



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2012-0129

Final Action:

Sponsor(s): Administration & Finance Committee

JUL 03 2012

Resolution approving the terms & conditions for a Demonstration Façade Improvement Loan to Michael R. and Carolyn Hottinger under the Department of Housing and Urban Development Community Development Block Grant Program in an amount not to exceed \$31,000.

WHEREAS, Michael R. and Carolyn Hottinger, owners of the property located at 7730-32 W. National Ave. and has applied for a loan from the City of West Allis in the amount of up to Thirty-One Thousand Dollars (\$31,000), under the Department of Housing and Urban Development Community Development Block Grant Program, for the purpose of improving the façade at 7730-32 W. National Ave.; and,

WHEREAS, the Department of Development has reviewed the loan request from Michael R. and Carolyn Hottinger, and has determined that the Project is eligible for funding under the Community Development Block Grant guidelines under the provision of removing slum & blight conditions; and,

WHEREAS, the Building Inspections & Neighborhood Services Department has cited the property for exterior code violations; and,

WHEREAS, the Department of Development has recommended approval of a Community Development Block Grant funded loan for the purpose of completing the Project.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that it hereby approves the terms and conditions of the Loan in an amount of up to Thirty-One Thousand Dollars (\$31,000) to Michael R. and Carolyn Hottinger in accordance with the terms and conditions outlined in the Commitment Letter attached as Exhibit A hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that the City Attorney is hereby authorized to prepare loan documents required by the aforesaid commitment.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the loan documents, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated

therein.

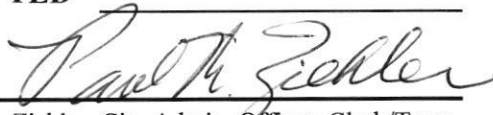
BE IT FURTHER RESOLVED that the proper City Officers, or any of their authorized deputies, as necessary, are authorized on behalf of the City to execute the aforesaid loan documents.

cc: Department of Development
Grants Accounting Specialist

DEV-R-674-7-3-12

ADOPTED

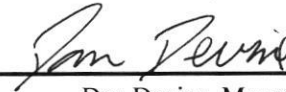
JUL 03 2012



Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED

7/9/12



Dan Devine, Mayor



Exhibit A
Commitment Letter



DEPARTMENT OF DEVELOPMENT
John F. Stibal

414/302-8460
414/302-8401 (Fax)

City Hall
7525 West Greenfield Avenue
West Allis, Wisconsin 53214

www.westalliswi.gov
jstibal@westalliswi.gov

July 3, 2012

Mr. & Mrs. Michael Hottinger
7730-32 West National Avenue
West Allis, WI 53214

Dear Mr. & Mrs. Hottinger:


Pursuant to your application and information provided by you, the Common Council of the City of West Allis ("City") hereby agrees to make a Demonstration Façade Improvement Loan to Michael R. & Carolyn Hottinger, in accordance with the federal Community Development Block Grant regulations and the following specific terms and conditions:

1. Borrower. The Borrower shall be Michael R. & Carolyn Hottinger, owners of the property located at 7730-32 W. National Avenue, West Allis, WI.
2. Guarantor. Michael R. & Carolyn Hottinger.
3. Project. Loan proceeds are to be used for façade improvement work.
4. Loan Amount. The loan amount shall not exceed Thirty-one Thousand Dollars (\$31,000). Disbursement of the aggregate principal will be at draw request & work performance. The loan will be evidenced by a note payable by the Borrower to the City.
5. Interest Rate. (To be computed on basis of 360-day year.) The interest rate shall be three and one-quarter percent (3.25%) per annum. In the event of default, all unpaid principal and interest shall bear interest at the rate of eighteen percent (18.0 %) per annum until paid.
6. Term. The term of this loan shall be ten years (120 months) with a 25-year amortization. A balloon payment will be required upon the last payment.
7. Payments. Payments are due on the first day of each month commencing with calendar month following that month in which the initial disbursement of loan proceeds is made.
8. Late Charge. A late charge not to exceed one percent (1%) on each dollar of each payment, which is more than ten (10) days in arrears may be collected provided that no such charge shall exceed the maximum amount which may be charged according to law.

9. Security. As security for the loan, the Borrower will deliver to the City:
 - A. A Second Mortgage on real estate at 7730-32 W. National Ave.
 - B. Unlimited Personal Guaranty from Michael R. & Carolyn Hottinger.
10. Loan Processing Fee. A non-refundable fee of Three Hundred Nine Dollars (\$309.00) to be paid upon acceptance and delivery of this Commitment. (Borrower may elect to include this fee in the terms of the note). The fee is compensation to the City for making the loan and shall be fully and completely earned upon acceptance of this Commitment by the Borrower.
11. Maturity Date. This loan shall mature on August 1, 2022.
12. Closing Date. The loan shall close on or before July 30, 2012.
13. Prepayment Privilege. The loan may be prepaid, in whole or in part, at any time without penalty or restriction.
14. Duns Number/Federal ID Number. Borrower must provide a Duns/Federal ID Number as proof of application by closing and provide a federal identification number to the City.
15. Slum/Blight Removal. Borrower recognizes the City is providing a loan to address the conditions of the property and all work must be consistent with Plan Commission approval.
16. General Conditions. All of the terms and conditions contained in the attached "General Conditions" (Exhibit No. 1) for economic development loans and "Federal Requirements" (Attachment A) are incorporated into this Commitment.
17. Acceptance. Except as provided in the General Conditions, this Commitment shall be deemed binding upon the City if the City receives an unqualified acceptance by the Borrower of the terms and provisions contained herein, evidenced by the Borrower properly executing this document below and delivering it to the office of the undersigned on or before July 10, 2012, along with the non-refundable loan processing fee and the written guarantee by Michael R. and Carolyn Hottinger, Owners. If not so accepted, the City shall have no further obligation hereunder.

SIGNATURES CONTINUED ON NEXT PAGE

CITY OF WEST ALLIS

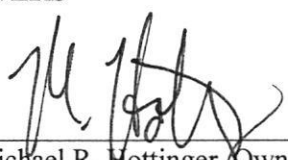
By: 
John F. Stibal, Director
Department of Development

ACCEPTANCE

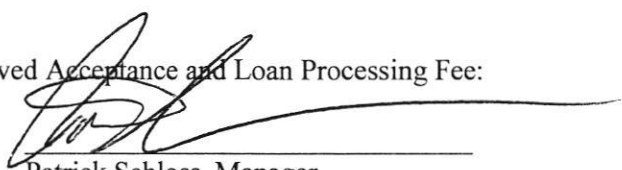
The foregoing Commitment, as well as the terms and conditions referred to therein, are hereby accepted.

BORROWERS

Date: 8/24/12

By: 
Michael R. Hottinger, Owner

By: 
Carolyn Hottinger, Owner

Received Acceptance and Loan Processing Fee:
By: 
Patrick Schloss, Manager
Community Development

Date: 8-24-12

Attachments

EXHIBIT NO. 1

CITY OF WEST ALLIS
ECONOMIC DEVELOPMENT LOANS
GENERAL CONDITIONS
(REAL ESTATE)

BORROWER: Michael R. and Carolyn Hottinger

COMMITMENT: July 3, 2012

LOAN AMOUNT: \$ 31,000

In addition to the other terms and conditions set forth in the Commitment, the Loan is subject to the following general requirements, terms and conditions and borrower representations:

1. Closing. Closing is defined as the execution and delivery of the Note and other required Loan Documents by and between the City and the Borrower. Time is of the essence with respect to the closing date. There can be no extensions of the closing date unless applied for in writing and granted in writing at least ten (10) days prior to the original closing date.

2. Job Creation. With two years of closing, the Project will create or have created at least the number of permanent, full time jobs for low to moderate income persons indicated in the commitment letter. The Borrower will agree that the jobs created will be held by low to moderate income persons and that it will provide training for any of those jobs requiring special skills or education; and, will give to the City, upon demand, such information as the City may deem necessary to document this requirement. A low to moderate income person is defined as a member of a low to moderate income family within the current applicable income limits for the section 8 Rental Assistance Program administered by the City.

3. Need for Assistance. Borrower represents that the Project would not be undertaken unless the public funding on which it is based becomes available, as the Borrower can maximally raise only a portion of the debt and equity funds necessary to complete the Project.

4. Federal Regulations. Throughout the term of the Loan, the Borrower will comply with all applicable federal regulations set forth on Attachment A, Federal Regulations.

5. Loan Documentation. Borrower shall execute and deliver to the City an Economic Development Loan Agreement, and all other Loan documents which the City shall deem necessary or require relative to the completion of the Loan. Such documents shall be in form, substance and content satisfactory to the City. All documents and data pertaining to the legal aspects of the transaction are subject to the approval of the City Attorney. Borrower shall provide such other documentation and/or assurances as the City or its Attorney may reasonably require.

6. Other Documentation. Prior to closing, to the extent required by the City, the Borrower shall furnish to the City in form and content acceptable to the City:

(a) Title Insurance. A title insurance policy on an A.L.T.A. form in the amount of the Loan issued by a title company and through a title agency approved by the City, naming the City as insured mortgagee, and insuring that the title to the Project Real Estate is vested in fee simple in the Borrower and

that the City has a second lien on the Project Real Estate with no exceptions or exclusions other than as may be approved by or acceptable to the City. The title commitment shall also provide such affirmative coverage over items such as access, construction liens and zoning as may be required by the City.

(b) Survey. A current survey of the Project Real Estate showing the legal description of the Real Estate, the boundaries of the land, the location of improvements (either as made or as proposed) and any other features affecting the Real Estate, including, without limitation, all streets, easements, rights of way, utility lines, bodies of water, encroachments both onto the Real Estate and from the Real Estate onto adjacent real estate, and set back and other building lines, as the City may require. The surveyor shall be a registered land surveyor in the State of Wisconsin. The surveyor shall certify the accuracy of the survey to the City.

(c) Authority. All appropriate documents evidencing the existence and good standing of the Borrower and any guarantors and resolutions authorizing the Project and the Loan and directing the appropriate officers or partners of the Borrower, as the case may be, to execute and deliver the Loan documents.

(d) Compliance. Evidence from the appropriate governmental authorities and such other evidence, certificates or opinions as the City may require showing or stating that the intended use of the Project Real Estate will comply with all applicable zoning, building, health, environmental, safety and other laws, rules and regulation applicable to the Project Real Estate.

(e) Insurance. Fire and extended coverage insurance for the Project Real Estate and such other insurance issued by companies and in amount satisfactory to the City with a loss payable clause in the City's favor.

(f) Leases. If the Project Real Estate is or will be subject to leases, the Borrower shall furnish to the City prior to closing:

(1) A correct and complete copy of each lease for each existing tenant whose term shall coincide with at least the term of this Loan and a pro forma lease to be used for unoccupied space in the Project Real Estate; and

(2) An estoppel letter from each existing lessee in form and content acceptable to the City stating, no default has occurred under the Lease, the lessee is subordinate to the mortgage and that lessee consents to and acknowledges an assignment of the lease to the City.

(g) Licenses. A certified copy of each license, permit and franchise agreement necessary or required to conduct the Borrower's business operation.

7. Legal Matters. The Borrower's counsel shall furnish opinions satisfactory to the City that the Borrower is legally existing and is in good standing in all jurisdictions where it transact business; that the Loan Documents are legal, binding and enforceable in accordance with their terms; that the Loan Documents, and the Borrower's obligations thereunder, do not contravene the terms and conditions of any agreement to which the Borrower is a party or by which the Borrower is bound; and that there are no judicial or administrative actions, suits or proceedings pending or threatened against or affecting the Borrower or the Project. The Borrower shall cause counsel for the guarantors to deliver to the City legal opinions covering the same matter for the Guarantors. Such opinions shall be dated as of closing.

8. Costs. All costs and expenses incidental to the making, administration and enforcement of

the Loan, including fees and expenses of the City's counsel, if any, shall be paid by the Borrower, whether or not the Loan closes.

9. Adverse Change. As of the closing date, there shall be no material adverse change in the value of the Project Real Estate or in the business or financial condition of the Borrower or of any guarantor, the Project Real Estate shall not have suffered any significant damage by fire or other casualty and no condemnation or adverse zoning or other ordinances, restrictions or similar matters shall have been enacted, adopted or proposed by any federal, state or local government or any board, authority, commission, agency or department asserting jurisdiction over the Project Real Estate which, in the City's judgment, would have a material and adverse affect on the Project Real Estate.

10. Bankruptcy. The City shall not be obligated to close the Loan if prior to closing the Borrower or any guarantor or any party who has a financial or business interest in or relationship with the Borrower becomes insolvent or the subject of state insolvency proceedings or a receiver, trustee or custodian or other similar official is appointed for, or takes possession of any part of the property of such party or any such party takes any action to become, or is named, the subject of proceedings under the federal bankruptcy code or state receivership statutes.

11. Transfer Restriction. Except as otherwise provided in the Commitment, the Loan documents shall provide that, during the term of the Loan, or any extension thereof, no sale, conveyance, mortgage, transfer or grant of any interest in encumbered real estate, if any, or any part thereof, nor any sale, assignment, pledge, transfer or grant of any interest or right in any shares of stock or partnership interest in the Borrower shall be made without the prior written consent of the City. The Borrower will continuously maintain its existence and right to do business in the state and the City of West Allis.

12. Other Liens and Fixtures. Except as otherwise provided in the Commitment, the Loan documents shall provide that the Borrower shall not create, nor permit to exist, any liens on, or security interest in, any Project equipment, except the lien of the City, or other personal property or fixtures owned by the Borrower or any guarantors and used or usable in connection with the operation of the Borrower's business and shall not lease any such equipment, property or fixtures without the prior written consent of the City.

13. Insurance and Condemnation Proceeds. Except as otherwise provided in the Commitment, the Loan documents shall provide that all insurance and condemnation proceeds shall be applied to the Note, whether or not then due and payable.

14. Environmental Matters. Borrower represents and warrants to the City that to the best of Borrower's knowledge and belief, and after reasonable inquiry, the past, present or contemplated use of the Project Real Estate has not violated and does not violate any environmental laws, regulations, ordinances, orders or similar governmental restrictions; the Project Real Estate is not within a government identified area of contamination; and the subject property and any site in the vicinity of the same are not nor have been the site of any oil, hazardous waste or other toxic substance or storage.

15. Use of Funds. The Borrower will use the proceeds of the Loan in the manner set forth in the Commitment Letter.

16. Construction Loans.

(a) Plans and Specifications. Prior to closing, the Borrower shall submit to the lender for its approval final and complete architectural and mechanical plans and specifications for the Project

Real Estate. Prior to closing, the Borrower shall furnish evidence that all applicable governmental bodies have approved the plans and specifications.

(b) Construction Costs and Contracts Prior to Closing. The Borrower shall deliver to the City a complete construction cost breakdown, including all soft costs. All construction, architect and engineering contracts for the Project are to be submitted to the City for its review and approval.

(c) Project Completion. The Borrower shall start and complete the Project by the dates indicated in this commitment.

17. Prohibition Against the Borrower's Assignment. The Commitment is not assignable or transferable by the Borrower.

18. Not Joint Venture. The City shall not be deemed to be a partner or joint venturer with the Borrower and Borrower shall indemnify and hold the City harmless from any and all damages resulting from such a construction or alleged construction of the relationship of the parties.

19. Entire Agreement. The Commitment shall supersede all prior written or oral understandings with respect thereto; provided, however, that all written and oral representations of the Borrower, any principal of the Borrower or any guarantor to the City shall be deemed to have been made to induce the City to make the Loan. No modification or waiver of any provision of the Commitment shall be effective unless it is in writing signed by the City.

20. Compliance with Laws. The Borrower shall comply fully with all applicable local, state and federal laws, ordinances, rules and regulations relating to the operation and management of its business, including, without limitation, all such legal matters relating to zoning, subdivision, safety of construction, building codes, land use, environmental protection and conservation. The Borrower shall immediately notify the lender in writing of any notice received from any governmental entity indicating that the Borrower is, or may be in violation of such laws, ordinances, rules or regulations.

21. Complete Performance and Waiver. If the Borrower fails to comply fully with the provisions of this Commitment, the City shall be under no obligation to close the Loan. The waiver by the City of any of the conditions contained herein shall be in writing.

22. Duration of Commitment. If timely accepted, the Commitment shall remain in full force and effect until the closing date as originally scheduled in the Commitment. If the closing does not occur by the closing date or is not extended in accordance with the terms of the Commitment, the City shall have no further obligation under the Commitment.

23. Wisconsin Law. The subject Loan is to be governed by and shall be construed according to the laws of the State of Wisconsin.

24. Financial and Other Data. Prior to closing, the Borrower and each guarantor shall furnish to the City:

(a) Organizational Documents. If a corporation, its articles of incorporation, by-laws, certificate of good standing and a list of current officers and directors; if a partnership, its partnership agreement and certificate of limited partnership (if a limited partnership) and a list of current partners; and

(b) Financial Statements. Current statements of financial condition and earnings.

25. Annual Financial Statements. During the life of the Loan, the Borrower and the guarantors, if any, shall furnish the City with annual financial statements as the City shall reasonably require. The City shall have the right to inspect any related books of account.

26. Representation. The Borrower represents to the City that all information provided to the City to induce the City to issue the Commitment is true and correct.

ATTACHMENT "A" TO GENERAL CONDITIONS
CITY OF WEST ALLIS
ECONOMIC DEVELOPMENT LOAN
FEDERAL REQUIREMENTS

BORROWERS: Michael R. and Carolyn Hottinger

COMMITMENT: July 3, 2012

LOAN AMOUNT: \$31,000

This Loan is funded with Federal Community Development Block Grant Funds. Borrowers will fully comply with the following statutes, laws, rules, regulations and other requirements during the term of the Loan.

I. Non-Discrimination.

A. Title VI of the Civil Rights Act of 1964 (Pub. L. 86-352), and implementing regulations issued at 24 CFR Part 1, which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, denied the benefits of or otherwise subjected to discrimination under any program or activity for which the person receives federal financial assistance and will immediately take measures necessary to effectuate this assurance.

B. Section 109 of the Housing and Community Development Act of 1969, as amended, and the regulations issued at 24 CFR 570.601, which provide that no person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity funded in whole or in part with funds provided under 24 CFR PART 570.

C. Section 504 of the Rehabilitation Act of 1973, as amended (Pub. L. 93-112), and implementing regulations when published for effect. Section 504 provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, denied the benefits of or otherwise subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

D. Title I of the Americans with Disabilities Act of 1990, as amended (Pub. L. 101-336), and implementing regulations. The Act prohibits discrimination against any qualified individual with a disability because of his or her disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

II. Equal Employment Opportunity. (All Loans Exceeding \$10,000). Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

A. The Borrowers will not, in carrying out the Project, discriminate against any employee because of race, color, religion, sex, handicap or national origin. It will take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Borrowers shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this non-discrimination clause.

B. The Borrowers will, in all solicitations or advertisements for employees placed by or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap or national origin.

C. The Borrowers will incorporate the foregoing requirements of this section in all of its contracts for Project work, except contracts for standard commercial supplies or raw materials or contracts covered under 24 CFR Part 570 and will require all of its contracts for such work to incorporate such requirements in all subcontracts for work done with funds provided under 24 CFR Part 570.

III. Employment Opportunities For Low Income Residents. Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations at 24 CFR Part 135, requiring that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and contracts for work in connection with the Project be awarded to eligible business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

IV. Age Discrimination Prohibited. The Age Discrimination Act of 1975, as amended, (Pub. L. 94-135), and implementing regulations (when published for effect).

V. Drug-Free Work Place. Borrowers certify that they will provide a drug-free work place and will otherwise comply with the Drug-Free Work Place Act of 1988, as amended, and the regulations promulgated thereunder.

VI. Federal Management and Budget Requirements and Procurement Standards.

A. The regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, and A-87, as they relate to the acceptance and use of federal funds under 24 CFR Part 570.

B. All requirements imposed by HUD concerning special requirements of law, program requirements and other administrative requirements approved in accordance with OMB No. A-102, Revised.

C. OMB Circular A-110.

VII. Environmental Review. Borrowers will cooperate with the City in carrying

out the following:

A. Consent to assume the status of a responsible federal official for environmental review, decision making and action pursuant to the National Environmental Policy Act of 1969, and the other authorities listed in Part 58, insofar as the provisions of such act or other authorities apply to 24 CFR Part 570.

B. Are authorized to accept the jurisdiction of the federal courts for the purpose of enforcement of his/her responsibilities as such official.

VIII. Historic Preservation. Borrowers will comply with the requirements for historic preservation, identification and review set forth in section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a, et seq.), regulations of the Advisory Council on Historic Preservation at 36 CFR 801, and any other regulations promulgated pursuant to section 21 of the Housing and Community Development Act of 1974, as amended.

IX. Relocation. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, implementing regulations at 24 CFR Part 42, and the special provisions of section 570.457, concerning the relocation of residential tenants not covered by the Uniform Act.

X. Labor Standards. The labor standards requirements as set forth in section 570.605 and HUD regulations issued to implement such requirements.

XI. Flood Insurance. The flood insurance purchase requirements of section 102(a) or the Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

XII. Facilities. The Borrowers will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of violating facilities, and that it will notify HUD of the receipt of any communication from the Director of the EPA Office of Federal Activities, indicating that a facility to be used in the Project is under consideration for listing by the EPA.

XIII. Davis-Bacon. The Project may be subject, in whole or in part, to Federal Fair Labor Standards provisions in accordance with the Davis-Bacon Act, as amended (40 U.S.C. section 276a-276a-5), and implementing regulations issued at 24 CFR 570.603; and, the Borrowers will agree that any such work will be done in accordance with such laws and regulations.

XIV. Fraud. The Borrowers have not knowingly and willingly made or used a document or writing containing any false, fictitious or fraudulent statement or entry. It is provided in 18 U.S.C. 1001 that whoever does so within the jurisdiction of any department or agency of the United States shall be fined not more than Ten Thousand Dollars (\$10,000) or imprisoned for not more than five (5) years, or both.

XV. Remedies for Noncompliance. In the event of Borrowers' noncompliance with any of the provisions of these FEDERAL REQUIREMENTS, the City shall impose such sanctions as it may determine to be appropriate, including, but not limited to:

- A. Withholding of payments under the Loan Agreement until Borrowers comply; and/or
- B. Immediate cancellation, termination or suspension of the Loan Agreement, in whole or in part.
- C. Other remedies that may be legally available.

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