

# UNOFFICIAL COPY

Prepared by, and ~~after recording~~  
return to:

Higier Allen & Lautin, P.C.  
2711 North Haskell Avenue, Suite 2400  
Dallas, Texas 75204  
Attn: Michael B. Allen, Esq.

Record and Return to:  
Madison Title Agency, LLC  
National Commercial Dept  
1125 Ocean Avenue  
Lakewood, NJ 08701  
MTA 118410-01



Doc# 1734844041 Fee \$54.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/14/2017 12:25 PM PG: 1 OF 9

## SUBORDINATION AGREEMENT

### GOVERNMENTAL ENTITY

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## SUBORDINATION AGREEMENT GOVERNMENTAL ENTITY FOR REGULATORY AGREEMENT REGULATORY AGREEMENT ONLY/NO SUBORDINATE DEBT

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (this "**Agreement**") is effective as of the 30th day of November, 2017, by the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body politic and corporate under the laws of the State of Illinois ("**Governmental Entity**"), and **5644 W WASHINGTON BLVD HOLDINGS LLC**, a Delaware limited liability company ("**Borrower**"), for the benefit of **ARBOR COMMERCIAL FUNDING I, LLC**, a New York limited liability company, its successors and assigns ("**Lender**").

### RECITALS:

A. Simultaneously herewith Lender is making a loan to Borrower in the original principal amount of **\$3,328,000.00** ("**Loan**") pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the "**Loan Agreement**") and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the "**Note**"). The Loan is to be secured by a Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing that will be recorded among the records of Cook County, Illinois ("**Official Records**") (as supplemented or amended from time to time, the "**Mortgage**") of certain improved real property located in Chicago, Cook County, Illinois, as more particularly described on Exhibit A attached hereto ("**Property**"). The Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the "**Loan Documents**".

B. In connection with the construction and development of the Property, Borrower is entered into a certain Restrictive Covenant and Regulatory and Land Use Restriction Agreement dated as of May 21, 2008 (together with all amendments and assignments thereof, the "**Regulatory Agreement**") in favor of the Governmental Entity, which was recorded as Instrument No. 0826740146 of the Official Records, pursuant to which the Property was subjected to certain restrictions by Governmental Entity.

C. As a condition to making the Loan, Lender requires that the lien of the Mortgage be superior to the lien of the Regulatory Agreement. Lender will not make the Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.

D. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

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**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

2. Subordination. The Governmental Entity hereby agrees that the Regulatory Agreement is and shall at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief at any time in the event of a default under or breach of the terms of the Regulatory Agreement.

3. Financing, Encumbrance and Transfer Approval. Governmental Entity hereby approves and acknowledges the transfer of the Property to Borrower and the financing evidenced by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure of the Mortgage or a deed in lieu thereof shall not require Governmental Entity's consent but shall require notice to Governmental Entity.

4. Intentionally Omitted.

5. Lender Notice of Default. In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity shall be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.

6. Governmental Entity Notice of Default. Governmental Entity shall give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, shall have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents that, to the best of its knowledge, there is no current default under the Regulatory Agreement.

7. Governmental Entity's Rights. Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may be released but it may not be modified, amended, changed or otherwise altered without the prior written consent of Lender so

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long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) the collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) the application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) the removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.

8. Foreclosure by Lender. In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent shall be required from Governmental Entity.

9. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the subordination of the Regulatory Agreement to the lien or charge of the Loan Documents, and shall supersede and cancel any prior agreements with regard to this subject matter.

10. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

12. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Notices. All notices required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand and the party giving such notice has received a signed receipt thereof, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to Governmental Entity:

Illinois Housing Development Authority  
111 E. Wacker Drive Suite 1000  
Chicago, Illinois 60601  
Attention: Director of Asset Management

With a copy to:

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Illinois Housing Development Authority  
111 E. Wacker Drive Suite 1000  
Chicago, Illinois 60601  
Attention: General Counsel

If to Lender:

3370 Walden Avenue, Suite 114  
Depew, New York 14043  
Email: [portfoliomanagement@arbor.com](mailto:portfoliomanagement@arbor.com)

If to Borrower:

1 Stag Court  
Suffern, New York 10901  
E-mail: [Bgottesman@brimaram.com](mailto:Bgottesman@brimaram.com)

14. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

15. Valid Authorization. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

16. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together constitute one and the same instrument, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

**GOVERNMENTAL ENTITY:**

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY,**  
a body politic and corporate under the laws of the State of Illinois

By: *Audra Hamernik*  
Name: Audra Hamernik  
Title: Executive Director

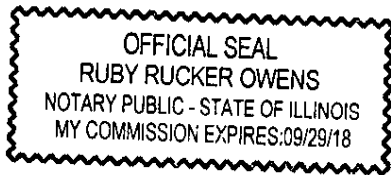
*if*

STATE OF ILLINOIS )  
)

COUNTY OF COOK )

This instrument was acknowledged before me on this 27<sup>th</sup> day of November, 2017, by Audra Hamernik, Executive Director of ILLINOIS HOUSING DEVELOPMENT AUTHORITY, a body politic and corporate under the laws of the State of Illinois.

[SEAL]



*Ruby Rucker Owens*

Notary Public in and for  
the State of Illinois

*Ruby Rucker Owens*

Print name of Notary

My Commission Expires: 09/29/18



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**LENDER:**

**ARBOR COMMERCIAL FUNDING I, LLC, a**  
New York limited liability company

By: 


Name: Adam Dratch  
Title: Vice President, Closing

STATE OF NEW YORK     )  
  ):  
COUNTY OF NEW YORK    )

This instrument was acknowledged before me on this 27 day of November, 2017,  
by Adam Dratch, Vice President, Closing of ARBOR COMMERCIAL FUNDING I, LLC, a  
New York limited liability company, on behalf of said limited liability company.

[SEAL]

**DAVID NATHAN STORM**  
Notary Public, State of New York  
No. 02ST6356546  
Qualified in Queens County  
Commission Expires April 3, 2021

  
Notary Public in and for  
the State of New York

David Storm  
Print name of Notary

My Commission Expires: April 3, 2021



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## EXHIBIT A Legal Description

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Chicago, County of Cook, State of Illinois.

### TRACT I:

LOT 3 AND THE EAST 1/2 OF LOT 4 AND THE EAST 3 FEET OF THE WEST 1/2 OF LOT 4 IN FRINK AND ULLMAN'S ADDITION TO AUSTIN, A SUBDIVISION OF LOTS 21 TO 26, INCLUSIVE, (EXCEPT THE WEST 7 FEET) AND LOTS 47 TO 52, INCLUSIVE, (EXCEPT THE EAST 7 FEET) IN BLOCK 2 (AND ALLEY) IN WALLER'S SUBDIVISION OF THE SOUTH 43 3/4 ACRES OF THE EAST 1/2 OF THE SOUTHEAST 3/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

### TRACT II:

LOTS 1 AND 2 IN FRINK AND ULLMAN'S ADDITION TO AUSTIN, BEING A SUBDIVISION OF LOTS 21 TO 26 (EXCEPT THE WEST 7 FEET THEREOF) AND LOTS 47 TO 52 (EXCEPT THE EAST 7 FEET) ALSO THAT PART OF THE ALLEY LYING BETWEEN SAID LOTS ALL IN BLOCK 2 IN HENRY WALLER'S SUBDIVISION OF THE SOUTH 43 3/4 ACRES OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### TRACT III:

THE SOUTH 1/2 OF LOT 44 AND ALL OF LOTS 45 AND 46 (EXCEPT THE EAST 7 FEET OF SAID LOTS CONVEYED TO THE TOWN OF CICERO FOR STREET) IN BLOCK 2 IN HENRY WALLER'S SUBDIVISION OF THE SOUTH 43 3/4 ACRES OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### TRACT IV:

LOTS 42, 43 AND THE NORTH 1/2 OF LOT 44 (EXCEPT THE EAST 7 FEET OF SAID LOTS) IN BLOCK 2 IN HENRY WALLER'S SUBDIVISION OF THE SOUTH 43 3/4 ACRES OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

NOTE: Being Parcel No. 16-08-416-031-0000, 16-08-416-032-0000, 16-08-416-025-0000 and 16-08-416-026-0000, of the City of Chicago, County of Cook.