This instrument prepared by:

Keith W. Groebe 203 N. La Salle Street, Suite 2500 Chicago, IL 60601

<u>Upon recording, return to</u>:

X-Caliber Capital Corp.
3 West Main Street, Suite 103
Irvington, NY 10533
ATTN: Amber Howard, SVP

Project No.: 077-11448

Project Name: Loke View Towers Apartments



Doc# 1908613103 Fee ≇64.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 03/27/2019 01:15 PM PG: 1 OF 14.

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of the 1st day of March, 2019, by and among the Illinois Housing Development Authority, a body politic and corporate created by and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq. (the "Subordinate Lender"), X-Caliber Capital Corp., a Kentucky corporation, its successors and assigns (the "Senior Lender" or at times "X-Caliber"), and Lake View Towers Residents Association Inc., an Illinois not for profit corporation (the "Borrower" or the "Owner").

Recitals

- A. The Subordinate Lender and Borrower have previously entered into that certain Regulatory and Land Use Restriction Agreement, recorded October 2, 2001 in the Office of the Cook County Recorder as Document Number 0010917181 (the "Subordinate Regulatory Agreement");
- The Senior Lender is, concurrently herewith, making a loan to use Porrower in the amount of \$66,390,000.00 insured or to be insured by the Secretary of Housing and Urban Development ("HUD") under section 223(f) of the National Housing Act (the "Senior Loan"). The proceeds of the Senior Loan are being used to refinance the former first and second mortgage notes and mortgages held by PNC Bank, N.A. dated as of May 1, 2012 and December 1, 2009, respectively, and the Subordinate Note and Subordinate Mortgage held by the Subordinate Lender. The Senior Loan is evidenced by that certain Note (the "Senior Note"), dated as of March 1, 2019, made by the Borrower payable to the order of the Senior Lender in the original principal amount of \$66,390,000.00. The Senior Note is secured by that certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement dated as of March 1, 2019 (the "Senior Mortgage"), made by the Borrower in favor of the Senior Lender, which is being recorded concurrently herewith in the Office of the Cook County Recorder, and that certain UCC Financing Statement which is being recorded concurrently herewith in the Office of the Cook County Recorder and that certain UCC Financing Statement which is being filed concurrently herewith in the Office of the Secretary of State of Illinois (together the "Senior UCC Financing Statements"). In connection with the Senior Loan, the Borrower and HUD are

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entering into that certain "Regulatory Agreement for Insured Multifamily Housing Projects" dated as of March 1, 2019 which is being recorded concurrently herewith in the Office of the Cook County Recorder (the "Senior Regulatory Agreement"). The Senior Note, Senior Mortgage, Senior UCC Financing Statements, Senior Regulatory Agreement, and all other documents evidencing, securing or governing the Senior Loan are hereinafter collectively referred to as the "Senior Loan Documents".

- C. The Borrower affirms that the following documents are currently recorded against and currently encumber the Development or are being recorded concurrently herewith (collectively, the "Documents of Record"):
 - that certain Use Agreement, recorded August 27, 1992 in the Office of the Cook County Recorder as Document Number 92635720; as amended by that certain Agreement Amending and Extending Use Agreement, recorded December 4, 2009 in the Office of the Cook County Recorder as Document Number 0933818090; as further amended by that certain Second Agreement Amending and Extending Use Agreement dated as of May 1, 2012, recorded May 30, 2012, in the Office of the Cook County Recorder as Document Number '215118101, and as further amended by that certain Third Agreement Amending and Extending Use Agreement dated as of March 1, 2019 (the "Third Agreement Amending and Extending Use Agreement") and recorded concurrently herewith in the Office of the Cook County Recorder (together, the "Flex Loan Use Agreement").
 - that certain Amende 1 and Restated Regulatory Agreement for Multifamily Housing Projects, recorded December 4, 2009 in the Office of the Cook County Recorder as Document Number 0933818092 (the "Amended and Restated Regulatory Agreement") as amended by that certain Amendment to Amended and Restated Regulatory Agreement recorded May 30, 2012, in the Office of the Cook County Recorder as Document Number 1215118106 and as further amended by that certain Second Amendment to Amended and Restated Regulatory Agreement dated as of March 1, 2019 (the "Second Amendment to Amended and Restated Regulatory Agreement"), and recorded concurrently herewith in the Office of the Cook County Recorder (together, the "241(a) Regulatory Agreement").
- D. All obligations of the Borrower to the Senior Lender row existing or hereafter arising, due or to become due, under the Senior Note and the other Senior Loan Documents along with all obligations of the Borrower now existing or hereafter arising, due or to become due, under the Documents of Record, are collectively referred to in this Agreement as the "Senior Liabilities". All obligations of the Borrower to the Subordinate Lender nov existing or hereafter arising, due or to become due, under the Subordinate Regulatory Agreement are collectively referred to in this Agreement as the "Subordinate Liabilities."
- E. The Senior Lender's agreement to make the Senior Loan is subject to the condition that the Subordinate Lender enters into this Agreement.
- **NOW, THEREFORE**, in consideration of the foregoing Recitals and as an inducement to the Senior Lender to make the Senior Loan, 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. <u>Subordination of Liens; Consents and Approvals</u>. All of Borrower's remaining Subordinate Liabilities and any and all amendments, modifications, extensions, replacements or

renewals thereof are hereby subordinated to and shall be subordinate to the Senior Liabilities. and the liens and security interests created by the Subordinate Regulatory Agreement are subordinated to and hereby shall be subordinate to the liens and security interests created by the Senior Loan Documents and the Documents of Record and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents and the Documents of Record, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents and the Documents of Record or in connection with the Senior Liabilities, pursuant to any of the terms thereof. The Subordinate Lender hereby consents to and approves the Senior Loan Documents.

- 2. Successors and Assigns. This Agreement shall be binding upon the Subordinate Lender and the successors and assigns thereof, whether immediate or remote.
- 3. Amendment of Agreement. This Agreement may not be altered or amended without the prier written consent of all of the parties hereto and HUD.
- Effect on Due on Sale Provisions. The Subordinate Lender waives any due on 4. refinancing provision of the Subordinate Regulatory Agreement as the same may relate to the Senior Liabilities. As subordinated by this Agreement, the Subordinate Regulatory Agreement shall continue to remain in full force and effect and is hereby ratified and confirmed by the
- all conorrower and the orrower and the state of the state Notices. Any notice, demand, request or other communication that any party hereto may desire or may be required to give to any other party hereto under or with respect to 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

United States Department of Housing and Urban Development 77 West Jackson Boulevard, 26th Floor Chicago, Illinois 60604 Attention: Regional Counsel HUD Project No's. 071-11448

If to the Subordinate Lender:

Illinois Housing Development Authority 111 E. Wacker Drive, Suite 100 Chicago, Illinois 60601 Attention: Legal Department

If to the Borrower:

Lake View Towers Residents Association Inc. 4550 N. Clarendon Chicago, IL 60611 Attention: President

With a copy to:

Keith W. Groebe, Esq. Masuda, Funai, Eifert & Mitchell, Ltd. 203 North LaSalle Street, Suite 2500 Chicago, IL 60601

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

- 6. <u>Construction and Interpretation of this Agreement.</u> 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 only be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 7. Termination. This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Liabilities, (provided that this Agreement shall stay in effect as to the subordination to the Flex Use Agreement until the Flex Use Agreement is terminated or released and shall stay in effect as to the subordination to the 241(2) Regulatory Agreement until the 241(a) Regulatory Agreement is terminated or released) and provided that all rights of the Subordinate Lender under this Agreement shall automatically terminate at such time as the Subordinate Liabilities have been paid in full.
- 8. <u>Counterparts</u>. This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must or may be produced or exhibited, be the Agreement, but all such counterparts shall constitute but one and the same instrument.
- 9. <u>Amendments to the Subordinate Regulatory Agreement</u>. Section 12 of the 2012 Subordination Agreement (and Section 12 of the 2009 Subordination Agreement and Section 13 of the 2004 Subordination Agreement), entitled "Amendments to Subordinate Loan Documents", and each HUD-Required Provisions Rider attached to the Subordinate Regulatory Agreement is hereby amended as follows:

(a) That part of paragraph 12(a) of the 2012 Subordination Agreement after "to wit" and that part of the first unnumbered paragraph of each HUD-Required Provisions Rider attached to the Subordinate Regulatory Agreement after the third sentence thereof (including the descriptions of documents A through L), is hereby deleted, and the following substituted in place thereof, to wit:

"As used herein, "Borrower" or "Owner" shall mean Lake View Towers Residents Association Inc., an Illinois not-for-profit corporation; "HUD" shall mean the United States Department of Housing and Urban Development; "FHA" shall mean the Federal Housing Administration, an organizational unit within HUD; "X-Caliber" shall mean X-Caliber Capital Corp., a Kentucky corporation; "Project" and "Property" shall have the same meaning as in the "HUD Regulatory Agreements" described below (the same also being known as FHA Project No's. 071-11448) and "Senior Loan Documents" shall mean the icllowing documents:

- A. (i) Firm Commitment for Section 223(f), dated December 20, 2018, issued by the Secretary of HUD to Draper and Kramer Commercial Mortgage Corp. and later assigned to X-Caliber, as from time to time amended.
- B. (i) Note dated as of March 1, 2019, made by Owner payable to the order of X-Caliber in the principal amount of \$66,390,000 (the "Senior Note"), made by Owner payable to the order of X-Caliber.
- C. (i) Multifamily Mertgage, Assignment of Leases and Rents Security Agreement, dated as of March 1, 2019, made by Owner in favor of X-Caliber and encumbering the Project as security for the Senior Note, recorded in the Office of the Cook County Recorder as Document Number (the "Senior Mortgage").
- D. UCC-1 Financing Statements made by Owner, as debtor, in favor of X-Caliber and/or the Secretary of HUD, as their interests may appear, as secured party, and recorded, or to be recorded, in the Office of the Cook County Recorder and filed, or to be filed, in the Office of the Illinois Secretary of State in connection with the Senior Mortgage.
- E. Regulatory Agreement for Insured Multifamily Housing Projects, dated as of March 1, 2019, recorded concurrently in the Office of the Cook County Recorder as Document Number \(\frac{10861307}{10861307}\) (the "Senior Regulatory Agreement); and (ii) Amended and Restated Regulatory Agreement for Multifamily Housing Projects, dated as of December 1, 2009, recorded in the Office of the Cook County Recorder as Document Number 0933818092, amended by that certain Amendment to Amended and Restated Regulatory Agreement for Multifamily Housing Projects, dated as of May 1, 2012, recorded in the Office of the Cook County Recorder as Document Number 1215118106 (collectively, the "HUD Regulatory Agreements") and,
- F. Use Agreement dated August 1, 1992, recorded in the Office of the Cook County Recorder as Document Number 92635720; as amended and extended by that certain Agreement Amending and Extending Use Agreement,

- (b) In Section 12 of the 2012 Subordination Agreement and in each HUD-Required Provisions Rider attached to any of the Subordinate Regulatory Agreement, all references to the term "Senior Lender" or "Senior Lenders" shall mean, collectively or indivioually, X-Caliber or the Secretary of Housing and Urban Development (as holder of the Senior Note) and HUD.
- (c) In Section 12 of the 2012 Subordination Agreement and in each HUD-Required Provisions Rider attached to any of the Subordinate Regulatory Agreement, all references to the term "Senior Mortgage" or "Senior Mortgages" shall mean the Senior Mortgage.
- (d) In paragrap. 12(m) of the 2012 Subordination Agreement, the reference to the term "First Lender" shall mean "X-Caliber".
- (e) Paragraph R-8 of each MOD-Required Provisions Rider attached to any of the Subordinate Regulatory Agreement is hereby amended to delete "Attention: Director of Multifamily Hub, Project Nos. 071-41005, 071-35820" and replace it with "Attention: Director, Multifamily Midwest Region, Project No. 071-11448".
- (f) In each HUD-Required Provisions Rider attached to any of the Subordinate Loan Documents all references to the term "First Regulatory Agreement" shall mean the HUD Regulatory Agreements.
 - (g) Paragraph 12(1) is deleted in the entirety.
- (h) In the event of any conflict, inconsistency or ambiguity between the provisions of any of the Subordinate Regulatory Agreement and the provisions of this Section 12, the provisions of this Section 12 shall control. All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Subordinate Regulatory Agreement. As amended by the foregoing provisions of this Section 12, the Subordinate Regulatory Agreement shall continue to remain in full force and effect and are hereby ratified and confirmed by the Borrower and the Subordinate Lender.
- 10. <u>Senior and Subordinate Lenders</u>. X-Caliber is consenting to this Agreement as "Senior Lender" under the Senior Loan Documents and as the substituted Senior Lender under the 2009 Subordination Agreement and 2012 Subordination Agreement. The Illinois Housing Development Authority, a body politic and corporate created by and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 <u>et</u>. <u>seq</u>., as "Subordinate Lender" under the 2012 Subordination Agreement, the 2009 Subordination Agreement, and the 2004 Subordination Agreement and X-Caliber, as Senior Lender and as the substituted Senior Lender under the 2004

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Subordination Agreement, 2009 Subordination Agreement and 2012 Subordination Agreement hereby agree that Paragraph 3 of the 2009 Subordination Agreement as amended in its entirety by Paragraph 3 of the 2012 Subordination Agreement is hereby deleted and replaced in its entirety with a Paragraph 3 that reads exactly the same as Section 3 of this Agreement.

[Signatures appear on the following page.]

Property of Cook County Clark's Office

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

SENIOR LENDER:

X-Caliber Capital Corp., a Kentucky corporation		
By:		
Name:	Amber Howard	
Title	Executive Vice President	

SUBORDINATE LENDER:

Na... Title Illinois Housing Development Authority, a body politic and corporate created by and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq.

By:			
Name:			
Title:			

BORPOWER:

Lake View Towers Residents Association Inc., an Illinois not-for-profit corporation

By: Name: Stephen Somuah Title: President

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Agreement has been executed and delivered by the authorized representatives of the parties.

SENIOR LENDER:

X-Caliber Capital Corp., a Kentucky corporation

By: Name: Amber Howard

Title: Executive Vice President

SUBORDINATE LENDER:

Tit Illinois Housing Development Authority, a body politic and corporate created by and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq.

Ву:		_	
Name:	 		
Title:			
A			

BORROWER:

Lake View Towers Residents Association Inc., an Illinois not-for-profit corporation

By: Name: Stephen Somuai.

Title: President

1908613103 Page: 10 of 14

UNOFFICIAL COPY

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

SENIOR LENDER:

X-Caliber Capital Corp.,	
a Kentucky corporation	
·	
By:	

Name: Kate L. Belser Title: Vice President

SUBORDINATE LENDER:

Illinois Housing Development Authority, a body politic and corporate created by and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq.

By: Allra Olson
Name: DEBRA OLSON

Title: ASSISTANT EXECUTIVE DIRECTOR

BORROWER:

Dropont Or C

Lake View 7c wers Residents Association Inc., an Illinois not-for profit corporation

By: _____

Name: Stephen Somuan

Title: President

IN WITNESS WHERPOF, this Agreement has been executed and delivered by the authorized representatives of the parties below intending only to consent to and not be bound by the terms hereof, except that by its signature below, (i) the United States Department of Housing and Urban Development agrees to the amendment to Subordination Agreement referenced in Section 13 of this Agreement, shall be bound thereby, shall be entitled to enforce the provisions thereof and shall be entitled to enforce the subordination of the Subordinate Loan Documents to the HUD Regulatory Agreements and the Flex Loan Use Agreement and the amendment to the HUD-Required Provisions Rider, and (ii) X-Caliber Capital Corp., as holder of the Senior Mortgage described in Section 3 above, shall be entitled to enforce the provisions hereof subordinating the Subordinate Liabilities to such Senior Mortgage and all other documents governing, evidencing or securing the loan secured thereby, as amended.

CONSENTED TO DI:
United States Donartment of

CONCENTED TO DV.

United States Department of Housing and Urban Development

By: / UMN
Name: She bl

Title: Authorized Agent

CONSENTED TO BY:

X-Caliber Capital Corp., a Kentucky corporation

Name: Amber Howard

Title: Executive Vice President

STATE OF MARYLAND

COUNTY OF Baltimore CITY

In witness whereof I hereunto set my hand and official seal.

NOTARY PUBLIC

Print Name: Ton Tonlinson

My Commission Expires:

June 2,2021

TONI TOMLINGON'
Notary Public-Maryland
Baltimore City
My Commission Expires
June 02, 2021

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of the parties below intending only to consent to and not be bound by the terms hereof, except that by its signature below, (i) the United States Department of Housing and Urban Development agrees to the amendment to Subordination Agreement referenced in Section 13 of this Agreement, shall be bound thereby, shall be entitled to enforce the provisions thereof and shall be entitled to enforce the subordination of the Subordinate Loan Documents to the HUD Regulatory Agreements and the Flex Loan Use Agreement and the amendment to the HUD-Required Provisions Rider, and (ii) X-Caliber Capital Corp., as holder of the Senior Mortgage described in Section 3 above, shall be entitled to enforce the provisions hereof subordinating the Subordinate Liabilities to such Senior Mortgage and all other documents governing, evidencing or securing the loan secured thereby, as amended.

CONSENTED TO BY:	CONSENTED TO BY:
United States Department of Housing and Urban Development	X-Caliber Capital Corp., a Kentucky corporation
By:	By:
Name:	Name: Kate L. Belser
Title: Authorized Agent	Title: Vice President
State of)	
County of	
This instrument was acknowledge, as	ed before me on March, 2019, by of X-Caliber Capital Corp.
	C
	Notary Public
mile . '-	My Commission Expires:
State of Illinois	'S _
State of <u>Illinois</u>) County of <u>Ook</u>) ss	O _{Sc.}
CERTIFY, that Jebra Olson, personall	nd for the County and State aforesaid, DO HEREBY ly known to me to be the Assistant Executive (In Sport line)
	ic and corporate created by and existing pursuant CS 3805/1 et seq., and personally known to me to be
	foregoing instrument, appeared before me this day in
person and acknowledged that as such 151. (Y)	(D)Y., she signed and delivered said instrument,
pursuant to the authority given by	of said body politic, as free and voluntary
act, and as the free and voluntary act and deed of s forth.	said body politic, for the uses and purposes therein set
1 0141.	AL .
Witness my hand and official seal this	day of Narch 2019.
·····	3//()
OFFICIAL SEAL SHARON HUNLEY	Notary Public
NOTARY PUBLIC - STATE OF ILLINOIS	10
MY COMMISSION EXPIRES:06/22/22	/

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State of - +++ Thors
County of Cook) ss
 I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that to her Dt, personally known to me to be the Authorized Age of Illinois Housing Development Authority, a body politic and corporate created by and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., 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 as such Authorized Age to signed and delivered said instrument, pursuant to the authority given by of said body politic, as free and voluntary act, and as the free and voluntary act and deed of said body politic, for the uses and purposes therein set forth.
Witness ray hand and official seal this day of March, 2019.
Notary Public
State of Illinois)) ss
County of Cook)
This instrument was acknowledged before me on March 22, 2019, by Stephen Somuah, as President of Lake View Towers Resident's Association Inc.
OFFICIAL SEAL KEITH W GROEBE NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES:06/20/20 MOTATY I ublic MY COMMISSION EXPIRES:06/20/20
State of ///nois) County of Cook)
Before me,
Witness my hand and official seal this 27 day of March 2019.
OFFICIAL SEAL JESSICA L TULLIER NOTARY PUBLIC - STATE OF ILLINOIS NOTARY PUBLIC - S

Exhibit A

Legal Description

Parcel 1:

Lot 3 (except the West 11.0 feet of the North 79.336 feet) and Lots 4 to 12, both inclusive, the East 79 feet of Lot 1 (measured along the South Line of said Lot); all of the East and West vacated alley lying South of and adjoining Lots 3 to 6, both inclusive, and all of the North and South vacated alley lying West of and adjoining Lots 7 to 11, both inclusive, all in Christian Kurz's Resubdivision of Lots 5 and 6 in Rufus C. Hall's Subdivision of part of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian. in Cook County, Illinois.

Parcel 2:

Lot 10 and the East 59.60 leet of Lot 9 in Wallingford's Subdivision of the 15 Rods South of and adjoining the North 95 Rods of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14 East of the Thra Principal Meridian, in Cook County, Illinois. 200 County Clory's Office

P.I.N.: 14-17-221-009-0000

14-17-221-010-0000 14-17-221-011-0000 14-17-221-012-0000 14-17-221-025-0000 14-17-221-026-0000 14-17-221-027-0000 14-17-221-028-0000

14-17-221-029-0000 14-17-221-032-0000

Address: 4550 North Clarendon Avenue

Chicago, Illinois

v.2 2/27.2019