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Doc# 1815044075 Fee \$54.00

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

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 05/30/2018 04:13 PM PG: 1 OF 9

⑥ 212765

SNDA

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval #2502-0029

Exp. (xx/xx/xxxx)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Laura E. Tilly, Esq.
Miner, Barnhill & Galland, P.C.
325 N. LaSalle Street, Suite 350
Chicago, IL 60654

(Space above this line for Recorder's Use)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made as of this 1st day of May, 2018, by and between Armitage Commons Preservation, NFP, an Illinois not-for-profit corporation ("~~Owner~~" or "Lessor"), as lessor under the lease hereinafter described, and Affordable Community Energy I, LLC, an Illinois limited liability company ("~~Operator~~" or "Lessee"), lessee under the aforementioned lease, in favor of PNC Bank N.A., a national banking association ("FHA Lender"), the owner and holder of the Mortgage hereinafter described.

WITNESSETH:

WHEREAS, Lessor, as owner of the real property hereinafter described, has executed, or will execute that certain Multifamily Mortgage, Assignment of Leases and Rents, and Security Agreement, dated as of May, 1, 2018 (the "Mortgage"), in favor of FHA Lender and covering certain real property (the "Property") located in the City of Chicago, State of Illinois, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"); and

WHEREAS, Lessor and Lessee entered into that certain unrecorded Building and Rooftop Lease Agreement dated as of September 10, 2013, and all amendments thereto (the "Lease"), covering a portion of the Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual

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benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and FHA Lender thereunder, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.
2. FHA Lender consents to the Lease.
3. In the event FHA Lender or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by FHA Lender of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
 - (a) Lessee shall be bound to FHA Lender or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if FHA Lender or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to FHA Lender or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon FHA Lender or such other purchaser succeeding to the interest of Lessor under the Lease.
 - (b) Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, FHA Lender or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if FHA Lender or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that FHA Lender or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor, (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that FHA Lender or such other purchaser succeeded to the interest of Lessor or any other prior lessor

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under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor, (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of FHA Lender or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until FHA Lender or such other purchaser has actually received for its own account as lessor the full amount of such security deposit.

(c) Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor thereunder or the occurrence of any other event without first giving to FHA Lender prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Lessee shall not take any action to terminate the Lease if FHA Lender (a) within thirty (30) days after service of such written notice on FHA Lender by Lessee of its intention to terminate the Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the leased premises (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until FHA Lender has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on FHA Lender by Lessee of its intention to terminate.

4. Lessor and Lessee hereby certify to FHA Lender that the lease as previously submitted to FHA Lender has not been further amended.
5. For the purposes of facilitating FHA Lender's rights hereunder, FHA Lender shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Property and the Improvements thereon for the purpose of affecting any such cure.
6. Lessee hereby agrees to give to FHA Lender concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to FHA Lender in the manner set forth herein below, and no such notice given to Lessor which is not at or about the same time also given to FHA Lender shall be valid or effective against FHA Lender for any purpose.
7. Subordination of Lease to Mortgage and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("HUD").

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- (a) The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Owner's interest in the Property in favor of FHA Lender, its successors and assigns insofar as it affects the real and personal property comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, and (ii) that certain Regulatory Agreement for Multifamily Projects between Owner and HUD to be recorded against the Property.
- (b) The parties to the Lease agree to execute and deliver to FHA Lender and/or HUD such other instrument or instruments as the FHA Lender and/or HUD, or their respective successors or assigns, shall reasonably request from time to time to reconfirm the status of the lease and to effect and/or confirm the subordination of the Lease to the lien of the Mortgage and the above-described Regulatory Agreements. To the extent that any provision of the Lease shall be in conflict with the HUD Program Obligations (as such term is defined below), the HUD Program Obligations shall be controlling.
- (c) In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
- (i) HUD can terminate the Lease for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease.
 - (ii) As used in this Agreement "HUD Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD Handbooks, Notices, and Mortgagee Letters that apply to the Property, including all updates and changes to such Handbooks, Notices and Mortgagee Letters that apply to the Property, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.
- (d) To the extent there is any inconsistency between the terms of this Subordination, Non-Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non-Disturbance and Attornment Agreement shall be controlling.

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8. For purposes of any notices to be given to FHA Lender hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA Lender at the following address:

PNC Bank, N.A.
 575 Market Street, 28th Floor
 Mail Stop: XX-XMSF-28-1
 San Francisco, CA 94105
 ATTN: Kathy J. Ratliff

or to such other address as FHA Lender may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other address as FHA Lender may hereafter be advised of in writing by notice sent to FHA Lender as aforesaid.

9. Acknowledgement and Consent to "ACE Transaction."
- (a) The Property is subject to a certain Consent, Waiver and Non-Disturbance Agreement (ACE Solar) (the "ACE Consent") dated as of September 10, 2013, by and among Lessor, Lessee, JP Morgan Chase Bank, N.A., a national banking association; Hispanic Housing Development Corporation, an Illinois not for profit corporation; and CDF Sub-Allocatee XIX, LLC, an Illinois limited liability company ("CDE Lender"), recorded with the Cook County Recorder of Deeds on September 11, 2013 as Document No. 1325444127. The parties acknowledge that the ACE Consent relates to a transaction (the "ACE Transaction") involving New Market Tax Credits issued under Section 45D of the Internal Revenue Code, as amended. The ACE Transaction remains outstanding, and the "Equipment" described in the ACE Consent remains the property of Lessee and located in or on the Property.
- (b) Notwithstanding the subordination of the Lease to the Mortgage as agreed to in this Agreement, the Lender hereby consents to and acknowledges the ACE Consent, to the extent applicable to it as a subsequent lender to the Lessor, including, but not limited to Sections 3(c), 3(d), and 3(e) of the ACE Consent.
10. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.
11. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.
12. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the State of Illinois.

[SEE ATTACHED SIGNATURE PAGES]

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LESSOR:

Armitage Commons Preservation, NFP,
an Illinois not-for-profit corporation

By: *Hipolito Roldan*
Hipolito Roldan
President

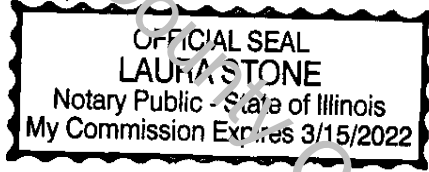
Personally appeared before me this 25th day of May, 2018, Hipolito Roldan, the President of Armitage Commons Preservation, NFP, an Illinois not-for-profit corporation, who, after having been duly sworn, acknowledged the execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement for and on behalf of Armitage Commons Preservation, NFP.

My Commission Expires:

Laura Stone
Notary Signature

County of Residence: COOK

LAURA STONE
Notary Printed



[SIGNATURES CONTINUE ON FOLLOWING PAGES]

**COOK COUNTY
RECORDER OF DEEDS**

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LESSEE:

Affordable Community Energy I, LLC,
an Illinois limited liability company

By: Affordable Community Energy, Inc.,
its sole member

By: *Hipolito Roldan*
Name: Hipolito Roldan
Its: President

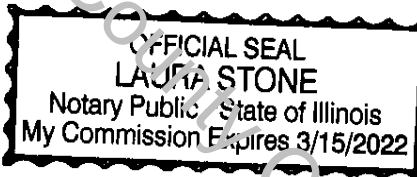
Personally appeared before me this 25th day of May, 2018 Hipolito Roldan, the President of Affordable Community Energy, Inc., sole member of Affordable Community Energy I, LLC, who, after having been duly sworn, acknowledged the execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement for and on behalf of such limited liability company.

My Commission Expires:

Laura Stone
Notary Signature

County of Residence: COOK

LAURA STONE
Notary Printed




[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**COOK COUNTY
RECORDER OF DEEDS**

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FHA LENDER:

PNC Bank, N.A.,
a national banking association

By: 
Kathy J. Ratliff, Senior Vice President

Acknowledgement

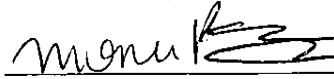
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) §
COUNTY OF SAN FRANCISCO)

On May 9, 2018, before me, **Monica Palomarez** a Notary Public, personally appeared **Kathy J. Ratliff** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.





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EXHIBIT A

Legal Description

PARCEL 1:

LOT 61 (EXCEPT THE EAST 16.00 FEET THEREOF); LOTS 62 TO 72, BOTH INCLUSIVE, AND LOTS 75 TO 90, BOTH INCLUSIVE, IN BLOCK 7 IN JACKSON'S SUBDIVISION OF BLOCKS 7 AND 8 IN HAMBLETON'S SUBDIVISION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THAT PART OF THE EAST/WEST 16-FOOT PUBLIC ALLEY, LYING SOUTH OF THE SOUTH LINE OF LOTS 61 TO 70, BOTH INCLUSIVE, LYING NORTH OF THE NORTH LINE OF LOTS 75 TO 84, BOTH INCLUSIVE, LYING EAST OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF SAID LOT 70 TO THE NORTHWEST CORNER OF SAID LOT 75; AND LYING WEST OF THE WEST LINE OF THE EAST 16.00 FEET OF SAID LOT 61, EXTENDED SOUTH TO THE NORTH LINE OF SAID LOT 84, ALL IN BLOCK 7 IN JACKSON'S SUBDIVISION OF BLOCKS 7 AND 8 IN HAMBLETON'S SUBDIVISION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID PART OF PUBLIC ALLEY HEREIN VACATED BEING FURTHER DESCRIBED AS:

THE EAST 234.00 FEET OF THE WEST 284.00 FEET OF THE EAST/WEST 16-FOOT PUBLIC ALLEY IN THE BLOCK BOUNDED BY WEST MCLEAN AVENUE, WEST ARMITAGE AVENUE, NORTH HAMLIN AVENUE AND NORTH LAWNSDALE AVENUE, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 3720 W. ARMITAGE AVENUE, CHICAGO, IL 60647
PIN 13-35-127-046-0000