



Doc# 2225845136 Fee \$88.00

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KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/15/2022 01:31 PM PG: 1 OF 14

Illinois Housing Development Authority
111 E. Wacker Dr., Ste 1000
Chicago, Illinois 60601
Attn: Monika A. Bobo

Permanent Tax Index
Identification No.:
See Exhibit A Attached Hereto
Chicago, Illinois
41065573 (15 of 20)

HTF - 12003

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of this 16th day of September 2022, between the **ILLINOIS HOUSING DEVELOPMENT 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 (the "Senior Lender"), and **BERRY MANOR OWNER, LP**, an Illinois limited partnership (the "Subordinated Lender").

RECITALS

WHEREAS, The Senior Lender is the owner and holder of a certain Mortgage Note (the "Senior Note") dated of even date herewith in the original principal amount of One Million Seven Hundred Thousand and 00/100 (\$1,700,000.00) made by Berry Manor Apartments, LP, an Illinois limited partnership (the "Borrower") payable to the order of the Senior Lender. The Senior Note is (i) secured by a certain Mortgage, Security Agreement and Assignment of Rents and Leases (the "Senior Mortgage") executed by the Borrower in favor of the Senior Lender dated of even date herewith and recorded with the Clerk of Cook County (the "Recorder's Office") contemporaneously herewith encumbering certain property legally described on **Exhibit A** attached to and made a part of this Agreement (the "Real Estate") (the Real Estate and the improvements constructed on it are referred to in this Agreement as the "Development"); (ii) governed by a certain Regulatory and Land Use Restriction Agreement ("Regulatory Agreement") executed by and between Borrower and Senior Lender dated of even date herewith and recorded contemporaneously herewith; and evidenced, secured and governed by certain other loan documents (the "Other Documents"). The Senior Note, Senior Mortgage, Regulatory Agreement and the Other Documents are collectively referred to in this Agreement as the "Senior Loan Documents."

WHEREAS, The Subordinated Lender is the owner and holder of a certain Note (the "Subordinated Note") dated of even date herewith in the original principal amount of Two Million Five Hundred Sixty Thousand Six Hundred Seventy-Five and 00/100 (\$2,560,675.00) made by Borrower payable to the order of Subordinated Lender. The Subordinated Note is evidenced, secured and governed by a certain Junior Mortgage, Assignment of Rents and Security Agreement

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(the "Subordinated Mortgage") of even date herewith, made by the Borrower in favor of Subordinated Lender and recorded in the Recorder's Office contemporaneously herewith. The Subordinated Mortgage and all other documents evidencing, securing and governing the Subordinated Note are hereinafter collectively referred to as the "Subordinated Loan Documents."

WHEREAS, All obligations of the Borrower to the Senior Lender now existing or hereafter arising, due or to become due, under the Senior Note and the Senior Loan Documents are referred to in this Agreement as the "Senior Liabilities;" all obligations of the Borrower to the Subordinated Lender now existing or hereafter arising, due or to become due, under the Subordinated Note and the Subordinated Loan Documents are referred to in this Agreement as the "Subordinated Liabilities."

WHEREAS, The Senior Lender has agreed to make the loan evidenced by the Senior Note on the condition that Subordinated Lender enters into this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and as an inducement to the Senior Lender to make the loan evidenced by the Senior Note, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto represent, warrant and agree as follows:

1. **Subordinated Loan Documents.** The Subordinated Loan Documents are described in the Recitals above.

2. **Subordination of Liens.** The Subordinated Lender agrees that the Subordinated Liabilities are and shall be subordinate to the Senior Liabilities and that the liens and security interests created by the Subordinated Loan Documents are and shall be subordinate to the liens and security interests created by the Senior Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents pursuant to their terms.

3. **Subordination of Payment.** Until such time as the date on which the Senior Liabilities have been paid in full, the payment of the Subordinated Liabilities shall be postponed and subordinated to the payment of all of the Senior Liabilities, and the Subordinated Lender shall accept no payments or other distributions whatsoever (including without limitation distributions of casualty insurance or condemnation proceeds) on account of the Subordinated Liabilities, nor shall any property or assets of the Borrower be applied to the purchase or acquisition or retirement of any Subordinated Liabilities. Notwithstanding the foregoing, so long as no notice of default has been given under any document evidencing or securing the Senior Liabilities (except any such notice of default which has subsequently been waived in writing by the party giving such notice), then Subordinated Lender shall retain and Borrower may make regularly scheduled payments to Subordinated Lender (but not prepayments) as provided in the Subordinated Loan Documents; however, no such payment to Subordinated Lender shall be permitted so long as the Subordinated Lender is then in default in the performance of any of its obligations under this Agreement. The Subordinate Note shall be co-terminus with the Senior Note, and in no event shall the Subordinated Note mature prior to that of Senior Note. Any payment due to Subordinated Lender in connection

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with the maturity of the Subordinated Note shall not be paid to Subordinated Lender prior to the Maturity Date of the Senior Note.

4. **Constructive Trust.** If the Subordinated Lender receives any payment or other distribution of any kind or character from the Borrower or from any other source whatsoever in respect to any of the Subordinated Liabilities, other than as expressly permitted by the terms of this Agreement, such payment or other distribution shall be received and shall be held by the Subordinated Lender in trust for the Senior Lender and promptly turned over by the Subordinated Lender to the Senior Lender. The Subordinated Lender shall execute such further documents or instruments and take such further action as Senior Lender may reasonably require from time to time to carry out the intent of this Agreement.

5. **Waiver by Subordinated Lender.** The Subordinated Lender waives (a) notice of the existence, creation, or nonpayment of all or any of the Senior Liabilities; and (b) all diligence in collection, protection of or realization upon the Senior Liabilities or any security therefor.

6. **Covenants of Subordinated Lender.** The Subordinated Lender shall not, without the prior written consent of the Senior Lender, (a) modify, amend or consent to any modification or amendment of any document evidencing or securing the Subordinated Liabilities; (b) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower; (c) seek to appoint a receiver for (i) the Development or any part of it, or (ii) the Borrower, or seek to obtain possession of the Development, or seek any accounting from the Senior Lender in connection with the proceeds of the Development; or (d) take any action affecting any lease of the Property in which the Senior Lender claims a security interest (including without limitation any action to subordinate any such lease to the Subordinated Loan Documents, or any of them).

7. **Bankruptcy of Borrower.** In the event of any dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to the Borrower, the Borrower's creditors, or to the Borrower's property (whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment to benefit creditors, or any other marshalling of the assets and liabilities of the Borrower, or any sale of all or substantially all of the assets of the Borrower, or otherwise), the Senior Liabilities shall first be paid in full before Subordinated Lender shall be entitled to receive and to retain any payment or distribution with respect to the Subordinated Liabilities.

8. **Notices of Default.** The Subordinated Lender agrees to give the Senior Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under the Subordinated Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Subordinated Loan Documents. The Subordinated Lender agrees that the indebtedness evidenced, secured and guaranteed by the Subordinated Loan Documents shall not be accelerated, nor shall any remedies be pursued thereunder unless (a) in the case of default in the payment of a sum of money due under the Subordinated Loan Documents and after expiration of all applicable grace periods, the Senior Lender shall have been given written notice of such failure and the Senior Lender shall have failed to pay or cause to be paid such sum of money within

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thirty (30) days following such written notice; or (b) in the case of any other default under the Subordinated Loan Documents, the Senior Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to the Borrower to cure such default. The Senior Lender agrees to give to the Subordinated Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under the Senior Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Senior Loan Documents. The Senior Lender agrees that the indebtedness evidenced, secured and guaranteed by the Senior Loan Documents shall not be accelerated, nor shall any remedies be pursued there under unless (a) in the case of default in the payment of a sum of money due under the Senior Loan Documents and after expiration of all applicable grace periods, the Subordinated Lender shall have been given written notice of such failure and the Subordinated Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice; or (b) in the case of any other default under the Senior Loan Documents, the Subordinated Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to Borrower to cure such default.

9. Insurance Proceeds and Condemnation Awards. The Subordinated Lender agrees that in the event of a casualty to the Development, or a condemnation or taking under a power of eminent domain of the Development, or a threat of such a condemnation or taking, all adjustments of insurance claims, condemnation claims and settlements in anticipation of such a condemnation or taking shall be prosecuted, at the Senior Lender's election, by the Senior Lender and all payment and settlements of insurance claims or condemnation awards or payments in anticipation of condemnation or a taking shall be paid to the Senior Lender. The Subordinated Lender irrevocably assigns to the Senior Lender all of its interests in any such claims, settlements or awards (the "Award") and irrevocably grants to the Senior Lender a power of attorney, coupled with an interest, to execute any and all documents on the Subordinated Lender's behalf necessary in connection with the prosecution or settlement of the Award. If the amount of the Award is in excess of all amounts due under the Senior Liabilities, the Senior Lender agrees that such excess Award shall be paid to or held for the benefit of the Subordinated Lender.

10. Consent to Easements and Plats of Subdivision. If the Borrower requests that the Senior Lender and all other mortgagees or trustees under trust deeds of record execute any easements or plats of subdivision or similar documents in connection with the construction, development, operation or maintenance of the Development, and if Senior Lender executes them, the Subordinated Lender agrees to execute such documents and instruments as its interests appear.

11. Acquisition of Fee Title by Senior Lender. The Subordinated Lender agrees that an acquisition of fee title to the Property by Senior Lender, its nominee, or any other person or entity through a foreclosure of the Senior Mortgage (where such foreclosure does not extinguish the security interests created by the Subordinated Loan Documents) or through a deed in lieu of foreclosure is not a "sale or disposition" and will not constitute an event of default under the Subordinated Loan Documents.

12. Subrogation. Until such time as the Senior Liabilities have been paid in full, the

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Subordinated Lender waives and releases any and all rights of subrogation which it has against the Development and which subrogation would result in the Subordinated Lender obtaining a priority equal or superior to the priority of the Senior Loan Documents for any funds which Subordinated Lender may advance either to cure defaults under security instruments or pay liens encumbering the Development or otherwise protect the lien of the Subordinated Loan Documents or any of them.

13. Permitted Actions by Senior Lender. The Senior Lender may, from time to time, in its sole discretion and without notice to the Subordinated Lender, take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Senior Liabilities; (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Liabilities; and (c) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of the property securing any of the Senior Liabilities, or extend or renew for one or more periods of time (whether or not longer than the original period) or release, compromise, alter or modify any obligation of any nature of any obligor with respect to any such property.

14. Assignment. The Senior Lender may, from time to time, without notice to the Subordinated Lender, assign or transfer any or all of the Senior Liabilities or any interest in them; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement, and every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest in them shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were the Senior Lender; however, unless the Senior Lender otherwise consents in writing, the Senior Lender shall have the unimpaired right prior and superior to that of any such assignee or transferee, to enforce this Agreement for the benefit of the Senior Lender as to those of the Senior Liabilities which the Senior Lender has not assigned or transferred.

15. Successors and Assigns. This Agreement shall be binding upon the Subordinated Lender and its respective successors and assigns, whether immediate or remote.

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

17. No Waiver by Senior Lender. The Senior Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by the Borrower or the Subordinated Lender, or any non-compliance of the Borrower or the Subordinated Lender with any agreement or obligation, regardless of any knowledge of such agreement or obligation the Senior Lender may have or with which the Senior Lender may be charged; and no action of the Senior Lender permitted under this Agreement shall in any way affect or impair the rights of the Senior Lender and the obligations of the Subordinated Lender under this Agreement. No delay on the part of the Senior Lender in the exercise of any rights or remedies shall operate as a waiver of such rights, and no single or partial exercise by Senior Lender of any right or remedy shall preclude other or further exercise of such right or remedy or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon the Senior

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Lender except as expressly set forth in a writing duly signed and delivered on behalf of the Senior Lender.

18. Effect on Due on Sale Provisions. The Subordinated Lender waives any due on sale or due on refinancing provisions of the Subordinated Loan Documents as they relate to the Senior Liabilities.

19. Notices. Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Senior Lender:

Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
Attention: Legal Department

If to Subordinated Lender:

Berry Manor Owner, LP
c/o The NHP Foundation
122 E. 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

In connection with a courtesy copy, Senior Lender will exercise reasonable efforts to provide copies of any notices given to Subordinated Lender; however, Senior Lender's failure to furnish copies of such notices shall not limit Senior Lender's exercise of any of its rights and remedies any document evidencing, securing or governing the loan from Senior Lender 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 Agreement. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (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 subsection (c) shall be served and effective three (3) business

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days after proper deposit with the United States Postal Service.

20. Construction and Interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

21. Termination. This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Liabilities, provided that all rights of the Subordinated Lender under this Agreement shall automatically terminate at such time as the Subordinated Liabilities have been paid in full.

22. 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.

23. Joinder of Borrower. The Borrower has joined in the execution of this Agreement for the purpose of acknowledging and consenting to the terms and agreements herein contained, but shall have no rights or benefits hereunder as third party beneficiary or otherwise.

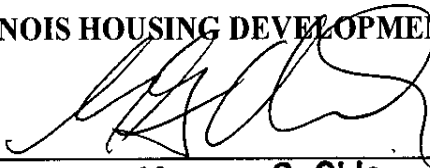
[SIGNATURE PAGE TO FOLLOW]

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

SENIOR LENDER:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

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

SUBORDINATED LENDER:

BERRY MANOR OWNER, LP,
an Illinois limited partnership

By: Berry Manor NHPF, LLC,
an Illinois limited liability company,
its general partner

By: The NHP Foundation,
a District of Columbia not-for-profit corporation
its managing member

By: _____
Name: Mecky Adnani
Title: Senior Vice President

Property of Cook County Clerk's Office

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

SENIOR LENDER:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY


By: _____
Printed Name: _____
Its: _____

SUBORDINATED LENDER:

BERRY MANOR OWNER, LP,
an Illinois limited partnership

By: Berry Manor NHPF, LLC,
an Illinois limited liability company
its general partner

By: The NHP Foundation,
a District of Columbia not-for-profit corporation
its managing member

By: 
Name: Mecky Adnani
Title: Senior Vice President

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Acknowledged and Consented to by:

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 A. J. J. J.
Title: Senior Vice President

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that **Maureen G. Ohle**, personally known to me to be the **GENERAL COUNSEL** of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** 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 in her/his capacity as **GENERAL COUNSEL** of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, as her/his free and voluntary act and deed and as the free and voluntary act and deed of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, for the uses and purposes therein set forth.

Given under my hand and official seal this 1 day of SEPTEMBER, 2022.

Shannon D. Lindsey
Notary Public



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STATE OF IL)
COUNTY OF Cook) SS

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 be 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 respective 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 said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 29 day of August, 2022.



Bridget A. White
Notary Public

County Clerk's Office

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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

Property of Cook County Clerk's Office