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RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 10/05/2015 02:11 PM Pg: 1 of 12

**THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING**

RETURN TO:

Albert, Whitehead, P.C.
10 North Dearborn Street
Suite 600
Chicago, Illinois 60602
Attn: Gregory C. Whitehead

Permanent Tax Index

Identification No.:

See Attached Exhibit A

Property Address:

See Attached Exhibit A

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of September 30, 2015 between **VILLAGE BANK & TRUST** (the "Senior Lender"); and **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body politic and corporate of the State of Illinois ("IHDA" or "Subordinated Lender").

RECITALS

A. Pursuant to the terms and conditions of that certain Construction Loan Agreement by and between Senior Lender and DDG PhilHaven, LLC, an Illinois limited liability company ("Borrower") of even date herewith (the "Senior Loan Agreement"), the Senior Lender has agreed to make available to Borrower a construction - converting to permanent loan in the maximum stated principal amount of Nine Million Nine Hundred Thousand and No/100 Dollars (\$9,900,000.00) (the "Senior Loan"). The Senior Loan is secured by that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing of even date herewith granted by Borrower to Senior Lender (the "Senior Mortgage") encumbering that certain multifamily housing project to be located in Wheeling, Illinois on the land legally described in Exhibit A attached hereto (the "Real Estate", the Real Estate and the improvements constructed or to be constructed thereon, commonly known as PhilHaven Apartments, are referred to in this Agreement as the "Development"). The Borrower's obligation to repay the Senior Loan is evidenced by that certain Promissory Note of even date herewith made by Borrower to the order of Senior Lender in the stated principal amount of Nine Million Nine Hundred Thousand and No/100 Dollars (\$9,900,000.00) (the "Note") (as amended or replaced from time to time, the "Senior Note"), and is further evidenced, secured and governed by certain other loan documents (the "Other Senior Loan Documents"). The Senior Loan Agreement, Senior Note, Senior Mortgage and the Other Senior Loan Documents are collectively referred to in this Agreement as the "Senior Loan Documents."

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CORPORATE SEAL

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B. IHDA is the owner and holder of (i) that certain Mortgage Note (the "IHDA Note") dated as of even date herewith, in the original principal amount of Two Million and No/100 Dollars (\$2,000,000.00) made by Borrower payable to the order of IHDA. The IHDA Note is (I) secured by a certain Junior Mortgage, Security Agreement and Assignment of Rents and Leases (the "IHDA Mortgage") made by the Borrower in favor of IHDA dated as of even date herewith encumbering the Development; (II) governed by a certain Regulatory and Land Use Restriction Agreement dated as of even date herewith (the "IHDA Regulatory Agreement"); and (III) evidenced, secured and governed by certain other loan documents (the "Other IHDA Loan Documents"). The IHDA Note, IHDA Mortgage and the Other IHDA Loan Documents are collectively referred to in this Agreement as the "Subordinated Loan Documents".

C. All obligations of the Borrower to the Senior Lender now existing or hereafter arising, due or to become due, under the Senior Note and the Senior Loan Documents are referred to in this Agreement as the "Senior Liabilities;" all obligations of the Borrower to the Subordinated Lender now existing or hereafter arising, due or to become due, under the Subordinated Loan Documents are referred to in this Agreement as the "Subordinated Liabilities."

D. The Senior Lender has agreed to make the loan evidenced by the Senior Note on the condition that Subordinated Lender enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and as an inducement to the Senior Lender to make the loan evidenced by the Senior Note, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto represent, warrant and agree as follows:

1. **Subordinated Loan Documents.** The Subordinated Loan Documents are described in **Recital B** above.
2. **Subordination of Liens.** The Subordinated Lender agrees that the Subordinated Liabilities are and shall be subordinate to the Senior Liabilities and that the liens and security interests created by the Subordinated Loan Documents are and shall be subordinate to the liens and security interests created by the Senior Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents pursuant to their terms.
3. **Subordination of Payment.** Subject to the express exceptions under this Section 3, until such time as the date on which the Senior Liabilities have been paid in full, the payment of the Subordinated Liabilities shall be postponed and subordinated to the payment of all of the Senior Liabilities, and Subordinated Lender shall not accept any payments or other distributions whatsoever (including without limitation distributions of casualty insurance or condemnation proceeds) on account of its Subordinated Liabilities, nor shall any property or assets of the Borrower be applied to the purchase or acquisition or retirement of any Subordinated Liabilities. Notwithstanding the foregoing, so long as no notice of default has been given under any document evidencing or securing the Senior Liabilities (except any such notice of default which has subsequently been waived in writing by the party giving such notice), then Subordinated

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Lender shall retain and Borrower may make regularly scheduled payments to Subordinated Lender (but not prepayments) as provided in the Subordinated Loan Documents; however, no such payment to Subordinated Lender shall be permitted so long as the Subordinated Lender is then in default in the performance of any of its obligations under this Agreement.

4. **Constructive Trust.** If Subordinated Lender receives any payment or other distribution of any kind or character from the Borrower or from any other source whatsoever in respect to any of the Subordinated Liabilities, other than as expressly permitted by the terms of this Agreement, such payment or other distribution shall be received and shall be held by Subordinated Lender in trust for the Senior Lender and promptly turned over by the Subordinated Lender to the Senior Lender. Subordinated Lender shall execute such further documents or instruments and take such further action as Senior Lender may reasonably require from time to time to carry out the intent of this Agreement.

5. **Waiver by Subordinated Lender.** Subordinated Lender waives (a) notice of the existence, creation or nonpayment of all or any of the Senior Liabilities; and (b) all diligence in collection, protection of or realization upon the Senior Liabilities or any security therefor.

6. **Covenants of Subordinated Lender.** Subordinated Lender shall not, without the prior written consent of the Senior Lender, (a) modify, amend or consent to any modification or amendment of any document evidencing or securing the Subordinated Liabilities; (b) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower; (c) seek to appoint a receiver for (i) the Development or any part of it, or (ii) the Borrower, or seek to obtain possession of the Development, or seek any accounting from the Senior Lender in connection with the proceeds of the Development; or (d) take any action affecting any lease of the Development in which the Senior Lender claims a security interest (including without limitation any action to subordinate any such lease to the Subordinated Loan Documents, or any of them).

7. **Covenants of Senior Lender.** Senior Lender shall not, without the prior written consent of Subordinated Lender, amend or modify the Senior Loan documents to (a) increase the amount of the Senior Loan and/or the obligations evidenced or secured by the Senior Loan Documents other than advances made either to cure defaults under the Senior Loan Documents or pay liens encumbering the Development or otherwise to protect the lien of the Senior Loan Documents, (b) decrease the term of the Senior Loan, (c) increase the interest rate on the Senior Loan or (d) otherwise amend the Senior Loan terms in a manner that creates a material adverse effect upon the Subordinated Lender under the Subordinated Loan Documents. Such consent shall not be unreasonably withheld.

8. **Bankruptcy of Borrower.** In the event of any dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to the Borrower, the Borrower's creditors, or to the Borrower's property (whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment to benefit creditors, or any other marshalling of the assets and liabilities of the Borrower, or any sale of all or substantially all of the assets of the Borrower, or otherwise), the Senior Liabilities shall first be paid in full before Subordinated Lender shall be entitled to receive and to retain any payment or distribution with respect to the Subordinated Liabilities.

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9. **Notices of Default.** Subordinated Lender agrees to give the Senior Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under its Subordinated Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under its Subordinated Loan Documents. Subordinated Lender agrees that the indebtedness evidenced, secured and guaranteed by the Subordinated Loan Documents shall not be accelerated, nor shall any remedies be pursued thereunder unless (a) in the case of default in the payment of a sum of money due under the Subordinated Loan Documents and after expiration of all applicable grace periods, the Senior Lender shall have been given written notice of such failure and the Senior Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice; or (b) in the case of any other default under the Subordinated Loan Documents, the Senior Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to the Borrower to cure such default. The Senior Lender agrees to give to the Subordinated Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under the Senior Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Senior Loan Documents. The Senior Lender agrees that the indebtedness evidenced, secured and guaranteed by the Senior Loan Documents shall not be accelerated, nor shall any remedies be pursued there under unless (a) in the case of default in the payment of a sum of money due under the Senior Loan Documents and after expiration of all applicable grace periods, the Subordinated Lender shall have been given written notice of such failure and the Subordinated Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice; or (b) in the case of any other default under the Senior Loan Documents, the Subordinated Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to Borrower to cure such default.

10. **Insurance Proceeds and Condemnation Awards.** Subordinated Lender agrees that in the event of a casualty to the Development, or a condemnation or taking under a power of eminent domain of the Development, or a threat of such a condemnation or taking, all adjustments of insurance claims, condemnation claims and settlements in anticipation of such a condemnation or taking shall be prosecuted, at the Senior Lender's election, by the Senior Lender and all payment and settlements of insurance claims or condemnation awards or payments in anticipation of condemnation or a taking shall be paid to the Senior Lender. Subordinated Lender irrevocably assigns to the Senior Lender all of its interests in any such claims, settlements or awards (the "Award") and irrevocably grants to the Senior Lender a power of attorney, coupled with an interest, to execute any and all documents on the Subordinated Lender's behalf necessary in connection with the prosecution or settlement of the Award. If the amount of the Award is in excess of all amounts due under the Senior Liabilities, the Senior Lender agrees that such excess Award shall be paid to or held for the benefit of IHDA.

11. **Consent to Easements and Plats of Subdivision.** If the Borrower requests that the Senior Lender and all other mortgagees or trustees under trust deeds of record execute any

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easements or plats of subdivision or similar documents in connection with the construction, development, operation or maintenance of the Development, and if Senior Lender executes them, Subordinated Lender agrees to execute such documents and instruments as its interests appear.

12. **Acquisition of Fee Title by Senior Lender.** The Subordinated Lender agrees that an acquisition of fee title to the Real Estate by Senior Lender, its nominee, or any other person or entity through a foreclosure of the Senior Mortgage (where such foreclosure does not extinguish the security interests created by the Subordinated Loan Documents) or through a deed in lieu of foreclosure is not a "sale or disposition" and will not constitute an event of default under its Subordinated Loan Documents.

13. **Subrogation.** Until such time as the Senior Liabilities have been paid in full, Subordinated Lender waives and releases any and all rights of subrogation which it has against the Development and which subrogation would result in Subordinated Lender obtaining a priority equal or superior to the priority of the Senior Loan Documents for any funds which Subordinated Lender may advance either to cure defaults under security instruments or pay liens encumbering the Development or otherwise protect the lien of the Subordinated Loan Documents or any of them.

14. **Permitted Actions by Senior Lender.** The Senior Lender may, from time to time, in its sole discretion and without notice to Subordinated Lender, take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Senior Liabilities; (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Liabilities; and (c) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of the property securing any of the Senior Liabilities, or extend or renew for one or more periods of time (whether or not longer than the original period) or release, compromise, alter or modify any obligation of any nature of any obligor with respect to any such property.

15. **Assignment.** The Senior Lender may, from time to time, without notice to Subordinated Lender, assign or transfer any or all of the Senior Liabilities or any interest in them; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement, and every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest in them shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were the Senior Lender; however, unless the Senior Lender otherwise consents in writing, the Senior Lender shall have the unimpaired right prior and superior to that of any such assignee or transferee, to enforce this Agreement for the benefit of the Senior Lender as to those of the Senior Liabilities which the Senior Lender has not assigned or transferred.

16. **Successors and Assigns.** This Agreement shall be binding upon Subordinated Lender and its respective successors and assigns, whether immediate or remote.

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17. **Amendment of Agreement.** This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.

18. **No Waiver by Senior Lender.** The Senior Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by the Borrower or Subordinated Lender, or any non-compliance of the Borrower or Subordinated Lender with any agreement or obligation, regardless of any knowledge of such agreement or obligation the Senior Lender may have or with which the Senior Lender may be charged; and no action of the Senior Lender permitted under this Agreement shall in any way affect or impair the rights of the Senior Lender and the obligations of the Subordinated Lender under this Agreement. No delay on the part of the Senior Lender in the exercise of any rights or remedies shall operate as a waiver of such rights, and no single or partial exercise by Senior Lender of any right or remedy shall preclude other or further exercise of such right or remedy or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon the Senior Lender except as expressly set forth in a writing duly signed and delivered on behalf of the Senior Lender.

19. **Effect on Due on Sale Provisions.** Subordinated Lender waives any due on sale or due on refinancing provisions of its Subordinated Loan Documents as they relate to the Senior Liabilities.

20. **Notices.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Senior Lender:

Village Bank & Trust
234 West Northwest Highway
Arlington Heights, Illinois 60004
Attention: Stephanie Molster

with a copy to:

Albert, Whitehead, P.C.
10 North Dearborn Street, Suite 600
Chicago, Illinois 60602
Attn: Gregory C. Whitehead, Esq.

If to IHDA:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: Legal Department

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Such addresses may be changed by notice to the other party given in the same manner as provided in this Agreement. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

21. **Construction and Interpretation of this Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

22. **Termination.** This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Liabilities, provided that all rights of Subordinated Lender under this Agreement shall automatically terminate at such time as the Subordinated Liabilities have been paid in full.

23. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of the parties.

SENIOR LENDER:

VILLAGE BANK & TRUST,
national banking association

By: Stephanie Molster
Name: Stephanie Molster
Title: Vice President

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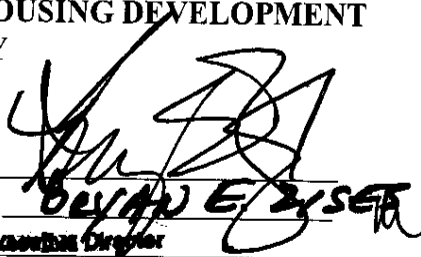
SUBORDINATED LENDER:

**ILLINOIS HOUSING DEVELOPMENT
AUTHORITY**

By: _____

Printed Name: _____

Title: _____



BRYAN E. ZISER
Executive Director

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that BYRON E. ZISES personally known to me to be the ~~Executive Director~~ of ILLINOIS HOUSING DEVELOPMENT AUTHORITY and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in his capacity as Executive Director of ILLINOIS HOUSING DEVELOPMENT AUTHORITY, as his free and voluntary act and deed and as the free and voluntary act and deed of ILLINOIS HOUSING DEVELOPMENT AUTHORITY, for the uses and purposes therein set forth.

Given under my hand and official seal this 28th day of September, 2015.

OFFICIAL SEAL
MARGARET A VIZZINI
Notary Public - State of Illinois
My Commission Expires Nov 19, 2017
Margaret A. Vizzini
Notary Public

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EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

LOT 1 OF KATIE'S SUBDIVISION, A PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 9, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS RECORDED JULY 12, 2006 AS DOCUMENT NO. 0619310024.

PROPERTY ADDRESS OF REAL ESTATE:

2418-2422 Hintz Road
Wheeling Illinois

PERMANENT TAX IDENTIFICATION NUMBERS:

03-09-402-023-0000 and 03-09-402-024-0000

Property of Cook County Clerk's Office