



Doc# 2225845128 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/15/2022 01:23 PM PG: 1 OF 22

THIS INSTRUMENT WAS PREPARED BY AND AFTER RECORDING RETURN TO: Illinois Housing Development Authority 111 E. Wacker Dr., Ste 1000 Chicago, Illinois 60601 Attention: Monika A. Bobo

Permanent Tax Index Identification No.: See Exhibit A Attached Hereto

Property Address: See Exhibit A Attached Hereto

HTF - 12003 41065573 (7 of 20)

REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (this "Agreement") is made and entered into as of this 16th day of September 2022, by and between BERRY MANOR APARTMENTS, LP, an Illinois limited partnership ("Borrower"), and the ILLINOIS HOUSING DEVELOPMENT AUTHORITY ("Authority"), a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as amended from time to time ("Act"), having its principal office at 111 E. Wacker Dr., Suite 1000, Chicago, Illinois 60601.

WITNESSETH:

WHEREAS, the Authority is the program administrator of the Illinois Affordable Housing Program ("Trust Fund Program"), as that program is authorized by the Illinois Affordable Housing Act, 310 ILCS 65/1 et seq., as amended from time to time ("Trust Fund Act"), and the rules promulgated under the Trust Fund Act ("Trust Fund Rules"); and

WHEREAS, Borrower is the fee owner of certain real property upon which a housing development consisting of fifty-seven (57) units ("Units") is constructed, legally described in Exhibit A attached to and made a part of this Agreement ("Real Estate"), located in Chicago, Illinois. The Real Estate and the improvements constructed on it are collectively referred to in this Agreement as the "Development"; and

WHEREAS, Berry Manor NHPF Manager, LLC, an Illinois limited liability company, is the general partner of Borrower ("General Partner") and The NHP Foundation, a District of Columbia non-profit corporation is the managing member of the General Partner ("Member"); and

WHEREAS, the Authority has agreed to make a loan to Borrower from the Trust Fund Program in the amount of One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) (the "Loan"), to be used with other monies, if any, for the acquisition, rehabilitation and permanent financing of the Development; each non-grammatical capitalized term not defined in this Agreement shall have the meaning ascribed to it in the Loan Agreement

CERTAIN OF THE PROVISIONS HEREOF MAY CONTINUE IN EFFECT NOTWITHSTANDING THE PAYMENT IN FULL OF THE LOAN PRIOR TO THE MATURITY DATE.

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of an even date herewith by and between Borrower and Authority (“Loan Agreement”); and

WHEREAS, the Loan is and will be evidenced by the Loan Documents; the Loan Documents are incorporated in this Agreement by this reference; and

WHEREAS, the Authority has required, as a condition precedent to the making of the Loan and the disbursement of the proceeds of the Loan that Borrower execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation**. The foregoing recitals are incorporated in this Agreement by this reference.

2. **Act and Rules**. As an inducement to the Authority to make the Loan, Borrower agrees that at all times its acts regarding the Development shall be in conformance with the applicable provisions of the Act, the Trust Fund Act, the Trust Fund Rules, and all applicable rules, regulations, policies and procedures of the Authority, all as they may be amended and supplemented from time to time.

3. **Representations and Agreements**. Borrower further represents and agrees that:

a. Two (2) of the Units shall be occupied by Affordable Tenants (as defined in **Paragraph 9** hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Low Income Tenants (as defined in **Paragraph 9** hereof), another four (4) of the Units shall be occupied by Affordable Tenants whose income, at the time of initial occupancy, does not exceed the income limits for Very Low Income Tenants (as defined in **Paragraph 9** hereof);

b. In the advertising, marketing, and rental of Units and the selection of Tenants, Borrower agrees to abide by the terms and conditions of the Tenant Selection Plan executed by Borrower, and approved by the Authority, as it may be amended from time to time with the prior written consent of the Authority;

c. In the management and operation of the Development, Borrower agrees to abide by the terms and conditions of the Affirmative Fair Housing Marketing Plan, the Management Plan, and the Management Agreement, all as approved by the Authority, as such documents may be amended from time to time with the prior written approval of the Authority. Borrower shall be responsible for ensuring the management agent’s compliance with applicable provisions of the Act, Trust Fund Act, the Trust Fund Rules, and all applicable ordinances, regulations and statutes and the rules, procedures and requirements of the Authority. Subject to approvals rights, if any, of the Senior Lender (as defined in the Loan Agreement), at the Authority’s direction, Borrower shall terminate the Management Agreement with the management agent and select another management agent

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satisfactory to the Authority;

d. On forms approved by the Authority, Borrower shall obtain from each prospective Affordable Tenant prior to his or her admission to the Development and periodically thereafter as required by the Authority, a certification of income ("Certification"). Borrower shall submit such Certifications to the Authority in the manner prescribed by the Authority;

e. In the manner prescribed by the Authority, Borrower shall obtain written evidence substantiating the information given on such Certifications and shall retain such evidence in its files at the Development for three (3) years after the year to which such evidence pertains. Within thirty (30) days after the end of each calendar year, Borrower shall certify to the Authority that, at the time of such certification and during the preceding calendar year, Borrower was in compliance with the requirements of this **Paragraph 3**, or, if Borrower is not or has not been in compliance with such requirements, Borrower shall give notice to the Authority of its failure to comply and the corrective action Borrower is taking or has taken;

f. Borrower shall annually submit a schedule of rents with utility allowances for the Development for the Authority's approval, and shall not change the rent schedule and utility allowances for the Development without the Authority's approval. The requirements of this **Paragraph 3.f** are subject to any requirements of the Section 8 Housing Assistance Payments Contract (HAP), which requirements shall control those units receiving project based rental subsidy while the HAP is in effect

g. Borrower shall require all Tenants to execute a written lease ("Lease") in a form approved by the Authority;

h. Borrower shall obtain all federal, state and local governmental approvals required by law for its acquisition, construction, ownership and operation of the Development;

i. Borrower shall not evict any Tenant from the Development without good cause;

j. Borrower shall design and construct the Development in conformity (i) with applicable federal, state and local statutes, regulations, ordinances, standards and codes (except as otherwise approved by the Authority) and (ii) with all applicable rules, contracts, agreements, procedures, guides and other requirements of the Authority provided to Borrower in writing; and

k. Borrower shall timely perform its obligations under that certain Low Income Housing Tax Credit Extended Use Agreement between the Borrower and the Authority ("Extended Use Agreement") and any other regulatory agreement or other document between the Authority and Borrower which restricts the Units (collectively "Regulatory Agreements", together with the Extended Use Agreement, the "Restrictive

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Agreements”), which have been or shall be executed by the Authority. No consent or approval given by Authority under or in connection with the Restrictive Agreements shall be deemed to constitute any consent or approval of the Authority under this Agreement or under any other Loan Document. In the event of any conflict between this Agreement and the provisions of the Restrictive Agreements, the more restrictive provisions shall control and prevail.

4. **Acts Requiring Authority Approval.** Except as permitted pursuant to the other Loan Documents, Borrower shall not, without the prior written approval of the Authority, which may be given or withheld in the Authority’s sole discretion:

a. Convey, transfer or encumber the Development or any part of it, or permit the conveyance, transfer or encumbrance of the Development or any part of it;

b. Convey, assign or transfer any right to manage, or receive the rents and profits from, the Development;

c. Initially rent any Unit for a period other than one (1) year, and after such initial one (1) year period, rent any Unit for less than six (6) months or more than one (1) year;

d. Lease or sublease any non-residential facility in the Development or amend or modify any such lease or sublease, which, to the best of Borrower’s knowledge, would result in a conflict of interest between any of the parties to such contracts and the Authority, its board members, officers, employees, agents or members of their respective immediate families;

e. Require, as a condition of the occupancy or leasing of any Unit in the Development, any consideration or deposit other than the prepayment of the first month’s rent plus a security deposit in an amount not to exceed one (1) month’s rent to guarantee the performance by the Tenant of the covenants of the Lease. Any funds collected by Borrower as security deposits shall be kept separate and apart from all other funds of the Development; or

f. Prepay the Loan in whole or in part.

5. **Borrower Duties.** In addition to, but not by way of limitation of, the other duties of Borrower set forth in this Agreement, Borrower shall comply with the following:

a. **Maintenance.** Borrower shall maintain the Development and the grounds and equipment appurtenant to it in a decent, safe and sanitary condition, and in a rentable and tenantable state of repair, and in compliance with all applicable federal, state and local statutes, regulations, ordinances, standards and codes.

b. **Management.** Borrower shall provide for the management of the Development in a manner satisfactory to the Authority.

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c. Audit. The Development and the equipment, buildings, plans, specifications, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it, and the books and records relating to Borrower, shall at all times be maintained in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority or its agent or representative upon reasonable prior notice during normal business hours, as the Authority reasonably requires.

d. Financial and Expense Reports. Commencing after completion of the rehabilitation of the Development, within ninety (90) days following the end of the Borrower's fiscal year, in a manner prescribed by the Authority in writing, Borrower shall furnish the Authority with a complete annual financial report for the Development based upon an examination of the books and records of the Development, prepared at Borrower's expense in accordance with the written requirements of the Authority, and certified to Borrower by an Illinois licensed certified public accountant.

e. Furnishing Information. At the request of the Authority, Borrower shall furnish such reports, projections, certifications, budgets, operating reports, tax returns and analyses as required pursuant to the statutes, rules and regulations of the Authority, and the Trust Fund Act, as amended from time to time, or by other applicable federal or state statutes or requirements, and from time to time shall give specific answers to written questions in connection with Borrower's income, assets, liabilities, contracts and operation, all relating to the Development, and the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Development.

f. Compliance with Certain Laws. Borrower shall comply with the provisions of the Environmental Barriers Act (410 ILCS 25/1 *et seq.*, as amended from time to time), the Illinois Accessibility Code (71 Ill. Adm. Code 400), 47 Ill. Adm. Code 310, Subpart I, as amended from time to time, except as otherwise approved by the Authority, and the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, as amended, if applicable.

6. Non-Discrimination in Housing.

a. Borrower shall not, in the selection of Tenants, in the provision of services, or in any other manner unlawfully discriminate against any person on the grounds of race, color, creed, religion, sex, age, unfavorable military discharge (as such term is defined in the Illinois Human Rights Act, 775 ILCS 51-101 *et seq.*), ancestry, handicap, national origin, marital status, familial status or because the prospective Tenant is receiving governmental rental assistance. Notwithstanding the foregoing, the Development will be used for senior housing for those aged 62 years or older.

b. Borrower shall comply with all of the provisions of Paragraph 3805/13 of the Act, Paragraph 65/10(a) of the Trust Fund Act, and all other provisions of federal, state and local law relating to non-discrimination.

7. Violation of Agreement by Borrower. Upon violation of any of the provisions of

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this Agreement by Borrower, the Authority may give notice of such violation to Borrower as provided in **Exhibit B** attached to and made a part hereof. If such violation is not corrected to the satisfaction of the Authority within thirty (30) days after such notice, the Authority may declare a default under this Agreement; however if such condition is not reasonably curable within thirty (30) days despite Borrower's reasonable efforts to cure it, Borrower shall have one hundred twenty (120) additional days to cure such default, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Borrower continues to diligently pursue such cure in good faith and (iii) the Authority's security for the Loan is not, in the sole judgment of the Authority, impaired as a result of the existence of such failure; after the expiration of such one hundred fifty (150) day period, the Authority may declare a default under this Agreement, effective on the date of notice of such declaration of default to Borrower, and upon such default, and so long as such default is continuing, the Authority may do the following:

- a. Declare the whole of the indebtedness under the Note immediately due and payable and then proceed to exercise the rights and remedies set forth in any Loan Document;
- b. Take possession of the Development, bring any action necessary to enforce any rights of Borrower growing out of the operation of the Development and operate the Development in accordance with the terms of this Agreement until such time as the Authority, in its sole discretion, determines that Borrower is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Note;
- c. Collect all rents and charges in connection with the operation of the Development and use such collections to pay Borrower's obligations under this Agreement, the Note, the Mortgage, or any other Loan Document and such other obligations of Borrower in connection with the Development and the necessary expenses of preserving and operating it;
- d. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. Because the injury to the Authority arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, Borrower acknowledges and agrees that the Authority's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the Authority's public purpose;
- e. Use and apply any monies deposited by the Borrower with the Authority regardless of the purpose for which the same were deposited, to cure any such default or to repay any indebtedness under the Loan Agreement or any other Loan Document which is due and owing to the Authority; and/or
- f. Exercise such other rights or remedies as may be available to the Authority under this Agreement, at law or in equity.

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g. The Authority agrees that any cure made or tendered by Borrower's Investor Limited Partner (as defined in the Loan Agreement) shall be accepted or rejected by the Authority on the same basis and within the same time periods as if such cure were made or tendered by Borrower and if such default is cured by the Borrower's Investor Limited Partner, such cure shall be deemed to be a cure by Borrower.

The Authority's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies. No waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure or delay of the Authority in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of its rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights.

8. **Termination of Liabilities.** In the event of a sale or other transfer of the Development, all of the duties, obligations, undertakings and liabilities of Borrower or other transferor (the "Transferor") under the terms of this Agreement shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by the Transferor that occurred or arose prior to such sale or transfer; provided, however, as a condition precedent to the termination of the liability of the Transferor under this Agreement and the approval of the transferee of the Development (a "New Borrower"), the New Borrower shall assume in writing, on the same terms and conditions as apply to the Transferor, all of the duties and obligations of the Transferor arising under this Agreement from and after the date of such sale or transfer. Such assumption shall be in form and substance acceptable to the Authority. Any such New Borrower shall not be obligated with respect to matters or events that occur or arise before its admission as a New Borrower.

9. **Definitions.**

a. "Affordable Tenant" or "Tenant", means a Low Income Tenant or Very Low Income Tenant.

b. "Low Income Tenant", means a single person, family or unrelated persons living together whose adjusted income is less than or equal to eighty percent (80%) of the median income of the metropolitan statistical area of Chicago, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 ("Median Income").

c. "Very Low Income Tenant", means a single person, family or unrelated persons living together whose adjusted income is less than or equal to fifty percent (50%) of the Median Income the metropolitan statistical area of Chicago adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 ("Median Income").

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10. Term of Agreement; Covenants Run with Development. The covenants and agreements set forth in this Agreement shall encumber the Development and be binding on the Borrower, New Borrower and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it until the Maturity Date (as defined in the Note). If the Note is prepaid prior to the Maturity Date (as defined in the Note) with the approval of the Authority, only the covenants and agreements set forth in **Paragraphs 2, 3, 4(a, b, d, and e), 5(a), 6, 7(d)-(e), 8-10 and 12-20** hereof (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing on the prepayment and ending on the Maturity Date, regardless of whether the Loan is prepaid voluntarily by Borrower or tendered by any party following an acceleration by the Authority of the Note or enforcement by the Authority of its remedies in connection with the Loan.

Borrower expressly acknowledges that its undertakings and agreements stated in this Agreement are given to induce the Authority to make the Loan and that, even if the Loan have been repaid prior to the Maturity Date, or paid on the Maturity Date, the Borrower's undertaking to perform the Continuing Obligations for the period set forth in the previous paragraph is a condition precedent to the willingness of the Authority to make the Loan.

11. Liability of Borrower – Nonrecourse. Except as otherwise set forth in the Environmental Indemnity and the Guaranty, Borrower's liability created under this Agreement and the Loan Documents shall be non-recourse and neither Borrower, General Partner, nor Investor Limited Partner shall have any personal liability for repayment of the Loan. The Authority shall look only to the Development and its reserves and any other funds or letters of credit relating to the Development for repayment of the Loan. The foregoing shall not limit Borrower's or Guarantor's liability for damages as a result of (i) fraudulent acts, or willful and wanton acts or omissions in violation of the provisions of this Agreement and the other Loan Documents; (ii) the fair market value of the personalty or fixtures removed or disposed of from the Development in violation of the terms of the Loan Documents; (iii) the misapplication, in violation of the terms of the Loan Documents, of any funds to the full extent of such misapplied funds and proceeds, including, without limitation, any funds or proceeds received under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain; (iv) any misapplication of any security deposits attributable to any leases of any Unit, or failure to pay interest on such security deposits as required by law; (v) waste committed on the Development to the extent that funds in the Replacement Reserve Account (as defined in the Loan Agreement) or otherwise available in any property account held by Borrower, are available to remedy such waste and Borrower has failed to remedy the waste despite the written instructions of the Authority; (vi) the occurrence of a Prohibited Transfer (as defined in the Mortgage), without the prior written consent of the Authority; (vii) a written material misrepresentation was made by Borrower or any party in the ownership structure of Borrower, or any employee or agent of Borrower or any other such entity or individual under Borrower's direction or control; (viii) a material error or omission was made in the Ownership Structure Certificate ("Ownership Structure Certificate" shall mean that certain final Ownership Structure Certificate, in the form required by Authority, to be dated, executed and delivered by Owner to Authority as of Initial Closing); (ix) the Borrower has violated the single asset requirement contained in the Loan Agreement; (x) the Borrower has delivered a false certification pursuant to any of the Loan Documents; or (xi) failure to comply with all fair

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housing and accessibility laws and regulations. Any liability incurred pursuant to this Paragraph shall be the personal liability of the Borrower and/or the Guarantor. The provisions of this Paragraph shall have no effect on the liabilities and obligations contained in the Environmental Indemnity and the Guaranty.

12. **Amendment of Agreement.** This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.

13. **Execution of Conflicting Documents.** Borrower warrants that it has not executed, and it agrees that it shall not execute, any other agreement with provisions contradictory, or in opposition, to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are and shall be paramount and controlling as to the rights and obligations set forth in such other agreement and supersede any other requirements in conflict with this Agreement. To the extent this Agreement conflicts with any provisions or requirements set forth in the Mortgage or the Note, the provisions of the Mortgage or the Note, as the case may be, shall prevail and control.

14. **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement, or its application to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. **Successors.** Subject to the provisions of Paragraph 8 hereof, this Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, successors in office or interest and assigns; however, Borrower may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of the Authority.

16. **Indemnification of the Authority.** Except for matters arising solely from the gross negligence or willful misconduct of the Authority, Borrower and Guarantor agree to defend and indemnify and hold harmless the Authority from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that the Authority may incur or suffer by reason of or in connection with the Development. Borrower and Guarantor further agree that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

17. **Gender.** The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

18. **Captions.** The captions used in this Agreement are used only as a matter of convenience and for reference and in no way define, limit or describe its scope or intent.

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19. **Notices.** Notices under this Agreement shall be given as provided in **Exhibit B** hereof.

20. **Counterparts.** This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument with the same effect as if all parties had signed the same signature page.

[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized representatives.

BORROWER:

BERRY MANOR APARTMENTS, LP,
an Illinois limited partnership

By: Berry Manor NHPF Manager, LLC
An Illinois limited liability company
Its General Partner

By: The NHP Foundation,
A District of Columbia non-profit corporation
Its Managing Member

By: 
Name: Mecky Adnani
Its: Senior Vice President

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____
Name: _____
Its: _____

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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized representatives.

BORROWER:

BERRY MANOR APARTMENTS, LP,
an Illinois limited partnership

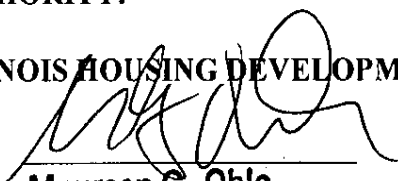
By: Berry Manor NHPF Manager, LLC
An Illinois limited liability company
Its General Partner

By: The NHP Foundation,
A District of Columbia non-profit corporation
Its Managing Member

By: _____
Name: _____
Its: _____

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: 
Name: Maureen G. Ohle
Its: GENERAL COUNSEL

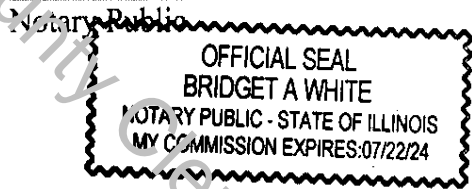
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STATE OF IL)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Mecky Adnani, personally known to me to be the Senior Vice President of The NHP Foundation, the managing member of Berry Manor NHPF Manager, LLC the general partner of Berry Manor Apartments LP 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 signed and delivered the said instrument in her capacity as Senior Vice President of The NHP Foundation as her free and voluntary act and deed and as the free and voluntary act and deed of corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 24 day of August, 2022.

Bridget A. White
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION

LOTS 12, 13, AND 14 IN SUPERIOR COURT PARTITION SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 737 East 69th Street, Chicago, Illinois 60637

PINs: 20-22-418-028-0000; 20-22-418-029-0000; 20-22-418-061-0000

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EXHIBIT B

NOTICE PROVISIONS

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this document 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 States mail, postage prepaid, return receipt requested.

If to the Authority:

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attention: Director, Multifamily Financing

with a copy to:

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

If to Borrower:

Berry Manor Apartments, LP
c/o The NHP Foundation
122 East 42nd Street, Suite 4900
New York, New York 10168
Attention: Mecky Adnani

with a courtesy copy to:

Applegate & Thorne-Thomsen, P.C.
425 South Financial Pl, Suite 1900
Chicago, Illinois 60605
Attention: Kimberly A. Lawson

And

NHT Equity, LLC
2245 North Bank Drive, Suite 200
Columbus, OH 43220
Attn: President

And

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Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, MA 02116
Attn: Kristen M. Cassetta, Esq.

In connection with the courtesy copy, the Authority will exercise reasonable efforts to provide copies of any notices given to Borrower; however, the Authority's failure to furnish copies of such notices shall not limit the Authority's exercise of any of its rights and remedies under any document evidencing, securing, or governing the Loan from the Authority to the Borrower, or affect the validity of the notice.

Such addresses may be changed by notice to the other party given in the same manner as provided in this Exhibit. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

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This RIDER TO IHDA REGULATORY AND LAND USE RESTRICTION AGREEMENT is made as of September 16th, 2022, by BERRY MANOR APARTMENTS, LP ("Borrower") and Illinois Housing Development Authority ("Agency").

WHEREAS, Borrower has obtained financing from Merchants Capital Corp., a corporation organized and existing under the laws of Indiana ("Lender") for the benefit of the project known as Berry Manor ("Project"), which loan is secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of September 16th, 2022, and recorded in the Recorder's Office of Cook County, Illinois ("Records") contemporaneously herewith, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received a loan from the Trust Fund Program (the "Loan") from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means Merchants Capital Corp., a corporation organized and existing under the laws of Indiana, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

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“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency’s reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available Surplus Cash, if the Borrower is a for-profit entity;
- ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available Residual Receipts authorized by HUD, if the Borrower is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set

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forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available Surplus Cash and/or Residual Receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to jeopardize the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

[SIGNATURE PAGES TO FOLLOW]

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AGENCY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: 

Name: GENERAL COUNSEL

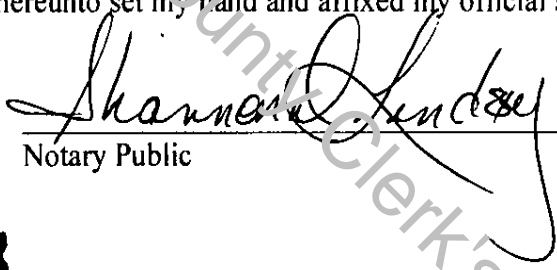
Title: Maureen G. Ohle

STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this Maureen G. Ohle, GENERAL COUNSEL, 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 (s)he signed and delivered the said instrument as his/her ~~free and~~ voluntary act and the free and voluntary act of GENERAL COUNSEL for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]



Notary Public

