

RESOLUTION NO. M-2433

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, AUTHORIZING IN SUBSTANTIALLY FINAL FORM A PRIORITY AND SUBORDINATION AGREEMENT RELATED TO CITY OF OLYMPIA HOME FUND GRANT AGREEMENT NO. 22-HFC-006**

**WHEREAS**, the City of Olympia (City) currently has a Home Fund Grant Agreement with the Low Income Housing Institute (LIHI) in the amount of \$150,000.00, Home Fund Loan No. 22-HFC-006, to develop affordable housing and housing-related services for the residents of the City of Olympia; and

**WHEREAS**, LIHI is in the process of obtaining both public and private financing for new construction of a 64-unit multi-family building located at 111 Pattison Street NE that will be rented to homeless persons, including homeless seniors; and

**WHEREAS**, development and financing of LIHI's low-income housing project also requires approval of a Priority and Subordination Agreement that sets out the priority of the interests of various lenders and entities lending or granting funds to LIHI for its low income housing project known as Unity Commons Phase 2; and

**WHEREAS**, the document attached hereto as Exhibit A relates to interests in real estate, said document has gone through legal review, has been approved in substantially final form, and will be executed in escrow during the closing process; and

**WHEREAS**, the Olympia City Council determines it to be in the best interests of the City of Olympia and its residents to provide for its most vulnerable populations by agreeing to LIHI's request to subordinate the City's Home Fund Grant No. 22-HFC-006 in the priority listed on Exhibit A attached hereto;


**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE** as follows:

1. The document attached hereto as Exhibit A is hereby approved in substantially final form.
2. The City Manager is directed and authorized to execute the attached Priority and Subordination Agreement on behalf of the City of Olympia in substantially the final form as presented in this Resolution, subject to the City Manager's authority and discretion to make any amendments or minor modifications as may be required and are consistent with the intent of the attached document, or to correct any scrivener's errors.

**PASSED BY THE OLYMPIA CITY COUNCIL** this 9th day of May 2023.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

**Mark Barber**  
CITY ATTORNEY

AFTER RECORDING RETURN TO:

Stoel Rives LLP  
600 University St. Ste. 3600  
Seattle, WA 98101  
Attn: Sallie Lin

**Document:** PRIORITY AND SUBORDINATION AGREEMENT

- Grantors:**
1. JP MORGAN CHASE
  2. WASHINGTON STATE HOUSING FINANCE COMMISSION
  3. WASHINGTON STATE DEPARTMENT OF COMMERCE
  4. THURSTON COUNTY
  5. CITY OF OLYMPIA
  6. OLYMPIA SCHOOL DISTRICT NO. 111
  7. BANNER BANK
  8. MARTIN WAY II LLLP
  9. LOW INCOME HOUSING INSTITUTE (LIHI)

- Grantees:**
1. JP MORGAN CHASE
  2. WASHINGTON STATE HOUSING FINANCE COMMISSION
  3. WASHINGTON STATE DEPARTMENT OF COMMERCE
  4. THURSTON COUNTY
  5. CITY OF OLYMPIA
  6. OLYMPIA SCHOOL DISTRICT NO. 111
  7. BANNER BANK
  8. MARTIN WAY II LLLP
  9. LOW INCOME HOUSING INSTITUTE (LIHI)

**Abbrev. Legal Description:** Unit(s): 3 Condo: LIHI Martin Way Condo

(Additional legal description on Exhibit A)

**Tax Parcel #:** 69510000300

- Reference Numbers:**
- 4802882 Original Priority Agreement
  - \_\_\_\_\_ Commission Extended Use Agreement
  - \_\_\_\_\_ State Covenant
  - \_\_\_\_\_ County Covenant
  - 4798100; 4802569 City Covenant
  - 4801291; \_\_\_\_\_ School Covenant
  - \_\_\_\_\_ FHLB Covenant
  - \_\_\_\_\_ Bank Deed of Trust
  - \_\_\_\_\_ State Deed of Trust
  - \_\_\_\_\_ County 1406 Deed of Trust
  - \_\_\_\_\_ County HOME Deed of Trust
  - \_\_\_\_\_ County 2060 Deed of Trust
  - \_\_\_\_\_ Sponsor City Deed of Trust
  - \_\_\_\_\_ Sponsor FHLB Deed of Trust
  - \_\_\_\_\_ Sponsor HD Deed of Trust
  - \_\_\_\_\_ Developer Fee Deed of Trust

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THIS PRIORITY AND SUBORDINATION AGREEMENT (“*Agreement*”), dated as of April \_\_\_, 2023, is made by and among the following parties: **WASHINGTON STATE HOUSING FINANCE COMMISSION**, a public body corporate and politic and an instrumentality of the State of Washington (the “*Commission*”); **JPMORGAN CHASE**, a national banking association (“*Bank*”); **WASHINGTON STATE DEPARTMENT OF COMMERCE**, a department of the State of Washington (“*State*”); **THURSTON COUNTY**, a Washington municipal corporation (“*County*”); **CITY OF OLYMPIA**, a municipal corporation (“*City*”); **OLYMPIA SCHOOL DISTRICT NO. 111**, a political subdivision of the State of Washington (“*School*”); **BANNER BANK**, a Washington commercial bank (“*Banner*”); **MARTIN WAY II LLLP**, a Washington limited liability limited partnership (“*Partnership*”); **LOW INCOME HOUSING INSTITUTE (LIHI)**, a Washington nonprofit corporation (“*Sponsor*”) (collectively, the “*Parties*” and each individually, a “*Party*”).

Bank, State, County, and Sponsor (solely in its role as holder of the Sponsor Notes and beneficiary under the Sponsor Deeds of Trust) are collectively referred to herein as “*Lenders*” and each individually, a “*Lender*,” in each case so long as such Party’s deed of trust remains in effect as a lien on the Property (defined below).

## RECITALS

A. **Original Priority and Subordination Agreement**. Certain parties entered into that certain Priority and Subordination Agreement dated as of November 19, 2020, and recorded under Thurston County recording number 4802882 (the “*Original Priority Agreement*”). The Original Priority Agreement encumbered the Property (defined below) as well as additional real property, as identified therein. The Original Priority Agreement, as it pertains to the Property, has been terminated and is of no further force or effect.

B. **Partnership’s Interest**. Partnership owns that certain real property in Thurston County, Washington, legally described as set forth on **Exhibit A** attached hereto (the “*Property*”), which includes all improvements now and hereafter constructed thereon. The Property will be developed using a combination of public and private funds from various sources, to serve as low-income housing (the “*Project*”).

C. **Commission’s Interest**. Commission has allocated annual low-income housing tax credits to the Partnership in the amount of \$1,891,320 to finance the Project through the use of Low-Income Housing Tax Credits (“*LIHTC*”). In connection with the LIHTC, Partnership has executed a Regulatory Agreement (Extended Use Agreement) with the Commission, recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (“*Extended Use Agreement*”).

D. **Bank’s Interest**. Bank has agreed to make a construction loan to the Partnership in the aggregate amount of [\$13,000,000] (the “*Bank Loan*”). The Bank Loan is made pursuant to that certain Loan Agreement (the “*Bank Loan Agreement*”). The Bank Loan is evidenced by a promissory note made by the Partnership in favor of Bank under the Bank Loan Agreement in the

maximum aggregate principal amount of [\$13,000,000] (the “**Bank Note**”). Repayment of the Bank Note is secured by, among other security documents, a Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases and Rents granted by Partnership in favor of Chicago Title Insurance Company, as trustee, and Bank as beneficiary, recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**Bank Deed of Trust**”), encumbering Partnership’s fee simple interest in the Property and other personal property described in the Bank Deed of Trust. The Bank Loan is secured by UCC-1 Financing Statements, filed with the Department of Licensing, Uniform Commercial Code Division of the State of Washington (together, the “**Bank Financing Statement**”). All documents identified in this paragraph and all documents executed by Partnership in connection with the Bank Loan are referred to collectively as the “**Bank Loan Documents**.”

E. **State’s Interest.** The State and Sponsor entered into a Contract, Number 21-94110-019 (the “**State Contract**”). Pursuant to the State Contract, Sponsor executed a Promissory Note in the principal amount of \$6,500,000 in favor of the State (the “**State Note**”), and the State Contract and the State Note have been assigned to Partnership. The State Note is secured by that certain Deed of Trust, executed by Partnership, and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**State Deed of Trust**”). In connection with the State Contract, Partnership executed that certain Low Income Housing Covenant Agreement recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**State Covenant**”). All documents identified in this subparagraph, and any documents executed by the State, Sponsor, or Partnership in connection therewith, are collectively referred to as the “**State Loan Documents**.”

F. **County’s Interest.** County, through Thurston County - PHSS Housing and Community Renewal, has provided the following financing to the Project:

(i) County and Sponsor have entered into a HOME (CHDO) Development Agreement # \_\_\_\_\_ dated April 28, 2023 (the “**County HOME Contract**”). Pursuant to the County HOME Contract, Sponsor executed a Promissory Note in the principal amount of \$1,132,968.31 in favor of the County (the “**County HOME Note**”), and the County HOME Contract and County HOME Note have been assigned to the Partnership. The County HOME Note is secured by that certain Deed of Trust, executed by Partnership, and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**County HOME Deed of Trust**”).

(ii) County and Sponsor and have entered into a HB 1406 Affordable and Homeless Housing Professional Services Agreement (the “**County 1406 Contract**”). Pursuant to the County 1406 Contract, Sponsor executed a Promissory Note in the principal amount of \$1,741,380 in favor of the County (the “**County 1406 Note**”), and the County 1406 Contract and County 1406 Note have been assigned to Partnership. The County 1406 Note is secured by that certain Deed of Trust, executed by Partnership, and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**County 1406 Deed of Trust**”).

(iii) County and Sponsor have entered into an SHB 2060 Affordable and Homeless Housing Professional Services Agreement (the “**County 2060 Contract**”). Pursuant to the County 2060 Contract, Sponsor executed a Promissory Note in the principal amount of \$554,724 in favor of the County (the “**County 2060 Note**”), and the County 2060 Contract and County 2060 Note have been assigned to Partnership. The County 1406 Note is secured by that certain Deed of Trust, executed by Partnership, and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**County 2060 Deed of Trust**,” and together with the County HOME Deed of Trust and County 1406 Deed of Trust, the “**County Deeds of Trust**”).

(iv) In connection with the County HOME Contract, the County 1406 Contract and the County 2060 Contract, Partnership has entered into a Restrictive Covenant Agreement dated April 28, 2023 and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**County Covenant**”).

(v) The County HOME Loan, the County 1406 Loan, and the County 2060 Loan are collectively referred to as the “**County Loan**”.

G. **Sponsor’s Interests.** Sponsor has received certain funds for the Project, and has made the following loans to Partnership:

(i) Sponsor has received funds in the amount of \$150,000 from City; and Sponsor has loaned such funds to Partnership pursuant to that certain Subordinate Non-Recourse Promissory note, executed by Partnership, in the amount of \$150,000 (the “**Sponsor City Note**”). The Sponsor City Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**Sponsor City Deed of Trust**”).

(ii) Sponsor has received funds in the amount of \$750,000 from the Federal Home Loan Bank of Des Moines; and Sponsor has loaned such funds to Partnership pursuant to that certain Subordinate Non-Recourse Promissory Note, executed by Partnership, in the amount of \$750,000 (the “**Sponsor FHLB Note**”). The Sponsor FHLB Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**Sponsor FHLB Deed of Trust**”).

(iii) Sponsor has received funds in the amount of \$350,000 from the Home Depot Foundation; and Sponsor has loaned such funds to Partnership pursuant to that certain Subordinate Non-Recourse Promissory Note, executed by Partnership, in the amount of \$350,000 (the “**Sponsor HD Note**”). The Sponsor HD Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**Sponsor HD Deed of Trust**”).

(iv) Sponsor will be deferring a portion of its developer fee for the Project. To evidence the deferred amount of the developer fee, Partnership will executed a Subordinate [Non-

]Recourse Promissory Note in the amount of \$\_\_\_\_\_ (the “**Deferred Developer Fee Note**”). The Deferred Developer Fee Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**Developer Fee Deed of Trust**”).

(v) Sponsor is the grantee under the Amended and Restated Agreement of Limited Partnership of Partnership of the right to acquire the Property or the limited partners partnership interests in the Partnership (the “**Sponsor Option**”).

H. **City’s Interest.** City transferred the Property to Sponsor, subject to certain terms and conditions, including but not limited to that certain Restrictive Covenants, recorded on November 6, 2020 under Thurston County recording number 4798100, as amended by that certain Amended Restrictive Covenants, recorded on November 20, 2020 under Thurston County recording number 4802569 (collectively, the “**City Covenant**”).

I. **School’s Interest.** School is the beneficiary under that certain Restrictive Covenant (Regarding School Impact Fees and Eligible Project Presidents), dated as of November 17, 2020, and recorded on November 17, 2020 under Thurston County recording number 4801291; as amended by that certain First Amendment to Restrictive Covenant (Regarding School Impact Fees and Eligible Project Residents), dated \_\_\_\_\_, 2023, and recorded on \_\_\_\_\_, 2023 under Thurston County recording number \_\_\_\_\_ (collectively, the “**School Covenant**”).

J. **Banner’s Interest.** Banner is the beneficiary under that certain Agreement for Covenants and Restrictions, dated as of March 1, 2023, and recorded on \_\_\_\_\_, 2023 under Thurston County recording number \_\_\_\_\_ (the “**FHLB Covenant**”).

K. **Definitions.** The deeds of trust described in Paragraphs D, E, F, and G above may be referred to collectively hereinafter as the “**Deeds of Trust.**” The Bank Deed of Trust, and any substitute for it, may be referred to individually as a “**Bank Deed of Trust.**” The covenants and regulatory agreements described in Paragraphs C, E, H, I, and J above may be referred to collectively hereinafter as the “**Covenants.**” All of the documents discussed in the Recitals section of this Agreement are collectively referred to as the “**Documents**” and the information and definitions contained in the Recitals are acknowledged by the Parties to be an incorporated, integral part of this Agreement.

L. **Purpose.** The Parties wish to enter into this Agreement in order to establish their respective rights and priorities regarding the Property and the Documents, all as more fully set forth herein.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Termination of Original Priority Agreement.** For avoidance of doubt, to the extent that the Original Priority Agreement pertains to the Property, the parties hereby terminate the Original Priority Agreement. The Original Priority Agreement shall have no further force and effect with respect to the Property.

2. **Document Priority.**

(a) The Parties hereto agree that the documents, instruments, and rights identified and described above, regardless of recording order, shall have priority in the order set forth below in this Section, with the most senior of the respective documents and instruments listed first:

- (i) Extended Use Agreement
- (ii) State Covenant
- (iii) County Covenant
- (iv) City Covenant
- (v) School Covenant
- (vi) FHLB Covenant
- (vii) Bank Deed of Trust
- (viii) State Deed of Trust
- (ix) County 1406 Deed of Trust
- (x) County HOME Deed of Trust
- (xi) County 2060 Deed of Trust
- (xii) Sponsor City Deed of Trust
- (xiii) Sponsor FHLB Deed of Trust
- (xiv) Sponsor HD Deed of Trust
- (xv) Developer Fee Deed of Trust
- (xvi) Sponsor Option

(b) Any Uniform Commercial Code financing statement or fixture filing recorded or filed in connection with any Deed of Trust or any loan referenced in this Agreement shall have

the same relative priority or subordination as the Deed of Trust and loan to which such financing statement or fixture filing relates.

(c) The Covenants shall survive any foreclosure sale, trustee's sale, or deed in lieu thereof under any of the Deeds of Trust and shall be binding on any person acquiring the Property by any such means, or that is a successor to one who acquires the Property by such means, for so long as such person shall retain an interest in the Property, subject to the terms of each of the Covenants regarding the termination thereof.

(d) Regardless of priority as among the Covenants, the Partnership, its successors, and any other parties obligated thereunder shall be obligated to comply with the provisions of each Covenant except as expressly provided herein. The Parties hereto acknowledge that the Covenants apply simultaneously and that the grantors thereunder are obligated to comply with each of them regardless of the relative priority or order of recording of the Covenants.

(e) Sponsor agrees that it shall not have any rights to the lien position of Bank, or to any lien that may be prior to, or rank equally with, the lien of the State Deed of Trust or County Deeds of Trust hereunder, or to any part of any such lien, whether by subrogation, assignment, or otherwise, based upon any payment of any amounts secured by the Bank Deed of Trust or any other liens on the Property, whether such payment is made as guarantor, or otherwise. Sponsor agrees that if it acquires the Property or a part thereof by exercise of the ROFR or otherwise, it shall be bound and obligated as a grantor under all of the terms of the Documents then in effect.

3. **Advance of Funds.** The Parties agree that except for such obligations as the Partnership may have to other Parties hereto pursuant to agreements with such Parties (i) the Parties do not have any obligations to each other to advance funds or to see to the application of their respective loan proceeds, (ii) any application of such proceeds contrary to the terms of any loan documents shall not defeat the subordinations granted herein in whole or in part, and (iii) nothing contained in this Agreement shall impair the right of any party to pursue any right or remedy available to it in any of the agreements, covenants, regulatory agreements, deeds of trust or options referenced herein.

4. **Reliance by Lenders; Consent.** It is understood by the Parties hereto that the Lenders and Commission would not enter into their respective Documents without this Agreement. The Partnership and Sponsor consent to all terms hereof.

5. **Rents.** Each of the Parties hereto acknowledges and consents to the Partnership's assignment of all leases, income, rents, and profits of the Project and/or Property to Bank. The Parties agree that upon an Event of Default under the Bank Loan Documents, Bank shall have the absolute right to collect all rents and profits from the Project and/or Property as provided in the Bank Loan Documents.

6. **Subordinate Lenders' Agreement to Standstill.** Until the Bank Loan has been repaid in full, each Lender other than Bank agrees for the benefit of Bank and its successors and



assigns, that if a default occurs and is continuing under documents other than the Bank Loan Documents, the other Lenders shall not, without the Bank's prior written consent, accelerate its respective loan, commence foreclosure proceedings with respect to the Project collect rents, appoint (or seek the appointment of) a receiver or institute any other enforcement action with respect to the Project (excluding any action, not previously enumerated, for other than monetary relief including, but not limited to specific performance, mandatory injunctive relief, or similar equitable remedy to compel compliance by any party. Provided, however, that the Bank's consent shall not be required for other Lenders' actions to enforce the affordability provisions of their loan documents and any covenant or regulatory agreement.

7. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement comprises the entire agreement among the Parties with respect to the priority of each Party's loans and liens upon and interests in the Property, and all prior understandings or agreements on that subject are superseded hereby, provided that nothing herein shall supersede any separate agreement between Bank, City, State, and Sponsor by which Sponsor's rights to any payments are subordinated or restricted.

(b) **Applicable Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue of any action or proceeding to enforce, interpret or otherwise related hereto shall lie in Thurston County, Washington.

(c) **Successors; Assignment.** This Agreement is for the benefit of the Bank, State, City, and the Commission and their respective successors and assigns, in each case for so long as such Party's Deed of Trust or Covenant, or both, remains in effect with respect to the Property or any part thereof, and any provision hereof may be waived or modified by written agreement among all of them, or so many of them as are affected thereby, without the consent of the Partnership or Sponsor and without affecting the priority of the liens and interests of the other Parties. The heirs, administrators, assigns, and successors-in-interest of the Parties hereto shall be bound by this Agreement. This Agreement may be assigned by a Party only as a part of an assignment of that Party's entire interest in the Property or its loan secured by one of the Deeds of Trust described herein.

(d) **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, when actually received by facsimile transmission during normal business hours, or two (2) business days after deposit in the U.S. mail, postage prepaid, (one (1) business day if sent by overnight courier) to the Parties hereto at the addresses set forth below or to such other place as a Party may from time to time designate by notice to the other Parties. No transferee or successor of a Party hereto shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this Section 7(d). For purposes of this Section 7(d), a "business day" is any day other than a Saturday, Sunday, statutory federal or Washington state bank holiday or official City of Seattle holiday.

Bank: JPMorgan Chase Bank, N.A.  
Attention: Commercial Real Estate Loan Administration  
700 North Pearl Street, 13<sup>th</sup> Floor  
Mail Code TX1-2625  
Dallas, TX 75201-7424

And to: JPMorgan Chase Bank, N.A.  
Legal Department  
Attention: Michael R. Zients, Executive Director  
and Assistant New York Plaza, 21st Floor  
Mail Code NY1-E089  
New York, NY 10004

With copy to: Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, WA 98104  
Attention: Anthony T. Caso

Commission: Washington State Housing Finance Commission  
1000 Second Avenue, Suite 2700  
Seattle, WA 98104  
Attention: Director, Asset Management and  
Compliance

State: Washington State Department of Commerce  
Housing Trust Fund  
1011 Plum Street SE  
P.O. Box 42525  
Olympia, WA 98504-2525  
Attention: Contracts/Fiscal Group

County: Thurston County PHSS-Housing  
Tom Webster, Senior Program Manager  
412 Lilly RD NW  
Olympia, WA 98506

City: City of Olympia  
Attn: Legal Department  
P.O. Box 1967  
Olympia, WA 98507-1967

School: Olympia School District No. 111  
111 Bethel Street NE  
Olympia, WA 98506

Banner: Banner Bank  
[ ]  
[ ]

Partnership: Martin Way II LLLP  
c/o Low Income Housing Institute (LIHI)  
1253 S Jackson Street, Suite A  
Seattle, WA 98144

With a copy to: [Raymond James]  
c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, FL 33716  
Attn: Steven J. Kropf, President

With a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard, Esq.

Sponsor: Low Income Housing Institute (LIHI)  
1253 S Jackson Street, Suite A  
Seattle, WA 98144  
Attn: Executive Director

With a copy to: Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Attn: Sallie Lin

(e) **Successors; Assignment.** This Agreement is for the benefit of the Lenders and their respective successors and assigns, and not for the benefit of the Partnership. Any provision hereof may be waived or modified by agreement of the Lenders (or by any two or more of them, if the other(s) are unaffected thereby) without the consent of the Partnership and without affecting the priority of the liens and interests of the Lenders. The heirs, administrators, assigns and successors-in-interest of the Parties shall be bound by this Agreement. This Agreement may be assigned by a party only as a part of an assignment of such party's loan documents described in this Agreement.

(f) **Amendment.** This Agreement may be amended only by a writing signed by the Parties hereto, but this Section 7(f) shall not impair the validity of any further agreements among fewer than all of the Parties hereto as among themselves.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(h) **Completion of Recording Information.** If this Agreement is signed without completion of certain recording information called for above, any Party hereto or any title insurance company acting on the instructions of any Party is hereby authorized to insert such information prior to recording this Agreement.

(i) **Attorney Fees.** If any Party shall bring an action against any other Party by reason of the breach of any covenant, provision, or condition of this Agreement, or otherwise arising out of this Agreement, the unsuccessful Party shall pay to the prevailing party reasonable attorneys' fees, which fees shall be payable whether or not any action is prosecuted to judgment. The term "prevailing party" shall include, without limitation, a Party who brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought, whether by compromise, settlement, or judgment.

(j) **Consent to Other Parties' Documents.** By executing this Agreement, each Party hereby acknowledges and consents to the execution of, and where appropriate, the recording of, the Documents by the Partnership and the other Parties thereto. Notwithstanding such consent, the terms hereof, the terms of any such Documents, and the acceptance by Lenders of their respective liens and other rights and interests under these Documents, a Lender shall not, prior to any acquisition of title to the Property by such Lender, be liable or responsible for any obligation of the Partnership under such Documents, or of any "Owner" as defined in any such documents.

*[SIGNATURE PAGE(S) FOLLOW]*

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**WASHINGTON STATE HOUSING FINANCE COMMISSION**, a public body corporate and politic of the state of Washington

By: \_\_\_\_\_  
Steve Walker, Executive Director

STATE OF WASHINGTON

COUNTY OF KING

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steve Walker, to me known (or proved by satisfactory evidence) to be the Executive Director of the **Washington State Housing Finance Commission**, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**JPMORGAN CHASE,**  
a national banking association,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON )  
   ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known (or proved by satisfactory evidence) to be the \_\_\_\_\_ of **JPMorgan Chase**, a national banking association, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**BANNER BANK,**  
a Washington commercial bank,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 2023, by  
\_\_\_\_\_, as \_\_\_\_\_ of Banner Bank, a Washington commercial  
bank.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**WASHINGTON STATE DEPARTMENT OF  
COMMERCE,**  
a department of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF THURSTON

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known (or proved by satisfactory evidence) to be the \_\_\_\_\_ of **Washington State Department of Commerce**, a department of the State of Washington, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**CITY OF OLYMPIA,**  
a Washington municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF THURSTON

This record was acknowledged before me on \_\_\_\_\_, 2023, by  
\_\_\_\_\_, as \_\_\_\_\_ of City of Olympia, a Washington municipal  
corporation.

\_\_\_\_\_  
Notary Public for the State of Washington

Print name: \_\_\_\_\_

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

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**MARTIN WAY II LLLP,**  
a Washington limited liability limited partnership

By: Martin Way Manager LLC,  
a Washington limited liability company  
Its: General Partner

By: Low Income Housing Institute (LIHI),  
a Washington nonprofit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name: Lynne Behar  
Title: Chief Financial Officer

STATE OF WASHINGTON

COUNTY OF KING

This record was acknowledged before me on \_\_\_\_\_, 2023, by Lynne Behar, as Chief Financial Officer of Low Income Housing Institute (LIHI), the Sole Member of Martin Way Manager LLC, the General Partner of Martin Way II LLLP, a Washington limited liability limited partnership.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**LOW INCOME HOUSING INSTITUTE (LIHI),**  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Name: Lynne Behar  
Title: Chief Financial Officer

STATE OF WASHINGTON

COUNTY OF KING

This record was acknowledged before me on \_\_\_\_\_, 2023, by Lynne Behar, as Chief Financial Officer of Low Income Housing Institute (LIHI), a Washington nonprofit corporation.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**THURSTON COUNTY,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF THURSTON

This record was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_, as \_\_\_\_\_ of Thurston County, a Washington municipal  
corporation.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**OLYMPIA SCHOOL DISTRICT NO. 111,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF THURSTON

This record was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_, as \_\_\_\_\_ of Olympia School District No. 111, a  
Washington municipal corporation.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL A:**

Unit 3 of LIHI Martin Way, a Condominium, according to Declaration thereof recorded November 12, 2020 under Recording No. 4799858, and any amendments thereto; said Unit is located on Survey Map and Plans recorded November 12, 2020 under Recording No. 4799859:

In Thurston County, Washington.

**PARCEL B:**

A Non-Exclusive Reciprocal Access Easement for ingress and egress as created by that certain Condominium Declaration recorded November 12, 2020 under Recording No. 4799858;

In Thurston County, Washington.

**PARCEL C:**

Non-Exclusive Easements for Construction, Utilities, Encroachments and Maintenance as created by that certain Condominium Declaration recorded November 12, 2020 under Recording No. 4799858;

In Thurston County, Washington.

AFTER RECORDING RETURN TO:

Stoel Rives LLP  
600 University St. Ste. 3600  
Seattle, WA 98101  
Attn: Sallie Lin

**Document:** PRIORITY AND SUBORDINATION AGREEMENT

**Grantors:**

1. JP MORGAN CHASE
2. WASHINGTON STATE HOUSING FINANCE COMMISSION
3. WASHINGTON STATE DEPARTMENT OF COMMERCE
4. THURSTON COUNTY
5. CITY OF OLYMPIA
6. OLYMPIA SCHOOL DISTRICT NO. 111
7. BANNER BANK
8. MARTIN WAY II LLLP
9. LOW INCOME HOUSING INSTITUTE (LIHI)

**Grantees:**

1. JP MORGAN CHASE
2. WASHINGTON STATE HOUSING FINANCE COMMISSION
3. WASHINGTON STATE DEPARTMENT OF COMMERCE
4. THURSTON COUNTY
5. CITY OF OLYMPIA
6. OLYMPIA SCHOOL DISTRICT NO. 111
7. BANNER BANK
8. MARTIN WAY II LLLP
9. LOW INCOME HOUSING INSTITUTE (LIHI)

**Abbrev. Legal Description:** Unit(s): 3 Condo: LIHI Martin Way Condo  
(Additional legal description on Exhibit A)

**Tax Parcel #:** 69510000300

**Reference Numbers:**

<u>4802882</u>	Original Priority Agreement
_____	Commission Extended Use Agreement
_____	State Covenant
_____	County Covenant
<u>4798100; 4802569</u>	City Covenant
<u>4801291;</u>	School Covenant
_____	FHLB Covenant
_____	Bank Deed of Trust
_____	State Deed of Trust
_____	County 1406 Deed of Trust
_____	County HOME Deed of Trust
_____	County 2060 Deed of Trust
_____	Sponsor City Deed of Trust
_____	Sponsor FHLB Deed of Trust
_____	Sponsor HD Deed of Trust
_____	Developer Fee Deed of Trust

THIS PRIORITY AND SUBORDINATION AGREEMENT (“*Agreement*”), dated as of May \_\_\_, 2023, is made by and among the following parties: **WASHINGTON STATE HOUSING FINANCE COMMISSION**, a public body corporate and politic and an instrumentality of the State of Washington (the “*Commission*”); **JPMORGAN CHASE**, a national banking association (“*Bank*”); **WASHINGTON STATE DEPARTMENT OF COMMERCE**, a department of the State of Washington (“*State*”); **THURSTON COUNTY**, a Washington municipal corporation (“*County*”); **CITY OF OLYMPIA**, a municipal corporation (“*City*”); **OLYMPIA SCHOOL DISTRICT NO. 111**, a political subdivision of the State of Washington (“*School*”); **BANNER BANK**, a Washington commercial bank (“*Banner*”); **MARTIN WAY II LLLP**, a Washington limited liability limited partnership (“*Partnership*”); **LOW INCOME HOUSING INSTITUTE (LIHI)**, a Washington nonprofit corporation (“*Sponsor*”) (collectively, the “*Parties*” and each individually, a “*Party*”).

Bank, State, County, and Sponsor (solely in its role as holder of the Sponsor Notes and beneficiary under the Sponsor Deeds of Trust) are collectively referred to herein as “*Lenders*” and each individually, a “*Lender*,” in each case so long as such Party’s deed of trust remains in effect as a lien on the Property (defined below).

## RECITALS

A. **Original Priority and Subordination Agreement.** Certain parties entered into that certain Priority and Subordination Agreement dated as of November 19, 2020, and recorded under Thurston County recording number 4802882 (the “*Original Priority Agreement*”). The Original Priority Agreement encumbered the Property (defined below) as well as additional real property, as identified therein. The Original Priority Agreement, as it pertains to the Property, has been terminated and is of no further force or effect.

B. **Partnership’s Interest.** Partnership owns that certain real property in Thurston County, Washington, legally described as set forth on **Exhibit A** attached hereto (the “*Property*”), which includes all improvements now and hereafter constructed thereon. The Property will be developed using a combination of public and private funds from various sources, to serve as low-income housing (the “*Project*”).

C. **Commission’s Interest.** Commission has allocated annual low-income housing tax credits to the Partnership in the amount of \$1,891,320 to finance the Project through the use of Low-Income Housing Tax Credits (“*LIHTC*”). In connection with the LIHTC, Partnership has executed a Regulatory Agreement (Extended Use Agreement) with the Commission, recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (“*Extended Use Agreement*”).

D. **Bank’s Interest.** Bank has agreed to make a construction loan to the Partnership in the aggregate amount of [\$13,000,000] (the “*Bank Loan*”). The Bank Loan is made pursuant to that certain Loan Agreement (the “*Bank Loan Agreement*”). The Bank Loan is evidenced by a promissory note made by the Partnership in favor of Bank under the Bank Loan Agreement in the maximum aggregate principal amount of [\$13,000,000] (the “*Bank Note*”). Repayment of



the Bank Note is secured by, among other security documents, a Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases and Rents granted by Partnership in favor of Chicago Title Insurance Company, as trustee, and Bank as beneficiary, recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**Bank Deed of Trust**”), encumbering Partnership’s fee simple interest in the Property and other personal property described in the Bank Deed of Trust. The Bank Loan is secured by UCC-1 Financing Statements, filed with the Department of Licensing, Uniform Commercial Code Division of the State of Washington (together, the “**Bank Financing Statement**”). All documents identified in this paragraph and all documents executed by Partnership in connection with the Bank Loan are referred to collectively as the “**Bank Loan Documents**.”

E. **State’s Interest.** The State and Sponsor entered into a Contract, Number 21-94110-019 (the “**State Contract**”). Pursuant to the State Contract, Sponsor executed a Promissory Note in the principal amount of \$6,500,000 in favor of the State (the “**State Note**”), and the State Contract and the State Note have been assigned to Partnership. The State Note is secured by that certain Deed of Trust, executed by Partnership, and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**State Deed of Trust**”). In connection with the State Contract, Partnership executed that certain Low Income Housing Covenant Agreement recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “**State Covenant**”). All documents identified in this subparagraph, and any documents executed by the State, Sponsor, or Partnership in connection therewith, are collectively referred to as the “**State Loan Documents**.”

F. **County’s Interest.** County, through Thurston County - PHSS Housing and Community Renewal, has provided the following financing to the Project:

(i) County and Sponsor have entered into a HOME (CHDO) Development Agreement # CFDA 14.239 dated May \_\_\_\_, 2023 (the “**County HOME Contract**”). Pursuant to the County HOME Contract, Sponsor executed a Promissory Note in the principal amount of \$1,132,968.31 in favor of County (the “**County HOME Note**”), and the proceeds have been re-loaned by Sponsor to the Partnership.

(ii) County and Sponsor and have entered into a HB 1406 Affordable and Homeless Housing Professional Services Agreement (the “**County 1406 Contract**”). Pursuant to the County 1406 Contract, Sponsor executed a Promissory Note in the principal amount of \$1,741,380 in favor of the County (the “**County 1406 Note**”), and the proceeds have been re-loaned by Sponsor to the Partnership.

(iii) County and Sponsor have entered into an SHB 2060 Affordable and Homeless Housing Professional Services Agreement (the “**County 2060 Contract**”). Pursuant to the County 2060 Contract, Sponsor executed a Promissory Note in the principal amount of \$554,724 in favor of the County (the “**County 2060 Note**”), and the proceeds have been re-loaned by Sponsor to the Partnership.

(iv) In connection with the County HOME Contract, the County 1406 Contract and the County 2060 Contract, Partnership has entered into a Restrictive Covenant Agreement dated May \_\_\_\_, 2023 and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “*County Covenant*”).

(v) The County HOME Loan, the County 1406 Loan, and the County 2060 Loan are collectively referred to as the “*County Loan*”.

G. **Sponsor’s Interests.** Sponsor has received certain funds for the Project, and has made the following loans to Partnership:

(i) Sponsor has received funds in the amount of \$150,000 from City; and Sponsor has loaned such funds to Partnership pursuant to that certain Subordinate Non-Recourse Promissory Note, executed by Partnership, in the amount of \$150,000 (the “*Sponsor City Note*”). The Sponsor City Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “*Sponsor City Deed of Trust*”). The Sponsor has assigned the Sponsor City Note and the Sponsor City Deed of Trust pursuant to that certain Collateral Assignment of Promissory note and Deed of Trust executed by Sponsor and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_.

(ii) Sponsor has received funds in the aggregate amount of \$3,429,072.62 from County under the County Loan; and Sponsor has loaned such funds to the Partnership pursuant to that Subordinate Non-Recourse Promissory Note, executed by Partnership, in the amount of \$3,429,072.62 (the “*Sponsor County Note*”). The Sponsor County Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “*Sponsor County Deed of Trust*”). The Sponsor has assigned the Sponsor County Note and the Sponsor County Deed of Trust to the County pursuant to that certain Collateral Assignment of Promissory Note and Deed of Trust executed by Sponsor and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_.

(iii) Sponsor has received funds in the amount of \$750,000 from the Federal Home Loan Bank of Des Moines; and Sponsor has loaned such funds to Partnership pursuant to that certain Subordinate Non-Recourse Promissory Note, executed by Partnership, in the amount of \$750,000 (the “*Sponsor FHLB Note*”). The Sponsor FHLB Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “*Sponsor FHLB Deed of Trust*”).

(iv) Sponsor has received funds in the amount of \$350,000 from the Home Depot Foundation; and Sponsor has loaned such funds to Partnership pursuant to that certain Subordinate Non-Recourse Promissory Note, executed by Partnership, in the amount of \$350,000 (the “*Sponsor HD Note*”). The Sponsor HD Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof

under Thurston County recording number \_\_\_\_\_ (the “*Sponsor HD Deed of Trust*”).

(v) Sponsor will be deferring a portion of its developer fee for the Project. To evidence the deferred amount of the developer fee, Partnership will execute a Subordinate [Non-]Recourse Promissory Note in the amount of \$ \_\_\_\_\_ (the “*Deferred Developer Fee Note*”). The Deferred Developer Fee Note is secured by that certain Subordinate Deed of Trust executed by Partnership and recorded on or about the date hereof under Thurston County recording number \_\_\_\_\_ (the “*Developer Fee Deed of Trust*”).

(vi) Sponsor is the grantee under the Amended and Restated Agreement of Limited Liability Limited of Partnership of the right to acquire the Property from the Partnership pursuant to a right of first refusal (the “*ROFR*”) (the “*Sponsor Option*”).

H. **City’s Interest.** City transferred the Property to Sponsor, subject to certain terms and conditions, including but not limited to that certain Restrictive Covenants, recorded on November 6, 2020 under Thurston County recording number 4798100, as amended by that certain Amended Restrictive Covenants, recorded on November 20, 2020 under Thurston County recording number 4802569 (collectively, the “*City Covenant*”).

I. **School’s Interest.** School is the beneficiary under that certain Restrictive Covenant (Regarding School Impact Fees and Eligible Project Presidents), dated as of November 17, 2020, and recorded on November 17, 2020 under Thurston County recording number 4801291; as amended by that certain First Amendment to Restrictive Covenant (Regarding School Impact Fees and Eligible Project Residents), dated \_\_\_\_\_, 2023, and recorded on \_\_\_\_\_, 2023 under Thurston County recording number \_\_\_\_\_ (collectively, the “*School Covenant*”).

J. **Banner’s Interest.** Banner is the beneficiary under that certain Agreement for Covenants and Restrictions, dated as of March 1, 2023, and recorded on \_\_\_\_\_, 2023 under Thurston County recording number \_\_\_\_\_ (the “*FHLB Covenant*”).

K. **Definitions.** The deeds of trust described in Paragraphs D, E, F, and G above may be referred to collectively hereinafter as the “*Deeds of Trust.*” The Bank Deed of Trust, and any substitute for it, may be referred to individually as a “*Bank Deed of Trust.*” The covenants and regulatory agreements described in Paragraphs C, E, H, I, and J above may be referred to collectively hereinafter as the “*Covenants.*” All of the documents discussed in the Recitals section of this Agreement are collectively referred to as the “*Documents*” and the information and definitions contained in the Recitals are acknowledged by the Parties to be an incorporated, integral part of this Agreement.

L. **Purpose.** The Parties wish to enter into this Agreement in order to establish their respective rights and priorities regarding the Property and the Documents, all as more fully set forth herein.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Termination of Original Priority Agreement.** For avoidance of doubt, to the extent that the Original Priority Agreement pertains to the Property, the parties hereby terminate the Original Priority Agreement. The Original Priority Agreement shall have no further force and effect with respect to the Property.

2. **Document Priority.**

(a) The Parties hereto agree that the documents, instruments, and rights identified and described above, regardless of recording order, shall have priority in the order set forth below in this Section, with the most senior of the respective documents and instruments listed first:

- (i) Extended Use Agreement
- (ii) State Covenant
- (iii) County Covenant
- (iv) City Covenant
- (v) School Covenant
- (vi) FHLB Covenant
- (vii) Bank Deed of Trust
- (viii) State Deed of Trust
- (ix) Sponsor County Deed of Trust
- (x) Sponsor City Deed of Trust
- (xi) Sponsor FHLB Deed of Trust
- (xii) Sponsor HD Deed of Trust
- (xiii) Developer Fee Deed of Trust
- (xiv) Sponsor Option

(b) Any Uniform Commercial Code financing statement or fixture filing recorded or filed in connection with any Deed of Trust or any loan referenced in this Agreement shall have

the same relative priority or subordination as the Deed of Trust and loan to which such financing statement or fixture filing relates.

(c) The Covenants shall survive any foreclosure sale, trustee's sale, or deed in lieu thereof under any of the Deeds of Trust and shall be binding on any person acquiring the Property by any such means, or that is a successor to one who acquires the Property by such means or acquires an interest in the Partnership, for so long as such person shall retain an interest in the Property, subject to the terms of each of the Covenants regarding the termination thereof.

(d) Regardless of priority as among the Covenants, the Partnership, its successors, and any other current or future parties obligated thereunder shall be obligated to comply with the provisions of each Covenant except as expressly provided herein. The Parties hereto acknowledge that the Covenants apply simultaneously and that the grantors thereunder are obligated to comply with each of them regardless of the relative priority or order of recording of the Covenants; provided, however, that in the event there is a conflict between the State Covenant and any other Covenant, the terms of the State Covenant shall control.

(e) Sponsor agrees that it shall not have any rights to the lien position of Bank, or to any lien that may be prior to, or rank equally with, the lien of the State Deed of Trust or County Deeds of Trust hereunder, or to any part of any such lien, whether by subrogation, assignment, or otherwise, based upon any payment of any amounts secured by the Bank Deed of Trust or any other liens on the Property, whether such payment is made as guarantor, or otherwise. Sponsor agrees that if it acquires the Property or a part thereof by exercise of the ROFR or otherwise, it shall be bound and obligated as a grantor under all of the terms of the Documents then in effect.

3. **Advance of Funds.** The Parties agree that except for such obligations as the Partnership may have to other Parties hereto pursuant to agreements with such Parties (i) the Parties do not have any obligations to each other to advance funds or to see to the application of their respective loan proceeds, (ii) any application of such proceeds contrary to the terms of any loan documents shall not defeat the subordinations granted herein in whole or in part, and (iii) nothing contained in this Agreement shall impair the right of any party to pursue any right or remedy available to it in any of the agreements, covenants, regulatory agreements, deeds of trust or options referenced herein.

4. **Reliance by Lenders; Consent.** It is understood by the Parties hereto that the Lenders and Commission would not enter into their respective Documents without this Agreement. The Partnership and Sponsor consent to all terms hereof.

5. **Actions by Bank; Certain Waivers.** The Bank, without the consent of or notice to any other Party, may enter into amendments of the Bank Deed of Trust and other Bank Documents in any manner, in order to release any or all parties liable for any obligation secured by the Bank Documents, or release any or all security for the obligations secured by the Bank Documents, all without affecting the subordinations under this Agreement. The Parties waive any right to require marshaling of assets or to require Bank to proceed against or exhaust any specific security for the

obligations secured by the Bank Documents, and waive any defense arising out of the loss or impairment of any right of subrogation to the lien of the Bank Documents.

6. **Insurance or Condemnation Proceeds.** Notwithstanding any provision of the Parties' Documents to the contrary, so long as any portion of the Bank Loan is outstanding, in the event of any damage to, destruction of, or taking or condemnation (including deed in lieu thereof) of the Property or any portion thereof, the application of any insurance or condemnation proceeds shall be governed by the terms of the Bank Deed of Trust. Any funds to be applied to repair or restoration shall be held and administered by Bank in accordance with the Bank Documents, and the Bank shall be entitled to reasonable compensation for its services in connection with the administration of such funds, as set forth in the Bank Documents. For so long as any portion of the Bank Loan is outstanding, the Bank shall have all approval, consent, and oversight rights in connection with any insurance claims relating to the Property and any decisions regarding the use of insurance or condemnation proceeds after a casualty loss or condemnation notwithstanding any rights of any other Lender under its Loan Documents.

7. **Rents.** Each of the Parties hereto acknowledges and consents to the Partnership's assignment of all leases, income, rents, and profits of the Project and/or Property to Bank. The Parties agree that upon an Event of Default under the Bank Loan Documents, Bank shall have the absolute right to collect all rents and profits from the Project and/or Property as provided in the Bank Loan Documents.

8. **Subordinate Lenders' Agreement to Standstill.** Until the Bank Loan has been repaid in full, each Lender other than Bank agrees for the benefit of Bank and its successors and assigns, that if a default occurs and is continuing under documents other than the Bank Loan Documents for a period up to 180 days, the other Lenders shall not, without the Bank's prior written consent, accelerate its respective loan, commence foreclosure proceedings with respect to the Project collect rents, appoint (or seek the appointment of) a receiver or institute any other enforcement action with respect to the Project (excluding any action, not previously enumerated, for other than monetary relief including, but not limited to specific performance, mandatory injunctive relief, or similar equitable remedy to compel compliance by any party). Provided, however, that the Bank's consent shall not be required for other Lenders' actions to enforce the affordability provisions of their regulatory agreements; further if Bank fails to provide consent within 180 days of notice of default under State's loan documents and the default is continuing, State may act to enforce the terms of its loan documents.

9. **Refinance.** Each Lender other than the Bank agree that its liens, rights and interests pursuant to their respective loan documents, shall retain its relative priority and be subject to the same limitations set forth in this Agreement in the event of any refinancing upon maturity of the Bank Loan (without regard to the source/lender of any such refinancing) provided that the principal amount of any obligation incurred in connection with such refinancing does not exceed one hundred percent (100%) of the then outstanding principal loan amount under the Bank Loan plus ordinary and customary refinancing fees and costs, or such higher amount to the extent necessary to refinance the Bank Loan to enable the Project to achieve a 1.15 Debt Coverage Ratio, which may include a restructuring of repayment terms. It is the intention of the Parties

that no further priority agreements or subordination agreements shall be required to establish such lien priority; however, the Parties acknowledge and agree that to the extent such subordination or priority agreements are required by such refinance lender in order to provide the refinance lender with the same lien position as identified herein, the Parties shall execute a subordination agreement substantially in the form of this Agreement or such other reasonable subordination agreement.

10. **Acknowledgements.** Each Lender other than Bank hereby agrees and acknowledges, solely for the benefit of Bank, as follows:

(a) For purposes of this Agreement, each has been provided the opportunity to review the Bank Loan Documents before executing this Agreement;

(b) Bank, in making disbursements pursuant to the Bank Loan Documents, is under no obligation or duty to insure, nor has Bank represented that it will insure, the proper application of such proceeds by the person(s) to whom Bank disburses such proceeds, and any application or use of such proceeds for purposes other than as provided in any such agreement shall not defeat or render invalid, in whole or in part, the subordinations provided for in this Agreement;

(c) Bank has not made any warranty or representation of any kind or nature whatsoever with respect to (i) the application of the proceeds of the Bank Loan upon the security of the Bank Deed of Trust, (ii) the value of the Property or the improvements to be developed thereon pursuant to the Bank Loan Documents, or the marketability or value thereof upon completion of such improvements, or (iii) the ability of the Borrower to honor its covenants and agreements with Bank or other parties;

(d) Bank's release of any security for the Bank Loan, including, without limitation, the reconveyance of any portion(s) of the Project from the lien of the Bank Deed of Trust, shall not constitute a waiver or relinquishment of the other Lender's unconditional subordination of the liens or charges of their respective deeds of trust or other encumbrances against the Project to the lien or charge of the Bank Deed of Trust;

(e) Bank would not make the Bank Loan absent the execution of this Agreement by the Parties hereto; and

(f) Bank has no duty to disclose to any party, any facts Bank may now know or hereafter know about the Borrower or the members or successors of the Borrower, regardless of whether (i) Bank has reason to believe that any such facts may increase materially the risk beyond that which the parties intend to assume, (ii) Bank may have reason to believe that such facts are unknown, or (iii) Bank has a reasonable opportunity to communicate such facts, it being understood and agreed that each party is fully responsible for being and keeping informed of the financial condition of the Borrower and/or any members or successors of the Borrower and of all circumstances bearing on the risk of non-payment of any indebtedness of the Borrower to Bank described in this Agreement.

(g) Each party hereto has made such independent legal and factual inquiries and examinations as such party deems necessary or desirable and is not relying on any inquiries or examinations made by Bank or on information from Bank concerning the Borrower, the Property or the Project.

11. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement comprises the entire agreement among the Parties with respect to the priority of each Party's loans and liens upon and interests in the Property, and all prior understandings or agreements on that subject are superseded hereby, provided that nothing herein shall supersede any separate agreement between Bank, City, State, and Sponsor by which Sponsor's rights to any payments are subordinated or restricted.

(b) **Applicable Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue of any action or proceeding to enforce, interpret or otherwise related hereto shall lie in Thurston County, Washington.

(c) **Successors; Assignment.** This Agreement is for the benefit of the Bank, State, City, and the Commission and their respective successors and assigns, in each case for so long as such Party's Deed of Trust or Covenant, or both, remains in effect with respect to the Property or any part thereof, and any provision hereof may be waived or modified by written agreement among all of them, or so many of them as are affected thereby, without the consent of the Partnership or Sponsor and without affecting the priority of the liens and interests of the other Parties. The heirs, administrators, assigns, and successors-in-interest of the Parties hereto shall be bound by this Agreement. This Agreement may be assigned by a Party only as a part of an assignment of that Party's entire interest in the Property or its loan secured by one of the Deeds of Trust described herein.

(d) **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, when actually received by facsimile transmission during normal business hours, or two (2) business days after deposit in the U.S. mail, postage prepaid, (one (1) business day if sent by overnight courier) to the Parties hereto at the addresses set forth below or to such other place as a Party may from time to time designate by notice to the other Parties. No transferee or successor of a Party hereto shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this Section 11(d). For purposes of this Section 11(d), a "business day" is any day other than a Saturday, Sunday, statutory federal or Washington state bank holiday or official City of Seattle holiday.

Bank: JPMorgan Chase Bank, N.A.  
Attention: Commercial Real Estate Loan Administration  
700 North Pearl Street, 13<sup>th</sup> Floor  
Mail Code TX1-2625  
Dallas, TX 75201-7424



And to: JPMorgan Chase Bank, N.A.  
Legal Department  
Attention: Michael R. Zients, Executive Director  
and Assistant New York Plaza, 21st Floor  
Mail Code NY1-E089  
New York, NY 10004

With copy to: Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, WA 98104  
Attention: Anthony T. Caso

Commission: Washington State Housing Finance Commission  
1000 Second Avenue, Suite 2700  
Seattle, WA 98104  
Attention: Director, Asset Management and  
Compliance

State: Washington State Department of Commerce  
Housing Trust Fund  
1011 Plum Street SE  
P.O. Box 42525  
Olympia, WA 98504-2525  
Attention: Contracts/Fiscal Group

County: Thurston County PHSS-Housing  
Tom Webster, Senior Program Manager  
412 Lilly RD NW  
Olympia, WA 98506

City: City of Olympia  
Attn: Legal Department  
P.O. Box 1967  
Olympia, WA 98507-1967

School: Olympia School District No. 111  
111 Bethel Street NE  
Olympia, WA 98506

Banner: Banner Bank  
Attn: Dustin Koons, Vice President, Affordable Housing  
Lending  
Email [dustin.koons@bannerbank.com](mailto:dustin.koons@bannerbank.com)

Partnership: Martin Way II LLLP  
c/o Low Income Housing Institute (LIHI)  
1253 S Jackson Street, Suite A  
Seattle, WA 98144

With a copy to: RJ MT Martin Way II L.L.C.  
c/o Raymond James Affordable Housing Investments,  
Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Email Address: Steve.Kropf@RaymondJames.com  
Attn: Steven J. Kropf, President

With a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard, Esq.

Sponsor: Low Income Housing Institute (LIHI)  
1253 S Jackson Street, Suite A  
Seattle, WA 98144  
Attn: Executive Director

With a copy to: Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Attn: Sallie Lin

(e) **Successors; Assignment.** This Agreement is for the benefit of the Lenders and their respective successors and assigns, and not for the benefit of the Partnership. Any provision hereof may be waived or modified by agreement of the Lenders (or by any two or more of them, if the other(s) are unaffected thereby) without the consent of the Partnership and without affecting the priority of the liens and interests of the Lenders. The heirs, administrators, assigns and successors-in-interest of the Parties shall be bound by this Agreement. This Agreement may be assigned by a party only as a part of an assignment of such party's loan documents described in this Agreement.

(f) **Amendment.** This Agreement may be amended only by a writing signed by the Parties hereto, but this Section 7(f) shall not impair the validity of any further agreements among fewer than all of the Parties hereto as among themselves.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(h) **Completion of Recording Information.** If this Agreement is signed without completion of certain recording information called for above, any Party hereto or any title insurance company acting on the instructions of any Party is hereby authorized to insert such information prior to recording this Agreement.

(i) **Attorney Fees.** If any Party shall bring an action against any other Party by reason of the breach of any covenant, provision, or condition of this Agreement, or otherwise arising out of this Agreement, the unsuccessful Party shall pay to the prevailing party reasonable attorneys' fees actually incurred, which fees shall be payable whether or not any action is prosecuted to judgment. The term "prevailing party" shall include, without limitation, a Party who brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought, whether by compromise, settlement, or judgment.

(j) **Consent to Other Parties' Documents.** By executing this Agreement, each Party hereby acknowledges and consents to the execution of, and where appropriate, the recording of, the Documents by the Partnership and the other Parties thereto. Notwithstanding such consent, the terms hereof, the terms of any such Documents, and the acceptance by Lenders of their respective liens and other rights and interests under these Documents, a Lender shall not, prior to any acquisition of title to the Property by such Lender, be liable or responsible for any obligation of the Partnership under such Documents, or of any "Owner" as defined in any such documents.

[SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**WASHINGTON STATE HOUSING FINANCE COMMISSION**, a public body corporate and politic of the state of Washington

By: \_\_\_\_\_  
Steve Walker, Executive Director

STATE OF WASHINGTON

COUNTY OF KING

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steve Walker, to me known (or proved by satisfactory evidence) to be the Executive Director of the **Washington State Housing Finance Commission**, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**BANNER BANK,**  
a Washington commercial bank,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 2023, by  
\_\_\_\_\_, as \_\_\_\_\_ of Banner Bank, a Washington commercial  
bank.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**WASHINGTON STATE DEPARTMENT OF  
COMMERCE,**  
a department of the State of Washington

By: \_\_\_\_\_  
Name: Corina Grigoras  
Title: Assistant Director, Housing Division

STATE OF WASHINGTON

COUNTY OF THURSTON

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Corina Grigoras**, to me known (or proved by satisfactory evidence) to be the **Assistant Director of Housing Division of Washington State Department of Commerce**, a department of the State of Washington, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**CITY OF OLYMPIA,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF THURSTON

This record was acknowledged before me on \_\_\_\_\_, 2023, by  
\_\_\_\_\_, as \_\_\_\_\_ of City of Olympia, a Washington municipal  
corporation.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**MARTIN WAY II LLLP,**  
a Washington limited liability limited partnership

By: Martin Way Manager LLC,  
a Washington limited liability company  
Its: General Partner

By: Low Income Housing Institute (LIHI),  
a Washington nonprofit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name: Lynne Behar  
Title: Chief Financial Officer

STATE OF WASHINGTON

COUNTY OF KING

This record was acknowledged before me on \_\_\_\_\_, 2023, by Lynne Behar, as Chief Financial Officer of Low Income Housing Institute (LIHI), the Sole Member of Martin Way Manager LLC, the General Partner of Martin Way II LLLP, a Washington limited liability limited partnership.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**LOW INCOME HOUSING INSTITUTE (LIHI),**  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Name: Lynne Behar  
Title: Chief Financial Officer

STATE OF WASHINGTON

COUNTY OF KING

This record was acknowledged before me on \_\_\_\_\_, 2023, by Lynne Behar, as Chief Financial Officer of Low Income Housing Institute (LIHI), a Washington nonprofit corporation.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**THURSTON COUNTY,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF THURSTON

This record was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_, as \_\_\_\_\_ of Thurston County, a Washington municipal  
corporation.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

**OLYMPIA SCHOOL DISTRICT NO. 111,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF THURSTON

This record was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_, as \_\_\_\_\_ of Olympia School District No. 111, a  
Washington municipal corporation.

\_\_\_\_\_  
Notary Public for the State of Washington  
Print name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL A:**

Unit 3 of LIHI Martin Way, a Condominium, according to Declaration thereof recorded November 12, 2020 under Recording No. 4799858, and any amendments thereto; said Unit is located on Survey Map and Plans recorded November 12, 2020 under Recording No. 4799859:

In Thurston County, Washington.

**PARCEL B:**

A Non-Exclusive Reciprocal Access Easement for ingress and egress as created by that certain Condominium Declaration recorded November 12, 2020 under Recording No. 4799858;

In Thurston County, Washington.

**PARCEL C:**

Non-Exclusive Easements for Construction, Utilities, Encroachments and Maintenance as created by that certain Condominium Declaration recorded November 12, 2020 under Recording No. 4799858;

In Thurston County, Washington.