



# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 27 Ordinance/Resolution# 17-067

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of October 3, 2016  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION FOR THE APPROVAL OF AMENDMENTS TO THE LA CLINICA DE FAMILIA LEDA CONTRACT AND FOR APPROVAL OF A SUBORDINATION AND INTER-CREDITOR AGREEMENT BETWEEN CITY OF LAS CRUCES AND OTHER LIEN-HOLDERS OF LA CLINICA DE FAMILIA.

**PURPOSE(S) OF ACTION:**

Approve contract amendment and new agreement.

<b>COUNCIL DISTRICT: ALL</b>		
<b><u>Drafter/Staff Contact:</u></b> Robert Cates	<b><u>Department/Section:</u></b> Legal/City Attorney	<b><u>Phone:</u></b> 575-541-2010
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The City entered into a Local Economic Development Act (LEDA) Project Participation Agreement (PPA) with La Clinica de Familia (LCDF) on February 4, 2014 which involved granting LCDF the old City Annex building for rehabilitation into a new medical clinic. By that agreement, the City held a lien against the building and a separate Letter of Credit for \$979,000 to support the City's position in the event of default. By the terms of original PPA, the City agreed to take a junior position on the lien to future construction financing. In the Debt Subordination Agreement entered into on April 18, 2016, the City agreed to subordinate its position to new construction financing from Citizen's Bank up to a limit of a \$5 million line of credit. LCDF seeks to refinance its debt with Citizen's Bank and obtain new funding from "Finance New Mexico Investor Series XVI, LLC" ("Finance New Mexico") that will raise sufficient funds to complete construction. It will require the debt ceiling to be raised to \$7 million and that the City take a junior position behind Citizen's Bank and Finance New Mexico on the building liens. The City will retain its lien on this Letter of Credit for \$979,000 in addition to but apart from its lien on the building. Finance New Mexico requires the consent of the City Council for new financing to proceed.

The February 4, 2014 PPA contained a schedule to be implemented by LCDF for the creation of new jobs as a result of obtaining LEDA financing from the City. Construction delays require the

(Continue on additional sheets as required)



**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will extend the deadlines for job creation by LCDF under the current LEDA PPA and will permit LCDF to obtain new financing to complete rehabilitation of the old City Annex building.
2. Vote "No"; this will cause LCDF to be in default of the 2014 LEDA PPA and could result in the loss of financing to complete the project.
3. Vote to "Amend"; this could result in a need to renegotiate the terms of financing and the PPA with LCDF.
4. Vote to "Table"; this could result in the loss of Finance New Mexico as a source of new financing to the LCDF Project at the old City Annex.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Ordinance No. 2122.
2. Ordinance No. 2704.



# City of Las Cruces®

PEOPLE HELPING PEOPLE

## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of October 3, 2016  
 (Adoption Date)

TITLE:

**A RESOLUTION FOR THE APPROVAL OF AMENDMENTS TO THE LA CLINICA DE FAMILIA LEDA CONTRACT AND FOR APPROVAL OF A SUBORDINATION AND INTER-CREDITOR AGREEMENT BETWEEN CITY OF LAS CRUCES AND OTHER LIEN-HOLDERS OF LA CLINICA DE FAMILIA**

Purchasing Manager's Request to Contract (PMRC) {Required?}    Yes     No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Robert Gates</i>	541-2128	9/22/16
Department Director	<i>[Signature]</i>	541-2128	22 Sept 2016
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	541-2100	9/23/16
	<i>[Signature]</i>	541-2107	9/23/16
Assistant City Manager/COO	<i>[Signature]</i>	541-2271	9/29/16
City Attorney	<i>[Signature]</i>	541-2128	22 Sept 2016
City Clerk	<i>[Signature]</i>	541-2115	9-27-16

**RESOLUTION NO. 17-067****A RESOLUTION FOR THE APPROVAL OF AMENDMENTS TO THE LA CLINICA DE FAMILIA LEDA CONTRACT AND FOR APPROVAL OF A SUBORDINATION AND INTER-CREDITOR AGREEMENT BETWEEN CITY OF LAS CRUCES AND OTHER LIEN-HOLDERS OF LA CLINICA DE FAMILIA.**

The City Council is informed that:

**WHEREAS**, the City of Las Cruces (City) has previously entered into a Local Economic Development Act Project Participation Agreement with La Clinica de Familia for the development of the old City Annex building into a medical center; and

**WHEREAS**, the City has contracted with La Clinica de Familia that it would take a subordinate position for its lien on the old City Annex in favor of construction financing; and

**WHEREAS**, La Clinica de Familia has obtained financing to complete the rehabilitation and remodeling of the old City Annex and further requires the City to take a position for the City's own lien junior to that of both Citizen's Bank and Finance New Mexico Investor Series XVI, LLC; and

**WHEREAS**, La Clinica de Familia requires the restructuring of its construction financing to facilitate the completion of their new medical center by November 15, 2016; and

**WHEREAS**, with the completion of their new medical center, La Clinica de Familia can begin in earnest to create the 55 new jobs contemplated by the LEDA Project Participation Agreement and will do so on a revised schedule incorporated into an amended Project Participation Agreement.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the amended Project Participation Agreement attached hereto as Exhibit "A", and made a part of this Resolution, is hereby approved. Further, that the City acknowledges receipt of that certain Letter of Credit obtained by La Clinica de Familia in the amount of \$979,000 in support of the promises made by the terms of the amended Project Participation Agreement.

(II)

THAT the Subordination and Inter-Creditor Agreement attached hereto as Exhibit "B", and made a part of this Resolution, is hereby approved.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

VOTE:  
Mayor Miyagishima: \_\_\_\_\_  
Councillor Gandara: \_\_\_\_\_  
Councillor Smith: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Eakman: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Levatino: \_\_\_\_\_

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

AMENDMENT TO  
ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT  
LA CLINICA DE FAMILIA LAS CRUCES CENTRAL  
COMMUNITY HEALTH CENTER

THIS AMENDMENT to the Economic Development Project Participation Agreement La Clinica de Familia Las Cruces Central Community Health Center is made and entered into the \_\_\_ day of October, 2016 by and between La Clinica de Familia, LLC, A New Mexico limited liability company, whose address is 385 Calle de Alegria, Bldg. A, Las Cruces, New Mexico 88005 and The City of Las Cruces, a New Mexico municipal corporation, whose address is P.O. Box 20000, Las Cruces, New Mexico 88004-9002.

WHEREAS, La Clinica de Familia, LLC (“LCDF”) provides health and dental services in Las Cruces and Dona Ana County, New Mexico and is a Qualifying Entity under the Local Economic Development Act (Chapter 5, Article 10, NMSA 1978, as amended) and the Las Cruces Local Economic Development Plan 2004; and

WHEREAS, LCDF anticipates a significant increase in the demand for its services as a consequence of federal regulations and programs such as Medicaid under the Affordable Care Act, which will require LCDF to obtain additional space and hire many additional health care and support workers; and

WHEREAS, the former hospital facility and former municipal office annex located at the intersection of W. Lohman Ave. and S. Alameda Blvd. (575 S. Alameda Blvd.; the “Old City Annex”), presently owned by the City of Las Cruces (the “City”), is well located to serve as a health clinic for LCDF’s purposes but will require extensive rehabilitation and remodeling to meet LCDF’s needs; and

WHEREAS, in the rehabilitation and reuse of the Old City Annex by LCDF, in addition to providing health care benefits to the community, will also provide significant economic benefits to the City of Las Cruces as hereinafter set forth; and

WHEREAS, the City has conveyed the Old City Annex to LCDF as the City’s contribution to LCDF’s economic development project for the Old City Annex, in accordance with the City’s Local Economic Development Plan 2004 as adopted by City Ordinance No. 2122 on July 19, 2004, and is subsequently amended, and pursuant to the terms of the Project Participation Agreement; and

WHEREAS, from the inception of the agreement the measurable goals were delayed, conveyance of property to LCDF was supposed to be transferred by January 31, 2014, however, this was not completed until September 11, 2014 due to delay in securing a letter of credit, and a series of external factors and unexpected events; and

WHEREAS, LCDF has maintained open communication with the City and informed the City Manager of all progress and delays related to the project; and

WHEREAS, construction on the project is going very well, construction financing has been made available and the project has made substantial progress from the time the deed as transferred; and

WHEREAS, environmental remediation has been completed and construction is it progress.

NOW, THEREFORE, the parties hereto agree to amend Paragraphs 6 and 7. Paragraph 6 Timeline and Measurable Goals is amended as follows:

“6. Timeline and Measurable Goals: The Project include Phase I of the building reconstruction, renovation and remodeling, and the employment of the medical professionals and support personnel to staff the new clinic during its first two years of operation. LCDF commits to meeting the measurable goals shown in the following table within the time frames indicated, and failure to meet any of these goals, unless due to force majeure or conditions beyond the control of LCDF, may be deemed a default of LCDF’s obligations under this Agreement, and the City shall be entitled to recover proportional compensation for a portion of its contribution to the Project as provided in Section 7 Economic Development Project Participation Agreement La Clinica de Familia Las Cruces Central Community Health Center enter into the 4<sup>th</sup> day of February, 2014. In the event any date set forth in the following table falls on a Saturday, Sunday or legal holiday, the action will be deemed timely if completed by close business on the next day thereafter that is not a Saturday, Sunday or legal holiday.”

Event	Contingency	Deadline
Conveyance of Property to LCDF		September 11, 2014
Asbestos Abatement Complete		
Construction Drawings Complete		
Approvals Obtained		
First Measurable Goal: Construction Complete	796 days after conveyance	Not later than November 15, 2016
		Date Assuming Construction Complete Nov. 15, 2016
Second Measurable Goal: 15 Additional New Positions Filled	30 days after construction complete	December 15, 2016
Third Measurable Goal: 15 Additional New Positions Filled	77 days after construction complete	January 31, 2017
Fourth Measurable Goal: 15 Additional New Positions Filled	105 days after construction complete	February 28, 2017
Fifth Measurable Goal: 10 Additional New Positions Filled	136 days after construction complete	March 31, 2017

Parties agree to amend Paragraph 7 Security to Ensure Performance by LCDF as follows:

“7. Security to Ensure Performance by LCDF: To protect the City’s contribution and ensure performance of LCDF’s obligations under this Agreement, at the time the City transfers the Project property to LCDF, LCDF will simultaneously provide the City a standby letter of credit from a commercial bank in the amount of \$979,000, in a form satisfactory to the City, and shall also grant the City a lien, but not necessarily a first lien, on the Project property, which lien shall also be in the amount of \$979,000. The standby letter of credit will be held in escrow, and the City may exercise its right to recover under the said letter of credit in the event that the City becomes entitled to recover a portion of the City’s contribution to the Project by failure of LCDF to meet measurable Project goals as described in this Agreement, until fully released as described below.

The standby letter of credit and lien shall be released incrementally by the city upon LCDF’s partial completion of its obligations under this Agreement, in accordance with the milestones set out in the following table:

<b>Milestone</b>	<b>City Release</b>
First Measurable Goal (Phase I Construction Complete)	30% of lien and letter of credit
Second Measurable Goal (15 New Positions Filled)	Additional 15% of lien and letter of credit (total 45%)
Third Measurable Goal (15 New Positions Filled)	Additional 20% of lien and letter of credit (total 65%)
Fourth Measurable Goal (15 New Positions Filled)	Additional 20% of lien and letter of credit (total 85%)
Fifth Measurable Goal (10 New Positions Filled)	Remainder of lien and letter of credit (100% release)

The parties recognize and agree that LCDF will secure a construction loan for the rehabilitation, reconstruction and remodeling of the Project, and that such loan shall have a lien on the Project property that may be prior and senior to the lien of the City thereon. The parties acknowledge that the original PPA contemplated the City would take a junior position behind construction financing for the Project. As LCDF restructures its initial construction financing, the City has agreed to take a junior position behind construction funding sources Citizen’s Bank and Finance New Mexico Investor Series XVI, LLC.

In the event of a material failure by LCDF to meet its commitments under this Agreement within two (2) years after the Phase I rehabilitation and reconstruction is completed, the City may recover from LCDF that portion of the City’s \$800,000 contribution that is proportional to the failure of LCDF to complete its obligations under this Agreement, taking into account the amounts actually expended and the new employees actually hired by LCDF. For purposes of this Agreement, the parties agree and stipulate that thirty percent (30%) of LCDF’s commitment shall consist of the completion of the Phase I rehabilitation and remodeling of the property, and seventy percent (70%) if LCDF’s commitment shall consist of timely employing the newly hired employees as described in the foregoing enumeration of Measurable Goals. However, the City’s

proportional recovery of its contribution, if any, shall be determined based on the extent of completion of all Measurable Goals as of the date that is two (2) years after completion of the Phase I construction.”

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, the \_\_\_\_ day of October, 2016.

CITY OF LAS CRUCES

By: \_\_\_\_\_  
David Dollahon, Interim City Manager

ATTEST:

\_\_\_\_\_  
Linda Lewis, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William R. Babington  
City Attorney

LA CLINICA DE FAMILIA

By: \_\_\_\_\_  
Suzan Martinez de Gonzales  
Chief Executive Officer

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO )

) ss.

COUNTY OF DONA ANA )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of October, 2016, by Suzan Martinez de Gonzales, Chief Executive Officer of La Clinica de Familia, a New Mexico not-for-profit corporation, on behalf of the said Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## SUBORDINATION AND INTERCREDITOR AGREEMENT

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (this "**Agreement**"), is entered into as of October [\_\_\_], 2016 (the "**Effective Date**"), by and among Citizens Bank of Las Cruces, a New Mexico banking corporation (the "**Senior Lender**"), Finance New Mexico-Investor Series XVI, LLC, a New Mexico limited liability company ("**CDE Lender**"), the City of Las Cruces, New Mexico, a New Mexico municipal corporation (the "**City**"), La Clinica de Familia Title Holding Corporation, a New Mexico nonprofit corporation (the "**Borrower**"), and La Clinica de Familia, Incorporated, a New Mexico nonprofit corporation ("**Guarantor**"). The Senior Lender and CDE Lender are referred to in this Agreement individually as a "**Lender**" or collectively as the "**Lenders**".

### RECITALS

A. Pursuant to an Economic Development Project Participation Agreement La Clinica De Familia Las Cruces Central Community Health Center (the "**PPA**") dated February 4, 2014, between the City and La Clinica de Familia, LLC, a New Mexico limited liability company ("**La Clinica LLC**"), the City conveyed to Guarantor, at no direct cost to Guarantor, that certain real estate located at 575 South Alameda Boulevard, Las Cruces, New Mexico, 88005, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "**Property**").

B. The obligations of La Clinica LLC under the PPA up to the principal amount of \$979,000 are secured by, among other things, (i) a Mortgage/Security Agreement encumbering the Property made by La Clinica de Familia LLC for the benefit of the City, recorded in the real property records of Doña Ana County, New Mexico (the "**Recording Office**") on October 8, 2014, as Instrument Number 1420767, (ii) a Lien encumbering the Property filed by the City in the Recording Office on April 14, 2015, as Instrument Number 1507530 (collectively, the Mortgage/Security Agreement and Lien described in this recital are referred to as the "**PPA Mortgage**"), and (iii) an Irrevocable Letter of Credit dated August 26, 2016, in the amount of \$979,000 (the "**Letter of Credit**").

C. Guarantor has previously undertaken to develop and improve said Property, including the design, development, rehabilitation and construction of certain improvements and facilities on said Property (the "**Improvements**" and, together with the Property, the "**Facility**"), for use and operation as a community healthcare facility (the development of the Property, including the development, rehabilitation and construction of certain Improvements on the Property by Guarantor or Borrower, is collectively referred to herein as, the "**Project**").

D. To partially finance the cost of the Improvements, Senior Lender made a loan to Guarantor in the original principal amount of \$5,000,000.00 (the "**Existing Loan**") which is evidenced by a Promissory Note in the original principal amount of \$5,000,000.00 dated February 26, 2016, and executed by Guarantor in favor of Senior Lender (the "**Existing Note**") and which Existing Loan (together with future advances up to an additional \$5,000,000.00) is secured by,

among other things, that certain Deed of Trust encumbering the Property dated February 26, 2016, and recorded in the Recording Office on February 29, 2016, as Instrument Number 1604265, made by Guarantor, as grantor, for the benefit of Senior Lender, as beneficiary, encumbering the Project (the “**Existing Deed of Trust**”). In connection with the Existing Loan, Senior Lender and Guarantor entered into a Business Loan Agreement dated February 26, 2016 (the “**Existing Loan Agreement**” and, together with the Existing Note, the Existing Deed of Trust and all other documents, assignments, agreements and certificates evidencing or securing the Existing Loan, the “**Existing Loan Documents**”).

E. In connection with the Existing Loan, the City agreed to subordinate the PPA Mortgage to the Existing Deed of Trust pursuant to (i) that certain Subordination Agreement executed by the City on March 2, 2016, and filed in the Recording Office on March 31, 2016, as Instrument Number 1606771, and (ii) that certain Debt Subordination Agreement dated April 18, 2016, and filed in the Recording Office on April 21, 2016, as Instrument Number 1608559 (collectively, the “**Existing Subordination Agreements**”). The Existing Subordination Agreements limit the City’s subordination to the amount of the Existing Loan.

F. On or about the date hereof, but prior to the making of the Senior Loan by Senior Lender, Guarantor conveyed the Property and Improvements (to the extent completed) to Borrower and Borrower assumed all of Guarantor’s obligations under the Existing Loan and Existing Loan Documents pursuant to an Assumption, Substitution and Modification Agreement among Senior Lender, Borrower and Guarantor dated as of the date hereof (the “**Assumption Agreement**”).

G. Borrower will complete the construction of the Improvements and lease the Facility to Guarantor.

H. On the Effective Date, the Senior Lender and Borrower entered into that certain Loan Agreement (the “**Senior Loan Agreement**”), pursuant to which the Senior Lender made a loan to Borrower in the principal amount of \$900,000 (the “**Senior Loan**”).

I. On the Effective Date, Borrower executed and delivered a Promissory Note to evidence the Senior Loan in the original principal amount of \$900,000 (the “**Senior Loan Note**”), delivered pursuant to the Senior Loan Agreement.

J. On the Effective Date, CDE Lender entered into that certain Amended and Restated Loan Agreement with Borrower (the “**CDE Loan Agreement**”), pursuant to which CDE Lender made loans to Borrower in the aggregate original principal amount of \$6,062,500.00, subject to the conditions set forth therein (the “**CDE Loan**”).

K. On the Effective Date, Borrower executed and delivered the following promissory notes (collectively, the “**CDE Loan Notes**”), each delivered pursuant to the CDE Loan Agreement: (i) that certain Amended Promissory (Loan A Note) given by Borrower in favor of CDE Lender in the amount of \$4,261,250; and (ii) that certain Amended Promissory Note (Loan B Note) given by Borrower in favor of CDE Lender in the amount of \$1,801,250.

L. A portion of the CDE Loan will be used by CDE Lender to purchase from Senior Lender the Existing Loan, which assignment and transfer is evidenced in part by that certain Assignment of Loan, Promissory Note, Deed of Trust and Other Loan Documents dated as of the date hereof between Senior Lender and CDE Lender.

M. The Senior Loan is secured by the following documents, all dated as of the Effective Date:

1. a Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing made by Borrower for the benefit of Senior Lender encumbering the Property (the "**Senior Loan Deed of Trust**");
2. an Assignment of Plans made by Borrower for the benefit of Senior Lender;
3. an Assignment of Construction Agreements made by Borrower for the benefit of Senior Lender;
4. a Bank Account Pledge Agreement by and between Borrower and Senior Lender;
5. a Blocked Account Control Agreement by and between Senior Lender, in its capacity as lender and depositary bank, and Borrower;

and the documents described in items 1–5 above together with any corresponding UCC-1 financing statements, any guarantees, and any other collateral documents, referred to collectively in this Agreement as the "**Senior Loan Collateral Documents**".

N. The CDE Loan is secured by the following documents, all dated as of the Effective Date:

1. the Existing Deed of Trust as amended and restated by the Amended and Restated Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing made by Borrower for the benefit of CDE Lender (the "**A&R Deed of Trust**");
2. an Assignment of Architectural Agreements and Plans and Specifications made by Borrower for the benefit of CDE Lender;
3. an Assignment of Construction Agreements and Permits made by Borrower for the benefit of CDE Lender;
4. a Bank Account Pledge Agreement (Construction Disbursement Account) by and between Borrower and CDE Lender;
5. a Blocked Account Control Agreement (Construction Disbursement Account) by and among Senior Lender, in its capacity as depositary bank, Borrower and CDE Lender;

and the documents described in items 1–5 together with any corresponding UCC-1 financing statements, any guarantees, any collateral assignment of contracts and any other collateral documents, referred to collectively in this Agreement as the “**CDE Loan Collateral Documents**”;

O. The City, Senior Lender, CDE Lender, Borrower and Guarantor desire to enter into this Agreement for the purposes of (i) replacing the Existing Subordination Agreements with this Agreement, (ii) establishing the priorities of the PPA Mortgage, the A& R Deed of Trust and the Senior Loan Deed of Trust, and the respective security interests in the Collateral, and (iii) for the purpose of setting forth certain other agreements between them with respect to the transactions contemplated by the Senior Loan Agreement and CDE Loan Agreement.

In consideration of the premises and other good and valuable consideration, the parties hereby agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms will have the meanings listed below:

“**Business Day**” means a day other than a Saturday, Sunday or legal holiday for commercial banks in Las Cruces, New Mexico.

“**CDE Loan Documents**” means all documents governing and evidencing the CDE Lender Loan, including, without limitation, the CDE Loan Agreement, the CDE Lender Loan Notes and the CDE Loan Collateral Documents.

“**Collateral**” means any and all collateral as described in the Senior Loan Collateral Documents, the CDE Loan Collateral Documents and the PPA Mortgage, but excludes any of the funds available to the City from the Letter of Credit.

“**Enforcement Action**” means any action to enforce remedies with respect to or to apply any Collateral for the obligations under the Senior Loan, the CDE Loan, the PPA or the PPA Mortgage, but expressly excluding any collection by the City under the Letter of Credit.

“**Permitted Payments**” means, until the occurrence of a default under the Senior Loan Documents, payments by the Borrower of regularly scheduled principal and interest payments on the CDE Loan and reimbursable expenses, all as specified in the CDE Loan Documents.

“**Proceeds**” shall have the meaning assigned to it under the UCC.

“**Senior Loan Documents**” means all documents governing and evidencing the Senior Loan, including, without limitation, the Senior Loan Agreement, the Senior Loan Note, and the Senior Loan Collateral Documents.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New Mexico.

2. **Subordination.**

(a) City hereby subordinates its security interest in any Collateral to the security interest of the CDE Lender and Senior Lender in the Collateral and agrees that at all times, whether before, after or during the pendency of any reorganization or other insolvency proceeding involving the Borrower, and notwithstanding the priorities that would normally result from the order of the granting of a security interest or the order of the recording of any deed of trust or the filing of any financing statement, the lien of and security interest of the City in the Collateral shall constitute vis-à-vis the CDE Lender and Senior Lender a subordinate lien and security interest in such property and Collateral.

(b) CDE Lender hereby subordinates its security interest in any Collateral to the security interest of the Senior Lender in the Collateral and agrees that at all times, whether before, after or during the pendency of any reorganization or other insolvency proceeding involving the Borrower, and notwithstanding the priorities that would normally result from the order of the granting of a security interest or the order of the recording of any deed of trust or the filing of any financing statement, the lien of and security interest of the Senior Lender in the Collateral shall constitute vis-à-vis the CDE Lender a first priority lien and security interest in such property and Collateral.

(c) The payment of the CDE Loan and CDE Loan Notes is and shall be expressly subordinate and junior in right of payment to the prior payment in full of all amounts then due in good funds on the Senior Loan and the Senior Loan Note. Until the Senior Loan shall have been fully repaid, neither the CDE Lender nor Borrower shall directly or indirectly, make or receive, as applicable, any payment of any kind with respect to the principal or, premium or interest on, or any other amount due on account of any portion of the CDE Loan or the CDE Loan Notes, except for Permitted Payments. After and during a continuing default under the Senior Loan Documents, the CDE Lender shall not be entitled to receive any payments until payment in full of the amounts due under the Senior Loan and Senior Loan Note. CDE Lender shall not demand, sue for, or accept from the Borrower or the Guarantor, or from any other person, any such payment, or accelerate the maturity of the CDE Loan repayment, or take any other action to enforce or collect upon any such payment or to enforce its rights with respect to the CDE Loan Documents or any security therefor (including any action to repossess, foreclose upon or take any other action against or exercise any remedies with respect to the Collateral) except in accordance with the terms hereof. If CDE Lender shall commence, prosecute or participate in any suit, action or proceeding against the Borrower, the Guarantor or the Collateral in violation of this Agreement, or shall attempt to enforce, foreclose upon or realize upon any Collateral securing all or any part of the CDE Loan, then, without limiting any other rights or remedies that the Senior Lender may have hereunder, the Senior Lender may interpose as a defense the terms and conditions of this Agreement, and may intervene and interpose such defense in its name or in the name of the Borrower and/or the Guarantor, as applicable.

(d) Except for payments funded by the Letter of Credit, any payment from the Borrower to the City required under the PPA or PPA Mortgage is and shall be expressly subordinate and junior in right of payment to the prior payment in full of all amounts then due in good funds on the Senior Loan and the Senior Loan Note and the CDE Loan and the CDE Loan Note. Until the Senior Loan and CDE Loan shall have been fully repaid, neither the City nor Borrower shall directly or indirectly, make or receive, as applicable, any payment of any kind with respect to the principal, or any other amount due under the PPA or PPA Mortgage, except for payments funded by the Letter of Credit. After and during a continuing default under the Senior Loan Documents or CDE Loan Documents, the City shall not be entitled to receive any payments, except for payments funded by the Letter of Credit, until payment in full of the amounts due under the Senior Loan and Senior Loan Note or CDE Loan and CDE Loan Notes. The City shall not take any action to enforce or collect upon any such payment owed by the Borrower or to enforce its rights with respect to the PPA or PPA Mortgage (including any action to repossess, foreclose upon or take any other action against or exercise any remedies with respect to the Collateral) except in accordance with the terms hereof. If the City shall commence, prosecute or participate in any suit, action or proceeding against the Borrower, the Guarantor or the Collateral in violation of this Agreement, or shall attempt to enforce, foreclose upon or realize upon any Collateral securing all or any part of the PPA Mortgage, then, without limiting any other rights or remedies that the Senior Lender or CDE Lender may have hereunder, the Senior Lender or CDE Lender may interpose as a defense the terms and conditions of this Agreement, and may intervene and interpose such defense in its name or in the name of the Borrower and/or the Guarantor, as applicable.

(e) Borrower's and Guarantor's books shall be marked to evidence this subordination and Senior Lender, CDE Lender or the City may review such books from time to time and make any notations required for compliance with this Agreement.

(f) Notwithstanding anything in this Agreement to the contrary, the City shall not be prohibited in any way from drawing on the Letter of Credit.

3. **Lien Priorities.** Senior Lender, CDE Lender and the City agree at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the priorities that ordinarily would result under the UCC and other applicable law from the order of granting or perfecting of any security interests (including, without limitation, purchase money security interests) referred to herein, that the parties shall have the following priorities:

(a) Senior Lender's security interest in the Collateral shall constitute a first priority lien and security interest in the Collateral and shall be further governed by the terms of the Senior Loan Documents.

(b) CDE Lender's security interest in the Collateral shall constitute a subordinate second priority lien and security interest in the Collateral and shall be further governed by the terms of the CDE Loan Documents.

(c) City's security interest in the Collateral shall constitute a subordinate third priority lien and security interest in the Collateral and shall be further governed by the terms of the PPA Mortgage.

(d) The parties each shall cooperate to effect the agreement expressed in this Section 3, and from time to time shall execute such other and further documents, including subordination agreements, assignments of claim, and otherwise as may be necessary or appropriate to implement the provisions of this Agreement.

4. **Payments and Distribution of Proceeds of Collateral.**

(a) Lenders and the City agree that any payments made by Borrower and all Proceeds of the sale, collection, exchange, or other disposition of the Collateral shall be applied as follows:

(i) first, to the Senior Lender in accordance with the Senior Loan Note and the Senior Loan Documents, first to late charges and other expenses incurred in accordance with the Senior Loan Documents, if any, then to accrued and unpaid interest and then in reduction of principal; and

(ii) second, to the CDE Lender in accordance with CDE Loan Notes and the CDE Loan Documents, first to late charges and other expenses incurred in accordance with the CDE Loan Documents, if any, then to accrued and unpaid interest and then in reduction of principal.

(iii) third, to the City in accordance with the PPA and the PPA Mortgage.

(b) Lenders and the City agree that should they receive any monies to which they are not entitled pursuant to this Agreement, they will (unless otherwise restricted or prohibited by law) hold the same in trust for and promptly pay over the same to the appropriate party in accordance with the priorities provided in this Agreement.

5. **Exercise of Remedies.**

(a) Collateral. Irrespective of whether any event of default shall have occurred under the terms of the CDE Loan Documents, PPA or PPA Mortgage, and notwithstanding any provision of the UCC, so long as any obligations of Borrower to Senior Lender under the Senior Loan Documents remain unpaid, CDE Lender and the City shall not enforce any of their rights with respect to any of the Collateral except as set forth in this Section 5.

(b) Collateral Enforcement Action. CDE Lender and the City shall not take any Enforcement Action with respect to the Collateral or foreclose upon the real property secured by the CDE Loan Documents or PPA Mortgage without first providing

Senior Lender with not less than 180 Business Days' prior written notice (the "**Notice Period**") of CDE Lender's or the City's intent to take any such Enforcement Action; provided, however, if CDE Lender reasonably determines that any event of default of Borrower under the CDE Loan Documents could result in a recapture, loss or disallowance of new markets tax credits prior to the expiration of the Notice Period, then CDE Lender may exercise its remedies solely for the purpose of avoiding such recapture, loss, or disallowance of new markets tax credits upon notice to and with the written consent of Senior Lender. CDE Lender and the City shall not take any action to restrain, enjoin, or otherwise impede Senior Lender's prosecution of any action against Borrower or with respect to the enforcement of Senior Lender's security interest in the Collateral; provided, however, if any of the foregoing actions by Senior Lender could result in a recapture, loss or disallowance of new markets tax credits, then Senior Lender agrees not to take any Enforcement Action with respect to the Collateral or foreclose upon the real property secured by the Senior Loan Collateral Documents for 180 Business Days; provided, further, that Senior Lender agrees to cooperate with Borrower and CDE Lender to pursue a work-out (cure or otherwise) of any underlying default conditions which could result in a recapture, loss or disallowance of new markets tax credits. In addition, CDE Lender and the City shall not institute any litigation or arbitration proceeding against Borrower to collect any outstanding costs, fees, or expenses due to CDE Lender in connection with CDE Loan under the CDE Loan Documents or the City in connection with the PPA or PPA Mortgage or otherwise (excluding any action against the Collateral) without first providing Senior Lender with at least 30 days' prior written notice.

(c) Notice of Default. Each Lender and the City shall use commercially reasonable efforts to advise the other parties promptly of any event of default under the Senior Loan Documents, the CDE Loan Documents, or the PPA or PPA Mortgage, as applicable, of which such Lender or the City has actual knowledge, and shall provide back-up documentation reasonably requested by the other Lender or the City.

(d) Reporting. Each Lender and the City may specifically enforce Borrower's reporting obligations pursuant to its respective loan or project documents, and collect any penalties with respect thereto without the consent of any other party (excluding any action against the Collateral).

(e) Expenses. Subject to Section 2(c) and Section 2(d), Borrower shall be obligated to reimburse each Lender and the City for any reasonable third party out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred in enforcing each party's rights under this Agreement and their respective loan or project documents ("**Expenses**"). Each Lender and the City may, but subject to the limitations in Section 2(c) and Section 2(d) and the notice requirements in Section 5(b) and Section 5(c), pursue the Borrower for any outstanding costs, fees, or expenses due to them under the Senior Loan Documents, the CDE Loan Documents, the PPA or otherwise (excluding any action against the Collateral).

6. **Insurance Proceeds.** Subject to the provisions in the collective loan documents regarding use of insurance proceeds for restoration of the Project and to the extent that insurance proceeds will be distributed to Lenders or the City pursuant to the loan or project documents, such proceeds, to the extent available, shall be distributed to Lenders and the City in order of their respective priorities as provided in Section 3.

7. **Reinstatement of Obligation.** To the extent a Lender or the City is required to restore or return any payments received by it from Borrower, such payments shall be deemed never to have been made to such Lender or the City for all purposes of this Agreement and any amounts paid to any other Lender or the City in reliance on such payments having been made to such prior Lender or the City shall be paid over immediately by such Lender or the City, and the terms hereof shall be reinstated automatically and binding upon Lenders or the City.

8. **Continuing Agreement/Termination.** The subordinations, agreements, and priorities set forth in this Agreement shall remain in full force and effect regardless of whether any party hereto in the future seeks to rescind, amend, terminate, or reform, by litigation or otherwise, its agreements with Borrower. Upon Payment in Full of a Lender's loan or any obligations owing to the City under the PPA or PPA Mortgage, in accordance with this Agreement and the applicable loan and project documents, such Lender and the City shall have no further rights or obligations pursuant to this Agreement and this Agreement shall continue, in full force and effect, among Borrower, each other Lender and the City. For purposes of this Agreement "Payment in Full" shall mean that such loan or other obligation has been fully and indefeasibly paid and satisfied, and such Lender does not have any further obligation under the applicable loan or project documents to extend financial accommodations to Borrower. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, Section 7 shall survive the termination of this Agreement.

9. **Obligations Absolute.** The provisions of this Agreement are solely for the purpose of (i) defining the relative rights of Lenders and the City with respect to the priority of payment of the various obligations of Borrower to each of them, (ii) the priority of each Lender's and the City's liens in the Collateral, and (iii) the right of each Lender and the City to exercise rights and remedies as creditors of Borrower. Nothing herein shall impair, as between Borrower or Guarantor and the holders of any Lender's note, the obligations of Borrower and Guarantor which are unconditional and absolute, to pay to the holders thereof the principal and interest thereon and any other liabilities pursuant to any loan documents, all in accordance with their respective terms, but subject in all instances to the terms of this Agreement.

10. **Subordination Not Conditioned on Perfection.** The subordinations and relative priority agreements set forth above are not conditioned upon the perfection of the security interests described herein.

11. **Negative Covenants.**

(a) Until all of the indebtedness evidenced by the Senior Loan Note has been paid in full, CDE Lender shall not demand or accept from Borrower any consideration

which would result in a prepayment of the CDE Loan other than in accordance with the terms of this Agreement.

(b) Until all of the indebtedness evidenced by the Senior Loan Note has been paid in full, the City shall not demand or accept from Borrower any consideration which would result in a payment of the Borrower's obligations under the PPA, except for payment received from the Letter of Credit.

12. **Limitation of City Subordination and Revocation of Existing Subordination Agreements.** It is specifically agreed that the City's security interest in any Collateral and right to demand payment under the PPA or PPA Mortgage is only subordinate to advances by Senior Lender and CDE Lender up to an aggregate amount of \$7,000,000.00, excluding Senior Lender's and CDE Lender's costs of collection and enforcement. In addition, it is agreed that this Agreement supersedes and replaces the Existing Subordination Agreements in their entirety.

13. **Relationship of Parties.** This Agreement is entered into solely for the purposes set forth herein, and except as expressly provided herein, no party assumes any other duties or responsibilities to the other regarding the financial condition of Borrower, or regarding any collateral, or regarding any other circumstance bearing upon the risk of nonpayment of the obligations of Borrower under any of the agreements hereinabove referred to. Each party shall be responsible for managing its credit relationships with Borrower, and except as expressly set forth herein, no party shall be deemed to be the agent of the other for any purpose.

14. **Amendments to Loan Documents.** Prior to full satisfaction of Borrower's or Guarantor's obligations thereunder, no party may alter, amend, supplement, release, discharge or otherwise modify any material terms of the applicable loan or project documents without the prior written consent of the other parties.

15. **No Guaranty.** No Lender as a result of the provisions of this Agreement shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of Borrower, Guarantor or any of their affiliates.

16. **No Partnership Created.** Neither the execution of this Agreement, nor any action taken by any parties hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between any of the parties, in their respective capacities as such.

17. **Benefit of Agreement.** This Agreement is entered into solely for the benefit of Lenders and the City, and their respective successors and assigns, and none of Borrower, Guarantor or any other persons or entities whatsoever shall have any right, benefit, priority or interest under or because of the existence of this Agreement. Borrower and Guarantor are each a party to this Agreement solely for the purposes of its representations and covenants made to Lenders and the City herein and Borrower and Guarantor each agree that it/they will cooperate in

all respects to effectuate the provisions of this Agreement and will take no actions contrary to its provisions.

18. **Notices.** All notices, demands or other communications hereunder shall be in writing and shall be (a) sent by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), (b) sent by personal delivery for same day delivery, (c) sent by a nationally recognized courier service for next day delivery, or (d) sent by facsimile or electronic mail (with a copy thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), addressed to the applicable party at the addresses set forth on Schedule A or at such other addresses as such parties may designate by notice to the other parties. All notices, demands and requests shall be effective when actually received; provided however that rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent.

19. **Miscellaneous.**

(a) This Agreement may be amended, modified or terminated only by a written instrument signed by the parties hereto. No waiver of any term or provision of this Agreement shall be effective unless it is in writing and signed by the party against whom such waiver is sought to be enforced.

(b) To the extent any part of this Agreement shall conflict with any of the terms of any loan documents related to the Project and Collateral, whether existing as of the date hereof, or hereafter arising or amended, the terms of this Agreement shall control.

(c) Senior Lender, CDE Lender, and the City have cooperated in the drafting and preparation of this Agreement and therefore, in any construction hereof, this Agreement shall not be construed against any party as the draftsman thereof.

(d) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

(e) This Agreement shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement may not be assigned without the prior written consent of the parties hereto.

(f) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts shall together constitute one and the same instrument.

(g) If any obligation or portion of this Agreement is determined to be invalid or unenforceable under law, it shall not affect the validity or enforceability of any remaining obligations or portions hereof.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to principles of conflicts of laws of such state.

**(i) TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

**(j) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO LENDER SHALL ASSERT, AND EACH LENDER HEREBY WAIVES, ANY CLAIM AGAINST ANY LENDER AND SUCH LENDER'S AFFILIATES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGES FOLLOW]**

Each party has executed this Subordination and Intercreditor Agreement to be executed by its duly authorized officer as of the Effective Date.

**SENIOR LENDER:**

**CITIZENS BANK OF LAS CRUCES,**  
a New Mexico banking corporation

By: \_\_\_\_\_  
Name: Nate Olsen  
Title: Vice President

(Acknowledgment)

State of New Mexico  
County of Doña Ana

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Nate Olsen as Vice President of Citizens Bank of Las Cruces, a New Mexico banking corporation.

\_\_\_\_\_  
Notary Public, State of New Mexico

My commission expires: \_\_\_\_\_

*[Signatures Continue on Next Page]*

[COUNTERPART SIGNATURE PAGE TO SUBORDINATION AND INTERCREDITOR AGREEMENT]

**CDE LENDER:**

**FINANCE NEW MEXICO-INVESTOR  
SERIES XVI, LLC,**  
a New Mexico limited liability company

By: Finance New Mexico, LLC,  
a New Mexico limited liability company,  
its manager

By: New Mexico Finance Authority,  
its manager

By: \_\_\_\_\_  
Name: Robert P. Coalter  
Title: Chief Executive Officer

(Acknowledgment)

State of New Mexico  
County of \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Robert P. Coalter, as Chief Executive Officer of New Mexico Finance Authority, the manager of Finance New Mexico, LLC, a New Mexico limited liability company, the manager of Finance New Mexico-Investor Series XVI, LLC, a New Mexico limited liability company.

\_\_\_\_\_  
Notary Public, State of New Mexico

My commission expires: \_\_\_\_\_

*[Signatures Continue on Next Page]*

[COUNTERPART SIGNATURE PAGE TO SUBORDINATION AND INTERCREDITOR AGREEMENT]

**CITY:**

**CITY OF LAS CRUCES,**  
a New Mexico municipal corporation

By: \_\_\_\_\_

Name:

Title:

(Acknowledgment)

State of New Mexico  
County of Doña Ana

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_ of the City of Las Cruces, a New Mexico municipal corporation.

\_\_\_\_\_  
Notary Public, State of New Mexico

My commission expires: \_\_\_\_\_

*[Signatures Continue on Next Page]*

**BORROWER:**

**LA CLINICA DE FAMILIA TITLE HOLDING CORPORATION,**  
a New Mexico nonprofit corporation

By: \_\_\_\_\_  
Name: Suzan Martinez de Gonzalez  
Title: Secretary

(Acknowledgment)

State of New Mexico  
County of Doña Ana

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Suzan Martinez de Gonzalez as Secretary of La Clinica de Familia Title Holding Corporation, a New Mexico nonprofit corporation.

\_\_\_\_\_  
Notary Public, State of New Mexico

My commission expires: \_\_\_\_\_

*[Signatures Continue on Next Page]*

[COUNTERPART SIGNATURE PAGE TO SUBORDINATION AND INTERCREDITOR AGREEMENT]

**GUARANTOR:**

**LA CLINICA DE FAMILIA, INCORPORATED,**  
a New Mexico nonprofit corporation

By: \_\_\_\_\_

Name: Suzan Martinez de Gonzalez

Title: Chief Executive Officer

(Acknowledgment)

State of New Mexico  
County of Doña Ana

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Suzan Martinez de Gonzalez as Chief Executive Officer of La Clinica de Familia, Incorporated, a New Mexico nonprofit corporation.

\_\_\_\_\_  
Notary Public, State of New Mexico

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**DESCRIPTION OF A 3.262 ACRE TRACT**

A 3.262 acre tract of land located within the City of Las Cruces, Dona Ana County, New Mexico. Located in Section 18, Township 23 South, Range 2 East, N.M.P.M., being part of the Lohman-Schaublin Subdivision, bounded on the North by Lohman Avenue, on the West by Alameda Boulevard, on the East and south by Tract A, Wells Fargo Tract Subdivision, filed February 28, 2008 in the office of the County Clerk of Dona Ana, New Mexico in plat book 22, pages 429-430, and being more particularly described as follows, to wit:

**BEGINNING** at a "X" found along the South line of Lohman Avenue, for the Northeast corner of the Tract herein described, IDENTICAL, to the Northwest corner of said Tract A, Wells Fargo Tract Subdivision;

**THENCE**, from the point of beginning, leaving Lohman Avenue, S.21°51'37"E., a distance of 137.91 feet to an Iron pipe found for an angle point of this Tract;

**THENCE**, S.77°37'43"W., a distance of 192.70 feet to a ½" iron rod found for an angle point of this tract;

**THENCE**, S.11°59'09"E., a distance of 351.02 feet to a nail found for the Northeast corner of this tract;

**THENCE**, S.74°26'40"W., a distance of 177.23 feet to a ½" iron rod found along the East line of Alameda Boulevard for the Southwest corner of this tract;

**THENCE**, along the East line of Alameda Boulevard, the following five courses and distances, N.30°25'02"W., a distance of 129.67 feet to a ½" iron rod found for an angle point of this tract;

**THENCE**, N.28°47'42"W., a distance of 32.36 feet to a ½" iron rod found for an angle point of this tract;

**THENCE**, N. 24°52'50"W., a distance of 265.92 feet to a ½" iron rod found for an angle point of this tract;

**THENCE**, N.23°54'00"W., a distance of 38.48 feet to a ½" iron rod found for a point of curvature of this tract;

**THENCE**, along the arc of a curve to the right, having a radius of 20.00 feet, an arc length of 15.28 feet, an included angle of 43°46'15", and whose long chord bears, N.02°00'41"W., a distance of 14.91 feet to a ½" iron rod found along the South line of Lohman Avenue for a point of tangency of this tract;

**THENCE**, leaving Alameda Boulevard, and along the South line of Lohman Avenue, the following five courses and distances, N.19°52'37"E., a distance of 10.86 feet to a ½" iron rod found for a point of curvature of this tract;

**THENCE**, along the arc of a curve to the right, having a radius of 20.00 feet, an arc length of 20.16 feet, an included angle of 57°45'47", and whose long chord bears, N.48°45'08"E., a distance of 19.32 feet to a ½" iron rod found for a point of tangency of this tract;

**THENCE**, N.77°37'38"E., a distance of 96.25 feet to a ½" iron rod found for a point of curvature of this tract;

**THENCE**, along the arc of a curve to the left, having a radius of 2,895.79 feet, an arc length of 189.18 feet, an included angle of 03°44'35", and whose long chord bears, N. 75°45'20"E. a distance of 189.15 feet to a 1" brass cap concrete marker found for a point of reverse curvature of this tract;

**THENCE**, along the arc of a curve to the right, having a radius of 2833.79 feet, an arc length of 153.33 feet, an included angle of 03°06'00", and whose long chord bears, N.07°26'03"E., a distance of 153.31 feet to the point of beginning, enclosing 3.262 acres of land, more or less. Subject all easements, patents, restrictions and reservations of record.

**SCHEDULE A****Notice Addresses of Parties**

If to Senior Lender:

Citizens Bank of Las Cruces  
 505 S. Main St.  
 Las Cruces, New Mexico 88001  
 Attention: Nate Olsen  
 Facsimile: (575) 647-4181  
 Email: nolsen@citizenslc.com

With a copy to:

Kennedy Sutherland LLP  
 112 E. Pecan Street, Suite 2810  
 San Antonio, Texas 78205  
 Attention: William Sutherland  
 Facsimile: (210) 228-0781  
 Email: dsutherland@kslawllp.com

If to CDE Lender:

Finance New Mexico-Investor Series XVI, LLC  
 c/o Finance New Mexico, LLC  
 207 Shelby Street  
 Santa Fe, New Mexico 87501  
 Attention: Chief Executive Officer  
 Facsimile: (505) 992-9640  
 Email: [ ]

With a copy to:

Sutin, Thayer & Browne APC  
 6565 Americas Parkway NE  
 Two Park Square, Suite #1000  
 Albuquerque, New Mexico 87110  
 Attention: Anne P. Browne  
 Facsimile: (505) 888-6565  
 Email: apb@sutinfirm.com

If to the City

City of Las Cruces  
 [Street Address]  
 Las Cruces, New Mexico [Zip]  
 Attention: [ ]  
 Facsimile: [ ]  
 Email: [ ]

If to Borrower or Guarantor

La Clinica de Familia, Incorporated  
 La Clinica de Familia Title Holding Corporation  
 385 Calle de Alegria  
 Las Cruces, New Mexico 88005  
 Attention: [ ]  
 Facsimile: [ ]  
 Email: [ ]

With a copy to:

Ginsberg Jacobs LLC  
300 South Wacker Drive, Suite 2750  
Chicago, Illinois 60606  
Attention: Darryl P. Jacobs, Esq.  
Facsimile: (312) 660-9612  
Email: [djacobs@ginsbergjacobs.com](mailto:djacobs@ginsbergjacobs.com)

and

Coppler Law Firm, P.C.  
645 Don Gaspar  
Santa Fe, New Mexico 87504  
Attention: Frank R. Coppler, Esq.  
Facsimile: (505) 988-5656  
Email: [fcoppler@coppler.com](mailto:fcoppler@coppler.com)