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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 07/16/2020 01:57 PM PG: 1 OF 2

**SUBORDINATION AGREEMENT – PRIVATE**

**Prepared by:**

**Andrew Massmann  
Applegate & Thorne-Thomsen  
440 S. LaSalle Street, Suite 1900  
Chicago, Illinois 60605**

**After recording return to:**

**Title Services Midwest LLC  
610 E. Roosevelt Road, Suite 200  
Wheaton, Illinois 60187**

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**Subordination Agreement -  
Private**U.S. Department of Housing  
and Urban Development  
Office of HousingOMB Approval No.2502-0598  
(Exp. 9/30/2021)

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Project Name: Victory Apartments Preservation  
HUD Project No: 071-35924

THIS SUBORDINATION AGREEMENT ("**Agreement**") is entered into this 1st day of July, 2020 by and among (i) Bellwether Enterprise Real Estate Capital, LLC, an Ohio limited liability company ("**Senior Lender**"), (ii) Victory Apartments, LLC, an Illinois limited liability company ("**Subordinate Lender**"), and (iii) Victory Apartments Preservation LP, an Illinois limited partnership ("**Borrower**").

## Recitals

**WHEREAS**, Borrower is the owner of that certain 107 unit residential rental development known as "Victory Apartments Preservation" ("**Project**"), located at Chicago, Illinois. Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto to Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the Note described in Schedule A ("**Senior Note**"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, "**Senior Security Instrument**"), covering the property described in Exhibit A attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior Security Instrument ("**Mortgaged Property**").

**WHEREAS**, Borrower has requested Senior Lender to permit Subordinate Lender to make a subordinate loan to Borrower in the amount of \$5,135,664.49 ("**Subordinate Loan**"), pursuant to the Subordinate Loan Documents as defined below, and secured by, among other things, a mortgage lien against the Mortgaged Property.

**WHEREAS**, Senior Lender, with the approval of the U.S. Department of Housing and Urban Development ("**HUD**"), has agreed to permit Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged

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Property subject to all of the conditions contained in this Agreement and in accordance with Program Obligations. **"Program Obligations"** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on "HUDCLIPS," at [www.hud.gov](http://www.hud.gov).

**NOW, THEREFORE**, in order to induce Senior Lender to permit Subordinate Lender to make the Subordinate Loan to Borrower and to place a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

## 1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

(a) **"Affiliate"** is any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

(b) **"Bankruptcy Proceeding"** means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(c) **"Borrower"** means all entities identified as "Borrower" in the first paragraph of this Agreement, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property, whether or not such entity assumes the Senior Note, provided that the term "Borrower" shall not include Senior Lender in the event that Senior Lender may acquire title to the Mortgaged Property. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Senior Security Instrument.

(d) **"Business Day"** means any day other than Saturday, Sunday or any other day on which Senior Lender or HUD is not open for business.

(e) **"Covenant Event of Default"** is defined in the Senior Security Instrument.

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(f) **"Entity"** means an estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

(g) **"Monetary Event of Default"** is defined in the Senior Security Instrument.

(h) **"Non-Project Sources"** means any funds that are not derived from Project Sources.

(i) **"Project Sources"** means the Mortgaged Property (as defined in the Senior Security Instrument), any proceeds of the Senior Indebtedness, and any reserve or deposit made with Senior Lender or any other party as required by HUD in connection with the Senior Indebtedness.

(j) **"Senior Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Senior Lender under or in connection with the Senior Loan Documents.

(k) **"Senior Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns.

(l) **"Senior Loan Documents"** means the Senior Note, the Senior Security Instrument, and the Regulatory Agreement between Borrower and HUD, as such documents may be amended from time to time and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness, as identified in Schedule A.

(m) **"Senior Security Instrument Default"** means a "Monetary Event of Default" or a "Covenant Event of Default" as defined in the Senior Security Instrument.

(n) **"Subordinate Indebtedness"** means all present and future indebtedness, obligations, and liabilities of Borrower to Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan Documents.

(o) **"Subordinate Lender"** means the Entity named as such in the first paragraph on page 1 of this Agreement.

(p) **"Subordinate Loan Documents"** means the Subordinate Note, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as identified in Schedule B. The terms Subordinate Note and Subordinate Mortgage are defined in Schedule B.

(q) **"Subordinate Loan Enforcement Action"** means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any

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other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

(r) **"Subordinate Mortgage Default"** means any act, failure to act, event, conditions, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take a Subordinate Loan Enforcement Action.

(s) **"Surplus Cash"** is defined herein to mean the same as that term is defined in the Regulatory Agreement between Borrower and HUD.

## 2. **Permission to Place Mortgage Lien Against Mortgaged Property.**

Senior Lender agrees, subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects to the lien of the Senior Security Instrument) to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan. Senior Lender agrees that the existence of the Subordinate Loan does not create a basis for default of the Senior Indebtedness. Such permission is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to Borrower. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on both of those dates, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

## 3. **Borrower's and Subordinate Lender's Representations and Warranties.**

Borrower and, with respect to subsections (a) through (d) below, Subordinate Lender each make the following representations and warranties to Senior Lender:

(a) **Subordinate Loan Documents.** The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

(b) **Terms of the Subordinate Loan.** The original principal amount of the Subordinate Note is \$5,135,664.49. Interest on the Subordinate Note accrues monthly at the rate of 7.5% per annum. The Subordinate Note is due and payable in full on July 1, 2062 ("**Maturity**"). The Maturity term of the Subordinate Note does not end before the maturity term of the Senior Note. The principal of the Subordinate Note will have a balloon principal payment due at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make payments as follows, annually commencing May 1, 2021 and thereafter on the first day of May until the entire indebtedness has been paid, subject to Section 3(c)

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immediately below.

**(c) Required HUD Language in Subordinate Note.** The Subordinate Note contains the following provisions:

"As long as HUD is the insurer or holder of the Senior Note on FHA Project No. 071-35924, the following provisions ("HUD Provisions") shall be in full force and effect:

- (1) any payments due under the Subordinate Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Maker cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;
- (2) no prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD;
- (3) this Subordinate Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except in accordance with the requirements for assignment set forth in Section 35 of the mortgage securing the Subordinate Note;
- (4) interest on the Subordinate Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;
- (5) Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Subordinate Note;
- (6) the terms and provisions of this Subordinate Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Subordinate Note may not be modified or amended without the written consent of HUD; and
- (7) in the event of any conflict between the terms of the Subordinate Note (other than the HUD Provisions) and the HUD Provisions, the terms of the HUD provisions shall control."

**(d) Relationship of Borrower to Subordinate Lender.** Subordinate Lender is an Affiliate of Borrower.



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(e) **Subordinate Loan Documents.** Borrower certifies that the executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, HUD prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(f) **Senior Loan Documents.** The executed Senior Loan Documents are the same forms as approved by HUD prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

## 4. Deliveries.

Borrower shall submit the following items to Senior Lender and HUD at closing.

(a) **Title Evidence.** Evidence of title (title policy or title policy endorsement, as appropriate) insuring the lien of the Senior Security Instrument which insures that (i) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Mortgage, and (ii) this Agreement has been recorded among the applicable land records.

(b) **Loan Documents.** A complete set of the Subordinate Loan Documents, including this Subordination Agreement and all recorded.

## 5. Terms of Subordination.

(a) **Agreement to Subordinate.** Senior Lender and Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property). Subordinate Lender agrees to extinguish and release its lien on any and all Mortgaged Property in the event Senior Lender, HUD, or a designee of either acquires title to the Mortgaged Property pursuant to a deed in lieu of foreclosure.

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**(b) Subordination of Subrogation Rights.** Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

**(c) Payments Before Senior Security Instrument Default.** Until Subordinate Lender receives a default notice of a Senior Security Instrument Default from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

**(d) Payments After Senior Security Instrument Default.** Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Project Sources on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) unless either (i) such payment is being made solely from Non-Project Sources or (ii) such payment is made with Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Security Instrument Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 5 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new default notice from Senior Lender in accordance with the provisions of this Section 5(d).

**(e) Remitting Subordinate Loan Payments to Senior Lender.** If, after Subordinate Lender receives a default notice from Senior Lender in accordance with subsection (d) above, Subordinate Lender receives any payments under the Subordinate Loan Documents (other than payments permitted under subsection (d) above), Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in



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accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Mortgage Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

**(f) Agreement Not to Commence Bankruptcy Proceeding.**

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any Bankruptcy Proceeding with respect to Borrower, without Senior Lender's prior written consent.

**6. Default Under Subordinate Loan Documents.**

**(a) Notice of Default and Cure Rights.** Subordinate Lender shall deliver to Senior Lender a default notice within five Business Days in each case where Subordinate Lender has given a default notice to Borrower. Failure of Subordinate Lender to send a default notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the limitations set forth in Section 6(b) below.

**(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.** If a Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without Senior Lender's prior written consent. However, the preceding sentence shall not limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources.

**7. Default Under Senior Loan Documents.**

**(a) Notice of Default and Cure Rights.** Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has given a default notice to Borrower (provided that Senior Lender shall have no liability to Borrower, Subordinate Lender or to any other Entity for

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failure to timely give such notice). Failure of Senior Lender to send a default notice to Subordinate Lender shall not prevent the exercise of Senior Lender's right and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Borrower agrees that Subordinate Lender shall have the opportunity, but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD, whichever date is later. Subordinate Lender acknowledges that Senior Lender shall be entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender shall have the opportunity to cure a Covenant Event of Default during such period described above so long as there is no Monetary Event of Default under the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any default under the Senior Loan Documents shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

**(b) Cross Default.** Subordinate Lender certifies that the Subordinate Loan Documents do not contain a cross default provision. Notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Security Instrument Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents.

## 8. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; and (b) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be; give Borrower the right to notice of any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents, as applicable; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

## 9. Rights and Obligations of Subordinate Lender under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

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(a) **Protection of Security Interest.** Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Security Instrument Defaults pursuant to Section 7(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Mortgaged Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(1) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by or with the written consent of Senior Lender; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (to payment of the costs and expenses of repair and restoration and/or to payment of the Senior Security Instrument) in the manner determined by Senior Lender in its sole discretion, consistent with the Senior Loan Documents; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Security Instrument, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Security Instrument shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower.

(c) **No Modification of Subordinate Loan Documents.** Borrower and Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the

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Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

## **10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness; Transfer of Physical Assets.**

(a) Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, provided however, there shall be no modification of the Senior Loan Documents without the consent of the Subordinate Lender if such modification would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

(b) Subordinate Lender agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness in accordance with Program Obligations (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Indebtedness, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the indebtedness related to the refinance loan, the refinance note, the security instrument securing the refinance note, all documents evidencing, securing or otherwise pertaining to the refinance note and the holder of the refinance note, provided however, there shall be no refinancing of the Senior Indebtedness without the consent of the Subordinate Lender if such refinancing would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

(c) Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if HUD grants a deferment of amortization or forbearance that results in an extended maturity of the Senior Indebtedness.

(d) Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if the Subordinate Note is due, and there are no Surplus Cash funds or Residual Receipts (if applicable) available for repayment,

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and the first mortgage has not been repaid in full. (The parties agree that distributions of Residual Receipts must be approved by HUD and can only be approved by the terms of a written agreement between HUD and the Borrower).

(e) Subordinate Lender agrees that it will approve any transfer of ownership of the Project if approved by HUD in writing. Subordinate Lender further agrees that the Subordinate Indebtedness is assumable when a sale or transfer of physical assets occurs and the Senior Indebtedness remains in place, as follows.

(f) The Subordinate Lender cannot require that more than seventy-five percent (75%) of the net proceeds of the sale or transfer be applied to the reduction of the Subordinate Indebtedness. For these instructions, net proceeds are the funds available to the original borrower after:

- (1) correcting any default on the Senior Indebtedness;
- (2) making required contributions to any reserve funds; and
- (3) making needed improvements to the Property as evidenced by HUD's annual inspection reports.

## 11. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief.

## 12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which Senior Lender or Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two Business Days after mailing in the United States), addressed to the respective parties as follows:



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**SENIOR LENDER:**

Bellwether Enterprise Real Estate Capital, LLC  
 1375 E. 9<sup>th</sup> Street, Suite 2400  
 Cleveland, Ohio 44114

With a copy to:

U.S. Department of Housing and Urban Development  
 Director - Office of Multifamily Asset Management  
 Room 6160  
 451 Seventh Street, S.W.  
 Washington, DC 20410

**SUBORDINATE LENDER:**

Victory Apartments, LLC  
 c/o Bickerdike Redevelopment Corporation  
 2550 West North Avenue  
 Chicago, Illinois 60647  
 Attention: Joy Aruguete

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

**13. General.**

**(a) Assignment/Successors.** This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of Senior Lender and Subordinate Lender.

**(b) No Partnership or Joint Venture.** Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of any other party hereto.

**(c) Senior Lender's and Subordinate Lender's Consent.** Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by



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Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

**(d) Further Assurances; UCC Financing Statements.** Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

**(e) Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.** This Agreement shall be governed by the laws of the State in which the Mortgaged Property is located, except, so long as the Senior Indebtedness is insured or held by HUD, and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts, and with respect to HUD's rights and remedies, federal courts, and governmental authorities in the State in which the Mortgaged Property is located, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Subordinate Loan Documents. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

**(g) Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 5 hereof; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure; or (iv) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement. Notwithstanding the foregoing, in the event the Senior Indebtedness is refinanced or a transfer of physical assets occurs, the term of this Agreement shall continue and the Subordinate Indebtedness and Subordinate Loan Documents shall be subordinate to any such indebtedness related to the refinanced or transferred loan as provided in Section 10 above.

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(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

[Remainder of page intentionally left blank; signature pages follow.]

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Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

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

SENIOR LENDER:

**BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC,**  
an Ohio limited liability company

By: *R*  
R. Ann Gurley, Senior Vice President

STATE OF GA )  
COUNTY OF Fulton ) ss.

I, Jessica King, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that R. Ann Gurley, 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 officer such person signed and delivered the said instrument pursuant to due authority, as such person's free and voluntary act, and as the free and voluntary act and deed of the Grantor, for the uses and purposes therein set forth.

Given under my hand and official seal this 10<sup>th</sup> day of July, 2020.

Jessica King  
Notary Public



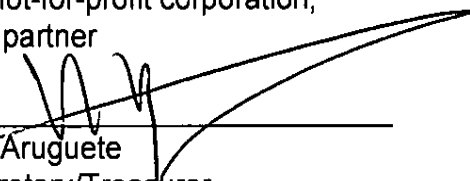
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### SUBORDINATE LENDER:


**VICTORY APARTMENTS, LLC,**  
an Illinois limited liability company

By: Victory Apartments Limited Partnership,  
an Illinois limited partnership,  
its sole member

By: Rockwell Community Development, Inc.,  
an Illinois not-for-profit corporation,  
its general partner

By:   
Name: Joy Aruguete  
Title: Secretary/Treasurer

By: Bickerdike Redevelopment Corporation,  
an Illinois not-for-profit corporation,  
its general partner

By:   
Name: Joy Aruguete  
Title: CEO

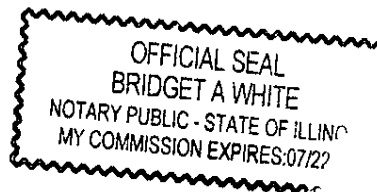
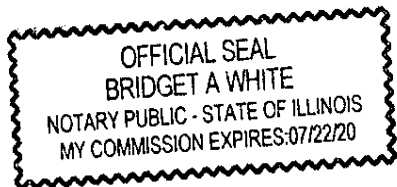
STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF COOK        )

I, BRIDGET A. WHITE, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joy Aruguete, 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 officer such person signed and delivered the said instrument pursuant to due authority, as such person's free and voluntary act, and as the free and voluntary act and deed of the Grantor, for the uses and purposes therein set forth.

Given under my hand and official seal this 7<sup>th</sup> day of July 2020.

Bridget A. White

Notary Public

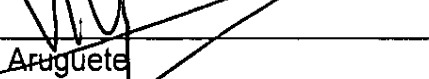


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BORROWER:

**VICTORY APARTMENTS PRESERVATION LP,**  
an Illinois limited partnership

By: Rockwell Community Development, Inc.,  
an Illinois not-for-profit corporation,  
its General Partner

By:   
Joy Aruguete  
Secretary/Treasurer

STATE OF ILLINOIS )  
                                  ) ss.  
COUNTY OF COOK )

I, BRIDGET A. WHITE, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joy Aruguete, 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 officer such person signed and delivered the said instrument pursuant to due authority, as such person's free and voluntary act, and as the free and voluntary act and deed of the Grantor, for the uses and purposes therein set forth.

Given under my hand and official seal this 14<sup>th</sup> day of July, 2020.

Bridget A. White

Notary Public





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## Schedule A – List of Senior Loan Documents

\$20,050,000 Note (Multistate)

Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (Illinois)  
Regulatory Agreement for Multifamily Projects

## Schedule B – List of Subordinate Loan Documents

“Subordinate Note” means that certain Surplus Cash Note made by Victory Apartments Preservation LP in favor of Victory Apartments, LLC in the principal amount of \$5,135,664.49.

“Subordinate Mortgage” mean that certain Junior Mortgage, Assignment of Rents and Security Agreement (Seller Financing) made by Victory Apartments Preservation in favor of Victory Apartments, LLC securing the Subordinate Note.

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EXHIBIT A

Legal Description**\*\*\*PARCEL 1:**

LOTS 1, 2 AND 3 IN BLOCK 3 IN A. N. WATERMAN'S SUBDIVISION OF THE WEST 5 ACRES OF THE SOUTH 25 ACRES OF THE EAST HALF OF THE NORTH WEST QUARTER OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 17-06-128-001-0000 Affects: Lots 1 and 2 of Parcel 1

PERMANENT REAL ESTATE INDEX NO. 17-06-128-002-0000 Affects: Lot 3 of Parcel 1

ADDRESS: 1215-1221 NORTH LEAVITT STREET, CHICAGO, ILLINOIS 60622

**PARCEL 2:**

LOT 16 AND THE SOUTH HALF OF LOT 17 IN BLOCK 9 IN CARTER'S RESUBDIVISION OF BLOCKS 1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 AND LOTS 2, 4 AND 5 OF BLOCK 17 ALL IN CARTER'S SUBDIVISION OF BLOCKS 1, 2, 3, 4 AND 7 IN CLIFFORD'S ADDITION TO CHICAGO A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 16-01-312-015-0000 Affects: Parcel 2

ADDRESS: 2816-2818 W. AUGUSTA BLVD. & 1003 N. MOZART STREET, CHICAGO, ILLINOIS 60622

**PARCEL 3:**

LOTS 1, 2 AND 3 IN BLOCK 14 IN CARTER'S RESUBDIVISION OF BLOCKS 1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 AND LOTS 2, 4 AND 5 OF BLOCK 17, ALL IN CARTER'S SUBDIVISION OF BLOCKS 1, 2, 3, 4 AND 7 IN CLIFFORD'S ADDITION TO CHICAGO, A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 16-01-315-015-0000 Affects: Parcel 3

ADDRESS: 2901-2903 W. AUGUSTA BLVD., CHICAGO, ILLINOIS 60618

**PARCEL 4:**

LOTS 29 AND 30 IN BLOCK 14 IN CARTER'S RESUBDIVISION OF BLOCKS 1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 AND LOTS 2, 4 AND 5 OF BLOCK 17, ALL IN CARTER'S SUBDIVISION OF BLOCKS 1, 2, 3, 4 AND 7 IN CLIFFORD'S ADDITION TO CHICAGO, A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 16-01-315-001-0000 Affects: Parcel 4

ADDRESS: 2915 WEST AUGUSTA BLVD. & 935 N. RICHMOND ST., CHICAGO, ILLINOIS 60622

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Exhibit A - Legal Description – Continued...

PARCEL 5:

LOT 23 IN BLOCK 4 IN HANSBROUGH AND HESS SUBDIVISION OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 13-36-304-002-0000 Affects: Parcel 5

ADDRESS: 1951-1955 N. HUMBOLDT BLVD., CHICAGO, ILLINOIS 60647

PARCEL 6:

LOTS 23, 24 AND THE SOUTH 10 FEET OF LOT 22 IN RUDOLPH WEHRLI'S WESTSIDE SUBDIVISION OF LOT 9 (EXCEPT THE NORTH 80 FEET AND THE SOUTH 380 FEET THEREOF) OF DIVISION OF LOTS 9 AND 10 IN ASSESSOR'S DIVISION OF PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 17-06-227-015-0000 Affects: Parcel 6

ADDRESS: 1219-1221 N. WOLCOTT AVE., CHICAGO, ILLINOIS 60622

PARCEL 7:

THE SOUTH 4 1/3 FEET OF LOT 22 AND ALL OF LOT 23 IN BLOCK 1 IN SUBDIVISION OF BLOCKS 1, 2, 3 AND 4 IN JOHNSTON AND COX'S SUBDIVISION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 13-36-319-038-0000 Affects: Parcel 7

ADDRESS: 1700 N. HUMBOLDT BLVD. & 3002-3004 W. WABANSIA AVE., CHICAGO, ILLINOIS 60647

PARCEL 8:

LOT 1 IN BLOCK 6 IN JOHNSTON AND COX'S SUBDIVISION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT REAL ESTATE INDEX NO. 13-36-325-016-0000 Affects: Parcel 8

ADDRESS: 3101-3103 W. WABANSIA AVE., CHICAGO, ILLINOIS 60647

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Exhibit A - Legal Description - Continued...

PARCEL 9:

LOT 1 IN BLOCK 15 IN CARTER'S RESUBDIVISION OF BLOCKS 1, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15 AND LOTS 2, 4 AND 5 OF BLOCK 17, ALL IN CARTER'S SUBDIVISION OF BLOCKS 1, 2, 3, 4 AND 7 IN CLIFFORD'S ADDITION TO CHICAGO, A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.\*\*\*

PERMANENT REAL ESTATE INDEX NO. 16-01-316-014-0000 Affects: Parcel 9

ADDRESS: 2845-2847 W. AUGUSTA BLVD. & 934 N. MOZART ST., CHICAGO, ILLINOIS 60622

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