

Prepared By And After Recording Return To:
Vanessa G. Morris, Esq.
Womble Bond Dickinson (US), LLP
271 17th Street NW
Suite 2400
Atlanta, Georgia 30363

Subordination Agreement

This Subordination Agreement (this “**Agreement**”) is made and executed as of as of this _____ day of September, 2024, by the COUNTY OF DURHAM, a North Carolina public body corporate and politic (“**Subordinate Lender**”) for the benefit of TRUIST BANK, a North Carolina banking corporation, as trustee (“**Senior Lender**”), and acknowledged and agreed to by 500 EAST MAIN, LLC, LLC, a North Carolina limited liability company (“**Borrower**”).

WITNESSETH:

A. Borrower is constructing a 195-unit apartment complex on the real property described in the attached **Exhibit A** (the real estate and improvements thereon shall be collectively referred to as the “**Property**”).

B. Subordinate Lender is making a loan (the “**Subordinate Loan**”) to Borrower, the proceeds of which will be disbursed pursuant to a Loan Agreement (the “**Subordinate Loan Agreement**”). The Subordinate Loan is evidenced by a Promissory Note in the principal amount of \$10,618,417.00 (the “**Subordinate Note**”) and secured by *inter alia* a Leasehold Deed of Trust, Security Agreement and Financing Statement (the “**Subordinate Security Instrument**”) from Borrower to a trustee for the benefit of Subordinate Lender, conveying Borrower’s leasehold interest in the Property as collateral for the Subordinate Loan. The Subordinate Loan Agreement, the Subordinate Note, the Subordinate Security Instrument, and all other documents or instruments relating to or evidencing the Subordinate Loan are collectively referred to as the “**Subordinate Loan Documents**.” The obligations created under and pursuant to the Subordinate Loan Documents are herein referred to collectively as the “**Subordinate Obligations**”.

C. Truist Bank, a North Carolina banking corporation (together with its successors and assigns, “**Purchaser**”) has agreed to purchase the \$[] Housing Authority of the City of Durham Multifamily Housing Revenue Bonds (500 East Main), Series 2024 (the “**Bonds**”) issued by Housing Authority of the City of Durham, a public body and body corporate and politic of the State of North Carolina (the “**Issuer**”) pursuant to a Trust Indenture dated as of _____ 1,

2024 (as amended, modified or supplemented from time to time, the “**Indenture**”) between the Issuer and Senior Lender, as trustee.

D. The proceeds from the sale of the Bonds will be deposited with the Senior Lender and will be used to fund a loan (the “**Senior Loan**”) to the Borrower in the principal sum of \$[].00 or so much thereof as may be advanced pursuant to the Bond Loan Agreement (as defined herein), for the leasing, construction and equipping by the Borrower a 195-unit apartment complex (the “**Improvements**”) in accordance with the Plans and Specifications (as defined in the Loan Agreement) on real property described in Exhibit A to the Security Instrument (as defined below), and being the property currently at 500 East Main Street, Durham, Durham County, North Carolina, to be known as 500 East Main Street Apartments. The Bonds will be periodically purchased by the Purchaser in an amount equal to the amount of the periodic Requisitions (as defined in the Indenture) approved and funded pursuant to the terms of the Senior Loan Agreement and the Indenture.

E. The Senior Loan is being made pursuant to a Loan Agreement dated as of even date herewith (as amended, modified or supplemented, the “**Bond Loan Agreement**”) among the Issuer, the Senior Lender and the Borrower. The obligations of the Borrower to repay the Senior Loan are evidenced by a Promissory Note (as amended, modified or supplemented, the “**Senior Note**”) in the original principal amount of \$[].00, made by the Borrower to the order of the Issuer. The obligations of the Borrower under the Bond Loan Agreement and the Note shall be secured by a Leasehold Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated of even date herewith from the Borrower, as grantor, in favor of the trustee named therein for the benefit of Issuer (as amended, modified and supplemented from time to time, the “**Senior Security Instrument**”), and other security instruments.

F. The proceeds of the Senior Loan will be advanced pursuant to the terms and conditions of a Construction Loan Agreement of even date herewith between Borrower and Purchaser (as the same might hereafter be extended, modified, restated, or supplemented, the “**Senior Loan Agreement**”).

G. Immediately upon the execution and delivery of the Senior Note, the Senior Security Instrument, the Bond Loan Agreement, the Senior Loan Agreement, the Environmental Indemnification Agreement (as defined in the Senior Loan Agreement), all guaranties, all indemnity agreements, all collateral agreements, all collateral assignments, and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the Senior Loan, as such documents may be amended from time to time (collectively, the “**Senior Loan Documents**”), it is contemplated and intended that Issuer will assign its rights under the Senior Loan (other than its Reserved Rights, as defined in the Bond Loan Agreement) to the Senior Lender, pursuant to the Bond Loan Agreement. The obligations created under and pursuant to the Senior Loan Documents are herein referred to collectively as the “**Senior Obligations**”.

H. As a condition under the Senior Loan Documents, Senior Lender has required that Subordinate Lender subordinate the Subordinate Loan, Subordinate Obligations and Subordinate Loan Documents in all respects to the Senior Loan, Senior Obligations and Senior Loan Documents in the manner set forth herein. It was and continues to be of substantial benefit to

Subordinate Lender and to Borrower for Senior Lender to disburse the Senior Loan proceeds, and Subordinate Lender is willing to subordinate the Subordinate Loan Documents, the Subordinate Obligations and the Subordinate Loan on the terms and conditions herein set forth.

I. Defined terms not otherwise used herein shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Recitals Incorporated. The recitals set forth hereinabove are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth hereinbelow, provided, however, that such recitals shall not be deemed to modify the express provisions hereinafter set forth.

2. Subordination. Subordinate Lender does hereby subordinate (a) the Subordinate Loan Documents, (b) all of the Subordinate Obligations, and (c) to the extent derived from the Subordinate Loan Documents, all of its right, title, lien, and interest in and to the Property and the rents, issues, and profits therefrom, to (i) the Senior Loan Documents, (ii) all of the Senior Obligations, and (iii) all of the right, title, lien and interest held by Senior Lender, or its successors and assigns (including, without limitation, all subsequent holders of the Senior Note and the Senior Security Instrument), in and to the Property and the rents, issues, and profits therefrom, under and pursuant to the Senior Loan Documents. From and after the date hereof, all of the documents, indebtednesses, right, title, lien, and interest described in clauses (a), (b) and (c) hereinabove shall be subject and subordinate to all of the documents, indebtednesses, right, title, lien, and interest described in clauses (i), (ii) and (iii) hereinabove. The priorities herein specified are applicable irrespective of the time of creation of the Senior Obligations or the Subordinate Obligations. Subordinate Lender does hereby agree that, notwithstanding anything provided in the Subordinate Loan Documents to the contrary, so long as the Senior Obligations remain outstanding, unless Senior Lender shall consent in writing, or the Conversion Date (as defined in the Senior Loan Agreement) shall have occurred: (A) all of the Senior Obligations shall be paid and satisfied in full before any payment is made on account of the Subordinate Obligations; and (B) no prepayment of the Subordinate Obligations shall be made. After the Conversion Date, Subordinate Lender may accept and apply payments made in accordance with the Borrower's Operating Agreement. In the event that any payment is made to Subordinate Lender on account of the principal, interest, fees, or other amounts on or with respect to the Subordinate Obligations which is not permitted hereunder, such payment shall be held by Subordinate Lender in trust for the benefit of Senior Lender and shall be paid forthwith over and delivered to Senior Lender for application to the payment of all of the Senior Obligations remaining unpaid. Notwithstanding anything to the contrary herein, nothing in this Agreement shall have the effect of subordinating or limiting any right, title, or interest Subordinate Lender has in the Property by virtue of (i) Subordinate Lender being the fee owner of the Property; (ii) Subordinate Lender being the ground lessor of the Property; or (iii) the Property being located within the boundaries of Subordinate Lender, a municipal body.

3. Amendments to the Subordinate Loan Documents. Prior to the Conversion Date and notwithstanding anything in the Subordinate Loan Documents to the contrary, Subordinate Lender agrees that, so long as the Senior Obligations remain outstanding, Subordinate Lender shall not modify, renew or extend any of the Subordinate Loan Documents without Senior Lender's prior, written consent, such consent not to be unreasonably conditioned, delayed, or denied.

4. Enforcement of Rights and Remedies Under Subordinate Loan Documents. Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Obligations or otherwise exercise any rights under the Subordinate Loan Documents (including, but not limited to, instituting a foreclosure proceeding) or take or accept a deed in lieu of foreclosure of the Subordinate Security Instrument until the Senior Obligations shall have been indefeasibly paid and performed in full and the Senior Security Instrument shall have been satisfied and cancelled of record. As long as any portion of the Senior Obligations shall remain outstanding, the sole remedy of the holder of the Subordinate Loan Documents, in the event of any default under the Subordinate Loan Documents, shall be to pay off (or to purchase upon such terms as the parties may then negotiate) the Senior Loan and the Senior Loan Documents as a condition to, and prior to asserting, any rights or remedies under the Subordinate Loan Documents. Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Declaration of Deed Restrictions, subject to Senior Lender's right to cure a default under the Subordinate Loan Documents set forth in Section 5.

5. Cure Provisions.

(a) If a default occurs under the Subordinate Loan Documents, Subordinate Lender shall notify the Senior Lender and Purchaser in writing within five (5) business days of Subordinate Lender's knowledge of the default, which notice shall specify the nature of the default (provided that Subordinate Lender shall have no liability to Borrower, Senior Lender, Purchaser, or to any other person or entity for failure to timely give such notice). For a period of thirty (30) days following the Senior Lender's and Purchaser's receipt of such notice, but in no event less than the period of time afforded Borrower under the Subordinate Loan Documents (the "**Senior Cure Period**"), Senior Lender or Purchaser shall have the right (but not the obligation) to cure Borrower's default without meeting any requirements as to the assumption of the Subordinate Loan Documents. If Senior Lender or Purchaser cures the default within the Senior Cure Period or if Borrower cures the default, then the Subordinate Loan shall be deemed reinstated, and, in the latter case, Subordinate Lender shall notify Senior Lender and Purchaser of the cure.

(b) Senior Lender agrees that prior to Senior Lender initiating a foreclosure sale pursuant to the Senior Security Instrument as a result of a default by Borrower under the Senior Loan Documents, Senior Lender will give Subordinate Lender written notice of such default and Senior Lender's intent to initiate foreclosure proceedings and will afford to Subordinate Lender a period of thirty (30) calendar days (the "**Subordinate Lender Cure Period**") from and after Subordinate Lender's receipt of such notice within which to cure the default under the Senior Loan Documents. During the Subordinate Lender Cure Period, Senior Lender shall be at liberty to exercise all of its rights and remedies under the Senior Loan Documents, including, without limitation, the initiation of foreclosure proceedings under the Senior Security Instrument, but Senior Lender agrees that it will not consummate a foreclosure sale pursuant to the Senior Security

Instrument unless and until the Subordinate Lender Cure Period shall expire without the curing by Subordinate Lender of the default under the Senior Loan Documents. For the purpose of this paragraph, a foreclosure sale is considered to be initiated upon the earlier to occur of: (i) filing a substitution of trustee under the Senior Security Instrument, or (ii) instructing the trustee under the Senior Security Instrument to file a Notice of Hearing.

6. Warranties, Representations and Acknowledgements of Subordinate Lender. Subordinate Lender hereby warrants and represents to Senior Lender that:

(a) Subordinate Lender is the owner and holder of the Subordinate Loan Documents, free and clear of any lien, security interest or other claim whatsoever;

(b) Subordinate Lender has full power and authority to enter into this Agreement, the persons executing, acknowledging, and delivering this Agreement on behalf of Subordinate Lender are fully authorized to do so, and all of the terms and provisions of this Agreement are fully enforceable against Subordinate Lender and its successors and assigns (including, without limitation, all subsequent holders of the Subordinate Note and the Subordinate Security Instrument).

(c) This Agreement does not violate any contract or other obligation by which Subordinate Lender is bound, and the Senior Loan does not cause a default under the Subordinate Loan Documents;

(d) Exhibit B attached hereto is a true, correct and complete listing of all of the Subordinate Loan Documents as of the date hereof.

7. Casualty and Condemnation. In the event of a casualty to, or a condemnation or taking under a power of eminent domain of all or any portion of, the Property or payment under any payment or performance bond obtained by Borrower, Senior Lender, as bond trustee, shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "Award"), and Senior Lender shall have the right to apply any such Award in accordance with the terms of the Senior Loan Documents. If Senior Lender makes any portion of the Award available to the Borrower for the repair or restoration of the Property, such portion of the Award shall not be subject to attachment by Subordinate Lender, and Subordinate Lender shall likewise make available to Borrower for the purpose of restoration the insurance proceeds or condemnation award (if any) to which it is entitled under the Subordinate Loan Documents.

8. Bankruptcy.

(a) Upon any distribution of the assets or properties of Borrower or upon any dissolution, winding up, liquidation, bankruptcy or reorganization involving Borrower (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise, herein referred to as a "Proceeding"):

(i) Senior Lender shall first be entitled to receive payment in full of the principal of and interest on the Senior Obligations and all fees and any other payments (including post-petition interest and all costs and expenses) due pursuant

to the terms of the Senior Documents, before Subordinate Lender is entitled to receive any payment on account of the Subordinate Obligations; and

(ii) any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, to which Subordinate Lender would be entitled except for the provisions of this Agreement, shall be paid by the debtor in possession, liquidating trustee or agent or other person making such payment or distribution directly to Senior Lender; and

(iii) in the event that, notwithstanding the foregoing, any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, shall be received by Subordinate Lender on account of principal, interest, fees, or other amounts on or with respect to the Subordinate Obligations before all of the Senior Obligations are paid in full, such payment or distribution shall be received and held in trust for and shall be paid over to Senior Lender forthwith, for application to the payment of the Senior Obligations until all such Senior Obligations shall have been paid in full in accordance with the terms of the Senior Loan Documents.

(b) For so long as the Senior Obligations shall remain outstanding, Subordinate Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause Borrower to: (i) commence any Proceeding or other action against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (ii) institute proceedings to have Borrower adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of a Proceeding against Borrower; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, custodian or any similar official for Borrower, the Property (or any portion thereof) or any other collateral securing the Senior Obligations (or any portion thereof); (vi) make an assignment for the benefit of any credit of Borrower; or (vii) take any action in furtherance of any of the foregoing.

9. No Modification to Senior Loan Documents; Dealings with Borrower; No Third Party Beneficiaries. Nothing herein shall be deemed to modify, limit or in any way affect the rights and obligations of Borrower to Senior Lender and Purchaser, or the rights and remedies of Senior Lender, under the Senior Loan Documents, except as expressly set forth herein and in accordance with the Senior Loan Documents. Senior Lender and/or Purchaser may extend, renew, modify, or amend the Senior Obligations and any of the Senior Loan Documents, and release, transfer, assign, sell, or exchange any security therefor and otherwise deal freely with Borrower to the same extent as could any person, all without notice to or consent of Subordinate Lender and without affecting the liabilities and obligations of Subordinate Lender. Senior Lender and Purchaser shall have no obligations or liability to Subordinate Lender with respect to the Senior Loan, except as expressly set forth herein. Without limiting the foregoing, Senior Lender and Purchaser has no obligation to Subordinate Lender to advance any funds under the Senior Loan Documents, and Senior Lender is under no obligation or duty to, nor has Senior Lender or Purchaser represented that it will, see to the application of the proceeds of the Senior Loan by Borrower or any other person to whom

Senior Lender disburses such proceeds. The parties hereto do not intend the benefits of this Agreement to inure to Borrower or any other person or entity.

10. Waiver; Modification. No delay on the part of Senior Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Senior Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon Senior Lender except as expressly set forth in a writing duly signed and delivered by or on behalf of Senior Lender.

11. Intentionally Omitted.

12. Notices. Any notice or other communication required or permitted hereunder shall be given in writing and deemed to be duly given and received on the date the same shall be personally delivered to the addressee (including delivery by a professional overnight courier service), or on the third day after the same shall be deposited in the United States mail, certified mail, return receipt requested postage prepaid, at the address specified below:

If to Subordinate Lender:

County of Durham, North Carolina
Office of the County Manager
200 East Main Street
2nd Floor, Old Courthouse
Durham, North Carolina 27701
Attn: Claudia Hager

With a copy to:

County of Durham
Office of the County Attorney
200 East Main Street
2nd Floor, Old Courthouse
Durham, North Carolina 27701
Attn: Curtis Massey, Esq., County Attorney

If to Senior Lender:

Truist Bank/Truist Community Capital, LLC
303 Peachtree Street N.E., 22nd Floor
Atlanta, GA 30308
Attention: Colin Whittier

And

Truist Bank
CRE Loan Administration/CIG Loan Operations
303 Peachtree Street NE, 3rd Floor
Mail Code 803-05-03-40
Atlanta, Georgia, 30308

Attention: CRE Team Lead

With a copy to (for information purposes only):
Womble Bond Dickinson (US), LLP
271 17th Street, NW, Suite 2400
Atlanta, Georgia 30363
Attention: Vanessa G. Morris, Esq.

Any party hereto may by written notice in the manner herein provided change the address to which any such notice or other communication shall be thereafter given to it.

13. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns (including all subsequent holders of any note, security instrument or other instrument described in this Agreement). Any references to the parties shall be deemed to include the parties hereto and their successors and assigns.

14. Miscellaneous. This Agreement is made and executed under and in all respects is to be governed and construed by the law of the state where the Property is located. Subordinate Lender waives any right to trial by jury in connection with any action arising under this Agreement. Headings to this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which, taken together, shall constitute one instrument. This Agreement sets forth the final expression of the entire agreement of the parties hereto with regard to the subordination provided for herein and shall supersede and cancel any prior agreements as to such subordination, including without limitation any provisions in the Subordinate Security Instrument. So long as the Senior Security Instrument shall affect the Property or any portion thereof, Subordinate Lender, its successors or assigns, or any other legal holder of the Subordinate Security Instrument, as the case may be, shall execute, acknowledge, and deliver upon the demand of Senior Lender, at any time or times, any and all further documents or instruments in recordable form for the purpose of further confirming the subordination and the agreements herein set forth.

15. Limitation of Liability. If it is determined in any proceedings that the Subordinate Lender has received payments from Borrower in violation of this Agreement, Senior Lender's sole remedy shall be disgorgement of such payments, and for itself and its partners, members, managers, shareholders or officers, Senior Lender hereby waives all claims for damages or set-off against the Subordinate Lender resulting therefrom.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Subordinate Lender has caused this instrument to be executed by its duly authorized officer as of the day and year first above written.

SUBORDINATE LENDER:

COUNTY OF DURHAM
a North Carolina public body corporate and politic

By: _____
Name: Kimberly J. Sowell
Title: County Manager

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Kimberly J. Sowell.

Date: _____, 202__

Notary Public
Printed or Typed Name: _____

My commission expires: _____

(Official Seal)

{Signatures continued on next page}

The undersigned has set its hand and seal hereto to acknowledge and agree to the terms and conditions of the foregoing Agreement, by Subordinate Lender, for the benefit of Senior Lender, and acknowledged and agreed to by the undersigned:

BORROWER:

500 EAST MAIN, LLC, a North Carolina limited liability company

By: LSR 500 East Main, LLC
a North Carolina limited liability company
Its Managing Member

By: LSR Manager, LLC
a North Carolina limited liability company
Its Managing Member

By: _____(Seal)
Name: Lee M. Cochran
Title: Vice President

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I _____, a notary public in and for the above jurisdiction, do hereby certify that Lee M. Cochran, party to the foregoing instrument and hereto annexed, personally appeared before me in said jurisdiction, the said Vice President being personally well-known to me as (or proved by the oath of credible witnesses to be) the Vice President of LSR Manager, LLC, which is the managing member of LSR 500 East Main, LLC, which is the managing member of 500 EAST MAIN, LLC, a North Carolina limited liability company and acknowledged the same to be the act and deed of said company, the party named within.

Given under my hand and seal this ____ day of _____, 2024.

Notary Public
Type or print name: _____
My commission expires: _____

[Notary seal]

Exhibit A
Legal Description

[to be inserted]

Exhibit B

Subordinate Loan Documents

(all dated as of even date herewith)

- Loan Agreement, between County of Durham and 500 East Main, LLC
- Promissory Note, from 500 East Main, LLC in favor of County of Durham
- Leasehold Deed of Trust, Security Agreement and Financing Statement, granted by 500 East Main, LLC in favor of County of Durham
- Assignment of Leases and Rents, granted by 500 East Main, LLC in favor of County of Durham
- Assignment of Contracts, Plans, and Permits (and related Consents), from 500 East Main, LLC in favor of County of Durham
- UCC-1, listing 500 East Main, LLC as Debtor and County of Durham as Secured Party.