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Doc# 2225845132 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/15/2022 01:28 PM PG: 1 OF 18

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud

844-768-1713

41065573 (11 OF 20)

The property identified as: **PIN:** 20-22-418-028-0000

Address:

Street: 737 EAST 69TH STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60637

Lender: BERRY MANOR OWNER, LP

Borrower: BERRY MANOR APARTMENTS, LP

Loan / Mortgage Amount: \$2,560,675.00

This property is located within the program area and is exempt from the requirements of 765 LCS 77/70 et seq. because it is commercial property.

Certificate number: 05CF87DE-D1E2-4AB4-AAE6-44C2BD30AA04

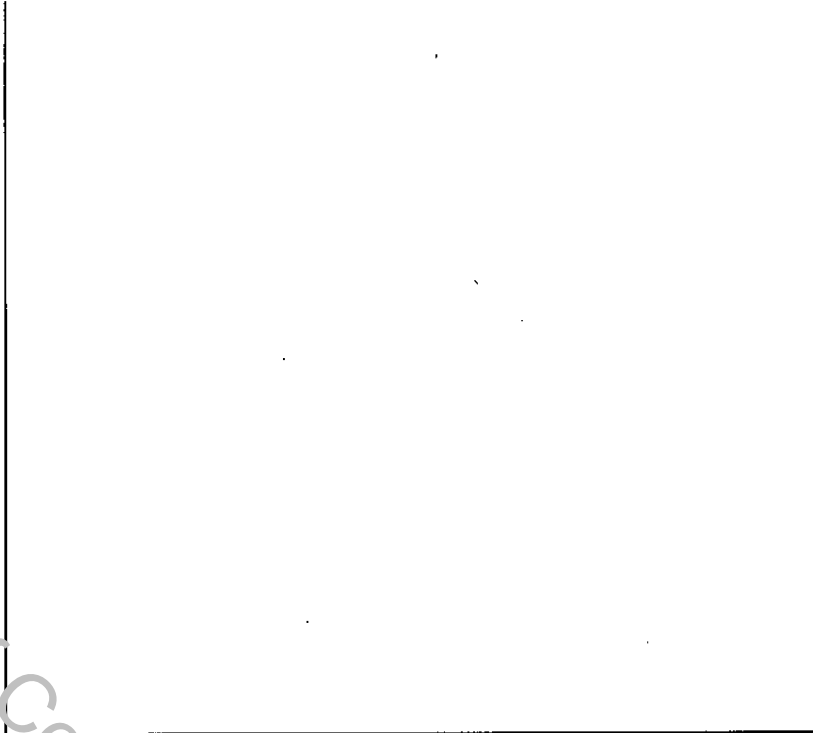
Execution date: 9/1/2022

S Y
P 18
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INT R

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This instrument was prepared by and after recording return to:

Kim Lawson
Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605



Above space for Recorder's Use Only

JUNIOR MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT
(Seller Loan)

THIS JUNIOR MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "Mortgage") is made as of September 1, 2022, by **BERRY MANOR APARTMENTS, LP** an Illinois limited partnership (the "Borrower"), to **BERRY MANOR OWNER, LP**, an Illinois limited partnership (the "Lender").

RECITALS

WHEREAS, Borrower is obtaining a mortgage loan from Lender in the amount of Two Million Five Hundred Sixty Thousand Six Hundred Seventy-Five and No/100 Dollars (\$2,560,675.00) (the "Mortgage Loan") to finance the acquisition of a rental housing development commonly known as Berry Manor Apartments in Chicago, Illinois (the "Project");

WHEREAS, the Mortgage Loan is evidenced by a Surplus Cash Note dated as of the date hereof from Borrower to Lender in the amount of the Mortgage Loan (the "Note") bearing interest at an annual rate of 6% with a maturity date of May 1, 2064. The Mortgage Loan will be repaid on the terms stated in the Note.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, **BORROWER HEREBY CONVEYS, GRANTS, MORTGAGES AND WARRANTS TO LENDER, ITS SUCCESSORS AND ASSIGNS**, the estate, right, title and

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interest of Borrower in the real estate located at 737 E. 69th Street, Chicago, Illinois legally described on Exhibit A attached hereto and incorporated herein (the "Property");

FOR THE PURPOSE OF SECURING:

A. Payment of that certain indebtedness in the principal amount of the Mortgage Loan evidenced by the Note, which Note together with any and all amendments, modifications, extensions and renewals thereof, however evidenced, are herein by reference made a part of this Mortgage;

B. Payment of all sums advanced by Lender to protect the Property and to enforce its rights under this Mortgage; and

C. Performance of Borrower's obligations and agreements with respect to the Note, this Mortgage and any other instrument now or hereafter given to evidence or further secure the payment of the Indebtedness (as that term is defined in **Section 1** herein) and any modification or amendment thereof (this Mortgage, the Note, and any other instruments or documents executed in connection with the Mortgage Loan, including any modifications, extensions and renewals thereof, are hereinafter referred to collectively as the "Loan Documents").

In addition to the Property, Borrower also grants, mortgages and warrants to Lender, its successors and assigns, the following to secure the obligations set forth in paragraphs (A) through (C) above: (i) all buildings and improvements of every kind and description now or hereafter erected or placed on the Property (the "Improvements"); and (ii) all goods affixed or to be affixed to the Property or the Improvements, and all machinery, apparatus, equipment, fittings, and articles of personal property of every kind and nature whatsoever, now or hereafter located in or upon the Property or the Improvements or any part thereof and used or usable in connection with any present or future operation of the Property and now owned or hereafter acquired by the Borrower, including but without limiting the generality of the foregoing, all gas and electric fixtures, heating, lighting, and plumbing fixtures, laundry, incinerating and power equipment, engines and machinery, radiators, heaters, furnaces, steam and hot water boilers, stoves, ranges, refrigerators, elevators, pipes, pumps, ducts, tanks, motors, compressors, conduits, switchboards, fire-prevention, fire-extinguishing, ventilating and communications apparatus, air cooling and air-conditioning apparatus, bathtubs, sinks, water closets, basins, cabinets, mantels, furniture, shades, awnings, partitions, screens, blinds, curtains, carpeting and other furnishings (the "Personal Property").

The Property, Personal Property and Improvements together comprise the "Mortgaged Property", and are part and parcel of the Mortgaged Property and appropriated to the use of the Mortgaged Property and, whether affixed or annexed or not, shall conclusively be deemed subject to the lien of this Mortgage. Borrower agrees to execute, acknowledge and deliver, from time to time, any other documents that are necessary to confirm and perfect the lien of this Mortgage on any Personal Property under the provisions of the Uniform Commercial Code. This Mortgage is also a security agreement, and is intended to be effective as a financing statement.

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TO HAVE AND TO HOLD the Mortgaged Property unto Lender, its successors and assigns, forever, for the purposes and uses set forth in this Mortgage provided that if Borrower makes all payments when due under the Loan Documents and performs all of the agreements contained in this Mortgage, then this Mortgage and the other Loan Documents shall be null and void; otherwise to remain in full effect.

Borrower hereby agrees, covenants with, represents and warrants to Lender and any purchaser at any foreclosure sale, as of the date hereof and until the Indebtedness is paid in full and all other obligations of Borrower under this Mortgage and the Loan Documents are performed in full, as follows:

1. **Payment of Indebtedness.** Borrower shall pay, promptly when due, all indebtedness required to be paid pursuant to the Note; all charges, fees and other sums required to be paid pursuant to the Loan Documents; and all other amounts, obligations and indebtedness secured by this Mortgage (collectively, the "Indebtedness"), and Borrower hereby waives all rights that now or hereafter are conferred by statute or otherwise to assert, any right to any demand, counterclaim, offset, deduction or defense.

2. **Subordination of Mortgage.** The liens, terms and conditions contained in this Mortgage are and shall be subject and subordinate in all respects to the liens, terms and conditions contained in the following documents, all of which have been or are intended to be recorded in the Cook County Clerk's office prior to the recording of this Mortgage:
 - (i) that certain Low Income Housing Tax Credit Extended Use Agreement between IHDA and the Borrower;
 - (ii) that certain Regulatory Agreement for Multifamily Projects between the Secretary of Housing and Urban Development and the Borrower;
 - (iii) that certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (Illinois) executed and delivered by the Borrower to and in favor of Merchants Capital Corp. securing repayment of a loan in the aggregate principal amount of \$5,802,000.00, and any other documents evidencing or securing any or all such indebtedness;
 - (iv) that certain Tax Regulatory Agreement by and between the Illinois Housing Development Authority ("IHDA"), Borrower, and U.S. Bank National Association;
 - (v) that certain Regulatory and Land Use Restriction Agreement by and between IHDA and Borrower; and
 - (vi) that certain Junior Mortgage, Security Agreement and Assignment of Rents and Leases executed and delivered by the Borrower to and in favor of IHDA securing repayment of a loan in the aggregate principal amount of \$1,700,000.00, and any other documents evidencing or securing any or all such indebtedness.

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Notwithstanding any provision of this Mortgage to the contrary, Borrower may refinance any loan which is superior and/or subordinate to the loans secured by this Mortgage so long as (i) the principal balance of the superior and/or subordinate loan being refinanced ("New Loan") does not exceed the outstanding balance of the original superior and/or subordinate loan, as the case may be, at the time of such refinancing plus the reasonable cost of such refinancing, (ii) the holder of the New Loan is an institutional or governmental lender, and (iii) the New Loan is on the then-existing market terms and conditions for loans of its type. Lender hereby agrees to subordinate its Mortgage to any such refinancing of a superior loan at the time such refinancing takes place.

3. **Care and Use of Mortgaged Property.** Borrower shall not commit any material physical waste on the Mortgaged Property.

4. **Payment of Taxes and Impositions.** Subject to **Section 6**, Borrower shall pay, not less than ten (10) days before any penalty or interest attaches, all real estate taxes and assessments (general or special), water charges, drainage charges, sewer charges and all other charges that may be imposed on the Mortgaged Property or any part thereof or interest therein (collectively, the "Impositions") and, at the request of Lender, shall exhibit to Lender official receipts evidencing such payments; provided, however, that if, by law, any such Impositions are payable in installments (or may be so paid at the option of the taxpayer), Borrower may pay the same together with any accrued interest on the unpaid balance in installments as they become due and before any cost may be added thereto for nonpayment.

5. **Payment of Expenses; No Liens.** Subject to **Section 6**, Borrower shall (a) pay when due all expenses incurred and all claims for labor and materials furnished in connection with the Mortgaged Property; (b) keep the Mortgaged Property free from all liens, charges, mortgages, security agreements and encumbrances, other than (i) Impositions not yet due, (ii) the documents evidencing the indebtedness described in **Section 2** herein, and (iii) such other encumbrances and restrictions as are reflected on the owner's title policy issued to Borrower on or about the date hereof, which Lender has reviewed; and (c) exhibit to Lender, upon request, satisfactory evidence of the payment and discharge of any such liens, charges and encumbrances.

6. **Right to Contest.** Notwithstanding anything in this Mortgage to the contrary, Borrower shall have the right to contest the validity (or the applicability to Borrower, the Mortgaged Property, the Note, or this Mortgage) of any tax, assessment, law, ordinance, lien, charge or encumbrance referred to in **Sections 4 or 5** herein of this Mortgage (other than those described in **Section 5** (b)(ii) or (b)(iii) hereof). Borrower agrees to prosecute any such contest diligently and by appropriate legal proceedings that (a) will prevent the enforcement of the matter under contest and the sale or forfeiture of the Mortgaged Property or any portion thereof or interest therein, (b) will not impair the lien of this Mortgage, and (c) will not interfere with the use or occupancy of the Mortgaged Property or the normal conduct of business thereon.

7. **Insurance; Application of Insurance Proceeds.** Borrower will keep the Improvements insured against loss from fire and such other hazards, casualties, and contingencies as required by senior mortgages encumbering the Mortgaged Property. If Borrower fails to do so Lender shall have the right to obtain the required insurance. In the event Lender obtains such insurance, Borrower covenants that it shall immediately reimburse Lender for the cost. All insurance policies

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covering the Mortgaged Property shall be endorsed and contain loss payable clauses acceptable to Lender naming Lender as an additional insured or loss payee as applicable. Subject to the rights of any senior lienholders and rights granted under any documents identified in **Section 2** hereof, if the Mortgaged Property, or any part thereof, is damaged by fire or other insured hazard, the amounts paid by any insurance company pursuant to the policy of insurance shall be paid to Lender to the extent of the Indebtedness then remaining unpaid. Notwithstanding the foregoing, Borrower shall have the right to rebuild the Improvements as nearly as possible to its value, condition and operational character immediately prior to any such damage, and to use all available insurance proceeds therefore, provided that sufficient funds from all sources are available to rebuild the Project. Lender shall make the insurance proceeds available for such purpose, after the payment of all of Lender's expenses in connection with such proceedings, including costs and reasonable attorneys' fees. If the casualty affects only part of the Project and total rebuilding is infeasible, Borrower shall have the right to use the proceeds for partial rebuilding and partial repayment of the Loan. Subject to Lender's consent, which may be granted or denied in its reasonable discretion, the Note may be reamortized on terms acceptable to the Lender if a partial pre-payment is made from insurance proceeds received as the result of damage to or the partial destruction of the Mortgaged Property, and there is a resulting loss of income from the Mortgaged Property.

8. **Assignment of Condemnation Awards.** For so long as any Indebtedness remains outstanding, subject to the rights of any senior lienholders and rights granted under any documents identified in **Section 2** hereof, Borrower hereby assigns to Lender, as additional security, all awards of damage resulting from condemnation proceedings or the taking of or injury to the Mortgaged Property for public use, and the proceeds of all such awards shall be paid to Lender. Notwithstanding the foregoing, Borrower shall have the right to apply such proceeds towards the cost of repair or reconstruction of the Mortgaged Property in accordance with **Section 7** and Lender shall make such proceeds available for such purpose, after the payment of all of Lender's expenses in connection with such proceedings, including costs and attorneys' fees. Borrower shall immediately notify Lender of any actual or threatened condemnation or eminent domain proceedings and shall give to Lender at any time any additional instruments requested by Lender for the purpose of validly assigning all awards or appealing from any such award.

9. **Further Representations, Warranties and Covenants of Borrower.** To induce Lender to make any loan secured hereby, in addition to all other covenants, representations and warranties contained in this Mortgage, Borrower further represents, warrants and covenants, as of the date hereof and until the Indebtedness is paid in full and all other obligations of Borrower under this Mortgage or any of the other Loan Documents are performed in full, as follows:

a. **Power and Authority.** Borrower is duly organized and validly existing in its state of organization, is qualified to do business and is in good standing in the state in which the Mortgaged Property is located, and has full power and due authority to execute, deliver and perform the obligations of Borrower under this Mortgage, the Note and all other Loan Documents.

b. **Nature of Loan and Mortgaged Property.** The proceeds of the Note are from a "business loan" (as that term is used in 815 ILCS 205/4(1)(c)); Borrower is borrowing money for the purpose of carrying on or acquiring a business of Borrower of the nature described in 815 ILCS

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205/4(1)(c); and the proceeds of the Note shall be used exclusively for the purpose of carrying on or acquiring a business of Borrower of the nature described in 815 ILCS 205/4(1)(c).

10. **Lender's Right of Inspection; Further Assurances.** Borrower shall (a) permit Lender or its representatives to enter on and inspect the Mortgaged Property at all reasonable times, and (b) prepare such summaries and reports with respect to the Mortgaged Property as Lender may request. Borrower, at its sole cost and expense, shall do such further acts and execute such further documents as Lender may require at any time to better assign and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Mortgage or any other instrument or Loan Document. Borrower hereby appoints Lender its attorney-in-fact and authorizes Lender to execute, acknowledge and deliver in the name of Borrower the instruments required by Lender pursuant this **Section 10** herein to the extent permitted by law. This power, being coupled with an interest, shall be irrevocable as long as any part of the Indebtedness remains unpaid.

11. **Lender's Right to Cure.** Upon the occurrence of any Event of Default (as defined in **Section 12** herein), Lender may, at its option, in any form and manner and without inquiry into the validity thereof, make any payment or perform any act hereinbefore required of Borrower, including but not limited to making full or partial payments on other encumbrances, if any, discharging any tax lien, redeeming all or any portion of the Mortgaged Property from any tax sale, or contesting any tax or assessment. In no event shall such actions by Lender be construed as a waiver of any Event of Default. The amount of all moneys paid for any of the purposes herein authorized, all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and all other moneys advanced by Lender to protect the Mortgaged Property and the lien of this Mortgage shall be additional Indebtedness secured hereby and shall become immediately due and payable without notice.

12. **Events of Defaults.** Any of the following shall constitute an "Event of Default" under this Mortgage:

a. **Non-Payment.** A default shall occur, and shall continue for ten (10) days after written notice to Borrower from Lender in the payment when due of any amount under any of the Loan Documents;

b. **Non-Observance; Non-Performance; False or Inaccurate Representation or Warranty.** A default shall occur in the performance of any other obligation of Borrower contained in any of the Loan Documents or any other instrument given as security for payment of the Indebtedness, or any representation, warranty or statement made in any of the Loan Documents or in any other material furnished to Lender by or on behalf of Borrower in connection with the Indebtedness secured hereby proves to be false or inaccurate in any material respect as of the date of making or issuance thereof and any of the foregoing continues for thirty (30) days after written notice from Lender to Borrower, provided, however, if Borrower has commenced the cure of such default within thirty (30) days, then such thirty (30) day period shall be extended so long as Borrower is diligently pursuing the cure.

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13. **Lender's Remedies on Default.** Upon the occurrence of any Event of Default (after the expiration of any notice and cure periods set forth herein) and subject to the rights of the senior lienholders identified in **Section 2**, then:

a. **Acceleration.** The Indebtedness shall, at the option of Lender, become immediately due and payable without demand or further notice, from the date of the first of any such Event of Default.

b. **Foreclosure.** After acceleration, Lender may immediately foreclose this Mortgage. Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 through 735 ILCS 5/15-1706 (the "Act"), to be placed in possession of the Mortgaged Property or, at its request, to have a receiver appointed, and such receiver or the Mortgagee, if and when placed in possession, shall have all rights, powers, immunities, and duties as provided for in Sections 15-1702 and 15-1703 of the Act.

c. **Other Remedies.** Lender shall have the right, at its option and without regard to whether the Indebtedness is declared to be immediately due as provided in **Section 13(a)** above, either with or without process of law, forcibly or otherwise, and subject to the rights of any senior lienholders and rights granted under documents identified in **Section 2** hereof, (a) to enter upon and take possession of the Mortgaged Property; (b) to expel and remove any persons, goods or chattels occupying or upon the same; (c) to collect or receive all the rents therefrom; (d) to manage and control the same; (e) to lease the same or any part thereof from time to time; and (f) after deducting all reasonable attorneys' fees and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, to apply the remaining net income so collected or received upon the Indebtedness or upon any deficiency decree entered in any foreclosure proceedings.

14. **Protective Advances; Fees and Expenses.** All advances, disbursements and expenditures made or incurred by Lender before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively the "Protective Advances"), shall have the benefit of all applicable provisions of the Act. The Protective Advances include the following:

a. All advances by Lender in accordance with the terms of the Mortgage to: (i) preserve or restore the improvements upon the Mortgaged Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Section 15-1302(b)(5) of the Act;

b. Payments by Lender of: (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) real estate taxes and assessments and all other taxes assessed or imposed upon the Mortgaged Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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c. Advances by Lender in settlement of any claims asserted by claimants under senior mortgages or any other prior liens;

d. Reasonable attorneys' fees and other costs incurred in connection with: (i) the foreclosure of the Mortgage as referred to in Sections 15-1504(d)(1) and (2) and Section 15-1510 of the Act; (ii) any action, suit or proceeding brought by or against Lender for the enforcement of the Mortgage or arising from the interest of Lender hereunder; or (iii) the commencement, prosecution or defense of any other action related to the Mortgage or the Mortgaged Property;

e. Reasonable lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 15-1508(b)(1) of the Act;

f. Reasonable expenses deductible from proceeds of sale as referred to in Sections 15-1512(a) and (b) of the Act;

g. Expenses incurred and expenditures made by Lender for any one or more of the following: (i) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation imposed by Section 15-1704(c)(1) of the Act of maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments deemed by Lender to be required for the benefit of the Mortgaged Property, by reason of the exercise by Lender of any of its rights under **Section 13** herein, or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (iv) shares or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (v) if any loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (vi) payments deemed by Lender to be required pursuant to any lease or other agreement for occupancy of the Mortgaged Property; (vii) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof deemed by Lender to be required to be paid; (viii) if Borrower's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; and (ix) if the Mortgage is insured, payments of FHA or private mortgage insurance required to keep such insurance in force.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Section 15-1302(b)(5) of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (i) determination of the amount of the Indebtedness at any time; (ii) the Indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental

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judgments or orders by the court of any additional Indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purposes; (iii) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Sections 15-1603(d)(2) and (e) of the Act; (iv) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (v) application of income in the hands of any receiver or Lender in possession; and (vi) computation of any deficiency judgment pursuant to Sections 15-1508(b)(2) and (3) and Section 15-1511 of the Act. However, the amount of Indebtedness secured by this Mortgage, including any Protective Advances, shall not exceed \$4,373,450.

The following shall be included in any decree foreclosing the lien of this Mortgage and shall be paid out of the rents or proceeds of any sale made in pursuance of any such decree in the following order: (i) all costs and expenses of such suit or suits as described in this **Section 14** herein with interest as herein provided; (ii) all money advanced by Lender for any purpose authorized in this Mortgage, with interest as herein provided; (iii) all of the accrued interest remaining unpaid on the Indebtedness; and (iv) the principal balance of the Note at such time remaining unpaid. The surplus of the proceeds of the sale, if any, shall then be paid to Borrower on reasonable request. In the event that, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire amount of Indebtedness, Lender shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses, and charges shall have been paid in full.

15. **Waiver of Right of Redemption.** Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in 735 ILCS 5/15-1201, or residential real estate, as defined in Section 15-735 ILCS 5/15-1219, and, pursuant to 735 ILCS 5/15-1601(b), hereby waives for Borrower and all its successors in interest and for any and all persons claiming any interest in the Mortgaged Property, to the maximum extent permitted by law, any and all rights of redemption otherwise available to Borrower under the Act.

16. **Prepayment Privilege; Evasion.** Borrower shall have the privilege of making prepayments on the principal of and interest on the Note at any time without premium or penalty.

17. **Lender's Rights Cumulative.** The remedies and rights herein are cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise of, or omission to exercise, any such remedy or right accruing shall impair any such remedy or right or be construed to be a waiver of any Event of Default, nor shall it affect any subsequent Event of Default of the same or a different nature.

18. **No Usury.** Nothing contained in this Mortgage or in any of the other Loan Documents or in any transaction related hereto shall be construed or shall so operate either presently or prospectively (i) to require Borrower to pay interest in excess of the maximum amount of interest permitted by law to be charged in the case of the Indebtedness, but shall instead be deemed required payment of interest only to the extent of the lawful amount, or (ii) to require Borrower to make any payment or do any act contrary to law. Any interest in excess of that permitted by law that Lender may have received in connection with the Indebtedness shall, at the option of Lender, be

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(a) applied as a credit against the then unpaid principal balance under the Note, (b) applied as a credit against any accrued and unpaid interest on the unpaid principal balance under the Note (but not to exceed the maximum amount permitted by applicable law), (c) refunded to the Borrower or other payor thereof or (d) applied or refunded pursuant to any combination of the foregoing; and neither Borrower nor any of the other obligors under the Note shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any such interest.

19. **Partial Invalidity; Severability.** If the lien of this Mortgage is invalid or unenforceable as to any part of the Indebtedness or the Mortgaged Property, the unsecured or partially secured portion of the Indebtedness shall be completely paid prior to the payment of the remaining secured or partially secured portions of the Indebtedness. All payments made on the Indebtedness, whether voluntary or not, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness not secured or fully secured by the lien of this Mortgage. If any term, covenant or provision contained in any of the Loan Documents shall be determined to be void, illegal or unenforceable to any extent or shall otherwise operate to invalidate any such Loan Document, in whole or part, then such term, covenant or provision only shall be deemed not contained in such Loan Document; the remainder of such Loan Documents shall remain operative and in full force and effect and shall be enforced to the greatest extent permitted by law as if such clause or provision had never been contained therein.

20. **No Discharge of Borrower's Liability.** In the event of the voluntary sale or transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Lender is hereby authorized and empowered to deal with such vendee or transferee with reference to the Mortgaged Property on the terms or conditions hereof, as fully and to the same extent as it might with Borrower, without in any way releasing or discharging Borrower from Borrower's liability, covenants or undertakings hereunder.

21. **Assignment of Rents.** It is agreed by Borrower that upon the occurrence and during the continuance of any Event of Default, and subject to all prior liens and **Section 14** herein, all the rents, income and profits from the Mortgaged Property shall be assigned and transferred over to Lender, both before and after foreclosure of this Mortgage and during the period of redemption. Following an Event of Default (after the expiration of all applicable notice and cure periods), Borrower does hereby constitute and appoint Lender its attorney-in-fact, irrevocably, with full power and Lender to enter upon and take full possession of the Mortgaged Property at once, to lease and control the same, and to receive, collect and receipt for all rents, income and profits received, which are expressly assigned and pledged as additional security for the payment of the debt secured by this Mortgage. Out of the amounts collected Lender shall be entitled to pay all taxes, payments in lieu of taxes, assessments, water and sewer charges, amounts due under contracts affecting the Mortgaged Property, liens, insurance premiums, operating expenses, repairs, and other charges upon the Mortgaged Property, as well as the payments due and owing under the Loan Documents, and may retain the cost of collecting such rents, income and profits to the extent that they are sufficient for that purpose, paying the surplus from time to time, if any, to Borrower. In any action to foreclose, Lender shall be entitled to the appointment of a receiver of the Mortgaged Property as a matter of right, and without notice, with power to collect the rents, issues, and profits of the Mortgaged Property which are due or become due during the pendency of such foreclosure suit, and with power to manage the Mortgaged Property throughout. Borrower,

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for itself and any subsequent owner, hereby waives any and all defenses to the application for a receiver as set forth above and hereby specifically consents to such appointment without notice, and nothing herein contained is to be construed to deprive Lender of any other right, remedy, or privilege it may now have under the law to have a receiver appointed or to take possession itself.

Lender acknowledges and agrees that the foregoing assignment of rents set forth in this **Section 21** of this Mortgage is subordinate in all respects, and shall remain subject and subordinate in all respects, to any assignment by Borrower of the rents, income and profits from the Mortgaged Property to a senior lender identified in **Section 2** hereof or any other party pursuant to a document identified in **Section 2** hereof.

22. **Release of Mortgage.** Upon full payment of all of the Indebtedness at the time and in the manner provided in this Mortgage, in the Note, and in the other Loan Documents, and provided all covenants and agreements contained in this Mortgage and in the other Loan Documents are kept and performed, this Mortgage shall be null and void, and upon demand therefore following such payment, a release of the Mortgaged Property shall be made by Lender to Borrower.

23. **Governing Law.** The terms and provisions of this Mortgage and the other Loan Documents shall be construed and governed by the laws of the State of Illinois without regard to the rules of conflicts of law of such state.

24. **Addresses for Notices.** All notices, demands, consents, requests, or other communications that are either required or contemplated in connection with this Mortgage shall be in writing, and shall be deemed given to the intended recipient thereof upon the earlier of: (a) actual delivery thereof at the address designated below for such intended recipient; (b) the first business day after deposit with a nationally recognized, reputable commercial courier service, such as Federal Express Company, with all charges prepaid; (c) when sent by facsimile transmission (with written confirmation of receipt); or (d) the third business day after the deposit thereof at any main or branch United States post office with postage prepaid for delivery thereof via certified or registered first class mail, return receipt requested, and in any such case addressed as follows:

If to Borrower:

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

With a copy to:

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

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And a copy to:

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

With a copy to:

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

If to Lender:

Berry Manor Owner, LP
c/o the NHP Foundation
122 E. 42nd Street, Suite 4900
New York, New York 10168
Attention: Mecky Adnani

By notice complying with the foregoing provisions of this **Section 24** herein, the parties may from time to time change the above addresses applicable to them for the purposes hereof, except that any such notice shall not be deemed delivered until actually received. Copies of notices are for informational purposes only and may be sent by regular mail or in any other manner and the failure to give or to receive copies of notices shall not be deemed a failure to give notice to a party.

25. **Binding Effect; Miscellaneous Definitions.** All provisions and covenants of this Mortgage run with the land and shall inure to and bind the parties hereto and their respective heirs, devisees, representatives, vendees, successors and assigns.

26. **Transfer.** So long as any Indebtedness remains outstanding and notwithstanding anything in the Loan Documents to the contrary, Lender agrees that any limited partner of Borrower may sell, transfer, pledge, assign or otherwise encumber or dispose of all or any part of its interest in Borrower in accordance with the terms and conditions of its Partnership Agreement, as amended or revised ("Partnership Agreement"), without the prior written consent of Lender.

27. **Captions.** The captions or headings at the beginning of any paragraph or portion of any paragraph in this Mortgage are for the convenience of Borrower and Lender and for purposes of reference only and shall not limit or otherwise alter the meaning of the provisions of this Mortgage.

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28. **General Partner Change.** The withdrawal, removal and/or replacement of the general partner of Borrower pursuant to the terms of the Partnership Agreement shall not require Lender notice or consent or constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Mortgage Loan.

29. **Monetary Default; Non-Monetary Default; Limited Partner Right to Cure.** In the event of a monetary Event of Default under the Loan Documents, Borrower's limited partner shall have the right (but not the obligation) to cure the default within 30 days after receipt of such notice prior to exercise of any remedies available to Lender under the Loan Documents. If a non-monetary Event of Default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder Lender shall give Borrower and each of the limited partners of Borrower, as identified in the Partnership Agreement, simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Borrower and its partners shall have such period to effect a cure prior to exercise of remedies by Lender under the Loan Documents, or such longer period of time as may be specified in the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days or such longer period if so specified, and if Borrower or any of its partners (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower and its partners shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Lender. If Borrower fails to take corrective action or to cure the default within a reasonable time, Lender shall give Borrower and each of the limited partners of Borrower written notice thereof, whereupon the limited partner(s) may remove and replace the general partner with a substitute general partner in accordance with the Partnership Agreement. The substitute general partner shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event shall Lender be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given, or such longer period of time as may be specified in the Loan Documents. Any cure tendered by any of Borrower's partners shall be accepted or rejected on the same basis as if tendered by Borrower.

30. **Force Majeure.** There shall be no default for construction or rehabilitation delays beyond the reasonable control of Borrower, provided that such delays do not exceed one hundred eighty (180) days, or such longer period of time as may be specified in the Loan Document.

31. **Purchase Rights.** The execution and delivery of the purchase option and right of first refusal agreement described in the Partnership Agreement shall not constitute a default under the Loan Documents or accelerate the maturity of the Mortgage Loan. Any requisite consent of Lender to (a) the exercise of the right of first refusal agreement by the grantee identified therein, and to (b) the assumption without penalty of Mortgage Loan obligations by such grantee and the release of Borrower from such obligations, shall not be unreasonably withheld. Subject to any such consent requirement, the exercise of rights under such agreement shall not constitute a default or accelerate maturity of the Mortgage Loan.

32. **Loan Assumption.** If the purchase option and right of first refusal agreement described in the Partnership Agreement are not exercised and the Project is sold subject to low-income housing use restrictions as contained in an existing regulatory agreement or other recorded covenant, any

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requisite consent of Lender to said sale, and to the assumption without penalty of loan obligations by the purchaser and the release of Borrower from such obligations, shall not be unreasonably withheld.

33. **Lender Approvals.** In any approval, consent, or other determination by Lender required under any of the Loan Documents, Lender shall act reasonably and in good faith.

34. **Standstill.** Notwithstanding anything to the contrary contained in the Seller Loan Documents, in no event will Lender declare a default or event of default, nor exercise any remedy, including without limitation, foreclosure or acceleration of the Note, upon the occurrence of a monetary or non-monetary event of default under the Seller Loan Documents until the earlier to occur of (i) such time as NHT Equity, LLC, an Ohio limited liability company, and its successors and assigns (the "Limited Partner") is no longer a partner of the Borrower, and (ii) the end of the "Compliance Period" of the Project, as defined in Section 42(i)(1) of the Internal Revenue Code.

-Signature Page Follows-

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Signature Page to Junior Mortgage (Seller Loan)

WITNESS the due execution hereof on the day and year first above written.

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

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STATE OF New York
COUNTY OF New York) SS

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that Mecky Adnani, personally known to me to be Senior Vice President of The NHP Foundation ("Managing Member"), which is the Managing Member of Berry Manor NHPF Manager, LLC, ("General Partner") the general partner of Berry Manor Apartments, LP ("Company"), 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 severally acknowledged that as such Senior Vice President, he/she signed and delivered the said instrument in his/her capacity as such Senior Vice President, as the free and voluntary act of such person, and as the free and voluntary act and deed of such Managing Member, General Partner and Company, for the uses and purposes therein set forth.

Given under my hand and official seal this 23 day of August, 2022.

Evelynn Howell
Notary Public

(SEAL)

Evelynn Howell
Notary Public, State of New York
No. 01HO6417039
Qualified in New York County
Commission Expires May 3, 2025

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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

PINS: 20-22-418-028

20-22-418-029

20-22-418-061

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