

## **COMPLIANCE AGREEMENT FOR LEAD-BASED PAINT OPERATIONS AND MAINTENANCE PLAN**

This **COMPLIANCE AGREEMENT FOR LEAD-BASED PAINT OPERATIONS AND MAINTENANCE PLAN** (this “**Agreement**”) dated as of September 27, 2019, is executed by and between Peach Basket, LLC, an Iowa limited liability company (“**Borrower**”), and Arbor Commercial Funding I, LLC, a New York limited liability company (“**Lender**”).

### **RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower in the original principal amount of \$1,447,000.00 (the “**Mortgage Loan**”), as evidenced by, among other things, that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”). The proceeds of the Mortgage Loan will be used for the financing of the Multifamily Project located at the Multifamily Project Address (the “**Mortgaged Property**”).

B. In addition to the Loan Agreement, the Mortgage Loan, and the Note are also secured by, among other things, a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”).

C. Lender requires as a condition to the making of the Mortgage Loan that Borrower develop, implement and carry out an operations and maintenance plan for the containment or removal of paint containing more than one-half percent (0.5%) lead by dry weight (“**Lead-Based Paint**”) on the Mortgaged Property (“**O&M Plan**”). The O&M Plan is attached as Exhibit A.

### **AGREEMENTS:**

NOW THEREFORE, in consideration of the mutual covenants in this Agreement and for other valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower and Lender agree as follows:

**1. Recitals.**

The recitals set forth above are incorporated herein by reference.

**2. Defined Terms.**

Capitalized terms used and not specifically defined herein shall have the meanings given to such terms in the Loan Agreement. In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Rules and Regulations**” means rules, regulations, laws or ordinances governing the use or condition of Lead-Based Paint in, on or around the Mortgaged Property.

**3. Borrower’s Responsibility to Know All Rules and Regulations; No Duty of Lender.**

Borrower acknowledges that the Mortgaged Property is currently, or may be in the future, subject to Rules and Regulations. Borrower acknowledges its responsibility to be aware of, and fully versed in, all Rules and Regulations in effect during the term of the Security Instrument. Borrower further acknowledges and agrees that Lender has no duty to provide Borrower with any information regarding the Rules and Regulations or any interpretation thereof.

**4. Borrower’s Responsibility to Maintain the Mortgaged Property in Compliance.**

Borrower agrees to maintain the Mortgaged Property in strict compliance with both the O&M Plan and all Rules and Regulations. Compliance includes the proper preparation and maintenance of all records, papers and forms required by the O&M Plan or the Rules and Regulations, especially those necessary to demonstrate or document compliance therewith.

**5. Violation of this Agreement is Default under Loan Documents.**

If Borrower is in default under this Agreement and such default remains uncured after any applicable cure period provided for in the Loan Agreement, then it shall be an Event of Default. Any amount disbursed or expended by Lender pursuant to or in connection with this Agreement or the Lead-Based Paint, with interest thereon, shall become additional Indebtedness of Borrower secured by the Security Instrument and the Loan Agreement.

**6. Borrower’s Other Obligations Not Impaired.**

Nothing contained in this Agreement shall alter, impair or affect the obligations of Borrower, or relieve Borrower of any of its obligations, to make payments and to perform all of its other obligations required under the Loan Documents.

**7. Successors and Assigns Bound.**

This Agreement shall be binding upon Borrower and Lender and their respective successors and assigns, and shall inure to the benefit of and may be enforced by Lender and its successors, transferees and assigns. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Lender.

**8. Amendment and Waiver.**

No amendment to this Agreement will be valid unless it is made in writing and executed by the parties to this Agreement. No specific waiver or forbearance for any breach of any of the terms of this Agreement shall be considered as a general waiver of that or any other term of this Agreement.

**9. No Agency or Partnership.**

Nothing contained in this Agreement shall constitute Lender as a joint venturer or partner with or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

**10. Environmental Obligations.**

Borrower's obligations under this Agreement are in addition to Borrower's obligations, indemnifications and liabilities for environmental matters under the Security Instrument, the Loan Agreement and the Environmental Indemnity Agreement.

**11. Severability.**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect. This Agreement contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Agreement. This Agreement may not be amended or modified except by written agreement signed by the parties hereto.

**12. Governing Law; Consent to Jurisdiction and Venue.**

Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

**13. Notice.**

Section 15.02 (Notice) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

**14. Construction.**

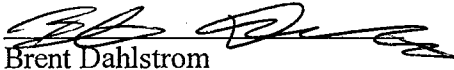
Section 15.08 (Construction) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

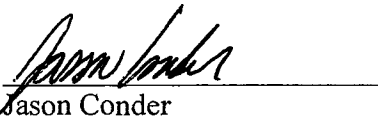
**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Borrower and Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by their respective duly authorized representative. Where applicable law so provides, Borrower and Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**


Peach Basket, LLC,  
an Iowa limited liability company

By:   
Brent Dahlstrom  
Its: Manager

By:   
Jason Conder  
Its: Manager

**LENDER:**

Arbor Commercial Funding I, LLC,  
a New York limited liability company

By:  \_\_\_\_\_  
Name: Adam Dratch  
Its: Vice President, Closing

## **EXHIBIT A**

### **LEAD BASED PAINT O&M PLAN**

#### **I. OVERVIEW OF THE PLAN**

Peach Basket, LLC, an Iowa limited liability company (hereinafter referred to as “**Owner**”) has chosen to undertake an Operations and Maintenance (O&M) Plan for lead-based paint.

The primary goal of Owner’s O&M Plan is reducing lead hazards in the Mortgaged Property, thus reducing the potential for lead exposure by Owner’s employees and building occupants.

Owner agrees and it is the policy of Owner that no employee of Owner will disturb any painted surface in the building which may cause the painted surface to release dust, chips or any other material. Only proven lead-based paint experienced contractors will be permitted to disturb any such surfaces.

#### **II. LEAD SAFETY OFFICER**

Owner agrees that Owner will name a Lead Safety Officer who will be responsible for implementing the O&M Plan. The Lead Safety Officer’s responsibilities include maintaining accurate and concise records on the Mortgaged Property for all lead-based paint related activities and ensuring that outside contractors utilize proper work procedures when disturbing lead-based paint. All outside contractors conducting lead paint related activities will report directly to the Lead Safety Officer. Owner hereby names Brent Dahlstrom as the Lead Safety Officer.

#### **III. DEFINITION OF LEAD-BASED PAINT**

Lead paint is defined in accordance with the OSHA Lead in Construction Standard (29 CFR 1926.62). Such standard does not assign a specific definition of “lead-based paint,” but states that “LEAD means metallic lead, all inorganic lead compounds and organic lead soaps.” In other words, lead paint is defined as any paint containing any level of lead.

Owner believes that paint containing less than the defined amount for lead paint may be hazardous if improperly handled during the course of normal renovation and remodeling activities. In order to ensure the safety of the work force and occupants of the building, all activities which disturb paint will be subject to this O&M Plan.

In accordance with OSHA and current practice, any paint in any improvement located on the Mortgaged Property will be considered lead-containing until proven otherwise.

#### **IV. INSPECTIONS**

Owner will utilize a standardized Inspection Form to determine which surfaces are peeling or chipped. Inspections of all common areas and units in the improvements will take place on an annual basis and will be spread out through each calendar year.

#### **V. RECORD KEEPING**

Owner will maintain the Inspection Forms at its principal office.

#### **VI. HEALTH EFFECTS OF LEAD**

Owner acknowledges that lead is hazardous to humans and that there is no known “safe” level of lead exposure. Lead enters the body in two (2) ways: (a) inhalation (breathing) and (b) ingestion (eating).

When absorbed into your body in certain doses, lead is a toxic substance. The object of the lead standard is to prevent absorption of harmful quantities of lead. The standard is intended to protect you not only from the immediate toxic effects of lead, but also from the serious toxic effects that may not become apparent until years of exposure have passed.

When lead is scattered in the air as a dust, inhalation of airborne lead is generally the most adverse source of occupational lead absorption.

You can absorb lead through your digestive system if lead gets into your mouth and is swallowed. If you handle food, cigarettes, chewing tobacco or make-up which have lead on them, or handle them with hands contaminated, this will contribute to ingestion.

A significant portion of the lead that you inhale or ingest gets into your bloodstream. Once in your bloodstream, lead is circulated throughout your body and stored in various organs or body tissues. As exposure to lead continues, the amount stored in your body increases if you are absorbing more lead than your body is excreting. Even though you may not be aware of the immediate symptoms of the disease, this lead stored in your tissues can be slowly causing irreversible damage, first to individual cells, then to your organs and whole body system.

Over exposure to lead happens in two (2) ways:

Short term (acute) over exposure to lead: Lead is a potent, systemic poison that serves no useful function once absorbed by your body. Taken in large doses, lead can kill you in a matter of days. A condition affecting the brain called “acute encephalopathy” may arise which develops quickly to seizures, coma and death from cardiorespiratory arrest. A short term dose of lead can lead to acute encephalopathy.

Long term (chronic) over exposure to lead: Chronic overexposure to lead may result in severe damage to your blood forming, nervous, urinary and reproductive systems. Some

common symptoms of chronic overexposure include loss of appetite, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pain or soreness, fine tremors, numbness, dizziness, hyperactivity and colds.

Because of the potential dangers in handling lead-based paint and the possibility of overexposure, has agreed that no employee will be allowed to disturb painted surfaces in the improvements located on the Mortgaged Property in any way.

## **VII. COMPETENCY OF OUTSIDE CONTRACTORS**

It is the policy of Owner that all outside contractors who will perform paint-disturbing activities receive the best training available in their discipline. To that end, Owner requires that all outside contractor's employees attend training courses at training facilities with documented experience in environmental training. Where required, these training providers must be federal, state or city approved to provide training.

For all lead-abatement courses, the topics will include, but not be limited to:

- a. History and Identification of Lead-Based Paint
- b. Health Effects of Lead Exposure in Adults and Children
- c. Dangers of contamination for Family Members
- d. Respiratory Protection and Personal Protective Equipment
- e. Medical Surveillance and Respiratory Protection Programs
- f. Establishing and Maintaining Decontamination systems
- g. Proper Engineering Controls to be Used in Abatement
- h. Abatement Methodologies
- i. Clean-Up and disposal
- j. Overview of Air Sampling Requirements
- k. Explanation of Regulations, including:
  - OSHA 29 CFR 1926.62
  - OSHA 29 CFR 1910.134
  - OSHA 29 CFR 1910.1200
  - HUD Guidelines
  - Title X
  - Local State, County or City laws or ordinances relating to lead-based paint.
- l. Safety Hazards Other Than Lead

All training course fees will be paid for by the outside contractor, except where employees have already received training. Any licensing/certification fees will be paid for by the outside contractor for his/her employees, except where an employee already possesses a valid license/certification.



Owner demonstrates Owner's commitment to training by requiring that the outside contractor provide valid proof of training or certification in the following areas:

Lead-based paint workers/supervisors will possess documentation of training in the practices and procedures of lead-based paint abatement, including without limitation valid certification as may be required by federal, state or local enforcement officials. In the event no training or certification is required by federal, state or local enforcement officials for the jurisdiction where the Mortgaged Property is located, all workers from an outside contractor will attend training programs at a training provider experienced and recognized in the environmental training field.

Once a certification program is established, Owner will ensure that all lead paint workers and supervisors are duly certified by all applicable government agencies.

A copy of all workers' and supervisors' proof of lead-based paint training shall be maintained in this program.

#### **VIII. DUTIES OF THE OUTSIDE CONTRACTOR'S COMPETENT PERSON**

- a. Competent persons will maintain on their person identification of any and all training credentials and/or certifications and ensure that all employees have any and all training credentials and/or certifications prior to entering a regulated area or conducting any abatement activity.
- b. Competent persons will determine if lead is present therein prior to the start of any project undertaken at the improvements located on the Mortgaged Property.
- c. Competent persons will be responsible for establishing containment barriers and ensure the integrity of all enclosures and regulated areas.
- d. Competent persons will ensure that all WARNING signs are posted appropriately and all building occupant notifications are displayed in conspicuous locations.
- e. Competent persons will ensure that all employees who conduct lead-related activities have documentation of the following records either on-site or in the contractor's office:
  1. Medical surveillance record.
  2. Respirator fit-test record.
  3. Signed document that they will follow the proper decontamination procedures and personal hygiene practices.

4. Signed document that employees will observe the no smoking, eating, drinking or cosmetic application prohibitions.
5. Signed document that employees are required to maintain protective clothing in proper condition and repair, along with proper disposal and/or laundering procedures.
- f. Competent persons will ensure that proper amounts of filter cartridges, protective clothing, hygiene supplies and separate storage facilities for protective clothing are available.
- g. Competent persons will ensure that respirators (when required) are properly cleaned, disinfected and stored in an adequate locker facility in a clean area. Adequate storage facilities for respirators must be maintained between jobs at the permanent facility.
- h. Competent persons will ensure that properly labeled containers are available for disposal of contaminated clothing.
- i. Competent persons will ensure that employees remove gross debris from work clothing utilizing a HEPA vacuum.
- j. Competent persons will ensure that initial air monitoring is conducted to determine employee exposure and proper respirator selection.
- k. Competent persons will be responsible for arranging or conducting employee exposure monitoring to determine the exposure of employees over an eight (8) hour TWA and/or thirty (30) minute TWA. Monitoring will be conducted representing full-shift exposure for employees in each work area and shall be representative of work performed by the employees.
- l. Competent persons will arrange for primary and secondary pump calibrations and ensure that air sampling pumps are performing properly for adequate air volumes in sampling.
- m. Competent persons will ensure proper record keeping of sampling results and employee notification of results.
- n. Competent persons shall establish proper engineering controls in accordance with the site-specific program.
- o. When performing lead abatement, the competent person shall inform employees of blood-lead levels which exceed standards set by OSHA and shall take appropriate action to reduce employee exposures or inform the employee of his/her rights under the standard.

**TO BE COMPLETED BY OWNER**

**DESCRIPTION OF BUILDING**

1. Street Address 1008, 1014 and 1024 Leavitt Street
2. City/State Waterloo, IA 50702
3. Number of Units 36
4. Number of Stories 3
5. Elevator  Yes  No
6. Window A/C units:  Yes  No
7. Windows:  New  Old  Mixed  
If mixed, describe All vinyl windows - 5-10 years old
8. Business in Building residential rental property
9. Describe Outside of Building:
  - a. Painted?  Yes  No  
If yes, describe \_\_\_\_\_
  - b. If unpainted, describe vinyl siding
10. Describe Condition of Fire Escapes, if any:
  - a.  None
  - b. Damaged?  Yes  No  
If yes, describe \_\_\_\_\_
11. Entrance to Building
  - a. Vestibule?  Yes  No  
Type of Floor vinyl plank  
Painted Surfaces walls and ceilings

Condition of Painted Surfaces Good, updated 2018

b. Lobby Floor Type n/a

c. Painted Surfaces in Lobby n/a

d. Old Window(s) in Lobby?  Yes  No

Condition n/a

12. Describe any damage in the common areas or units of the Building. Note the floor number and location and size of damaged area:

None

\_\_\_\_\_

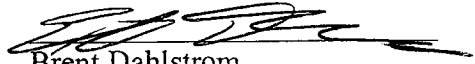
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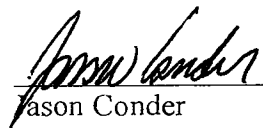
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Owner hereby accepts the foregoing Lead Based Paint O&M Plan as of \_\_\_\_\_ and has signed and delivered this acceptance under seal (where applicable) or has caused this acceptance to be signed and delivered under seal (where applicable) by its duly authorized representative. Where applicable law so provides, Owner intends that this acceptance shall be deemed to be signed and delivered as a sealed instrument.

**OWNER:**

Peach Basket, LLC,  
an Iowa limited liability company

By:   
Brent Dahlstrom  
Its: Manager

By:   
Jason Conder  
Its: Manager