



WHEN RECORDED MAIL TO:

Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300  
Scottsdale, Arizona 85253  
Attn: Heather Aeschleman

(SPACE ABOVE FOR RECORDER'S USE)

### SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN CERTAIN INTERESTS IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT ("*Agreement*") is made as of August 27 2024, by and among **HILLCREST GREEN II, LP**, an Indiana limited partnership ("*Borrower*"), **THE CITY OF OKLAHOMA CITY, CORPORATION**, an Oklahoma municipal corporation ("*Junior Lender*"), and **THE HUNTINGTON NATIONAL BANK**, a national banking association ("*Senior Lender*").

### RECITALS

A. Borrower owns a leasehold interest in and intends to construct a 43-unit affordable housing apartment project (the "*Project*") located on the real property described on Exhibit A attached hereto (the "*Property*").

B. Borrower has applied to Senior Lender for a loan in the maximum principal amount of \$8,483,000.00 (the "*Senior Loan*"), for the purpose of financing a portion of the costs of the acquisition and construction of the Project.

C. Borrower and Senior Lender have entered into that certain Construction Loan Agreement dated as of the date hereof (as the same from time to time may be amended, modified, extended, renewed or restated, the "*Senior Loan Agreement*").

D. Borrower's obligations to repay the Loan are further evidenced by that certain Promissory Note dated as of even date herewith executed by Borrower and payable to Senior Lender in the original principal amount of the Loan (the "*Senior Note*").

E. Borrower's obligations to Senior Lender under the Senior Loan Agreement and the Senior Note are secured by, among other things, (i) that certain Leasehold Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of even date herewith made by Borrower for the benefit of Senior Lender (the "**Senior Mortgage**"), and (ii) the Loan Documents described in the Senior Loan Agreement. The Senior Mortgage is being recorded substantially concurrently herewith in the official records of the Oklahoma County Clerk, which address is 200 Robert S. Kerr Avenue, #203, Oklahoma City, Oklahoma 73102, or subsequent official address ("**Official Records**"). The Senior Mortgage, the Senior Loan Agreement, the Senior Note and the other Loan Documents (as defined in the Senior Loan Agreement) are hereinafter collectively referred to as the "**Senior Loan Documents**".

F. Each of the documents listed on **Exhibit B** together with all other documents and materials entered into with Junior Lender with respect to the Project shall be referred to collectively as the "**Junior Loan Documents**".

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

H. As used herein, the term "**Senior Obligations**" 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.

I. Pursuant to the Senior Mortgage and the other Senior Loan Documents, Borrower is not entitled to further encumber the Property without the prior written consent of Senior Lender, which consent may be withheld in Senior Lender's sole discretion.

J. It is a condition precedent to Senior Lender entering into the Senior Loan Documents and permitting the recordation of any of the Junior Loan 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 Loan Documents, despite the official date of filing.

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

L. Junior Lender is willing to agree 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 Loan Documents. The parties hereto enter into this Agreement for the purposes set forth in these Recitals.

M. 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 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 Property prior and superior to the lien or charge of the Junior Loan Documents. Junior Lender intentionally and unconditionally subordinates the lien or charge of the Junior Loan Documents in favor of the lien or charge upon said land of the Senior Mortgage 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 recordation of any Junior Loan 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 Loan Documents to the lien or charge of the Senior Mortgage (except with respect to the subordination provisions contained in the Junior Loan Documents, to the extent not inconsistent with any provision of this Agreement).

3. **Loan Disbursements.** In making disbursements 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 Documents shall not defeat the subordination herein made in whole or in part. Borrower acknowledges an obligation to repay the disbursements received by Borrower for implementation of the Project, as described herein.

4. **Consent and Approval.** Junior Lender has received and consents to and approves the Senior Loan Documents.

5. **Other Agreements.** Junior Lender 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 Obligations, as set forth herein.

5.2 **Permitted Payments.** Borrower may make payments under the Junior Loan Documents, if required, 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) no Event of Default exists under the Senior Loan Agreement and no event exists which, with the lapse of time or the giving of notice or both, would be an Event of Default under the Senior Obligations of which Junior Lender 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 documents evidencing the Senior Loan ("*Permitted Payments*").

5.3 Payment Subordination. Except for any Permitted Payments, (a) all of the Senior Obligations 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 Obligation 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 shall be directed by the Borrower as per this Agreement, to pay to Senior Lender the full amount of the Senior Obligations before making any payments to Junior Lender due under the Junior Obligations.

5.4 Return of Prohibited Payments. Except as otherwise expressly agreed to herein, if Junior Lender 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 after notice to Junior Lender.

5.5 Repayment of Senior Obligations. This Agreement shall remain in full force and effect until all amounts due under the Senior Note and the Senior Loan Agreement are fully repaid in accordance with the terms of the Senior Loan Documents and after there has been complete compliance with all of the terms of this Agreement.

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

5.7 Assignment or Modification of Junior Loan Documents. Borrower and Junior Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, amend or modify any provision of the Junior Loan Documents. Junior Lender further agrees that it will not assign any portion of its interest in the Junior Loan Documents without the prior written consent of Senior Lender.

5.8 Assignment or Modification of Senior Loan and Senior Loan Documents. Junior Lender acknowledges and agrees that Senior Lender, at any time, shall have the right to sell, assign, transfer, or negotiate the Senior Loan and the Senior Loan Documents, in whole or in part, and to grant participation interests in the Senior Loan and the Senior Loan Documents, without the consent of Junior Lender. Junior Lender acknowledges and agrees that Senior Lender may amend or modify any provision of the Senior Loan Documents without the consent of Junior

Lender. Borrower shall give written notice of any such assignment or modification of the Senior Loan or the Senior Loan documents within thirty (30) days of any such occurrence to the Junior Lender at the addresses provided in item 6.1 below.

6. Senior Lender Agreements.

6.1 Senior Lender agrees that it shall not complete a foreclosure sale with respect to the Project, or record a deed-in-lieu of foreclosure (each, a “*Foreclosure Remedy*”) unless Junior Lender has first been given thirty (30) days’ written notice of the Event(s) of Default giving Senior Lender the right to complete such Foreclosure Remedy, and unless Junior Lender has failed, within such thirty (30) day period, to cure such Event(s) of Default; provided, however, that Senior Lender shall be entitled during such thirty (30) day period to continue to pursue all of its rights and remedies under the Senior Loan Documents, including, but not limited to, acceleration of the Senior Loan (subject to any de-acceleration provisions specifically set forth in the Senior Loan Documents), commencement and pursuit of a judicial or non-judicial foreclosure (but not completion of the foreclosure sale), appointment of a receiver, enforcement of any guaranty (subject to any notice and cure provisions contained therein), and/or enforcement of any other Senior Loan Document. In the event Senior Lender has accelerated the Senior Loan and Junior Lender cures all Events of Default (whether monetary or non-monetary) giving rise to such acceleration within the thirty (30) day cure period described above, such cure shall have the effect of de-accelerating the Senior Loan; provided, however, that such de-acceleration shall not waive or limit any of Senior Lender’s rights to accelerate the Senior Loan or exercise any other remedies under the Senior Loan Documents as to any future or continuing Events of Default. It is the express intent of the parties hereunder that Senior Lender shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to Junior Lender for failure to provide timely notice to Junior Lender required hereunder, and that Senior Lender’s liability hereunder shall be expressly limited to actual and consequential damages to Junior Lender directly caused by Senior Lender’s completion of a Foreclosure Remedy without Junior Lender receiving the notice and opportunity to cure described above. Senior Lender shall give Junior Lender notice by certified mail, directed to the addresses set forth below or to such other address as Junior Lender may provide Senior Lender in writing from time to time:

To Junior Lender:

The City of Oklahoma City  
200 North Walker, Second Floor  
Oklahoma City, OK 73102  
Attn: City Clerk

And to:

The City of Oklahoma City  
420 West Main Street, Suite 920  
Oklahoma City, OK 73102  
Attn: Planning Department/Housing and Community Development  
Division

6.2 Junior Lender shall also have the right, during the thirty (30) day cure period described in Section 6.1, above, to elect, by delivering a written notice ("**Election Notice**") of its election to Senior Lender, to purchase the Senior Loan from Senior Lender for a purchase price ("**Senior Loan Purchase Price**") equal to the sum of (i) the outstanding principal balance of the Senior Loan on the Closing Date (as defined below), plus (ii) all accrued and unpaid interest on the Senior Loan through and including the Closing Date, plus (iii) all other accrued and unpaid fees, costs and expenses payable by Borrower under the Senior Loan Documents, plus (iv) all costs and expenses incurred by Senior Lender in connection with the sale of the Senior Loan to Junior Lender. The sale of the Senior Loan by Senior Lender to Junior Lender under this Section shall be made (a) without recourse, representation or warranty by Senior Lender of any kind, express or implied, and (b) close on the date ("**Closing Date**") which is fifteen (15) days after Junior Lender gives the Election Notice to Senior Lender (unless another date mutually agreeable by both parties is selected). On the Closing Date, Junior Lender shall pay to Senior Lender, in immediately available funds and lawful monies of the United States of America, the Senior Loan Purchase Price.

## 7. Bankruptcy Provisions.

7.1 In the event of any proceedings to liquidate, dissolve or wind up the Borrower, or of any execution, sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or other similar proceedings relative to the Borrower or its property (a "**Bankruptcy Proceeding**"), to the fullest extent permitted by law, the payment and lien priorities set forth in this Agreement shall be respected and enforced in any such Bankruptcy Proceeding, and Junior Lender and Borrower agree not to contest such priorities in any Bankruptcy Proceeding. Without limitation to the foregoing, the Senior Loan shall be preferred in payment over all of the Junior Obligations and shall be paid in full before any payment is made upon any of the Junior Obligations; and any payment or distribution of any kind or character, whether in cash, property or securities, made upon or in respect of any of the Junior Obligations as a result of any such proceeding shall be paid over to the Senior Lender for application in payment of the Senior Loan unless and until the Senior Loan shall have been paid or satisfied in full. Junior Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding with respect to the Borrower without (i) sixty (60) days' prior written notice to the Senior Lender of such intent, and (ii) indefeasible payment in full of the outstanding principal balance and all accrued and unpaid interest under the Senior Loan, together with all other amounts secured by the Senior Mortgage. Upon the occurrence of any Bankruptcy Proceeding with respect to the Borrower, Junior Lender agrees to fully cooperate with Senior Lender in connection with such Bankruptcy Proceeding and to refrain from taking any actions which are inconsistent with the agreements contained in this Agreement. Without limitation to the foregoing, Junior Lender shall (i) consent to and vote in favor of any and all actions taken by Senior Lender in any Bankruptcy Proceeding to permit the commencement or continuation of any foreclosure of the Senior Mortgage; and (ii) not propose any plan, or confirm or take any other action in support of any plan or other course of action proposed by Borrower or any other party (other than Senior Lender), which would have the effect of (A) impairing the priority or lien of the Senior Loan, or (B) delaying, preventing, limiting, requiring a reduction in the amount of or impairing Senior Lender's collection of all or any portion of the Senior Loan.

7.2 To the extent any payment under any Senior Loan Document (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 in any Bankruptcy Proceeding, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Obligations 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, all of Senior Lender's 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 Lender 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 Lender's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation. Junior Lender 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 Oklahoma law, 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 Loan Documents. If Senior Lender holds such proceeds, awards or compensation and/or monitors the disbursement thereof, Junior Lender 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 Lender 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 Lender or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of Junior Lender, 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. Based thereon, Junior Lender acknowledges and agrees that Senior Lender neither undertakes nor assumes any fiduciary responsibility or other responsibility or duty to Borrower or Junior Lender to guarantee or assist in Borrower's or Junior Lender's performance under any of the agreements between those parties and other third parties, including without limitation the Junior Loan 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 Oklahoma. In the event of action, suit, proceeding or arbitration 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 arbitrator, all of the prevailing party's costs and expenses, including without limitation attorneys' fees and expert witness fees, incurred by the prevailing party in connection therewith. This Agreement shall inure to the benefit of, and the binding upon, the parties hereto and the respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**BORROWER:**

HILLCREST GREEN II, LP, an Indiana limited partnership

By: Hillcrest Green II GP, LLC, an Indiana limited liability company, its General Partner

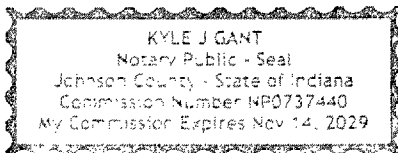
By: TWG GP V, LLC, an Indiana limited liability company, its Sole Member

By: \_\_\_\_\_  
Name: Louis A. Knoble  
Title: Manager

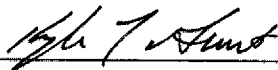


STATE OF INDIANA       )  
                                      ) SS.  
COUNTY OF MARION    )

On this 5<sup>th</sup> day of August, 2024, this record was signed before me by Louis A. Knoble, as Manager of TWG GP V, LLC, an Indiana limited liability company, the Sole Member of Hillcrest Green II GP, LLC, an Indiana limited liability company, the General Partner of HILLCREST GREEN II, LP, an Indiana limited partnership.



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



Commissioned in JOHNSON County.

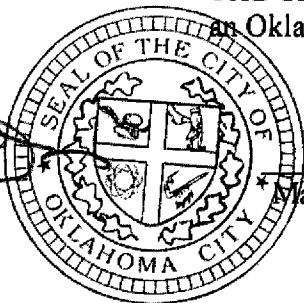
[notarial seal]

**JUNIOR LENDER:**

ATTEST:

THE CITY OF OKLAHOMA CITY,  
an Oklahoma municipal corporation

Amy K. Simpson  
City Clerk



David Holt  
Mayor

Approved as to form and legality.

Rita F. Douglas-Talbot  
Assistant Municipal Counselor

STATE OF OKLAHOMA           )  
  ) SS.  
COUNTY OF OKLAHOMA       )

PERSONALLY APPEARED BEFORE ME, Sharon D. Jones, a Notary Public for the State and County aforesaid, David Holt, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the within instrument for the purposes therein contained, and who further acknowledged that such person is the Mayor of THE CITY OF OKLAHOMA CITY, an Oklahoma municipal corporation, and is authorized to execute this instrument.

WITNESS MY HAND, at office, this 27<sup>th</sup> day of August, 2024.

Sharon D. Jones  
Notary Public

My Commission Expires: 1/16/27



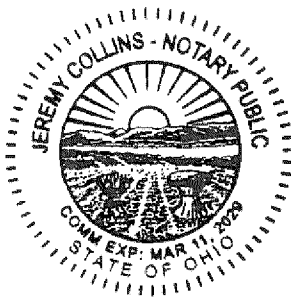
SENIOR LENDER:

THE HUNTINGTON NATIONAL BANK, a  
national banking associationBy: John Hyland  
Name: John Hyland  
Title: Authorized SignerSTATE OF Ohio )  
 ) SS.  
COUNTY OF Cuyahoga )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO  
HEREBY CERTIFY that John Hyland, the Authorized Signer of THE HUNTINGTON  
NATIONAL BANK, a national banking association, who is 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 he/she signed and delivered said instrument as his/her own free  
and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein  
set forth.

GIVEN under my hand and notarial seal this 6<sup>th</sup> day of August, 2024.Jeremy Collins  
Notary Public

My Commission Expires:

03/11/29

**EXHIBIT A****Legal Description**

A PART OF LOT "A" IN BLOCK THREE (3), IN THE MADOLE HILL CREST GREEN ADDITION SECTION 2, IN THE SOUTHEAST QUARTER (SE/4) OF SECTION TWENTY-FIVE (25), TOWNSHIP ELEVEN (11) NORTH, RANGE FOUR (4) WEST, OF THE INDIAN MERIDIAN, OKLAHOMA CITY, OKLAHOMA COUNTY, OKLAHOMA, ACCORDING TO THE RECORDED PLAT FILED IN BOOK 36, PAGE 41. BEGINNING AT THE NORTHEAST CORNER OF LOT "A", BLOCK THREE (3), IN THE MADOLE HILL CREST GREEN ADDITION SECTION 2; THENCE SOUTH 00°02'04" WEST ALONG THE EAST LINE OF SAID LOT "A" A DISTANCE OF 278.22 FEET TO THE SOUTHEAST CORNER OF SAID LOT "A"; THENCE NORTH 89°44'48" WEST ALONG THE SOUTH LINE OF SAID LOT "A" A DISTANCE OF 718.11 FEET; THENCE NORTH 00°27'30" EAST A DISTANCE OF 103.30 FEET; THENCE SOUTH 89°32'30" EAST A DISTANCE OF 22.29 FEET; THENCE NORTH 00°29'02" EAST A DISTANCE OF 175.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT "A"; THENCE SOUTH 89°44'48" EAST ALONG THE NORTH LINE OF SAID LOT "A" A DISTANCE OF 693.72 FEET TO THE NORTHEAST CORNER OF SAID LOT "A" AND THE POINT OF BEGINNING.

## **EXHIBIT B**

### **Junior Loan Documents**

Each document is dated as of August 27 2024, unless otherwise noted below.

1. Promissory Note and Mortgage (Affordable Housing Assistance) from Borrower to Junior Lender
2. HOME Investment Partnerships Program (HOME) Loan Agreement by and between Borrower and Junior Lender
3. Declaration of Affordability Requirements by Borrower in favor of Junior Lender