



\*2225845138\*

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/15/2022 01:33 PM PG: 1 OF 12

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

4065573 (17 OF 20)

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ASSIGNMENT, ASSUMPTION AND AMENDMENT OF LAND USE RESTRICTION AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT OF LAND USE RESTRICTION AGREEMENT (this "Agreement") is made as of this 1st day of September, 2022, by and among BERRY MANOR OWNER, LP, an Illinois limited partnership (hereinafter referred to as "Seller"), BERRY MANOR APARTMENTS, LP, an Illinois limited partnership (hereinafter referred to as "Purchaser") and LOW INCOME INVESTMENT FUND, a California nonprofit public benefit fund ("LIIF").

WHEREAS, Seller is the owner of certain improved real property located in the City of Chicago, in the County of Cook, in the State of Illinois, as more particularly described in Exhibit A attached hereto and incorporated by this reference herein, on which is constructed a rental apartment project known as Edwin Berry Manor (the "Property");

WHEREAS, Seller and Low Income Investment Fund, a California non profit public benefit corporation ("LIIF") entered into a Land Use Restriction Agreement recorded in the Office of the Cook County Recorder of Deeds as Document No. 1928906200 (the "LIIF LURA").

WHEREAS, the LIIF LURA sets forth certain obligations requiring the use of the Property, affordability of the units rented, and similar restrictions;

WHEREAS, Seller and Purchaser entered into a contract pursuant to which Seller agreed to sell, and Purchaser agreed to purchase the Property;

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**UNOFFICIAL COPY**Project Name: Edwin Berry Manor  
Project Location: Chicago, Illinois

**WHEREAS**, Seller desires to assign and Purchaser desires to assume all rights and obligations in and to the LIIF LURA as herein provided, effective upon the date of transfer of the Property to Purchaser ("**Effective Date**");

**WHEREAS**, Seller and Purchaser desire to amend the LIIF LURA pursuant to the HUD Amendment to Restrictive Covenants described in **Exhibit B** attached hereto and incorporated herein;

**WHEREAS**, Seller and Purchaser desire to subordinate the LIIF LURA to the Low Income Housing Tax Credit Extended Use Agreement by and between Purchaser and the Illinois Housing Development Authority dated and recorded of even date herewith;

**WHEREAS**, Seller and Purchaser desire to subordinate the LIIF LURA to that certain trust fund loan in the amount of \$1,700,000.00 from the Illinois Housing Development Authority; and

**NOW, THEREFORE**, in consideration of the assignment, the mutual agreements contained herein and other good and valuable consideration, it is agreed as follows:

1. Seller hereby agrees to the assignment of the liabilities, duties and obligations contained in the LIIF LURA from Seller to Purchaser and its successors and assigns subject to the terms set forth herein.

2. Seller shall be responsible for all liabilities, duties and obligations under the LIIF LURA prior to the Effective Date.

3. Purchaser agrees to the assumption of all duties, obligations and restrictions set forth in the LIIF LURA and shall be responsible for all liabilities or obligations arising under the LIIF LURA from and after the Effective Date.

4. The LIIF LURA is hereby amended to add the HUD Amendment to Restrictive Covenants attached hereto as Exhibit D to the LIIF LURA.

5. Paragraph 7 of the LIIF LURA is hereby amended to add the following language:

"The Agreement is and shall be subordinate to (i) the Low Income Housing Tax Credit Extended Use Agreement by and between Berry Manor Apartments, LP and the Illinois Housing Development Authority ("IHDA") dated as of September 1, 2022 ("LIHTC EUA") and (ii) the Mortgage Note in the amount of \$1,700,000.00 dated as of September 1, 2022 made by Berry Manor Apartments, LP payable to IHDA and secured by that certain Mortgage, Security Agreement, and Assignment of Rents and Leases executed by Berry Manor Apartments, LP in favor of IHDA dated as of September 1, 2022, Regulatory and Land Use Restriction Agreement executed by Berry Manor Apartments, LP and IHDA dated as of September 1, 2022, and those certain other loan documents evidencing the IHDA loan (collectively, the "Senior Loan Documents") and that the liens created by the Agreement are and shall be subordinate to the liens and security interests created by the LIHTC EUA and Senior Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the LIHTC EUA and Senior Loan Documents. Grantor shall not, without the prior written consent of the Illinois Housing Development Authority, (a) modify, amend or consent to any modification or amendment of the Agreement; (b) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Grantor; (c) seek to appoint a receiver for (i) the Mortgaged Property or any part of it, or (ii) the Grantor, or seek to

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Project Name: Edwin Berry Manor  
Project Location: Chicago, Illinois

obtain possession of the Mortgaged Property. The Lender agrees to give the Illinois Housing Development Authority, contemporaneously with the giving of them to the Grantor, copies of any notices given to the Grantor regarding any default under the Agreement 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 Agreement."

6. The LIIF LURA shall be and remains in full force and effect in accordance with its terms as amended herein.

7. Purchaser does hereby release Seller from the LIIF LURA from and after the Effective Date and does hereby agree to hold Seller harmless from and against any claims, demands or causes of action arising out of the LIIF LURA based on facts or circumstances occurring after the Effective Date.

8. This Agreement shall run with the land and be binding upon Purchaser, as well as any successors and assigns.

9. This Agreement may be executed in counterparts all of which when taken together shall constitute an original document.

[SIGNATURE PAGES TO FOLLOW]

*The remainder of this page is intentionally left blank.*

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Project Name: Edwin Berry Manor  
Project Location: Chicago, Illinois

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year written above.

**SELLER:**

**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

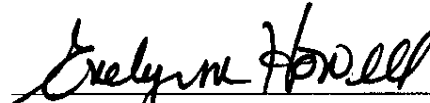
By:   
Name: Mecky Adnan  
Title: Senior Vice President

STATE OF New York  
COUNTY OF New York

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 29 August, 2022, Mecky Adnan, 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 The NHP Foundation, as managing member of Berry Manor NHPF, LLC the general partner of Berry Manor Owner, LP 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

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

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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Project Name: Edwin Berry Manor  
Project Location: Chicago, Illinois

**PURCHASER:**

**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

STATE OF New York  
COUNTY OF New York

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 23 August, 2022, Mecky Adnani, 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 The NHP Foundation, as managing member of Berry Manor NHPF Manager, LLC the general partner of Berry Manor Apartments, LP 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]

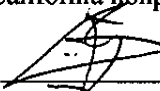
  
\_\_\_\_\_  
Notary Public

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

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AGENCY:

**LOW INCOME INVESTMENT FUND**  
A California nonprofit public benefit corporation

By:   
Name: Begonia Desalegn  
Its: Manager

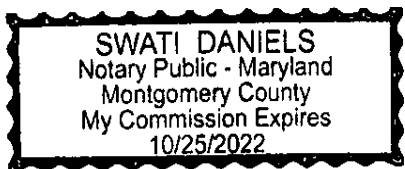
STATE OF Maryland  
COUNTY OF Montgomery

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 09/09, 2022, \_\_\_\_\_, 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 Low Income Investment Fund 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



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## EXHIBIT A

### Legal Description

LOTS 12, 13 AND 14 IN SUPERIOR COURT PARTITION SUBDIVISION OF THE SOUTEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Common Address: 737 E. 69<sup>th</sup> 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

### **HUD Amendment To Restrictive Covenants**

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of September 1, 2022 by Berry Manor Apartments, LP ("Borrower") and Low Income Investment Fund ("Agency").

WHEREAS, Borrower has obtained financing from Merchants Capital Corp., a corporation organizing 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 even date herewith and recorded in the Clerk's Office of Cook County, Illinois ("Records") contemporaneously herewith, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, contemporaneously herewith, Berry Manor Owner, LP assigned and Borrower assumed that certain Land Use Restriction Agreement ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of October 16, 2019 and recorded in the Records,

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 Amendment.

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 Amendment, the provision contained in this Amendment 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., its successors and assigns.



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“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, 12 USC § 1701 *et seq.*, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“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 will does not and will not serve as a basis for default under the HUD Requirements, unless a separate 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

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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 for release 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 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.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**

[Signature Pages to Follow]


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**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

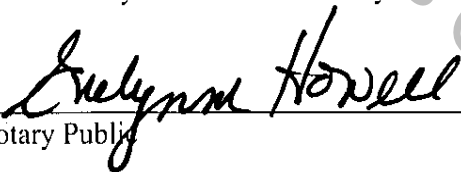
By:   
Name: Mecky Adnani  
Its: Senior Vice President

STATE OF New York  
COUNTY OF New York

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that on this 23 August, 2022, Mecky Adnani, personally known to me to be the same person whose name 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 The NHP Foundation, as managing member of Berry Manor NHPF Manager, LLC the general partner of Berry Manor Apartments, LP 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

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

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Project Name: Berry Manor  
Project Location: Chicago, Illinois

**LIIF:**

**LOW INCOME INVESTMENT FUND**

A California nonprofit public benefit corporation

By: [Signature]  
Name: Tsegaye Dessalegn  
Its: Manager

STATE OF Maryland  
COUNTY OF Montgomery

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 09/09, 2022, \_\_\_\_\_, 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 Low Income Investment Fund 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.

[Signature]  
Notary Public

[seal]



[END OF SIGNATURE PAGES]