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Northern Bristol County Registry of Deeds
Barry J. Amaral, Register
11 Court Street
Taunton, MA 02780
508-822-0502
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**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:)
)
)

Colonial Estates Homeowners Association, Inc.)

File No.: ACO- SE-16-1G003

**ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, MA 02347.

2. Colonial Estates Homeowners Association, Inc. ("Respondent") is a Nonprofit Corporation with a principal office at Colonial Estates Manufactured Housing Park, 310 Lothrop Street, Taunton, Massachusetts 02780. Respondent's mailing address for purposes of this Consent Order is 310 Lothrop Street, Taunton, Massachusetts 02780.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of: MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21A, § 13 and the Title 5 Regulations at 310 CMR 15.000 and M.G.L.c.21, §§ 26-53, the Ground Water Discharge Permit Regulations at 314 CMR 5.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. Respondent owns and operates a facility with a sewage flow greater than 15,000 gallons per day (gpd) and currently is not in compliance with 314 CMR 5.03(1) which states in pertinent part: "No person shall discharge pollutants to ground waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L. c. 21, s. 43 and 314 CMR 5.00, except as otherwise provided in 314 CMR 5.05."

5. The following facts and allegations have led MassDEP to issue this Consent Order:

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- A. Respondent owns and operates a Manufactured Housing Park known as at Colonial Estates Manufactured Housing Park (the "Property"), located on the west side of Lothrop Street, Taunton, Massachusetts. The property encompasses 44 acres and consists of 148 year round units for residents over 55 years of age.
- B. The Property is served by approximately 49 individual sewage disposal systems permitted in 1981 and 1986 with an estimated flow of 22,200 gallons per day (gpd) (hereinafter, the "Systems").
- C. Respondent is in violation of 314 CMR 5.00 insofar as it operates a facility in excess of 15,000 gpd without a valid Groundwater Discharge Permit.
- D. The City of Taunton Comprehensive Wastewater Management Plan ("CWMP") dated July 2009 identifies the area where the Property is located as a priority area for sewer installation. It is estimated that sewer will be available for Respondent to connect to in or about 2026.

6. On July 17, 2015, MassDEP issued a Notice of Noncompliance ("NON"), NON-SE-15-1G028, to Shamrock Redwood Colonial LLC, the prior owner of the Property, describing the above violations, specifying the actions to be taken to return to compliance, and stating the deadlines for performing such actions. Respondent acquired the Property from Shamrock Redwood Colonial LLC on or about August 29, 2016.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

8. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

9. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

10. Respondent shall perform the following actions:

- A. Beginning on the Effective Date of this Consent Order and continuing until Respondent has fully complied with the terms of this Consent Order, Respondent shall not allow sewage flow from the Property to exceed 22,200 gpd, as determined by the applicable regulations at 310 CMR 15.000.

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- B. No later than September 1, 2016, Respondent shall establish a Capital Reserve Account in the amount of \$260,000.00 for the repair of existing septic systems at the Property and other disbursements as described in the financing commitment letter dated August 11, 2016 attached as Attachment A (redacted).
- C. No later than September 1, 2021, Respondent shall provide a written report to MassDEP regarding the status of the City of Taunton's progress towards the construction of a sewer line on Lothrop Street (or other closest planned location to the Property) that would allow the Property to be connected to the City of Taunton's municipal wastewater treatment facility ("WWTF").
- D. If MassDEP determines that the City of Taunton has not made sufficient progress towards the construction of a sewer line on Lothrop Street (or other closest planned location to the Property) that would allow the Property to be connected to the City of Taunton's municipal WWTF, then Respondent shall provide to MassDEP annual status reports by the end of each subsequent calendar year until such time MassDEP notifies Respondent of its determination that the City of Taunton has made sufficient progress towards the construction of a sewer line on Lothrop Street (or other closest planned location to the Property) that would allow the Property to be connected to the City of Taunton's municipal WWTF.
- E. If MassDEP determines that the City of Taunton has made sufficient progress towards the planning or construction of a sewer line on Lothrop Street (or other closest planned location to the Property) that would allow the Property to be connected to the City of Taunton's municipal WWTF, then, within 60 days of having been so notified in writing by MassDEP, Respondent shall (1) hire a licensed Massachusetts engineer to begin the process of designing a collection system to connect to the sewer line on Lothrop Street and (2) submit in writing a request that MassDEP amend this Consent Order to require the Respondent to connect the Property to said sewer line and WWTF and to specify the necessary actions and timeframes for commencing and completing the connection of the Property to the sewer line and WWTF. The parties agree that the Respondent shall be required to connect the Property to the sewer line and WWTF within twenty four (24) months of the Lothrop Street (or other closest planned location to the Property) sewer line's installation and connection to the WWTF, however in no event shall the Respondent be required to connect before September 1, 2028.
- F. If MassDEP determines that the City of Taunton has not made substantial progress towards the planning or construction of a sewer system capable of

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serving the Property, then Respondent shall meet with MassDEP no later than March 30, 2027 to discuss the development of a plan for designing a compliant sewage treatment and disposal system (the "Compliant System") at the Property. However, in no event shall Respondent be required to build or install the Compliant System before December 31, 2028.

- G. Beginning on the Effective Date of this Consent Order and continuing until Respondent has fully complied with the terms of this Consent Order, Respondent shall perform an annual inspection of not less than one fifth of all Systems at the Property to be completed by the end of the calendar year such that all Systems shall be inspected within a rolling five year period. The inspections shall be conducted in accordance with the inspection requirements of 310 CMR 15.302 – 15.304.
- H. Immediately following any inspections of the Systems, including, but not limited to those required by Paragraph 10G of this Consent Order, Respondent shall notify both MassDEP and the Town of Taunton Board of Health in writing of any discharges to the surface or imminent hazards to public health.
- I. Beginning on the Effective Date of this Consent Order, and continuing until Respondent has fully complied with the terms of this Consent Order, Respondent shall pump not less than one fifth of all Systems at the Property each year that this Consent Order is in effect year such that all Systems shall be pumped at least once within a rolling five year period. If any cesspool or leaching pit has a liquid depth of less than six (6) inches from the inlet pipe invert or the remaining available volume above the liquid depth to the inlet pipe invert is less than one-half of one day's design flow based on the inspections required in Paragraph 10G of this Consent Order, the cesspool or leaching pit shall be pumped within seventy two (72) hours of the inspection. Pumping reports shall be submitted to MassDEP and the Taunton Board of Health within thirty (30) days of pumping. For any other type of soil absorption system (e.g., trenches, or fields), ponding levels shall be noted and MassDEP shall determine if the System represents an imminent hazard to public health.
- J. If any System discharges to the surface or is determined to be an imminent hazard to public health, then within thirty (30) days of said determination that System shall be upgraded in accordance with a plan approved by MassDEP. As used herein, the "Upgrade Plan" shall mean an interim plan to correct any hazard, but not to construct a wastewater treatment facility. MassDEP shall approve the "Upgrade Plan" in consultation with the Taunton Board of Health.
- K. Within ten (10) business days of the Effective Date of this Consent Order, Respondent shall execute an Escrow and Instructional Grant Agreement

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detailing the terms of the deposit in the amount of \$250,000 with the City of Taunton in an account established and maintained by the Finance Director of the City of Taunton pursuant to M.G.L. c.44, §53A. Respondent shall pay into this fund in 10 annual installments of \$25,000 each due October 1st of each year from 2017 to 2026. Such payments shall be made only from the free cash flow of the property, and if and to the extent that free cash flow for any particular year (September 1 –August 31) is less than \$25,000.00 as of the end of the Respondent's fiscal year, then any shortfall will be made up from free cash flow from the then following year's operation such that shortfalls will accumulate and be paid on the next following due dates until said accumulated amounts are paid.

Failure of Respondent to make any of the installment payments listed from available free cash flow of the property shall subject Respondent to stipulated penalties as set forth in Paragraph 21 of this Consent Order. Respondent agrees that the escrow funds deposited pursuant to this Paragraph shall be applied to the costs to be paid by Respondent to the City of Taunton in connection with the tie-in of its facility to the City's sewer system. In the event the Respondent's facility cannot be connected to a City of Taunton sewer system, all funds deposited in the escrow account pursuant to this Paragraph shall, upon proof that Respondent has entered into a binding contract to construct a Compliant System, be provided to Respondent, and Respondent shall use such funds solely to defray the cost of constructing the Compliant System at the Property.

In addition to the funds escrowed with the City of Taunton noted above, the Respondent has agreed to escrow additional funds in a Capital Reserve Account under the control of its mortgage lender.

- L. Within thirty (30) days of the Effective Date of this Consent Order, Respondent shall provide to MassDEP and the City of Taunton Board of Health documentation showing that this Consent Order has been properly recorded in the chain of title for the Property at the Registry of Deeds or Registry of Land Court, whichever is appropriate.
- M. Respondent agrees that this Consent Order shall run with the title to the Property until such time this Consent Order is terminated.
- N. In the event that any portion of the System fails during the pendency of this Consent Order, Respondent shall be permitted to repair or replace such failed portion of the System subject to MassDEP approval without the need to design, permit or construct a Compliant System. MassDEP approval shall occur in consultation with the Taunton Board of Health.

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- O. Respondent shall acquire financing for any shortfall between the amount in the escrow account to the City of Taunton and the actual cost of the connection to the Taunton sewer system.

11. Unless submitted via eDEP or except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

MassDEP
Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

12. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

13. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

14. Respondent is a Permittee, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees pursuant to M.G.L. c. 21A, §18.

15. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

16. This Consent Order may be modified only by written agreement of the parties hereto.

17. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

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18. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

19. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

20. This Consent Order shall be binding upon Respondent, its successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

21. In addition to the penalty set forth in this Consent Order, if any (including any suspended penalty), if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of one hundred dollars (\$100.00) per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

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22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to Colonial Estates Manufactured Housing Park for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

24. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

25. This Consent Order does not relieve Respondent's obligation to pay Annual Compliance Assurance Fees pursuant to 310 CMR 4.00 et. seq.

26. All applicable transmittal fees shall accompany any submissions(s) required by this Consent Order.

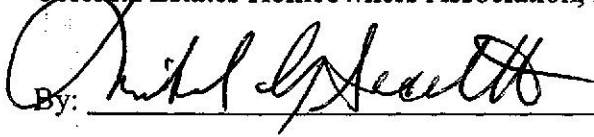
27. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

28. This Consent Order shall become effective on the date that it is executed by MassDEP.

29. Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to this Consent Order and MassDEP's issuance of a compliance letter stating that Respondent has completed the requirements of said Consent Order.

Consented To:

Colonial Estates Homeowners Association, Inc.

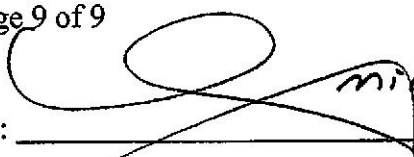
By:  Date: August 30, 2016

Michael Scarlett, President
Colonial Estates Homeowners Association, Inc.
310 Lothrop Street
Taunton, MA 02780
Federal Employer Identification No. 22-2610156

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Millie Garcia-Serrano

By: _____

Date: _____

aug 29, 2016


Millie Garcia-Serrano
Regional Director
MassDEP- SERO
20 Riverside Drive
Lakeville, MA, 02347

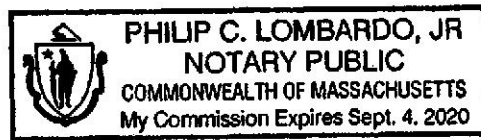
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COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

On this 29th day of August, 2016, before me, the undersigned notary public, personally appeared Michael Scarlett, as President of Colonial Estates Homeowners Association, Inc., proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose in such capacity.

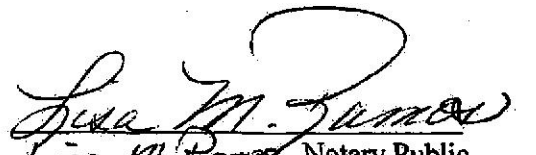

_____, Notary Public
My commission expires:

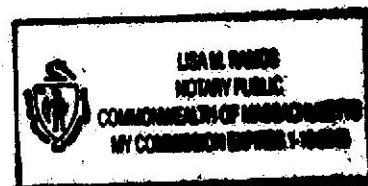


COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this 29th day of August, 2016, before me, the undersigned notary public, personally appeared Millie Garcia-Serrano, Regional Director, MassDEP-SERO, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose in such capacity.


_____, Notary Public
My commission expires: 1/19/2018



Attachment A
(redacted)



August 11, 2016

Mr. Michael J. Scarlett
President
Colonial Estates Homeowners Association, Inc.
310 Lothrop Street
Taunton, MA 02780

RE: Colonial Estates Manufactured Home Community
Acquisition Permanent Financing of up to \$11,209,000
ROC USA® Capital Loans #L1617 and #L1618

Dear Mr. Scarlett:

I am pleased to inform you that Resident Ownership Capital, LLC d/b/a ROC USA® Capital (hereinafter "Lender") has approved financing to Colonial Estates Homeowners Association, Inc. on August 3, 2016 to finance the acquisition of the 148-site Colonial Estates Manufactured Home Community (the "Property/Project") located at 310 Lothrop Street, Taunton, Massachusetts 02780 (the "Financing"). The Financing has been approved with the following terms and conditions:

- 1. **Borrower:** Colonial Estates Homeowners Association, Inc., a duly organized and existing not-for-profit corporation, incorporated pursuant to the laws of the Commonwealth of Massachusetts, with membership open to all homeowners residing at the Property. Currently, the Borrower has at least [redacted] member households, representing [redacted] (%) of the owner-occupied manufactured homes at the Property.
- 2. **Financing Amounts:** First Mortgage Loan in an amount of \$10,000,000 (hereinafter "The First Mortgage Loan"). The First Mortgage Loan will be fully disbursed at Closing. Second Mortgage Loan in an amount of up to \$1,209,000 (hereinafter "The Second Mortgage Loan"). Together the First Mortgage Loan and Second Mortgage Loan may be referred to herein as "The Financing" or "The Loans."
- 3. **Use of Loan Proceeds:** Acquisition of the Property, and associated soft costs, development costs, closing costs and capitalized reserve accounts in accordance with the Acquisition Budget set forth on Exhibit "A".
- 4. **Financing Term:** The Loans will mature ten (10) years from the Closing Date. The Loans shall be amortized on a 30-year schedule.

5. Interest Rates: The interest rate on the Loans shall be fixed at Closing for the full term at a rate of [REDACTED] percent ([REDACTED]%).

6. Loan Origination Fees: Borrower shall pay to Lender a loan origination fee equal to [REDACTED] basis points on the First Mortgage Loan ([REDACTED]% of the Loan Amount) and [REDACTED] basis points on the Second Mortgage Loan ([REDACTED] of the Loan Amount). Such fees are due and payable at Closing and may be financed with proceeds from the Loans.

7. Loan Payments: Monthly payments of principal and interest on the Loans shall be due and payable in arrears on the 15th day of each month during the Loan Term, commencing on the 15th day of October 2016 ("Initial Payment Date").

8. Prepayment: The First Mortgage Loan carries pre-payment fees calculated as follows over the first eight years of the loan term: 5.0% of the outstanding loan principal during Years 1 and 2 of the Loan; 4.0% during Years 3 and 4, 3.0% during Years 5 and 6, 2.0% during Year 7, 1.0% during Year 8, and no pre-payment penalty thereafter. In the event the First Mortgage Loan is prepaid in whole or in part, the Borrower shall be obligated to pay any prepayment penalty assessed. The Second Mortgage Loan has no pre-payment penalty but may only be pre-paid if the First Mortgage Loan is repaid in full.

9. Security: The Loans will be secured by: a) a first and second mortgage recorded against the Property in the amount of \$10,000,000 and \$1,209,000 respectively; b) collateral assignment of leases, rents and profits; c) covering lien on Borrower's personal property; d) collateral assignment and deposit control agreement over reserve and working capital accounts; d) assignment and subordination of property management agreement and any other security deemed necessary by Lender and its legal counsel.

10. Loan Documentation: The Financing will be evidenced by three or more Promissory Notes as deemed necessary by Lender and its legal counsel. The Note(s) will be secured by the collateral set forth in Section 9.

11. Borrower's Equity: At Closing, Borrower shall contribute at least \$[REDACTED] in equity to the acquisition and related costs shown on the attached Exhibit A. Borrower shall also provide evidence of executed Membership Agreements with at least 112 households. This evidence may be in the form of a membership list certified by Borrower's corporate Secretary.

12. Compliance with Affordability Restrictions at Time of Purchase: Borrower shall certify, or provide certification of an acceptable third party, representing and warranting that at least [REDACTED] percent ([REDACTED]%) of the homeowners currently residing at the Property have incomes at or below [REDACTED] percent ([REDACTED]%) of the median income for the area in which the Property is located, as defined by the U.S. Department of Housing and Urban Development, and at least one of the following is also true:

- a. at least [REDACTED] percent ([REDACTED]%) of the homeowners currently residing at the Property have incomes at or below [REDACTED] percent ([REDACTED]%) of the median income

for the area in which the Property is located, as defined by the U.S. Department of Housing and Urban Development;

- b. at least [redacted] percent ([redacted]%) of the homeowners currently residing at the Property have incomes at or below [redacted] percent ([redacted]%) of the median income for the area in which the Property is located, as defined by the U.S. Department of Housing and Urban Development or;
- c. the Loan will finance the acquisition of the Property such that the poor or distressed are served, or it can be demonstrated the Project is part of an approved community revitalization plan, will combat community deterioration or blight or will otherwise lessen the burdens of government.

To comply with this condition of Closing, Borrower is to provide at or before closing evidence acceptable to Lender in all respects that household demographic surveys have been completed by at least [redacted] percent ([redacted]%) of the households residing in the community.

13. Compliance with ROC USA® Models: The Borrower agrees to organize, operate, control its lot leasing activity and restrict the disposition of its assets to conform to the ROC USA Models for long-term preservation of the community as a resident owned manufactured home community dedicated to serving the needs of low- and moderate-income homeowners. The ROC USA Models are attached hereto as Exhibit B and incorporated herein by this reference as if fully set forth herein. It is hereby understood and agreed that these terms survive the closing and the term of the financing.

Towards this end, Borrower agrees to:

- A. Entity Choice and Asset Restrictions: Borrower agrees to choose a legal entity and/or restrict its assets in a manner that complies with Guideline #3 on the attached Resident Ownership Models, to the satisfaction of Lender.
- B. Sale of Homes/Admission of New Members: Any homeowners who move to the Property after the Closing Date shall be required to be Members of Borrower. Borrower's Bylaws shall provide that Borrower will not inhibit nor exclude low- and moderate-income people from becoming members and from benefitting from membership. Borrower's Bylaws shall include a provision that requires a preference to be given to low-income buyers for 30-days (when Members sell their homes) and low-income Lessees (when lots are leased).

14. Rental Homes: At no time during the term of the Loan may more than twenty-five percent (25%) of the homes at the Property be rental units. Rental homes include those homes where residents neither own nor are interested in purchasing the home in which they reside. Rental homes do not include homes owned by those residents who are not members of Borrower. Any homes currently occupied by tenants and for which ownership shall transfer to the Borrower as of the Closing Date shall be offered for sale by the Borrower to the current tenants within one year of the Closing Date. For any rental

homes currently occupied by tenants that will not transfer to the Borrower's ownership as of the Closing Date, Borrower shall provide to Lender prior to the Closing Date a written plan for conversion of such homes to resident ownership within one year, or such other reasonable period of time allowed for pursuant to local laws.

15. Property Management: Throughout the term of the Loan, Borrower shall manage the Property in a professional manner, including engaging the services of a third party professional property management agent for the operation of the community, including any rental homes. The Property Management Plan and contract entered into by Borrower with a third party property management agent are subject to the prior review and approval of Lender. The Borrower's annual budget for property operations shall include a line item for such management services and shall also be subject to the prior review and approval of Lender. Any future changes in third party property management agent, and the contracts governing such services, are subject to the prior approval of Lender.

Proposed material changes to Borrower's Property Management Plan shall also be subject to Lender's prior advance written consent. Such material changes shall include: a) changing from full-service third party property management to another arrangement; b) changing the number of hours of monthly financial management services contracted for c) changing the site management staffing arrangement from full-time to part-time or part-time to full-time whether accomplished with staff, consultants or contractors or d) substantially reducing or increasing the number of hours of on-site management/maintenance personnel and/or reducing the scope of third party property management services. Should Borrower propose such material changes to its Property Management Plan, such changes shall be submitted to Lender in writing with a revised Operating Budget reflecting the change in annual operating cost and an explanation setting forth why the Property will continue to be managed in a professional manner under the new arrangement.

16. Ongoing Technical Assistance – Lender has engaged the services of Cooperative Development Institute (CDI) as a certified technical assistance provider (CTAP) to provide ongoing loan servicing, asset management, organizational development and training services throughout the Loan Term. Borrower agrees to fully cooperate with the CTAP in providing the information and conducting the meetings and site inspections required for the CTAP to fulfill its contractual loan servicing responsibilities to Lender. In addition, Borrower shall commit itself to continuing education and training of its Board of Directors, committees, staff and members in cooperative management, park operations and other areas as needed, such continuing education and training services to be provided by the CTAP under the terms of the loan servicing contract with Lender.

17. Project Reserves – Borrower shall establish and maintain, in its own accounts or in Lender Escrow Accounts with interest accruing to the benefit of the Borrower, the following reserve accounts with the proceeds of the First Mortgage Loan:

- a. Working Capital Reserve – Funded at Closing of the Financing in the minimum amount of [REDACTED]. This account shall be held by Borrower. As Borrower uses these funds such that the balance in the account drops below

\$20,000, Borrower shall replenish the account to this minimum balance of \$20,000 before the end of Borrower's next fiscal year. Borrower may establish this account at the depository financial institution of Borrower's choosing, as long as Borrower and such financial institution execute prior to Closing a Deposit Account Control Agreement prepared by and for the benefit of Lender. Alternatively, should Borrower be unable to obtain a control agreement from said depository bank for delivery at Closing, Lender shall establish said account in Borrower's name at a depository selected by the Lender with Borrower holding sole signatory authority and provide a control agreement executed by the depository which shall be executed by and delivered by Borrower at Closing.

- b. Rent Gap Reserve - At the time of Closing, a rent gap reserve shall be established, which shall be funded out of the proceeds of the Loans and held in an account controlled by Borrower. The purpose of this reserve is to account for the difference in member lot rents and non-member lot rents until such time as the non-member lot rents are equal or greater than member lot rents. Based on the current number of members, this reserve amount is estimated at \$20,000. This reserve amount may be decreased if additional members join the Resident Association prior to closing. The formula for determining this reserve amount is based on the assumption that two (2) additional households become members of the Resident Association every two years. This calculation is included in Exhibit A.
- c. Debt Service Reserve Account - This account shall be funded in the minimum amount of \$20,000 to pay debt service on the Loans, as necessary. This account shall be in the control of Lender, and disbursements from this account shall be at Lender's direction.
- d. Capital Improvement/Replacement Reserve Account - Initially funded at Closing in the minimum amount of \$260,000 and funded on an ongoing monthly basis beginning the first full month following closing and for throughout the Term of the Financing in the minimum amount of \$1,250 per month such that annual contributions to this account total at least \$15,000. This account shall be in the control of Lender.
- e. Escrow for Real Estate Taxes and Insurance - Lender shall collect from Borrower with monthly loan payments amounts necessary to fund and maintain an escrow account

for the payment of real estate taxes and insurance premiums. Lender shall hold this account in Borrower's name, and Lender shall make disbursements from this account as real estate tax payments and renewal premiums for insurance purposes become necessary.

18. Loan Closing Conditions – The following must be delivered by Borrower, and reviewed and approved by Lender in Lender's sole and absolute discretion, at least five business days prior to any scheduled closing date in order for Lender to close the Loans and advance Loan proceeds:

- a. **Initial Lot Rents and Year One Operating Budget** – Borrower shall deliver to Lender a resolution adopted by Borrower's Members, and certified by Borrower's Secretary, approving the operating revenue and expenses for the first year of operations following the Closing Date, which are substantially the same as those on EXHIBIT A attached hereto ("Initial Project Pro Forma and Financial Analysis"). Such resolution shall reflect revenues based upon an average lot rent for manufactured home sites of at least \$●●● per month for members (commencing no later than 30 days following the Closing Date) and an average of at least \$●●● per month for non-members. Such resolution shall also reflect that \$●●● per month of the \$●●● per month lot rent paid by member households shall be credited to each member household's Membership Fee, and that the Borrower commits all such revenue to monthly operations of the Property.
- b. **Insurance** – Borrower must deliver evidence of general liability insurance in the minimum amount of \$1 million and \$2 million in the aggregate, property insurance in the minimum amount of the replacement cost for Borrower's buildings and personal property including loss of business income coverage, directors and officers insurance and a fidelity bond covering Borrower's officers and agents in a minimum amount equal to three months of operating revenues, all on terms and from insurance providers acceptable to Lender in its sole and absolute discretion. **General liability insurance policies shall name Resident Ownership Capital, LLC as an "additional insured". Property insurance policies shall name Resident Ownership Capital, LLC as "mortgagee and loss payee"**. Each policy shall provide that it may not be cancelled without 30 days prior written notice to Lender. Lender reserves the right to require any other special insurance coverage or policies deemed to be prudent or advisable given the nature of the Borrower's Property and assets.
- c. **Borrower's Organizational Documents and Opinion of Counsel** – Borrower's Articles of Incorporation and Bylaws, (and all amendments thereto), and Borrower's Resolution authorizing the Loans, as well as an Opinion Letter signed by Borrower's Legal Counsel in the form and substance acceptable to Lender shall be delivered to Lender and approved by Lender prior to the Closing Date. Articles of Incorporation and Bylaws shall be certified by Borrower's Secretary and evidence that the Bylaws have been approved by the Borrower's members shall also be delivered. Such Bylaws shall contain provisions evidencing Borrower's commitment to maintaining the Property on a

permanent basis as an age-restricted community for households with at least one member age 55 or older.

- d. Approved Community Rules and Occupancy Agreement– Borrower shall deliver to Lender certified copies of Community Rules that have been adopted by Borrower's Members and certified forms of Member Occupancy Agreement and Non-Member Lease that will be effective as of the date of Closing for all parties leasing lots at the Property. The Occupancy Agreement shall provide for each Member's perpetual right to occupy a lot, absent a default by the Member under the terms of the Occupancy Agreement, Bylaws or Community Rules.
- e. Certified Membership List - A list of Borrower's legal members certified by an Officer of Borrower evidencing executed Membership Agreements in place with at least [REDACTED] homeowners occupying homes at the Property and evidencing that each homeowner listed as a Member has been credited with paying at least \$[REDACTED] at Closing towards the full Membership Fee of \$1,000. In addition, Borrower shall deliver to Lender a copy of the form Membership Fee Agreement evidencing a 36-month term to complete payments of the full Membership Fee. This Membership Fee Agreement and/or the Member Occupancy Agreement shall contain a provision indicating that \$25 per month of the member monthly fees paid as lot rent shall be credited to the Membership Fee until such time as the Membership Fee is paid in full, but not exceeding 36 months.
- f. Certified Rent Roll and Operating Statements - Borrower shall deliver a Rent Roll for all leased lots at the Property certified by the Seller as of the date of Closing, including statement of aged resident receivables, and statements of the financial operations of the property for at least the 12-month period preceding the closing date. Such financial statements may be in the form of tax returns or internally prepared operating statements of income and expense certified by the Seller in writing.
- g. Survey and Title Insurance – Borrower shall deliver an ALTA survey of the Property prepared by a professional surveyor and certified to Lender in form acceptable to Lender and acceptable for the purpose of issuing title insurance covering Lender. Title to the property must be clear and marketable. A title insurance commitment/policy on ALTA Form with Owner's and Lender's coverage shall also be required prior to closing and acceptable to Lender in all respects.
- h. Closing Costs – The Loans shall be closed at no cost to Lender. All approved acquisition and related costs shown on EXHIBIT A may be financed to the extent the final approved Loan Amounts covers such costs. All additional costs shall be covered by Borrower.
- i. Certified List of Households with Security Deposits - Borrower shall obtain from the seller of the Property a certified list of households with security deposits, if any, which will transfer as of the Closing Date. Such list shall

provide the amount of each household's security deposit that is to be transferred.

- j. Operating Contracts – Borrower shall deliver to Lender copies of contracts or accepted bids executed by Borrower for trash removal and septic system maintenance.
- k. Operating License – Borrower shall deliver to Lender evidence that the Property is currently licensed to operate as a 148-site manufactured home community by the City of Taunton. In addition, Borrower shall deliver its application to the City of Taunton to have the Operating License transferred into Borrower's name.
- l. Administrative Consent Order ("ACO") – Borrower shall deliver to Lender for Lender's specific review and approval the final Agreement by and among Borrower and the Commonwealth of Massachusetts regarding future compliance with the Commonwealth's Groundwater Discharge Permit and other regulations related to Borrower's operation of on-site septic systems. This ACO must not require Borrower to install new community-wide alternative onsite septic systems before ten (10) years from the date of Closing and not require Borrower to connect to any planned municipal sewer line that may be extended to the Property before twelve (12) years from the date of Closing.
- m. Phase I Environmental Site Assessment (ESA) – Borrower shall deliver a complete and satisfactory Phase I ESA to Lender evidencing there are no Recognized Environmental Conditions (RECs) at the Property. If a Phase II ESA is recommended and deemed necessary by Lender, such report shall be completed at Borrower's cost and provided to Lender prior to closing.
- n. ROC USA Capital staff to conduct a site visit and meet with Borrower's Board of Directors.
- o. Lender to receive acceptable bids for major third-party contractors and vendors providing ongoing services at the Property (i.e. trash collection, snow plowing, landscaping, septic pumping and annual financial audit).

19. Loan Covenants:

- a. Debt Service Coverage Ratio – At all times during the term of the First Mortgage Loan, the Borrower will operate the Property in a manner such that on an annual basis the ratio of Net Operating Income, as that term is defined in the Loan Agreement, to regular debt service payments on the First Mortgage Loan is at minimum [REDACTED] to [REDACTED]. For the Second Mortgage Loan, during the first five (5) years of operations, the ratio of Net Operating Income plus funds available from the "Rent Gap Reserve" to regular debt service payments on the First Mortgage Loan plus regular debt service payments on the Second Mortgage Loan must be at minimum [REDACTED] to [REDACTED]. After year 5 of operations and for each remaining year of the

Loan Term, the ratio of Net Operating Income to regular debt service payments on the regular debt service payments for the First Mortgage Loan plus regular debt service payments on the Second Mortgage Loan must be at minimum [REDACTED] to [REDACTED].

- b. Disbursements from Replacement Reserve Account – The Borrower shall maintain a funded account for future capital improvements/replacements (“Replacement Reserve Account”) held by Lender. Disbursements from the Borrower’s Replacement Reserve Account will require the prior approval of Lender. Checks and other drafts from such account will require a signature by Lender’s authorized signatory. Borrower is to provide to Lender a written justification for the expenditure of funds addressing identified capital replacement needs at the Property, with third party supporting documentation as appropriate (i.e. engineering reports, contractor’s bids, detailed cost breakdowns) at least 5 business days prior to the date such funds are needed.
- c. Limited Equity Nature of Borrower and Long-Term Preservation – Borrower shall maintain its corporate status and/or deed restrictions established to survive the term of the Loan and provide adequate stewardship and enforcement mechanisms in satisfaction of the provisions of Paragraph 13. above. If the Borrower ever elects to sell or otherwise dispose of the Property, the net proceeds of such sale or disposition shall be distributed to: (a) another nonprofit affordable housing organization or (b) shall be used for providing affordable housing by Borrower to its Membership if Borrower does not dissolve pursuant to a plan for use of net proceeds of sale. Such use of net proceeds of sale, whether or not subject to a disposition plan shall be subject to Lender’s prior approval. Lender’s approval shall neither be unreasonably withheld nor delayed, so long as the plan includes adequate restrictions in the public interest and does not allow private inurement of benefit to individuals, except as provided herein for the affordable housing needs of its membership.
- d. Annual Review – Borrower agrees that the loan is subject to an annual review and site inspection by Lender, or its designee, and Borrower agrees to cooperate fully with such review and related requests for information. Furthermore, Borrower shall direct any third party property management agent under contract to Borrower to cooperate fully in this annual review process.
- e. Interim Financial Reporting – Throughout the term of the Loans, Borrower is to provide Lender, or its designee, certified copies of internally prepared quarterly financial statements for the operation of the Property, prepared on an accrual basis and in accordance with the ROC USA Network Chart of Accounts (attached hereto as EXHIBIT C). Such financial reports shall be due on the 7th day of February, May, August and November for the preceding calendar quarter. Borrower shall also execute

and deliver to Lender on the dates above a Certificate in the form attached hereto as EXHIBIT D evidencing Borrower's formal approval of its quarterly financial statements.

- f. Annual Financial Reporting – Throughout the term of the Loan, Borrower is to provide Lender, or its designee, annual financial statements of property operations audited by an independent Certified Public Accountant prepared on an accrual basis and in accordance with GAAP and delivered to Lender within 120 days of the end of each completed fiscal year. Such annual financial statements shall include a calculation of debt service coverage ratio by Borrower's CPA for the fiscal year presented, using the definition of such term in Borrower's Loan Agreement. Borrower shall also execute and deliver to Lender within 120 days of the end of each completed fiscal year a Certificate in the form attached hereto as EXHIBIT E evidencing Borrower's formal approval of the calculation of debt service coverage ratio. In addition, Borrower shall provide on an annual basis a list of the monthly maintenance fees charged to residents, together with an updated listing of the total number of Borrower's members.
- g. Completion of Immediate Capital Improvements - Within eighteen (18) months following the Closing of the Loan, Borrower will deliver to Lender documentary evidence that all "Immediate Capital Improvements" identified in the attached EXHIBIT A "Capital Improvement Schedule" have been satisfactorily completed.
- h. In-Fill Development - To the extent Borrower conducts in-fill development of vacant home sites or replacement of existing homes, Borrower shall do so in full compliance with all local, state and federal rules and regulations currently in effect governing foundation systems.
- i. Use of Annual Net Operating Cash Flow After Debt Service - Until such time as Borrower and the Commonwealth of Massachusetts' Department of Environmental Protection (DEP) reach a final agreement as to the scope of a "Compliant System" for the treatment of wastewater generated at the Property pursuant to the Administrative Consent Order prepared by DEP and Lender has approved the costs and financing plan for such a "Compliant System", Borrower shall deposit the up to \$25,000 per year of Annual Net Operating Cash Flow After Debt Service, as that term is defined in the Loan Agreement, in an escrow account pursuant to the terms of such Administrative Consent Order. Furthermore, until such time as DEP and Lender approve Borrower's scope, costs and financing plan for such a "Compliant System", Borrower shall deposit any Annual Net Operating Cash Flow After Debt Service exceeding \$25,000 in the Replacement Reserve Account held by Lender or by the City of Taunton. Annual Net Operating Cash Flow After Debt Service shall be certified by Borrower's independent CPA in the annual audited financial statements.

At the time a final agreement is reached between Borrower and DEP on the scope of a "Compliant System" for the treatment of wastewater generated at the Property, Borrower may apply funds in the Replacement Reserve Account as set forth in Paragraph 17.c. hereof to implement the scope of work necessary to achieve the "Compliant System".

Upon completion of the "Compliant System" to the satisfaction of both DEP and Lender, Borrower shall no longer be required to commit Annual Net Operating Cash Flow After Debt Service to the Replacement Reserve Account.

- j. Member Patronage Dividends and Lot Rent Holidays – Borrower further agrees that during each fiscal year until such time as a final agreement is reached between Borrower and DEP on the scope of a "Compliant System" for the treatment of wastewater generated at the Property and Lender has approved such scope and the related costs and financing plan, Borrower shall not approve lot rent holidays or distribution of patronage dividends to Borrower's Members.
- k. Maintenance of Rent Gap Reserve – Until such time as non-member lot rents are equal to or greater than member rents (currently estimated to occur in Year 5, based on the calculation in Exhibit A), Borrower shall maintain adequate Rent Gap Reserve funds such that any operating shortfall is covered in order to maintain a [REDACTED] to [REDACTED] as described in 19.a. As Borrower uses these funds such that the balance in the account drops below the amount projected to be needed, Borrower shall replenish the account to this minimum balance before the end of Borrower's next fiscal year.

OTHER REQUIREMENTS

20. Other Fees: All legal and other fees incurred by the Lender in connection with the closing of this Loans will be the responsibility of the Borrower. After Closing of the Loans, any costs related to collection of delinquent loan payments and any costs related to successor replacement financing will be the responsibility of the Borrower.

21. Financial Reports and Minutes: The Borrower shall furnish the Lender, or its designated agent, with the following on a monthly basis:

Copies of Minutes for all Board and Membership Meetings
Treasurer's Reports
Monthly Operating Budget Variance Reports

At least 30 days prior to the beginning of Borrower's fiscal year, Borrower shall furnish to Lender for Lender's approval a proposed Annual Operating Budget. Such Annual Operating Budget shall be prepared on the standard ROC USA Network Budget Template (attached hereto as EXHIBIT D). At least 30 days

prior to the beginning of Borrower's fiscal year, Borrower shall furnish to Lender for Lender's approval an updated Capital Improvement Plan.

22. Secretary of State's Annual Report: The Borrower shall prepare and submit to the Secretary of State its annual report as may be required by Massachusetts law.

23. Expiration: Borrower is to execute and return this commitment letter within 10 business days of the date hereof or the commitment to lend upon the terms and conditions contained herein shall expire. In the event that the Loan is not closed on or before September 15, 2016, Lender's obligation to make this Loan shall terminate. If Lender discovers additional relevant facts, it reserves the right to require further security and assurance from the Borrower.

24. Entire Agreement: This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede, substitute for and satisfy all prior offers, negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties. This agreement shall be interpreted under the laws of the Commonwealth of Massachusetts. Any litigation under this agreement shall be resolved in the trial courts of Massachusetts.

BY: Michael Sloss
Michael Sloss, Managing Director – Resident Ownership Capital, LLC

ACCEPTED THIS 29th day of August, 2016 by:
Michael J. Scarlett *president*
Michael J. Scarlett – President, Colonial Estates Homeowners Association, Inc.
Duly Authorized

Anne Murphy *Treasurer*
Anne Murphy - Treasurer, Colonial Estates Homeowners Association, Inc.
Duly Authorized