AGENDA OF THE COMMON COUNCIL

MONDAY, OCTOBER 22, 2018, 5:00 PM
COUNCIL CHAMBERS
ROOM 203, CITY HALL

A. Roll Call.

B. Approval of the Agenda.

C. Report by the Mayor.

D. Committee of the Whole.

1. Consideration with possible action on the Subordination, Nondisturbance and Attornment Agreement requested by NTCIC Community Fund II, LLC as the identified tax credit investor for the Hotel Northland.

E. Adjournment.

1) SUPPLEMENTAL INFORMATION: The Video of this meeting, Agenda, Agenda Packet, and Minutes are available online at www.greenbaywi.gov/Meetings.
2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this committee meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of [__________], 2018 by and among 304 NAGB Master Tenant LLC, a Delaware limited liability company (the "Master Tenant" or "Lessee"), 304 North Adams Green Bay LLC, a Delaware limited liability company ("Owner" or "Lessor"), The City of Green Bay (together with any permitted successors or assigns, "Lender"), and NTCIC Community Fund II, LLC, a Delaware limited liability company ("Investor").

RECITALS

WHEREAS, Owner is the owner of certain improved real property located at 304 North Adams Street, Green Bay, Wisconsin 54301, more particularly described on Exhibit A attached hereto, together with certain improvements thereon, including without limitation, that certain historic building located thereon (the "Building"), and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto (the "Real Estate"); and

WHEREAS, Owner is currently rehabilitating and developing the Building in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Historic Tax Credit") pursuant to Sections 47 and 50 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code"); and

WHEREAS, pursuant to that certain Amended and Restated Operating Agreement of Lessee dated as of the date hereof (the "Operating Agreement"), Investor acquired an interest in Lessee and has and will make an equity investment, in one or more installments, as described therein; and

WHEREAS, Owner is governed by that certain Second Amended and Restated Operating Agreement of Owner dated as of the date hereof (the "Owner Operating Agreement"); and

WHEREAS, the Master Tenant has been formed to lease the Real Estate, including the Building, from Owner pursuant to the terms of that certain Master Lease dated as of the date hereof between Owner, as lessor, and the Master Tenant, as lessee, as amended from time to time (the "Lease"), and Master Tenant and Owner provided notice of the Lease pursuant to that certain Memorandum of Master Lease dated as of the date hereof, recorded with the Brown County Register of Deeds as Document No. _____________; and

WHEREAS, pursuant to the terms of the Lease, Owner will elect under Section 50 of the Code to pass-through to the Master Tenant the Historic Tax Credit to which Owner is otherwise entitled as a result of the rehabilitation of the Building; and

WHEREAS, Owner has entered into and delivered that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated as of December 14, 2015, in favor of Lender, recorded at with the Brown County Register of Deeds prior to the recording of this Agreement (the "Mortgage"), as amended and restated from time to time, as security for a loan from Lender to Owner in the original principal amount of Four Million Seven Hundred Thousand and 00/100 Dollars ($4,700,000.00) (the "Loan") as evidenced by that certain promissory note of Owner dated as of December 14, 2015 in the original principal amount of Four Million Seven Hundred Thousand and 00/100 Dollars ($4,700,000.00) (the "Note") (the Mortgage and all other documents evidencing, securing or otherwise executed in connection with the Loan, are hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, the Loan Documents require that Lender consent to any lease of the Real Estate.

NOW, THEREFORE, in consideration of the forgoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. CONSENTS. Lender hereby consents to the Lease and to the acquisition by Investor of an interest in Lessee and the execution of the Operating Agreement and the execution of the Owner Operating Agreement, and the ancillary transaction documents related thereto and Lender agrees that the execution and delivery thereof by Owner and/or Lessee, as the case may be, shall not constitute a default under the Loan Documents.

2. SUBORDINATION. Subject to the terms of this Agreement, the Lease is hereby made subject, junior and subordinate to the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage so that all rights of Lessee under the Lease are subject, junior and subordinate to the rights of Lender under the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage as fully as if such instrument had been executed, delivered and recorded prior to the execution of the Lease or possession of all or part of the Real Estate by the Lessee or its predecessors in interest. This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the recitals hereto.

3. LENDER'S RIGHT TO RECOGNIZE THE LESSEE'S RIGHTS UNDER THE LEASE. Subject to Section 12 of this Agreement, if the interests of Lessor shall be transferred to and owned by Lender, its nominee or assignee or any purchaser by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or by any other manner, provided that the Lessee is not then in default (beyond any period given Lessee to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Lessee's part to be performed, or provided that Lender elects to so recognize such rights regardless of such default (but in no way shall such election waive Lender's rights otherwise because of such default), the Lessee's possession of the Real Estate and Lessee's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Lender, its nominee or assignee, or such purchaser, as applicable, and Lessee's occupancy of the Real Estate shall not be disturbed by Lender, its

nominee or assignee or such purchaser, as applicable, during the remaining term of the Lease or any extensions or renewals thereof for any reason, except for a subsequent default by Lessee (beyond any period given Lessee to cure such default) under the Lease. Lender hereby consents to Owner entering into the Lease with Master Tenant.

4. ATTORNMENT.

A. If the interests of Lessor shall be transferred to and owned by Lender, its nominee or assignee or purchaser by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or by any other manner, and Lender, its nominee or assignee, or such purchaser succeeds to the interest of the Lessor under the Lease, Lessee shall be bound to Lender, its nominee, assignee or such purchaser, as applicable, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender, its nominee, assignee or such purchaser, as applicable, were the landlord under the Lease, and Lessee does hereby attorn to Lender, or its nominee, assignee or purchaser, as the case may be, as its landlord, said attornment to be effective and self-operative immediately upon Lender, or its nominee, assignee or purchaser, as the case may be, succeeding to the interest of the Lessor under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Lessee shall be under no obligation to pay rent to Lender, or its nominee, assignee or purchaser, as the case may be, by reason of such attornment until Lessee receives written notice from Lender, or its nominee, assignee or purchaser, as the case may be, that such party has succeeded to the interest of the Lessor under the Lease. The respective rights and obligations of Lessee and Lender, or their respective nominees, assignees or purchasers, as the case may be, upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

B. Lessee waives any and all rights to terminate the Lease solely by reason of the foreclosure of the Mortgage. If any court holds the Lease to be terminated by reason of such a foreclosure, this Agreement shall be deemed to be a new lease between Lender, its nominee, assignee or any purchaser at such foreclosure, as landlord, and Lessee, as tenant, for the balance of the term of the Lease at the same rental therein provided and upon the same terms and conditions as therein provided. Also, in such event and at the written request of Lender, its nominee, assignee or such purchaser at foreclosure, Lessee shall execute and deliver a new lease for the balance of the term of the Lease at the same rental therein provided and upon the same terms and conditions as therein provided. Notwithstanding anything to the contrary herein, if, prior to the date which is five years after the last date upon which any "qualified rehabilitation expenditures", as defined in Section 47(c)(2) of the Code ("QREs") relating to the Real Estate are Placed in Service (as such term is defined in the Lease), the foreclosure of the Mortgage (or any exercise of a power of sale under the Mortgage) would or could cause any recapture of the Historic Tax Credits as described in Sections 47 and 50 of the Code, allocated to Lessee under the Lease, and there exists no default by Lessee under the Lease that has not been cured within any applicable cure period, and Lessee provides written notice to Lender of such recapture, together with a letter from ______________________ confirming that recapture could occur or that foreclosure might subject the Lessee to a claim by the IRS of a disallowance of Historic Tax Credits, then upon any action by Lender, or on behalf of Lender, to foreclose the Mortgage (including any action to exercise a power of sale under the Mortgage), (a) such Mortgage shall, without the execution of any further instruments on the part of any of the parties hereto, be subject, junior and subordinate to the Lease (giving effect to any modifications to the terms of the Lease effected pursuant to this Agreement) and to all amendments and modifications thereof consented to by Lender as if such Mortgage had been executed, delivered and recorded following the execution of the Lease and possession of all or part of the Real Estate by the Lessee, or its predecessors in interest, and (b) if required by Lessee, Lender shall cause confirmation of the subordination of the lien of such Mortgage to the Lease to be recorded prior to any foreclosure of or exercise of a power of sale under such Mortgage.

5. LENDER NOT BOUND BY CERTAIN ACTS OF LESSOR. If Lender or its nominee, assignee or purchaser at a foreclosure sale or proceeding in lieu thereof (a "Lender Party") shall succeed to the interest of Lessor under the Lease, such party shall not be liable for any act or omission of any prior landlord (including Lessor) unless such act or omission continues during Lender's control of the Real Estate after receipt of notice from Lessee of such act or omission and such Lender Party thereafter takes no action to cure, and in such case, Lender Party shall not be liable for any damages arising from Lessor's act or omission; nor subject to any offsets or defenses which Lessee might have against any prior landlord (including Lessor), including without limitation all rights of offset, which shall be of no force and effect from and after the date a Lender Party succeeds to the interest of Lessor under the Lease; nor bound by any rent or additional rent which Lessee might have paid for more than one month in advance; nor bound by any amendment or modification of the Lease made without its consent; nor obligated to comply with any obligations of Lessor under the Lease regarding the completion of construction of the improvements to be constructed on or within the Real Estate. In the event of a default by Lessor under the Lease or any occurrence that would give rise to an offset against rent or claim against Lessor under the Lease, Lessee will use its best efforts to set off such defaults against rents currently due Lessor (subject to the limits on Lessee's offset rights set forth in this Agreement) and will give Lender written notice of such defaults or occurrence at the address of Lender as set forth below and will give Lender such time as, in Lender's opinion, is reasonably required to cure such default or rectify such occurrence, provided Lender uses reasonable diligence to correct the same. Notwithstanding any provision of the Lease to the contrary, Lessee will not be entitled to cancel the Lease, or to abate or offset against the rent, or to exercise any other right or remedy until Lender has been given notice of default and opportunity to cure such default as provided herein. If, in Lender's opinion, Lessor's default is not curable by Lender, Lender may at its option assume all of Lessor's right, title and interest in the Lease and all of Lessor's obligations and covenants under the Lease, and thereafter Lessee shall attorn to Lender or Lender's nominee, assignee or purchaser as the lessor under the Lease, and if Lender so elects, Lessee shall not have the right to terminate the Lease as a result of Lessor's default.

6. LEASE PAYMENTS. The terms of paragraph 4.A. notwithstanding, if in the

future there is a default by the Lessor in the performance and observance of the terms of the Mortgage after giving Lessor applicable notice and expiration of applicable cure rights, Lender may require that all rents and other payments due under the Lease be paid directly to Lender. Upon notification to that effect by Lender, the Lessor hereby authorizes and directs Lessee and the Lessee shall pay any payments due under the terms of the Lease to Lender. Such assignment does not diminish any obligations of the Lessor under the Lease or impose any such obligations on Lender prior to any foreclosure sale or proceeding or transfer in lieu thereof. Any payments by Lessee to Lender in accordance with this Agreement shall be deemed and shall constitute a payment of rent under the Lease.

7. UTILIZATION OF INSURANCE AND CONDEMNATION PROCEEDS. By execution of this Agreement, the parties hereby agree that the Lease and the Owner Operating Agreement shall govern the procedure for handling condemnation and casualty proceeds as between Owner and Lessee.

8. LENDER'S AND INVESTOR'S RIGHT TO CURE DEFAULTS. Lessee agrees to give Lender and Investor each a copy of any notice of default served upon Owner by Lessee with respect to a default which would entitle Lessee to terminate the Lease, receive a rent abatement or an offset or credit against rent or exercise a right of self-help. Lessee agrees that Lender and Investor shall each have the same rights to cure any and all defaults by Owner under the Lease within the same grace, notice and cure periods provided to Owner in relation thereto, except that such periods in relation to Lender and Investor shall not commence until Lender and Investor shall have received notice from Lessee of the relevant default by Owner. Notwithstanding the foregoing, if such default is of a type which cannot reasonably be cured without Lender and/or Investor taking possession of the Premises, then Lender and Investor shall have such additional time as may be necessary to commence and diligently pursue foreclosure proceedings to effect such cure and shall thereafter in good faith diligently and continuously pursue the remedies necessary to cure such default.

9. LESSEE'S AND INVESTOR'S RIGHT TO CURE DEFAULTS.

A. Lender shall give prompt notice to the Lessee and Investor of any default by Lessor under the applicable Loan Documents, specifying the nature of such default, and thereupon Lessee and Investor shall have the right (but not the obligation) to cure such default. Lender shall not exercise any remedies under its Loan Documents by reason of such default unless and until it has afforded Lessee and Investor (i) ten (10) days after Lessee's and Investor's receipt of such notice to cure such default if it is a monetary default under the Loan Documents or (ii) thirty (30) days after Lessee's and Investor's receipt of such notice to cure such default if it is a non-monetary default under the Loan Documents and an additional thirty (30) day period in addition thereto if the circumstances are such that the default is curable but cannot reasonably be cured within the original thirty (30) day period and Lessee and/or Investor has commenced and is diligently pursuing such cure, except, in all events, if failure to cure according to the terms of the Mortgage poses an imminent threat to material damage to person or property or the financial interests of Lender. Notwithstanding the foregoing, Lessee and/or Investor shall not have the right to cure any monetary default of Lessor for more than three (3) consecutive months at any time. Lender will not require Lessee or Investor to cure any default of Lessor which is not susceptible of cure by Lessee or Investor, but in such event Lender shall have all of its rights by reason of such uncured default of Lessor.

B. Lender agrees that neither the removal of the managing member of Lessee by Investor pursuant to the Operating Agreement nor the removal of the managing member of Owner by Lessee or Investor pursuant to the Owner Operating Agreement[, nor the appointment of a non-member manager of Lessee by Investor pursuant to the Operating Agreement or of Owner by Lessee or Investor pursuant to the Owner Operating Agreement,] shall in and of itself accelerate the Loan or constitute a default under the Loan Documents, provided that (i) any substitute managing member [or non-member manager] is Investor or an affiliate of Investor or other similarly creditworthy institutional investor acceptable to Lender (an "Approved Replacement"), and (ii) Lender receives notice of such substitution [or appointment] within ten (10) business days prior to such substitution or removal. Nothing contained in this subsection shall modify Lender's right to consent to the removal and/or substitution of the managing member [or appointment of a non-member manager] of Owner or Lessee if the substituted managing member [or appointed non-member manager] is not an Approved Replacement.

C. Lender agrees that any transfer of Investor's interest in Lessee pursuant to the Investor Member Put (as defined in the Operating Agreement) shall not in and of itself accelerate the Loan or constitute a default under the Loan Documents.

10. <u>SURVIVAL OF LEASE</u>. Notwithstanding anything contained herein to the contrary, with respect to the Lease and the leasehold interest created thereby, if, prior to the date which is five years after the last date upon which any QREs relating to the Real Estate have been Placed in Service (as such term is defined in the Lease), Lender or any of Lender's successors, assigns or nominees or any purchaser shall take title to the Real Estate by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or by any other manner, the Lease and the Lessee's rights and enjoyment of possession of the Real Estate shall be and remain undisturbed and unaffected by any foreclosure or other proceedings involving Lender's interests in the Real Estate to the extent necessary to prevent any recapture of the Historic Tax Credits as described in Sections 47 and 50 of the Code, as amended, allocated to Lessee under the Lease, regardless of whether there is any past, current or future default in the performance by Lessee of any terms, covenants or conditions of the Lease, provided that (i) following any default of any nature by Lessee under the Lease, which default continues beyond any applicable notice and cure period, or (ii) if Lessee does not pay rent equal to the applicable amount payable pursuant to the Lease, then upon the written request of Lender, the Lessee shall comply with the following provisions within fifteen (15) business days of such written request of Lender and shall continue to comply with such provisions throughout the term of the Lease:

A. A property manager selected by Lender or its nominee, assignee or purchaser at a foreclosure sale or proceeding in lieu thereof holding title to the Real Estate ("<u>Replacement</u>

Property Manager"), shall be engaged to manage the Real Estate pursuant to a management agreement ("Replacement Management Agreement") approved by Lender or its nominee, assignee or purchaser at a foreclosure sale or proceeding in lieu thereof. Pursuant to the Replacement Management Agreement, Lender or its nominee, assignee or purchaser at a foreclosure sale or proceeding in lieu thereof shall have the right to direct the Replacement Property Manager and administer the Replacement Management Agreement and the Replacement Property Manager shall be delegated full authority to lease, operate and manage the Real Estate on behalf of Lessee. Lessee shall irrevocably direct all subtenants of the Real Estate to remit rent and other payments directly to the Replacement Property Manager.

B. Lessee shall direct the Replacement Property Manager or, prior to the engagement of the Replacement Property Manager, the existing property manager to pay to Lender as rent under the Lease, on a monthly basis on the first (1^{st}) day of each calendar month, all "Net Operating Cash Flow" for the prior month, such monthly payments to continue throughout the term of the Lease or any earlier termination of the Lease permitted under this Agreement; provided, however, that such monthly payments shall not exceed the applicable amounts set forth in the Lease and payable pursuant to the Lease. The term "Net Operating Cash Flow" shall mean (a) all cash received from operations of the Real Estate and Lessee and the proceeds of business interruption or loss of rents insurance and casualty insurance in excess of the amounts expended or to be expended to repair or replace the property which suffered the casualty, but excluding capital contributions to Lessee, less (b) cash expended, reserved or required for operating debts and expenses of the Real Estate (other than rent and other amounts payable under the Lease) set forth in an operating budget for the Real Estate approved in writing by Lender in its sole discretion and any reserves to be held by the Replacement Property Manager for such applicable expenses as taxes and insurance premiums, capital expenditures and replacements (excluding expenses funded from capital contributions), to the extent approved in writing by Lender in its sole discretion. Any such budget and reserves shall be established in good faith to meet the requirements of the landlord under any leases or subleases of the Real Estate. The Replacement Property Manager shall be obligated under the Replacement Property Management Agreement to use commercially reasonable efforts to satisfy the requirements of the landlord under any leases or subleases of the Real Estate. Lessee hereby authorizes and directs the Replacement Property Manager to make on its behalf the payments required under this Section.

11. LIMITATION ON LENDER'S PERFORMANCE. Except as expressly provided herein, nothing in this Agreement shall be deemed or construed to be an agreement by Lender to perform any covenant of Owner as landlord under the Lease. If Lender becomes Purchaser (defined hereinafter) then, upon subsequent transfer of the Real Estate by Lender to a new owner, Lender shall have no further liability under the Lease after said transfer. Notwithstanding the foregoing, if there is a Transfer of the Property (defined hereinafter) after the last date upon which any QREs relating to the Real Estate have been Placed in Service (as such term is defined in the Lease), if a final certification (Part 3 Approval) of completed work from the Secretary of the United States Department of Interior has not been received with respect to the Real Estate, the Purchaser shall be obligated to do all things necessary to ensure that the Real Estate will receive a final certification (Part 3 Approval) of completed work from the Secretary of the United States Department of Interior stating that the rehabilitation is consistent with the historic

character of the Real Estate. If the Purchaser fails to obtain the Part 3 Approval within thirty (30) days following the last date upon which any QREs relating to the Real Estate have been Placed in Service (as such term is defined in the Lease), the Lessee (or any one or more of its members) is hereby authorized by the Purchaser to take such actions as are necessary on behalf of the Purchaser to obtain the Part 3 Approval, and the Purchaser hereby grants to the Lessee a power of attorney to execute any documents in connection with the foregoing. Any such actions taken by the Lessee (or any of its members) shall be at the sole cost of the Lessee (or the member taking such action). The Purchaser shall cooperate with the Lessee (or any its members) as necessary to obtain the Part 3 Approval. As used in this Paragraph 8, the term "Transfer of the Property" means any transfer of Owner's interest in the Real Estate by foreclosure, trustee's sale or other action or proceeding for the enforcement of the Mortgage or by deed in lieu thereof or any subsequent transfer thereafter. The term "Purchaser," as used herein, means any transferee, including Lender (and any party that purchases the Real Estate from Lender), of the interest of Owner as a result of any such Transfer of the Property and also includes any and all successors and assigns, including Lender, of such transferee.

12. RESTRICTION ON SALE OF REAL ESTATE. Without affecting the Lender's rights to pursue foreclosure proceedings to protect its superior lien hereunder, prior to the date which is five years after the last date upon which any QREs relating to the Real Estate have been Placed in Service (as such term is defined in the Lease), neither the Real Estate nor any improvements thereon can be sold or otherwise transferred to a governmental or tax-exempt entity or to any other entity, provided that such transfer would cause the recapture of the Historic Tax Credits as described in Sections 47 and 50 of the Code. The foregoing shall constitute the sole restriction on transfer (and any other restrictions on transfer or encumbrance of the Real Estate set forth in the Lease shall be of no force and effect) following the date of the acquisition of the Lessor's interest in the Lease by a Lender Party.

13. OPTION TO PURCHASE LOAN. At or prior to the time Lender initiates legal proceedings to foreclose the Mortgage or commences a sale pursuant to any power of sale granted in the Mortgage, Lender shall first offer Lessee and Investor, in writing, the right to purchase the Note, the Mortgage and all other loan documents evidencing or relating to the Loan (the "Loan Purchase Offer"). The purchase price ("Purchase Price") shall be equal to the then outstanding balance of the Note, including accrued and unpaid interest, plus the amount of all other monetary obligations then due and payable under the Note, the Mortgage and the other loan documents, including all collection costs and actual attorney fees incurred by or awarded to Lender, plus Lender's reasonable expenses relating to the transfer of the purchased loan documents. The written Loan Purchase Offer sent to Lessee and Investor shall set forth the calculation of the Purchase Price as of the date of such Loan Purchase Offer. Lessee and Investor shall each have fifteen (15) business days following receipt of Lender's Loan Purchase Offer in which to accept, in writing, the offer to purchase the Note, Mortgage and other Loan Documents. If Lessee or Investor fail to accept the Loan Purchase Offer in writing within such period, Lessee and Investor shall be deemed to have rejected the Loan Purchase Offer. If Lessee or Investor accepts the Loan Purchase Offer within such period, Lessee or Investor shall purchase the Note, Mortgage and all other Loan Documents, as applicable, on the date which is fifteen (15) business days following such acceptance (the "Loan Purchase Date"). On the Loan

Purchase Date, (i) Lender shall assign to Lessee the Note, the Mortgage and all other Loan Documents evidencing or relating to the Loan, such assignment (the "Assignment") to be in writing, in recordable form, and made without recourse, representation or warranty other than as to the amount of the then outstanding balance of the Note, including accrued and unpaid interest, and the amount of all other monetary obligations then due and payable under the Note, the Mortgage and the other Loan Documents, (ii) Lender shall deliver the original Note, Mortgage and other Loan Documents to Lessee or Investor or their designee, and (iii) as a condition to the execution and delivery of the Assignment and the delivery of the original Note, Mortgage and other Loan Documents to Lessee or Investor or their designee, Lessee or Investor shall pay to Lender, in good funds by wire transfer, the Purchase Price. If, following any Loan Purchase Offer made to Lessee or Invevstor, Lender does not commence within thirty (30) days, or abandons and does not pursue to completion, any power of sale or other foreclosure remedy, Lender shall again be obligated to make a Loan Purchase Offer to Lessee and Investor prior to again commencing to exercise any power of sale or other foreclosure remedy.

14. SUCCESSORS AND ASSIGNS. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their heirs, administrators, representatives, successors and assigns, including without limitation each and every holder, from time to time, of the Lease or any other person having an interest therein and shall inure to the benefit of Lender and their respective successors and assigns. This Agreement may not be assigned by Lessor or Lessee without the written consent of Lender.

15. FEES AND EXPENSES. Owner hereby agrees to pay the reasonable legal fees and other expenses of Lender incurred in connection with the preparation of this Agreement.

16. CHOICE OF LAW. This Agreement is made and executed under, and in all respects is to be governed and construed by, the laws of the State of Wisconsin (excluding its choice-of-law principles).

17. FORUM, SERVICE OF PROCESS AND WAIVER OF JURY TRIAL. To the fullest extent permitted by law, the parties hereto each hereby irrevocably and unconditionally:

(i) agree that any action, suit or proceeding by any person or entity arising from or relating to this Agreement or any statement, course of conduct, act, omission or event in connection therewith (collectively, "Related Litigation") shall be brought in any state or federal court of competent jurisdiction sitting in Brown County in the State of Wisconsin, submit to the jurisdiction of such courts, and agree not to bring any Related Litigation in any other forum;

(ii) acknowledge that the courts sitting in Brown County, Wisconsin will be the most convenient forum for any Related Litigation, waive any objection to the laying of venue of any Related Litigation brought in any such court, waive any claim that any Related Litigation brought in any such court has been brought in an inconvenient forum, and waive any right to object, with respect to any Related Litigation, that such court does not have jurisdiction over it;

(iii) Lender shall be served in accordance with the statutory requirements of Wis. Stat. § 801.11(4). The remainder of the parties consent and agree to service of any summons, complaint or other legal process in any Related Litigation by registered or certified U.S. mail, postage prepaid, to it at the address for notices described in this Agreement, and consent and agree that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law); and

(iv) to the extent permissible under applicable law, waive the right to trial by jury in any Related Litigation, with all such Related Litigation subject to a bench trial only.

18. CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

19. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

20. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

21. AMENDMENTS. No provision of this Agreement may be amended, changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought, and upon obtaining the prior written consent of Investor.

22. ESTOPPEL CERTIFICATES. Whenever reasonably requested by Lender, any party hereto from time to time shall severally execute and deliver to Lender, and without charge to Lender, an estoppel certificate setting forth whatever information Lender may reasonably require to confirm the current status of the Lease including, without limitation, a confirmation that the Lease is and remains in full force and effect.

23. LEASE. Lessee agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement with respect to the Mortgage. Lessee further agrees that in the event there is any inconsistency between the terms and

provisions hereof and the terms and provisions of the Lease dealing with nondisturbance, the terms and provisions hereof shall be controlling.

24. NOTICES. Any and all notices, elections, demands, or requests permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address indicated below, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

(a) If to the Master Tenant:

304 NAGB Master Tenant, LLC
c/o Greenwood Hospitality GB, LLC
304 N. Adams St.
Green Bay, Wisconsin 54301
Attention: Thomas Conran

With copies to:

Davis & Kuelthau, s.c.
318 S. Washington St., Ste. 300
Green Bay, Wisconsin 54301
Attention: Sherry D. Coley, Esq.

(b) If to the Owner:

304 North Adams Green Bay LLC
c/o Greenwood Hospitality GB, LLC
304 N. Adams St.
Green Bay, Wisconsin 54301
Attention: Thomas Conran

And

Davis & Kuelthau, s.c.
318 S. Washington St., Ste. 300
Green Bay, Wisconsin 54301
Attention: Sherry D. Coley, Esq.

(c) If to Lender:

The City of Green Bay
100 North Jefferson Street, Room 200
Green Bay, Wisconsin 54301
Attention: City Attorney

With copies to:
Redevelopment Authority of the City of Green Bay
100 North Jefferson Street
Green Bay, Wisconsin 54301
Attention: Executive Director, Room 600
100 North Jefferson Street

(d) If to Investor:

NTCIC HTC Community Fund II, LLC
c/o National Trust Community Investment Corporation
1155 15th Street NW, Suite 300
Washington, DC 20005
Attention: R. Bret Mosher
Email: bmosher@ntcic.com

With copies to:

Nixon Peabody LLP
799 9th Street, N.W.
Suite 500
Washington, DC 20001
Attention: Scott Sergio, Esq.
Facsimile: (202) 585-8080

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[COUNTERPART SIGNATURE PAGES FOLLOW]

COUNTERPART SIGNATURE PAGE
SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

The undersigned, Master Tenant, has executed this Subordination, Nondisturbance and Attornment Agreement as of the date first above written.

MASTER TENANT:

304 NAGB MASTER TENANT LLC, a Delaware limited liability company

By: Greenwood Hospitality GB, LLC, a Wisconsin limited liability company, its Managing Member

By: Greenwood Hospitality Group, LLC, a Delaware limited liability company

By: ______________________________
Name: Thomas Conran
Title: Manager

STATE OF __________)
) SS.
COUNTY OF ___________)

On this ___ day of ____________, 2018 before me appeared Thomas Conran, to me personally known, who being by me duly sworn (or affirmed), did say that he is Manager of the sole member of Greenwood Hospitality GB, LLC, a Wisconsin limited liability company, managing member of 304 NAGB Master Tenant, LLC, a Delaware limited liability company, and the instrument was signed on behalf of such company by due authority and said individual acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

____
Notary Public

My commission expires:

COUNTERPART SIGNATURE PAGE
SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

The undersigned, Owner, has executed this Subordination, Nondisturbance and Attornment Agreement as of the date first above written.

OWNER:

304 NORTH ADAMS GREEN BAY LLC,
a Delaware limited liability company

By: Greenwood Hospitality GB, LLC, a Wisconsin limited liability company, its Managing Member

By: Greenwood Hospitality Group, LLC, a Delaware limited liability company, its Sole Member

By: ________________________
Thomas Conran, Manager

STATE OF _____________)
) SS.
COUNTY OF ___________)

On this ___ day of ____________, 2018 before me appeared Thomas Conran, to me personally known, who being by me duly sworn (or affirmed), did say that he is Manager of the sole member of Greenwood Hospitality GB, LLC, a Wisconsin limited liability company, managing member of 304 North Adams Green Bay LLC, a Delaware limited liability company, and the instrument was signed on behalf of such company by due authority and said individual acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

____
Notary Public

My commission expires:

COUNTERPART SIGNATURE PAGE
SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

The undersigned, Lender, has executed this Subordination, Nondisturbance and Attornment Agreement as of the date first above written.

<u>LENDER</u>:

THE CITY OF GREEN BAY

By: ______________________________
Name: ____________________________
Title: _____________________________

STATE OF WISCONSIN)
) SS.
COUNTY OF ___________)

On this ___ day of ____________, 2018 before me appeared _____________, to me personally known, who being by me duly sworn (or affirmed), did say that [he/she] is the _____________ of The City of Green Bay, and the instrument was signed on behalf of the City by due authority and said individual acknowledged said instrument to be the free act and deed of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

____
Notary Public

My commission expires:

COUNTERPART SIGNATURE PAGE
SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

The undersigned, Investor, has executed this Subordination, Nondisturbance and Attornment Agreement as of the date first above written.

INVESTOR:

NTCIC HTC COMMUNITY FUND II, LLC, a Delaware limited liability company

By: National Trust Community Investment Corporation, its Managing Member

By: ________________________________
Merrill D. Hoopengardner, President

STATE OF ___________)
) SS.
COUNTY OF ___________)

On this ___ day of ____________, 2018 before me appeared Merrill D. Hoopengardner, to me personally known, who being by me duly sworn (or affirmed), did say that he is the President of National Trust Community Investment Corporation, the Managing Member of NTCIC HTC Community Fund II, LLC, a Delaware limited liability company, and the instrument was signed on behalf of the City by due authority and said individual acknowledged said instrument to be the free act and deed of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

____
Notary Public

My commission expires:

EXHIBIT A

Legal Descriptions

Lots Seventy-two (72) and Seventy-three (73), according to the recorded Plat of Navarino, in the City of Green Bay, East side of Fox River, Brown County, Wisconsin.

Tax Parcel No. 12-148

Lot 3, Volume 58 Certified Survey Maps, Page 249, Map Number 8340; said Lot being part of Lots 74 – 79, inclusive, according to the recorded Plat of Navarino and part of vacated North Adams Street cul-de-sac, in the City of Green Bay, East Side of Fox River, Brown County, Wisconsin.

Tax Parcel No. 11-2