

# UNOFFICIAL COPY



212919

This Document Prepared By and  
After Recording, Mail To:

Brandon R. Calvert  
Charity & Associates, P.C.  
20 N. Clark Street, Suite 1150  
Chicago, Illinois 60602

Doc# 2032557014 Fee \$88.00

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

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 11/20/2020 10:23 AM PG: 1 OF 1

## AFTER RECORDING, RETURN TO:

TITLE SERVICES, I.C.  
610 E. ROOSEVELT ROAD  
SUITE 201  
WHEATON, IL 60187

## SUBORDINATION AGREEMENT (ComEd Loan)

THIS SUBORDINATION AGREEMENT ("*Agreement*") is made as of November 2, 2020, by and among OAKWOOD SHORES PERSHING APARTMENTS LLC, an Illinois limited liability company ("*Borrower*"), THE COMMUNITY BUILDERS, INC., a Massachusetts nonprofit corporation ("*Junior Lienholder*"), and BMO HARRIS BANK N.A., a national banking association ("*Bank*" and "*Senior Lender*").

### RECITALS

A. Borrower is lessee of certain land (the "*Land*") situated at 508 E. Pershing Rd., Chicago, Illinois, legally described on *Exhibit A* attached hereto.

B. Borrower intends to rehabilitate on the Land 53-units of rental housing, approximately 3,500 square feet of commercial space, 7,000 square feet of building amenity and management offices and other improvements owned by Borrower (the "*Project*").

C. As more fully provided in that certain Construction Loan Agreement (the "*Senior Loan Agreement*") dated as of even date herewith, between Borrower and Senior Lender, Senior Lender has agreed to make a loan to Borrower in the principal amount of \$10,358,020.00 (the "*Senior Loan*"), which loan is evidenced by that certain Promissory Note of even date herewith from Borrower to the order of Senior Lender (the "*Senior Note*"). The proceeds of the Senior Loan are to be used to finance in part the construction, rehabilitation and development of the Project.

D. As security for the Loan, Borrower has executed that certain Leasehold Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing for the benefit of Senior Lender, dated as of even date herewith (together with all renewals, modifications, increases and extensions thereof, the "*Senior Mortgage*"), encumbering Borrower's interest in the Land and all buildings, structures and improvements now or hereafter constructed thereon (collectively, the "*Property*").

E. The Senior Mortgage is being recorded concurrently herewith with the Cook County, Illinois Recorder of Deeds (the "*Official Records*"). The Senior Loan Agreement, Senior Mortgage, Senior Note and the other documents executed in connection with the Senior Loan are hereinafter collectively referred to as the "*Senior Loan Documents*".

# UNOFFICIAL COPY

F. The Borrower has requested the Senior Lender permit the Junior Lienholder to make a loan to the Borrower in an amount not to exceed \$150,847.00 (the "*Junior Loan*").

G. Each of the documents listed on *Exhibit B* together with all other documents and materials entered into with the Junior Lienholder with respect to the Junior Loan shall be referred to collectively as the "*Junior Obligation Documents*".

H. As used herein, the term "*Junior Obligations*" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Junior Lienholder under the Junior Obligation Documents, together with all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

I. As used herein, the term "*Bank Indebtedness*" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Senior Lender under the Senior Loan Documents, together with all interest accruing thereon and all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

J. It is a condition precedent to Senior Lender to entering into the Senior Loan Documents and permitting the recordation of any of the Junior Obligation Documents that the Senior Mortgage and the other Senior Loan Documents be and remain at all times a lien or charge upon the Project, prior and superior to the liens or charges of the Junior Obligation Documents.

K. Senior Lender is willing to permit the recordation of the recordable Junior Obligation Documents, provided that (1) the Senior Mortgage and the other Senior Loan Documents are a lien or charge upon the Project prior and superior to the liens or charges of the Junior Obligation Documents, and (2) Junior Lienholder will specifically subordinate the liens or charges of the Junior Obligation Documents to the lien or charge of the Senior Loan Documents.

L. Junior Lienholder is willing that the Senior Loan Documents shall constitute a lien or charge upon the Project which is prior and superior to the liens or charges of the Junior Obligation Documents. The parties hereto enter into this Agreement for the purposes set forth in these Recitals.

M. Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Senior Loan Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Senior Lender to make the Senior Loan, it is hereby declared, understood, and agreed as follows:

1. Subordination. The Senior Mortgage and other Senior Loan Documents in favor of Senior Lender, and all amendments, modifications, extensions and renewals thereof shall unconditionally be and remain at all times a lien or charge on the Project prior and superior to the lien or charge of the Junior Obligation Documents. Junior Lienholder intentionally and unconditionally subordinates the lien or charge of the Junior Obligation Documents in favor of the lien or charge upon the Project of the Senior Mortgage and other Senior Loan Documents in favor of Senior Lender, and understands that in reliance upon and in consideration of this subordination, specific loans and advances are being and will be made and, as part and

# UNOFFICIAL COPY

parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination.

2. Only Agreement Regarding Subordination. Senior Lender would not permit the recordation of any Junior Obligation Documents without this Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Junior Obligation Documents to the lien or charge of the Senior Mortgage and the other Senior Loan Documents and shall supersede and cancel, but only insofar as would affect the priority between said mortgages and said covenants, conditions and restrictions, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the Junior Obligation Documents which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

3. Loan Disbursements. In making disbursements pursuant to any of the Senior Loan Documents, Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such Senior Loan Document(s) shall not defeat the subordination herein made in whole or in part.

4. Consent and Approval. Junior Lienholder consents to and approves the Senior Loan Documents, including but not limited to any existing or future extension, modification and/or amendment of said agreements, between Borrower and Senior Lender.

5. Other Agreements. Junior Lienholder and Borrower declare, agree, and acknowledge that:

5.1 Subordination of Indebtedness. Any and all Junior Obligations are hereby subordinated and subject to any and all Bank Indebtedness, as set forth herein.

5.2 Permitted Payments. Borrower may make interest payments in accordance with the Junior Obligation Documents, if required, as long as all payments under the Senior Mortgage and the other Senior Loan Documents are current and not delinquent or in arrears; and only so long as at the time of such payment: (i) no Event of Default exists under the Senior Loan Agreement and no event exists which, with the lapse of time or the giving of notice or both, would be an Event of Default under the Bank Indebtedness of which Junior Lienholder has received notice; and (ii) the payment would not result in a violation of any of Borrower's financial covenants set forth in any of the Senior Loan Documents ("**Permitted Payments**").

5.3 Payment Subordination. Except for any Permitted Payments, (a) all of the Bank Indebtedness now or hereafter existing shall be first paid in full by Borrower before any payment shall be made by Borrower on the Junior Obligations, and (b) this priority of payment shall apply at all times until all of the Bank Indebtedness has been repaid in full. In the event of any assignment by Borrower for the benefit of Borrower's creditors, or any bankruptcy proceedings instituted by or against Borrower, or the appointment of any receiver for Borrower or Borrower's business or assets, or of any dissolution or other winding up of the affairs of Borrower or of Borrower's business, and in all such cases respectively, Borrower's officers and any assignee, trustee in bankruptcy, receiver and other person or persons in charge are hereby directed to pay to Senior Lender the full amount of the Bank Indebtedness before making any payments to Junior Lienholder due under the Junior Obligations.

5.4 Return of Prohibited Payments. Except as otherwise expressly agreed to herein, if Junior Lienholder shall receive any payments or other rights in any property of Borrower in connection

# UNOFFICIAL COPY

with the Junior Obligations in violation of this Agreement, such payment or property shall immediately be delivered and transferred to Senior Lender after notice to Junior Lienholder.

5.5 Repayment of Bank Indebtedness. This Agreement shall remain in full force and effect until all amounts due under the Senior Note and the Senior Loan Agreement are fully repaid in accordance with their respective terms and all of the terms of this Agreement have been complied with.

5.6 Standstill. Junior Lienholder agrees that without the Senior Lender's prior written consent, it will not accelerate the Junior Obligations, commence foreclosure proceedings with respect to the Project, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action with respect to the Junior Obligations.

## 6. Addresses for Notices.

All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified below (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met.

The address of Senior Lender for all purposes under this Agreement and for all notices hereunder shall be:

BMO Harris Bank N.A.  
115 S. LaSalle St., Floor 19W  
Chicago, Illinois 60603  
Attention: Allison Porter-Bell

With copy to:

Charity & Associates, P.C.  
20 N. Clark St., Suite 1150  
Chicago, Illinois 60602  
Attention: Brandon R. Calvert

The address of Junior Lienholder for all purposes under this Agreement and for all notices hereunder shall be:

The Community Builders, Inc.  
185 Dartmouth Street  
Boston, Massachusetts 02116  
Attention: General Counsel  
Facsimile: (857) 221-8616

And to:

Applegate & Thorne-Thomsen, P.C.

# UNOFFICIAL COPY

425 S. Financial Place  
Suite 1900  
Chicago, Illinois 60605  
Attention: Paul Davis

The address of Borrower for all purposes under this Agreement and for all notices hereunder shall be:

Oakwood Shores Pershing Apartments LLC  
185 Dartmouth Street  
Boston, MA 02116  
Attention: General Counsel

with a copy to:

Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place  
Suite 1900  
Chicago, Illinois 60605  
Attention: Paul Davis

7. Bankruptcy Provisions. To the extent any payment under any Senior Loan Document (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under the Bankruptcy Code or any federal or state bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

8. Casualty Insurance Proceeds; Condemnation Proceeds. In the event Bank shall release, for the purposes of restoration of all or any part of the improvements, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, Junior Lienholder shall simultaneously release (and hereby agrees that it shall be irrevocably and unconditionally deemed to have agreed to release) for such purpose all of Junior Lienholder's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation. Junior Lienholder agrees that the balance of such proceeds remaining after such restoration, or all of such proceeds in the event Bank elects, in accordance with Illinois law, not to release any such proceeds for any such restoration, shall be applied to the payment of amounts due under the Senior Loan Documents until all such amounts have been paid in full, prior to being applied to the payment of any amounts due under the Junior Obligation Documents. If Bank holds such proceeds, awards or compensation and/or monitors the disbursement thereof, Junior Lienholder agrees that Bank may also elect, in its sole and absolute discretion, to hold and monitor the disbursement of such proceeds, awards and compensation to which Junior Lienholder is or may be entitled. Nothing contained in this Agreement shall be deemed to require Bank, in any way whatsoever, to act for or on behalf of Junior Lienholder or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of Junior Lienholder, and all or any of such sums so held or monitored may be commingled with any funds of Bank.

9. Effect of Other Agreements. The relationship between Borrower and Bank under the Senior Loan Documents is, and shall at all times remain, solely that of borrower and lender. Based thereon, Junior Lienholder acknowledges and agrees that Bank neither undertakes nor assumes any fiduciary responsibility or other responsibility or duty to Borrower or Junior Lienholder to guarantee or assist in

# UNOFFICIAL COPY

Borrower's or Junior Lienholder's performance under any of the agreements between those parties and other third parties, including without limitation the Junior Obligation Documents.

10. Miscellaneous. This Agreement may be executed in multiple counterparts and the signature page(s) and acknowledgment(s) assembled into one original document for recordation, and the validity hereof shall not be impaired by reason of such execution in multiple counterparts. This Agreement is to be governed according to the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. In the event of action, suit, proceeding or arbitration to enforce any term of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, as determined by the court or arbitrator, all of the prevailing party's costs and expenses, including without limitation reasonable attorneys' fees and expert witness fees, incurred by the prevailing party in connection therewith. If Junior Lienholder or any affiliate of Junior Lienholder shall acquire, by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Project, that lien, estate, right or other interest shall be subordinate to the Senior Mortgage and the other Senior Loan Documents as provided herein, and Junior Lienholder hereby waives, on behalf of itself and such affiliate, until all amounts owed under the Senior Loan Documents have been indefeasibly paid in full and all Bank's obligations to extend credit under the Senior Loan Documents have terminated, the right to exercise any and all such rights it may acquire by indemnification, subrogation or otherwise. The Agreement shall inure to the benefit of, and be binding upon, the parties hereto and the respective successors and assigns.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

Deputy Cook County Clerk's Office



# UNOFFICIAL COPY

[FIRST SIGNATURE PAGE TO SUBORDINATION AGREEMENT - COMED LOAN]

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

**SENIOR LENDER:**

**BMO HARRIS BANK N.A.,**  
a national banking association

By: *Allison Porter-Bell, V.P.*  
Name: Allison Porter-Bell  
Title: Vice President

Property of Cook County Clerk's Office

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF COOK                    )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Allison Porter-Bell, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as a Vice President of BMO Harris Bank N.A., a national banking association, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said national banking association for the uses and purposes therein.

GIVEN under my hand and notarial seal this 16<sup>th</sup> day of September, 2020.

*Andrea Wareham*  
Notary Public

(Seal)

My commission expires: 9/13/2022



# UNOFFICIAL COPY

[SECOND SIGNATURE PAGE TO SUBORDINATION AGREEMENT – COMED LOAN]

**JUNIOR LIENHOLDER:**

**THE COMMUNITY BUILDERS, INC.,**  
a Massachusetts nonprofit corporation

By: \_\_\_\_\_  
Name: William T. Woodley  
Title: Authorized Agent

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

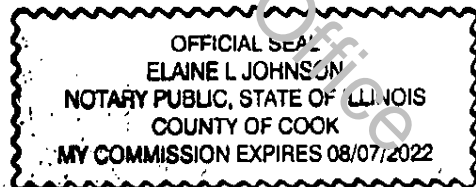
I, the undersigned, a Notary Public, in and for the County and State aforesaid, do certify that William Woodley, the Authorized Agent of The Community Builders, Inc., a Massachusetts nonprofit corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that ~~she~~ he signed and delivered the said instrument on behalf of said corporation, as the free and voluntary act of such person and the free and voluntary act and deed of said Authorized Agent, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21<sup>st</sup> day of September, 2020.

Elaine L. Johnson  
Notary Public

(Seal)

My commission expires: 8/7/22







# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

#### PARCEL 1:

THE LEASEHOLD ESTATE EVIDENCED BY THAT CERTAIN GROUND LEASE DATED NOVEMBER 2, 2020 WITH A 99 YEAR TERM BEGINNING NOVEMBER 2, 2020 AND TERMINATING NOVEMBER 1, 2119 ENTERED INTO BY THE CHICAGO HOUSING AUTHORITY AS LESSOR AND TCB DEVELOPMENT SERVICES LLC AS LESSEE, AND ASSIGNED AND ASSUMED AND AMENDED BY ASSIGNMENT, ASSUMPTION AND AMENDMENT OF GROUND LEASE, BETWEEN TCB DEVELOPMENT SERVICES LLC AND OAKWOOD SHORES PERSHING APARTMENTS LLC AND JOINED IN BY THE CHICAGO HOUSING AUTHORITY WITH RESPECT TO THE DEMISED LAND, DESCRIBED AS FOLLOWS:

LOT 69 IN OAKWOOD SHORES PHASE 2, BEING A RESUBDIVISION OF VARIOUS LOTS AND PARTS OF LOTS IN VARIOUS SUBDIVISIONS AND RESUBDIVISIONS TOGETHER WITH VACATED ROADS AND VACATED ALLEYS IN PART OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 11, 2007 AS DOCUMENT NUMBER 0734522111, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

OWNERSHIP, SUBJECT TO ARTICLES 5, 10 AND 14 OF THE AFORESAID GROUND LEASE AGREEMENT, OF THE IMPROVEMENTS NOW LOCATED ON, OR HEREAFTER ERECTED ON, PARCEL 1.

PERMANENT REAL ESTATE INDEX NUMBER: 17-34-429-010-0000

COMMON ADDRESS: 508 EAST PERSHING ROAD, CHICAGO, ILLINOIS 60653

# UNOFFICIAL COPY

## EXHIBIT "B"

### JUNIOR OBLIGATION DOCUMENTS

ALL DOCUMENTS DATED AS OF THE DATE OF THIS AGREEMENT UNLESS OTHERWISE NOTED.

1. \$150,847.00 Promissory Note executed by Borrower in favor of Junior Lienholder; and
2. Junior Leasehold Mortgage, Assignment of Rents and Security Agreement executed by Borrower in favor of Junior Lienholder.

Property of Cook County Clerk's Office