

# UNOFFICIAL COPY

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213121



PREPARED BY ~~AND WHEN~~ :  
RECORDED MAIL TO:

Charity & Associates, P.C.  
20 North Clark Street  
Suite 3300  
Chicago, Illinois 60602  
Attn: Elvin E. Charity, Esq.

Doc# 2412222046 Fee \$88.00  
ILRHSP FEE:\$18.00 RPRF FEE:\$1.00  
CEDRIC GILES  
COOK COUNTY CLERK'S OFFICE  
DATE: 5/1/2024 2:36 PM  
PAGE: 1 OF 10

AFTER RECORDING, RETURN TO:

TITLE SERVICES MIDWEST, LLC.  
610 E. ROOSEVELT ROAD  
SUITE 200  
WHEATON, IL 60187

(SPACE ABOVE FOR RECORDER'S USE)

## SUBORDINATION AGREEMENT

(Sponsor Loan)

THIS SUBORDINATION AGREEMENT ("*Agreement*") is made as of April 30, 2024, by and among LAKEVIEW LANDING LP, an Illinois limited partnership ("*Borrower*"), with a mailing address of c/o Over the Rainbow Association, 2040 Brown Avenue, Evanston, Illinois 60201, OVER THE RAINBOW ASSOCIATION, an Illinois not-for-profit corporation ("*Junior Lienholder*"), with a mailing address of 2040 Brown Avenue, Evanston, Illinois 60201, and BMO BANK N.A., a national banking association (together with its successors and assigns, the "*Bank*" and "*Senior Lender*"), with a mailing address of 320 South Canal, 15th Floor, Illinois 60606.

### RECITALS

A. Borrower has requested that Senior Lender enter into that certain Construction Loan Agreement, of even date herewith (the "*Senior Loan Agreement*"), by and between the Senior Lender, as lender, and the Borrower, as borrower, under the terms of which the Senior Lender will make a loan (the "*Senior Loan*") to the Borrower in the maximum principal amount of Eight Million Eight Hundred Four Thousand Eight Hundred Two and No/100 Dollars (\$8,804,802.00). The Senior Loan is evidenced by that certain promissory note, of even date herewith (the "*Senior Note*"), made by the Borrower to the order of Senior Lender. The Senior Loan is secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, of even date herewith, executed by Borrower in favor of Senior Lender (the "*Senior Mortgage*," and, together with the Senior Note, the Senior Loan Agreement and all other documents executed in connection with the Senior Loan, including this Agreement, are referred to hereinafter as the "*Senior Loan Documents*"), which Senior Mortgage encumbers the Property (as hereinafter defined). The Senior Mortgage is being recorded concurrently herewith in the Office of the Clerk of Cook County, Illinois ("*Official Records*") The Senior Loan Agreement, the Senior Note, the Senior Mortgage and all other documents executed and delivered to evidence and secure or otherwise relating to, the Senior Loan are referred to hereinafter collectively as the "*Senior Loan Documents*." )

B. The proceeds of the Loan are being loaned by Senior Lender to Borrower to finance directly and indirectly the acquisition, construction and equipping of 37 affordable rental units for seniors and

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related improvements on the land situated at 835 West Addison Street, Chicago, Illinois, and to be known as "Lakeview Landing" (collectively, the "**Property**").

C. As used herein, the term "**Senior Indebtedness**" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Senior Lender under the Senior Loan Documents, together with all interest accruing thereon and all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

D. Pursuant to the Senior Mortgage and the other Senior Loan Documents, Borrower is not permitted to accept any loans secured by the Property or to further encumber the Property without the prior written consent of Senior Lender, which consent may be withheld in Senior Lender's sole discretion. The Borrower has requested the Senior Lender permit the Junior Lienholder to make a loan to the Borrower in an amount not to exceed \$645,661.10 (the "**Junior Loan**"). The Junior Loan is evidenced by that certain Promissory Note (Senior Loan) (the "**Junior Note**") executed contemporaneously herewith by Borrower to the order of Junior Lienholder and is secured by that certain Junior Mortgage, Assignment of Rents and Security Agreement (the "**Junior Mortgage**") executed contemporaneously herewith by Borrower in favor of Junior Lienholder encumbering the Property. The Junior Note, Junior Mortgage and the other documents and agreements entered into with the Junior Lienholder with respect to the Junior Loan shall be referred to collectively as the "**Junior Obligation Documents**".

E. As used herein, the term "**Junior Obligations**" means the Junior Loan and any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Junior Lienholder under the Junior Obligation Documents, together with all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

F. The Illinois Housing Development Authority, an Illinois municipal corporation (the "**IHDA**") has issued to the Borrower its conditional commitment letter, each dated as of April 2, 2024, to make a permanent loan (the "**Permanent Loan**") to the Borrower in the maximum principal amount of \$750,000, to be comprised of (1) a loan (the "**FFB Loan**") in the maximum principal amount of \$750,000, to be made by IHDA to the Borrower under the FFB/542(c) Risk Sharing Program, wherein IHDA makes mortgage loans to borrowers, which loans are credit enhanced through insurance provided by the United States Department of Housing and Urban Development pursuant to Section 542(c) of the Housing and Community Development Act of 1992 and the regulations promulgated thereunder, and (2) if required as determined by IHDA, a loan (the "**AHS Loan**") in the maximum principal amount of \$277,000 using proceeds of bonds issued by IHDA under the Affordable Housing Program Trust Fund Bond General Resolution, as that program is authorized by the Illinois Affordable Housing Act, 310 ILCS 55/1 et seq., as amended from time to time, and the rules promulgated under the Affordable Housing Act.

G. The FFB Loan will be: (i) made pursuant to a Loan Agreement (the "**FFB Loan Agreement**") between IHDA, as lender, and Borrower, as borrower, (ii) evidenced by a promissory note (the "**FFB Loan Note**"), made by Borrower to the order of IHDA, (iii) secured by a Mortgage, Security Agreement and Assignment of Rents and Lease (FFB Loan) (the "**FFB Loan Security Instrument**"), encumbering the Property, made by Borrower in favor of IHDA, and (iv) subject to the requirements of that certain Regulatory Agreement (FFB Loan) (the "**FFB Loan Regulatory Agreement**," between the Borrower and IHDA. If required as determined by IHDA, the AHS Loan will be: (w) made pursuant to a Loan Agreement (the "**AHS Loan Agreement**," and, together with the FFB Loan Agreement, singly or collectively, as the context requires, the "**Permanent Loan Agreement**") between IHDA, as lender, and Borrower, as borrower, (x) evidenced by a promissory note (the "**AHS Loan Note**" and, together with the FFB Loan Note, singly or collectively, as the context requires, the "**Permanent Loan Note**"), made by

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Borrower to the order of IHDA, (y) secured by a Mortgage, Security Agreement and Assignment of Rents and Lease (AHS Loan) (the "*AHS Loan Security Instrument*," and, together with the FFB Loan Security Instrument, singly or collectively, as the context requires, the "*Permanent Loan Security Instrument*") encumbering the Property, made by Borrower in favor of IHDA, (z) subject to the requirements of that certain Regulatory Agreement (AHS Loan) (the "*AHS Loan Regulatory Agreement*," and, together with the FFB Regulatory Agreement, the "*Permanent Loan Regulatory Agreement*"), between the Borrower and IHDA. The Permanent Loan Agreement, the Permanent Loan Note, the Permanent Loan Security Instrument, the Permanent Loan Regulatory Agreement and the other documents evidencing, securing or relating to the Permanent Loan are referred to herein collectively as the "*Permanent Loan Documents*").

H. It is a condition precedent to Senior Lender entering into the Senior Loan Documents and permitting the execution and recordation as applicable of the Junior Obligation Documents that the Senior Mortgage and the other Senior Loan Documents be and remain at all times a lien or charge upon the Property, prior and superior to the liens or charges of the Junior Obligation Documents.

I. Senior Lender is willing to permit the recordation of the recordable Junior Obligation Documents, provided that (1) the Senior Mortgage and the other Senior Loan Documents are and shall remain a lien or charge upon the Property prior and superior to the liens or charges of the Junior Obligation Documents, and (2) Junior Lender will expressly subordinate the liens or charges of the Junior Obligation Documents to the lien or charge of the Senior Loan Documents.

J. Junior Lienholder is willing that the Senior Loan Documents shall constitute a lien or charge upon the Property which is prior and superior to the liens or charges of the Junior Obligation Documents. The parties hereto enter into this Agreement for the purposes set forth in these Recitals.

K. Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Senior Loan Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Senior Lender to make the Senior Loan, it is hereby declared, understood, and agreed as follows:

1. Subordination. The Senior Mortgage and other Senior Loan Documents in favor of Senior Lender, and all amendments, modifications, extensions and renewals thereof shall unconditionally be and remain at all times a lien or charge on the Project prior and superior to the lien or charge of the Junior Mortgage and the other Junior Obligation Documents. Junior Lienholder intentionally and unconditionally subordinates the lien or charge of the Junior Mortgage and the other Junior Obligation Documents in favor of the lien or charge upon the Property and the other collateral described in the Senior Mortgage and other Senior Loan Documents in favor of Senior Lender, and understands that in reliance upon and in consideration of this subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination.

2. Only Agreement Regarding Subordination. Senior Lender would not permit the execution or recordation of any Junior Obligation Documents without this Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Junior Mortgage and the other the Junior Obligation Documents to the lien or charge of the Senior Mortgage and the other Senior Loan Documents and shall supersede and cancel, but only insofar as would affect the priority between said

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mortgages and said covenants, conditions and restrictions, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the Junior Obligation Documents which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

3. Loan Disbursements. In making disbursements of the Senior Loan pursuant to any of the Senior Loan Documents, Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such Senior Loan Document(s) shall not defeat the subordination herein made in whole or in part.

4. Consent and Approval. Junior Lienholder consents to and approves the Senior Loan Documents, including but not limited to any existing or future extension, modification and/or amendment of said document, between Borrower and Senior Lender. No decision by Junior Lienholder to review or not review the Senior Loan Documents, including but not limited to the disbursement provisions contained therein, shall impair or otherwise limit the enforceability of this Agreement.

5. Other Agreements. Junior Lienholder and Borrower declare, agree, and acknowledge that:

5.1 Subordination of Indebtedness. Any and all Junior Obligations are hereby subordinated and subject to any and all Senior Indebtedness, as set forth herein.

5.2 Permitted Payments. Borrower may make payments with respect to the Junior Obligations solely from Cash Flow (as defined in the Borrower's Partnership Agreement) in accordance with Borrower's Partnership Agreement and the Junior Obligation Documents, as long as all payments under the Senior Mortgage and the other Senior Loan Documents are current and not delinquent or in arrears, and only so long as at the time of such payment: (i) there exists no Event of Default or event that, with the lapse of time or the giving of notice or both, would be an Event of Default under the Senior Loan Agreement or any of the other Senior Loan Documents of which Junior Lienholder has received notice; and (ii) the payment would not result in a violation of any of Borrower's financial covenants set forth in any of the Senior Loan Documents ("**Permitted Payments**").

5.3 Payment Subordination. Except for any Permitted Payments, Junior Lienholder hereby agrees that: (a) all of the Senior Indebtedness now or hereafter existing shall be first paid in full by Borrower before any payment shall be made by Borrower on the Junior Obligations; and (b) this priority of payment shall apply at all times until all of the Senior Indebtedness has been repaid in full. In the event of any assignment by Borrower for the benefit of Borrower's creditors, or any bankruptcy proceedings instituted by or against Borrower, or the appointment of any receiver for Borrower or Borrower's business or assets, or of any dissolution or other winding up of the affairs of Borrower or of Borrower's business, and in all such cases respectively, Borrower's officers and any assignee, trustee in bankruptcy, receiver and other person or persons in charge are hereby directed to pay to Senior Lender the full amount of the Senior Indebtedness before making any payments to Junior Lienholder due on the Junior Obligations under any of the Junior Obligation Documents.

5.4 Return of Prohibited Payments. Except as otherwise expressly agreed to herein, if Junior Lienholder shall receive any payments or other rights in any property of Borrower in connection with the Junior Obligations in violation of this Agreement, such payment or property shall immediately be delivered and transferred to Senior Lender.

5.5 Repayment of Senior Indebtedness. This Agreement shall remain in full force and effect until all amounts due under the Senior Note, the Senior Loan Agreement and the other Senior Loan

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Documents are fully and indefeasibly repaid in accordance with their respective terms and all of the terms of this Agreement have been complied with.

5.6 Standstill. Junior Lienholder agrees that, without the Senior Lender's prior written consent, it will not accelerate any of the Junior Obligations, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action with respect to the Junior Obligations.

6. Intentionally Omitted.

7. Bankruptcy Provisions. To the extent any payment under any of the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under the Bankruptcy Code or any federal or state bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

8. Casualty Insurance Proceeds; Condemnation Proceeds. In the event Senior Lender shall release, for the purposes of restoration of all or any part of the improvements at the Property, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, Junior Lienholder shall simultaneously release (and hereby agrees that it shall be irrevocably and unconditionally deemed to have agreed to release) for such purpose all of Junior Lienholder's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation. Junior Lienholder agrees that the balance of such proceeds remaining after such restoration, or all of such proceeds in the event Senior Lender elects, in accordance with Illinois law and the Senior Loan Documents, not to release any such proceeds for any such restoration, shall be applied to the payment of amounts due under the Senior Loan Documents until all such amounts have been paid in full, prior to being applied to the payment of any amounts due under the Junior Obligation Documents. If Senior Lender holds such proceeds, awards or compensation and/or monitors the disbursement thereof, Junior Lienholder agrees that Senior Lender may also elect, in its sole and absolute discretion, to hold and monitor the disbursement of such proceeds, awards and compensation to which Junior Lienholder is or may be entitled. Nothing contained in this Agreement shall be deemed to require Senior Lender, in any way whatsoever, to act for or on behalf of Junior Lienholder or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of Junior Lienholder, and all or any of such sums so held or monitored may be commingled with any funds of Senior Lender.

9. Effect of Other Agreements. The relationship between Borrower and Senior Lender under the Senior Loan Documents is, and shall at all times remain, solely that of borrower and lender. Junior Lienholder acknowledges and agrees that Senior Lender neither undertakes nor assumes any fiduciary responsibility or other responsibility or duty to Borrower or Junior Lienholder to guarantee or assist in Borrower's or Junior Lienholder's performance under any of the agreements between those parties and other third parties, including without limitation, the Junior Obligation Documents.

10. Miscellaneous. This Agreement may be executed in multiple counterparts and the signature page(s) and acknowledgment(s) assembled into one original document for recordation, and the validity hereof shall not be impaired by reason of such execution in multiple counterparts. This Agreement is to be governed according to 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

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ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. In the event of action, suit or proceeding to enforce any term of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, as determined by the court or other arbiter, all of the prevailing party's costs and expenses, including without limitation reasonable attorneys' fees and expert witness fees, incurred by the prevailing party in connection therewith. If Junior Lienholder or any affiliate of Junior Lienholder shall acquire, by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Property, that lien, estate, right or other interest shall be subordinate to the Senior Mortgage and the other Senior Loan Documents as provided herein, and Junior Lienholder hereby waives, on behalf of itself and such affiliate, until all amounts owed under the Senior Loan Documents have been indefeasibly paid in full and all Senior Lender's obligations to extend credit under the Senior Loan Documents have terminated, the right to exercise any and all such rights it may acquire by indemnification, subrogation or otherwise. The Agreement shall inure to the benefit of, and be binding upon, the parties hereto and the respective successors and assigns.

11. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing; or (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to the address for each party hereto first listed above.

12. Refinancing of the Senior Loan. Junior Lienholder consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Junior Lienholder further agrees that its agreement to subordinate hereunder shall extend to the Permanent Lender and the Permanent Loan Documents, as well as to any other new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and, in the event of any such new mortgage debt, Junior Lienholder shall execute and deliver to the permanent lender providing such refinancing a new subordination agreement on the same terms and conditions as this Subordination Agreement. Upon the closing and funding of the Permanent Loan or any other such refinancing loan, all the terms and covenants of this Subordination Agreement shall inure to the benefit of any holder of the Permanent Loan or such other refinancing loan, as applicable, and all references to the Senior Loan, the Senior Note, the Senior Security Instrument and the Senior Loan Documents shall mean, respectively, the Permanent Loan, the Permanent Loan Note, the Permanent Loan Security Instrument and the other Permanent Loan Documents, respectively.

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[SECOND SIGNATURE PAGE TO SUBORDINATION AGREEMENT – SPONSOR LOAN]

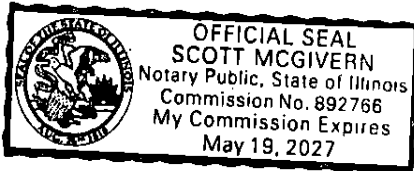
**JUNIOR LIENHOLDER:**

**OVER THE RAINBOW ASSOCIATION**, an Illinois not-for-profit corporation

By: *Eric Huffman*  
Name: *Eric Huffman*  
Title: *President*

STATE OF Illinois )  
 ) ss.  
COUNTY OF COVE )

On this April 4th, 2024, before me, the undersigned notary public, *Eric Huffman*, personally appeared, proved to me through satisfactory evidence of identification, which was my personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily, as the President of Over The Rainbow Association, an Illinois not-for-profit corporation, for its stated purpose as the voluntary act of said not-for-profit corporation.



*[Signature]*  
Notary Public  
My commission expires: May 19, 2027

Property of Coop County Clerk's Office



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[THIRD SIGNATURE PAGE TO SUBORDINATION AGREEMENT – SPONSOR LOAN]

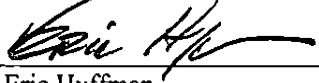
**BORROWER:**

**LAKEVIEW LANDING LP,**  
an Illinois limited partnership

By: Lakeview Landing GP LLC,  
an Illinois limited liability company,  
its general partner

By: OTR Lakeview Landing, LLC,  
an Illinois limited liability company,  
its managing member

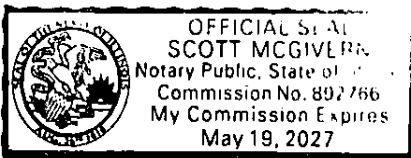
By: Over The Rainbow Association,  
an Illinois not-for-profit corporation,  
its sole member

By:   
Name: Eric Huffman  
Title: President

STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

I, Scott McGivern, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Eric Huffman, the President of Over The Rainbow Association, an Illinois not-for-profit corporation, the sole member of OTR Lakeview Landing, LLC, an Illinois limited liability company, the managing member of Lakeview Landing GP LLC, an Illinois limited liability company, the general partner of Lakeview Landing LP, an Illinois limited partnership (the "Partnership"), personally known to me, or proved to me on the basis of satisfactory evidence, to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free voluntary act and deed and as the free and voluntary act and deed of said Partnership for the uses and purposes therein set forth.

Given my hand and notarial seal this 4 day of April, 2024.



  
Notary Public

My Commission Expires:  
May 19, 2027

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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 1, 2, 3 AND 4 IN BENTON'S ADDISON STREET ADDITION IN THE EAST HALF OF THE  
SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE  
THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS. ✓

Street Address: 835 West Addison Street, Chicago, Illinois ✓

PIN: 14-20-406 045-0000 ✓

Property of Cook County Clerk's Office