 Dollars (\$11,544.00) for payments made April 1, 2030 and April 1, 2031.

As a point of clarification, the limitations established in the preceding sentence are ceilings/maximums on annual payment amounts required hereunder and Borrower shall not be in default if Excess Cash Flow is not sufficient to reach such amounts. However, Borrower may, in its sole

discretion, make additional payments (above the preceding ceiling amounts) of principal and interest as it desires.

- c. Statements. The County will provide Borrower with a statement, at least annually, of the outstanding balance reflecting payments made by Borrower.
 - d. Maturity. The balance of the Deferral amount together with all accrued and unpaid interest shall be due and payable in full seventeen (17) years after the date of this Agreement (the "**Maturity Date**").
 - e. No Other Fees. Other than Interest, there are no other fees (origination, servicing or otherwise) associated with this Agreement or the Deferral.
4. **No Prepayment Penalties.** Borrower may pre-pay the Deferral amount at any time without penalty, subject only to the amount of unpaid interest that has accrued to the date of such payment in full.
5. **Default and Remedies.** The Borrower's failure to make any payment required under this Agreement shall constitute an event of default. Prior to exercising any remedies, the County shall give Borrower and Investor Member simultaneous written notice of any event of default. Borrower and Investor Member have the right to cure any event of default by thirty (30) days after receipt of written notice of default by Borrower and Investor Member prior to exercise of any remedies by the County. If such default remains uncured more than thirty (30) days after receipt of written notice of default by Borrower and Investor Member, the County may declare the unpaid balance immediately due and payable.
- a. Any cure of any default or event of default made or tendered by any general or Investor Member of Borrower (including Investor Member), shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.
 - b. "**Investor Member**" shall mean RBC Tax Credit Equity, LLC, RBC Tax Credit Manager II, Inc., and their affiliates, successors and assigns.
6. **Notices.** Any notice, demand, request or other communication which may or are required to be given hereunder shall be in writing and shall be sent by statutory overnight delivery return receipt requested or certified United States mail return receipt requested to the party at the following address or at such other address as the party may have furnished in writing:

To County:

County of Brunswick
P.O. Box 249
Bolivia, NC 28422

Attn: County Manager

To Borrower:

Sunset Commons Apts, LLC
265 Creek View Drive
Sunset Beach, NC 28468
Attention: Holly L. Smith

With a copy to:

Blanco Tackabery & Matamoros, P.A.
110 South Stratford Road, Fifth Floor
Winston-Salem, NC 27104-4299
Attention: Deborah L. McKenney, Esq.

And with copy to:

c/o RBC Tax Credit Equity, LLC
600 Superior Avenue, Suite 2300
Cleveland, OH 44114
Attention: President and General Counsel

And with copy to:

Applegate & Thorne-Thomsen
626 W. Jackson Blvd., Suite 400
Chicago, IL 60661
Attention: Bennett P. Applegate, Esq.

7. **Entire Agreement.** This Agreement incorporates the terms of all agreements between the County and the Borrower with regard to the subject matter of this Agreement.
8. **Successors.** The provisions of this Agreement bind and inure to the benefit of the undersigned parties and their successors and assigns. Neither the withdrawal, removal, replacement, and/or addition of a Managing Member or an Investor Member of the Company pursuant to the terms of the Borrower's Operating Agreement, shall constitute a default under this Agreement or the Note, and any such actions shall not accelerate the maturity of under this Agreement or the Note, nor require the consent or approval of the County.
9. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of **North Carolina**.

10. **Assignment.** The County shall not assign, pledge or otherwise encumber, for security or otherwise, the Deferral fee amount or this Agreement, or any portion(s) thereof or any right(s) of the County thereto, without the prior written consent of the Borrower.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, this Agreement has been entered into by the undersigned as of the date first above written.

BORROWER:

Sunset Commons Apts, LLC,
a North Carolina limited liability company

By: Ilex Sunset Commons, LLC, Managing
Member

By: _____

Name: Holly L. Smith

Title: Managing Member

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for the state and county aforesaid, hereby certify that Holly L. Smith personally came before me this date and acknowledged that she is the Managing Member of Ilex Sunset Commons, LLC, the Managing Member of Sunset Commons Apts, LLC and that by authority duly given and as an act of Sunset Commons Apts, LLC, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal this the ____ day of _____, 2015.

My commission expires: _____(SEAL)
[Signature of Notary Public]

_____, Notary Public
[Printed Name of Notary Public]

[Signatures continue on the next page]

COUNTY:

County of Brunswick, North Carolina

By: AB. Hardy
Name: Ann B. Hardy
Title: County Manager

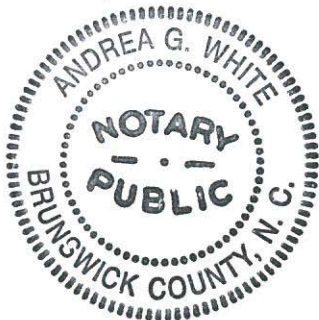
STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Andrea G. White, a Notary Public in and for the state and county aforesaid, hereby certify that Ann B. Hardy personally came before me this date and acknowledged that she is the Manager of the County of Brunswick and that by authority duly given and as an act of the county, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal this the 15 day of May, 2015.

My commission expires:

04/27/2018



Andrea G. White (SEAL)
[Signature of Notary Public]

Andrea G. White, Notary Public
[Printed Name of Notary Public]

Approved as to Form.

[Signature]
County Attorney

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

[Signature]
Julie A. Miller, Director of Fiscal Operations
Brunswick County, North Carolina

PROMISSORY NOTE

\$150,000.00

Executed: April __, 2015

FOR VALUE RECEIVED, the undersigned, SUNSET COMMONS APTS, LLC, a North Carolina limited liability company ("**Maker**"), having an address of 265 Creek View Drive, Sunset Beach, NC 28468 hereby promises to pay to the order of the COUNTY OF BRUNSWICK, NORTH CAROLINA ("**Holder**"), having an address of 30 Government Center Drive, Bolivia, NC 28422, the principal sum of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00), with interest and principal payable as hereinafter provided.

1. **Fee Deferral.** This Promissory Note ("**Note**") evidences the obligations of Maker under that certain Fee Deferral Agreement between Maker and Holder of even date herewith (the "**Agreement**"). This Note is subject to all terms and definitions of the Agreement.
2. **Interest.** The interest rate payable under this Note is fixed at two percent (2%) simple interest per annum. Interest shall not accrue until the Development (defined below) receives final certificates of occupancy for all buildings from the County.
3. **Maturity Date.** If not sooner paid, all outstanding principal of this Note together with accrued and unpaid interest thereon shall be paid to the Holder on April __, 2032 (the "**Maturity Date**").
4. **Payments.** Maker shall make payment to Holder, its successors and/or assigns via delivery of lawful money of the United States of America to Holder at the address set forth above, or at such other place as Holder may designate in writing. Maker shall make payments solely from Excess Cash Flow (hereinafter defined) as follows:
 - a. No payments shall be due prior to April 1, 2018.
 - b. Commencing April 1, 2018, the Excess Cash Flow payment for the prior calendar year (subject to the limitations set forth in Section 4.d. below) shall be remitted to the Holder on or before April 1st of each calendar year to be applied against the outstanding balance of the Deferral amount. All payments shall be applied first in payment of accrued interest and any remainder to payment of principal.
 - c. "**Excess Cash Flow**" shall mean the amount by which x) the actual rents plus other income from the Development exceed y) the Development's total actual operating expenses, asset management fee, debt service, repayment of deferred development fee, repayment of any unpaid loans made by an Investor Member and unpaid adjuster amounts due to an Investor Member. Excess Cash Flow shall be determined as of the end of each calendar year for that calendar year. As a point of clarification, Maker's Managing Member shall not get paid any amounts from Excess Cash Flow until after the annual payments hereunder are made to the Holder.

- d. Notwithstanding the foregoing, the Maker shall not be required to make annual Excess Cash Flow payments in excess of:

Nine Thousand One Hundred Six and 00/100 Dollars (\$9,106.00) for payments made on April 1, 2018, April 1, 2019, and April 1, 2020;

Ten Thousand Nine Hundred Seventeen and 00/100 Dollars (\$10,917.00) for payments made on April 1, 2021, April 1, 2022, and April 1, 2023;

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As a point of clarification, the limitations established in the preceding sentence are ceilings/maximums on annual payment amounts required hereunder and Maker shall not be in default if Excess Cash Flow is not sufficient to reach such amounts. However, Maker may, in its sole discretion, make additional payments (above the preceding ceiling amounts) of principal and interest as it desires.

5. **“Development”** shall mean Maker’s planned multifamily rental housing development to be known as Sunset Commons and located upon certain real property located in the County of Brunswick, North Carolina.
6. **Prepayment.** Maker may prepay any amount due under this Note. There shall be no prepayment fee or premium charged on the amount of any prepayment.
7. **Defaults.** Maker’s failure to make any payment required under this Note shall constitute an event of default. Prior to exercising any remedies, Holder shall give Maker and Investor Member (as defined in the Agreement) simultaneous written notice of any event of default. If such default remains uncured more than thirty (30) days after receipt of written notice by Borrower and Investor Member, Holder may declare the unpaid balance immediately due and payable.
8. **Notices.** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall comply with the terms of the Agreement.
9. **Security.** This Note is unsecured.
10. **Recourse.** This Note is a fully recourse obligation of Maker.

11. Venue. This Note, and the application and interpretation hereof, shall be governed by and construed in accordance with the law of the state of **North Carolina** applicable to contracts executed in and to be performed in the state of **North Carolina, Brunswick County, North Carolina**, shall be the venue of any legal action concerning this Note and/or the transactions contemplated hereby.

[Signature Appears on Following Page]

IN WITNESS WHEREOF, this Note has been executed as of the date first hereinabove written.

MAKER:

Sunset Commons Apts, LLC,
a North Carolina limited liability company

By: Ilex Sunset Commons, LLC, Managing
Member

By: _____
Name: Holly L. Smith
Tile: Managing Member

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for the state and county aforesaid, hereby certify that Holly L. Smith personally came before me this date and acknowledged that she is the Managing Member of Ilex Sunset Commons, LLC, the Managing Member of Sunset Commons Apts, LLC and that by authority duly given and as an act of Sunset Commons Apts, LLC, the foregoing instrument was signed in its name.

Witness my hand and official stamp or seal this the ____ day of _____, 2015.

My commission expires:

_____(SEAL)
[Signature of Notary Public]

_____, Notary Public
[Printed Name of Notary Public]