

# UNOFFICIAL COPY

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Prepared by, and after recording  
return to:  
Lanre A. Popoola, Esquire  
Troutman Pepper Hamilton Sanders LLP  
P.O. Box 1122  
Richmond, VA 23218



Doc# 2306922015 Fee \$71.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 03/10/2023 09:59 AM PG: 1 OF 11

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## SUBORDINATION AGREEMENT

### GOVERNMENTAL ENTITY

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## SUBORDINATION AGREEMENT GOVERNMENTAL ENTITY FOR REGULATORY AGREEMENT REGULATORY AGREEMENT ONLY/NO SUBORDINATE DEBT

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (this “**Agreement**”) is effective as of the 18<sup>th</sup> day of January, 2023, by the **COMMUNITY INVESTMENT CORPORATION** (“**Governmental Entity**”), and **AUSTIN VA PORTFOLIO 8 LLC**, a Delaware limited liability company (“**Borrower**”), for the benefit of **ARBOR COMMERCIAL FUNDING I, LLC**, a limited liability company organized and existing under the laws of New York, its successors and assigns (“**Lender**”).

### RECITALS:

A. Simultaneously herewith Lender is making a loan to Borrower in the original principal amount of \$162,000,000.00 (“**Loan**”) pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured by a Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing that will be recorded among the records of Cook County, Illinois (“**Official Records**”) (as supplemented or amended from time to time, the “**Mortgage**”) of certain improved real property located in Chicago, Cook County, Illinois, as more particularly described on Exhibit A attached hereto (“**Property**”). The Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”.

B. In connection with the construction and development of the Property, predecessor in interest to Borrower entered into a certain Grant Agreement and Mortgage dated as of September 6, 2013 (“**Regulatory Agreement**”) in favor of the Governmental Entity, which was recorded as Instrument No. 1327622034 in the Official Records, pursuant to which the Property was subjected to certain restrictions by Governmental Entity.

C. As a condition to making the Loan, Lender requires that the lien of the Mortgage be superior to the lien of the Regulatory Agreement. Lender will not make the Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.

E. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

2. Subordination. The Governmental Entity hereby agrees that the Regulatory Agreement is and shall at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief at any time in the event of a default under or breach of the terms of the Regulatory Agreement.

3. Financing, Encumbrance and Transfer Approval. Governmental Entity hereby approves and acknowledges the transfer of the Property to Borrower and the financing evidenced by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure of the Mortgage or a deed in lieu thereof shall not require Governmental Entity's consent but shall require notice to Governmental Entity.

4. Lender Notice of Default. In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity shall be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.

5. Governmental Entity Notice of Default. Governmental Entity shall give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, shall have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents that, to the best of its knowledge, there is no current default under the Regulatory Agreement.

6. Governmental Entity's Rights. Except as set forth in Sections 2 and 7 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may be released but it may not be modified, amended, changed or otherwise altered without the prior written consent of Lender so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) the collection or possession of rents or revenues from or with respect to the Property

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by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) the application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) the removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.

8. Foreclosure by Lender. In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent shall be required from Governmental Entity.

9. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the subordination of the Regulatory Agreement to the lien or charge of the Loan Documents, and shall supersede and cancel any prior agreements with regard to this subject matter.

10. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

12. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Notices. All notices required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand and the party giving such notice has received a signed receipt thereof, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to Governmental Entity:

Community Investment Corporation  
222 S. Riverside Plaza #380  
Chicago, Illinois 60606  
Attention: John Crane, SVP

If to Lender:

Arbor Commercial Funding I, LLC  
3370 Walden Avenue  
Depew, New York 14043

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Attention: Servicing

With a copy to:

Troutman Pepper Hamilton Sanders LLP  
401 9<sup>th</sup> Street, NW, Suite 1000  
Washington, DC 20004  
Attention: Lanre Popoola

If to Borrower:

Austin VA Portfolio 8 LLC  
777 Chestnut Ridge Road, Suite 301  
Chestnut Ridge, New York 10977  
Attention: Moshe Wechsler

With a copy to:

Levitin & Associates, P.C.  
777 Chestnut Ridge Road, Suite 300  
Chestnut Ridge, New York 10977  
Attention: Jeff Levitin, Esq.

14. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

15. Valid Authorization. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

16. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together constitute one and the same instrument, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

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

## GOVERNMENTAL ENTITY

## COMMUNITY INVESTMENT CORPORATION

By: \_\_\_\_\_  
 Name: John Crage  
 Title: Senior V.P.

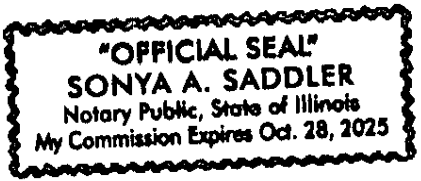
STATE OF Illinois

CITY/COUNTY OF Cook, to-wit:

The foregoing instrument was acknowledged before me in the above-stated jurisdiction this 15<sup>th</sup> day of December, 2022 by John Crage who is Senior V.P. of Community Investment Corporation for and on behalf of the \_\_\_\_\_.

Sonya A. Saddler  
 Notary Public

My commission expires: October 28, 2025



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**BORROWER:**

**AUSTIN VA PORTFOLIO 8 LLC**  
a Delaware limited liability company

By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF New York

CITY/COUNTY OF Rockland, to-wit:

The foregoing instrument was acknowledged before me in the above-stated jurisdiction this 12<sup>th</sup> day of January, 2023 by Bo Yankeov Kanner who is Authorized Signer of Austin VA Portfolio 8 LLC, for and on behalf of the Borrower.

[Signature]  
Notary Public

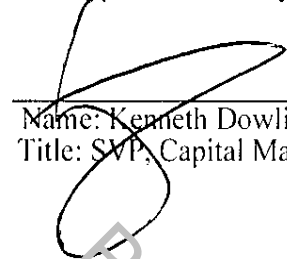
My commission expires: \_\_\_\_\_

Moshe C Goldblatt  
Notary Public, State of New York  
No. 01GO6346353  
Qualified in Rockland County  
Commission Expires Aug. 08, 2024

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**LENDER:**

**ARBOR COMMERCIAL FUNDING I, LLC, a**  
New York limited liability company


By:   
Name: Kenneth Dowling  
Title: SVP, Capital Markets

STATE OF NEW YORK

CITY/COUNTY OF NASSAU, to-wit:

The foregoing instrument was acknowledged before me in the above-stated jurisdiction this 18<sup>th</sup> day of JANUARY, 2023 by Kenneth Dowling who is SVP, Capital Markets of ARBOR COMMERCIAL FUNDING I, LLC, a New York limited liability company, for and on behalf of the limited liability company.

**Kaitlyn Beihl**  
Notary Public, State of New York  
Registration No. 01BE6418613  
Qualified in Nassau County  
Commission Expires September 13, 2025

  
\_\_\_\_\_  
Notary Public  
My commission expires: 9/13/2025



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## AS TO IL-024:

Lots 14 and 15 in Block 8 in Frederick Wilde's Resubdivision of Lots 1 to 25, both inclusive, of Silberstein and Walensky's Resubdivision of Lots 20 to 55, both inclusive, and the North 1/2 of Lot 56 in Block 8 in Derby's Resubdivision of Blocks 5, 6, 7, and 8 and vacated alleys, all in Derby's Subdivision of the East 1/2 of the Southeast 1/4 of Section 9, Township 39 North, Range 13, East of the third principal meridian, Except 5 acres in the Northeast corner thereof, in Cook County, Illinois.

P.I.N.: 16-09-418-022-0000

148 N. La Crosse Avenue, Chicago, Illinois 60644

## AS TO IL-034:

LOTS 20 AND 21 AND THE SOUTH 1 FOOT OF LOT 22 IN BLOCK 1 IN OGLEBAY'S SUBDIVISION OF LOTS 345 TO 347 TOGETHER WITH STREETS LYING BETWEEN SAID LOTS ALL IN BLOCK 15 IN AUSTIN'S SECOND ADDITION TO AUSTINVILLE IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-08-402-024-0000

Address: 310 N. Menard, Chicago, IL 60644

## AS TO IL-035:

Lot 19 and the North 10 feet of Lot 18 in the Subdivision of Block 2 in the Subdivision of the North part of Block 16 in Austin's Second Addition to Austinville in Section 8, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 16-08-400-012-0000

Address: 320 N Mason Ave., Chicago, Illinois 60644

## AS TO IL-036:

LOTS 24 AND 25 IN BLOCK 7 IN CENTRAL PARK ADDITION TO CHICAGO, A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF BARRY POINT ROAD IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-14-214-022-0000

Address: 327-29 S. Central Park, Chicago, Illinois 60624

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## AS TO IL-037:

### Parcel 1:

THAT PART OF THE NORTHEAST 1/4 OF BLOCK 3 IN FRINK'S RESUBDIVISION OF THE NORTH 36 1/4 ACRES OF THE NORTHEAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE NORTH 36 1/4 ACRES OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTH LINE OF THE SOUTH 10.26 FEET OF THE NORTH 192 FEET AND SOUTH OF A LINE 60 FEET SOUTH OF THE SOUTH LINE OF LAKE STREET (EXCEPT THE WEST 10 FEET THEREOF OF SAID LAND) IN COOK COUNTY, ILLINOIS.

### Parcel 2:

THE NORTH 60 FEET OF THAT PART OF THE NORTHEAST 1/4 OF BLOCK 3, LYING SOUTH OF THE SOUTH LINE OF LAKE STREET (EXCEPT THE WEST 10 FEET THEREOF) IN FRINK'S RESUBDIVISION OF THE NORTH 36 1/4 ACRES OF THE NORTHEAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE NORTH 36 1/4 ACRES OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-09-300-008-0000 AND 16-09-300-009-0000

Address: 330 N. Pine Ave., Chicago, Illinois 60644

## AS TO IL-038:

LOTS 1 AND 2 IN BLOCK 2 IN COUNSELMAN'S SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15 TOWNSHIP 39 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-15-128-020-0000

Address: 400-402 S. Kilbourn Avenue, Chicago, Illinois 60624

## AS TO IL-039:

LOTS 1, 2 AND 3 IN HAMBERG'S SUBDIVISION OF LOTS 82, 83 AND 84 AND THAT PART OF LOT 77 LYING WEST OF 52ND AVENUE IN SCHOOL TRUSTEES SUBDIVISION OF THE NORTH PART OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-16-119-018-0000

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Address: 400-08 S. Laramie Avenue, Chicago, IL 60644

**AS TO IL-043:**

LOTS 1, 2, 3 AND 4 (EXCEPT THE SOUTH 22 FEET OF SAID LOT 4) IN SECRIST'S SUBDIVISION OF LOT 80 IN THE SCHOOL TRUSTEES' SUBDIVISION OF THE NORTH part OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-16-119-032-0000

Address: 418-24 S. Laramie Avenue, Chicago, IL 60644

**AS TO IL-044:**

**PARCEL 1:**

LOT 7 (EXCEPT THE SOUTH 66.60 FEET OF THE WEST 137 FEET AND THE SOUTH 25 FEET EXCEPT THE WEST 137 FEET THEREOF) IN BLOCK 1 IN AUSTINVILLE, BEING AUSTIN AND MERRICK'S SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 8 AND THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, ALL IN TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

**PARCEL 2:**

THE SOUTH 66.60 FEET OF THE WEST 137 FEET AND THE SOUTH 25 FEET (EXCEPT THE WEST 137 FEET THEREOF) OF LOT 7 IN BLOCK 1 IN AUSTINVILLE, BEING AUSTIN AND MERRICK'S SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 8 AND THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, ALL IN TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

P.I.N.: 16-09-121-004-0000

Address: 423-25 N. Central Avenue, Chicago, Illinois 60644