

# SUBORDINATION OF MORTGAGE

**DOCUMENT NUMBER:**

**RETURN ADDRESS:**

BMO Harris Bank N.A.  
Attn: Collateral Fulfillment  
P.O. Box 2058  
Milwaukee, WI 53201

**PARCEL I.D. NUMBER:** 17151000, 17129000 and 17146000

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**NOTICE: THIS SUBORDINATION OF MORTGAGE RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**THIS SUBORDINATION OF MORTGAGE dated May 17, 2019, is made and executed among Biddle Enterprises, LLC ("Borrower"); Redevelopment Authority of the City of Racine ("Mortgagee"); and BMO Harris Bank N.A. ("Lender").**

**SUBORDINATED INDEBTEDNESS.** Mortgagee has extended the following described financial accommodations, secured by the Real Property (the "Subordinated Indebtedness"):

**An indebtedness in the original principal amount of \$506,815.00 together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the indebtedness.**

**SUBORDINATED MORTGAGE.** The Subordinated Indebtedness is or will be secured by the Real Property and evidenced by a mortgage dated October 24, 2016 from Biddle Enterprises, LLC ("Mortgagor") to Redevelopment Authority of the City of Racine ("Mortgagee") (the "Subordinated Mortgage") and recorded in Racine County, State of Wisconsin as follows:

**A Mortgage recorded on October 27, 2016 as Document #2448966 in the office of the Register of Deeds for Racine County, as may be subsequently modified from time to time.**

**REAL PROPERTY DESCRIPTION.** The Subordinated Mortgage covers the following described real property (the "Real Property") located in Racine County, State of Wisconsin:

**PARCEL I: LOTS 1-6, BLOCK 10, AND LOTS 1-7, BLOCK 11, COLLEGE ADDITION, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF SECTION 21, TOWNSHIP 3 NORTH, RANGE 23 EAST. ALSO, THAT PART OF VACATED 20TH STREET LYING EAST OF THE CHICAGO & NORTHWESTERN RAILROAD RIGHT OF WAY, AND WEST OF CLARK STREET AS DESCRIBED IN RESOLUTION DATED DECEMBER 30, 1969 AND RECORDED IN THE RACINE COUNTY REGISTER OF DEEDS OFFICE ON JANUARY 2, 1970 IN VOLUME 1040, PAGE 319, AS DOCUMENT NO. 863217. SAID LAND BEING IN THE CITY OF RACINE, COUNTY OF RACINE, STATE OF WISCONSIN.**

**PARCEL II: LOTS 6, 7, 10, 11,14 AND THE NORTH 26 FEET OF LOT 15, BLOCK 9, COLLEGE ADDITION, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF SECTION 21, TOWNSHIP 3 NORTH, RANGE 23 EAST. SAID LAND BEING IN THE CITY OF RACINE, COUNTY OF RACINE, STATE OF WISCONSIN.**

**PARCEL III: LOT 22, BLOCK 9, COLLEGE ADDITION, BEING A SUBDIVISION OF PART OF THE NORTH 1/2 OF SECTION 21, TOWNSHIP 3 NORTH, RANGE 23 EAST. SAID LAND BEING IN THE CITY OF RACINE, COUNTY OF RACINE, STATE OF WISCONSIN**

The Real Property or its address is commonly known as 1900, 1909 and 1945 Clark Street, Racine, WI 53403. The Real Property tax identification number is 17151000, 17129000 and 17146000.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

**A Promissory Note dated May 17, 2019 from Biddle Enterprises, LLC to Lender in the original principal amount of \$850,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the Promissory Note.**

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, dated May 17, 2019, from Borrower to Lender (the "Lender's Lien") and recorded in Racine County, State of Wisconsin as follows:

**A Mortgage and Assignment of Rents recorded on \_\_\_\_\_ as Document # \_\_\_\_\_ and Document # \_\_\_\_\_ in the office of the Register of Deeds for Racine County, as may be subsequently modified from time to time.**

As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Mortgage.

**REQUESTED FINANCIAL ACCOMMODATIONS.** Mortgagor, who may or may not be the same person or entity as Borrower, and Mortgagee each want Lender to provide financial accommodations to Borrower in the form of the Superior Indebtedness. Mortgagor and Mortgagee each represent and acknowledge to Lender that Mortgagee will benefit as a result of these financial accommodations from Lender to Borrower, and Mortgagee acknowledges receipt of valuable consideration for entering into this Subordination.

**NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:**

**SUBORDINATION.** The Subordinated Mortgage and the Subordinated Indebtedness secured by the Subordinated Mortgage is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinated Mortgage. Mortgagee also subordinates to Lender's Lien all other Security Interests in the Real Property held by Mortgagee, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**MORTGAGEE'S REPRESENTATIONS AND WARRANTIES.** Mortgagee represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Mortgagee which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at Borrower's request and not at the request of Lender; (C) Lender has made no representation to Mortgagee as to the creditworthiness of Borrower; and (D) Mortgagee has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Mortgagee agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Mortgagee's risks under this Subordination, and Mortgagee further agrees that Lender shall have no obligation to disclose to Mortgagee information or material acquired by Lender in the course of its relationship with Mortgagee.

**MORTGAGEE WAIVERS.** Mortgagee waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any Superior Indebtedness secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

**LENDER'S RIGHTS.** Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Mortgagee, (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

**PROPERTY PROCEEDS.** In the event that Mortgagee is entitled to collect any Payments pursuant to the Subordinated Mortgage, such amounts will be distributed and otherwise handled in accordance with the terms of the Lender's Lien regardless of any conflicting provisions in the Subordinated Mortgage. Until such time as the obligations contained under the Superior Indebtedness are satisfied, Mortgagee agrees to transfer, or cause to be transferred to Lender for application to the Superior Indebtedness, any Payments collected or received by the Mortgagee. The "Payments" covered under this provision include but are not limited to all claims, awards, payments, rents, income, compensation or profits stemming from any actions or proceedings including eminent domain, takings, condemnations, deed in lieu, foreclosure, damages for injury to property or proceeds from insurance claims regarding the Real Property.

**EXPENDITURES.** In the event that Mortgagee or Lender performs or causes to be performed any duties of Borrower under the Subordinated Mortgage or Lender's Lien on account of Borrower's failure to perform such duties, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property ("Expenditures"), the Expenditures shall be added to the Superior Indebtedness if performed by Lender or, if performed by Mortgagee with Lender's consent and secured by the Subordinated Mortgage, given the priority they would have received under the Subordinated Mortgage but for this Subordination of Mortgage.

**DEFAULT BY BORROWER.** If Borrower becomes insolvent or bankrupt, this Subordination shall remain in full force and effect. Any default by Borrower under the terms of the Subordinated Indebtedness also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Subordination:

**Amendments.** This Subordination constitutes the entire understanding and agreement of the parties as to the matters set forth in this

Subordination. No alteration of or amendment to this Subordination shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Mortgagee also will pay any court costs, in addition to all other sums provided by law.

**Authority.** The person who signs this Subordination as or on behalf of Mortgagee represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Mortgagee's security interests in Mortgagee's property, if any.

**Caption Headings.** Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

**Governing Law.** This Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Wisconsin without regard to its conflicts of law provisions. This Subordination has been accepted by Lender in the State of Wisconsin.

**Choice of Venue.** If there is a lawsuit, Mortgagee agrees upon Lender's request to submit to the jurisdiction of the courts of Milwaukee County, State of Wisconsin.

**Successors.** This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Mortgagee herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Subordination unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Subordination shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Subordination. No prior waiver by Lender, nor any course of dealing between Lender and Mortgagee, shall constitute a waiver of any of Lender's rights or of any of Mortgagee's obligations as to any future transactions. Whenever the consent of Lender is required under this Subordination, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED MAY 17, 2019.**

**BORROWER:**

**BIDDLE ENTERPRISES, LLC**

By: \_\_\_\_\_  
Marilyn A. Biddle, Member of Biddle Enterprises, LLC

**RAYMOND K. AND MARILYN A. BIDDLE REVOCABLE TRUST DATE APRIL 5, 2007, AS AMENDED AND RESTATED, Member of Biddle Enterprises, LLC**

By: \_\_\_\_\_  
Marilyn A. Biddle, Trustee of Raymond K. and Marilyn A. Biddle Revocable Trust date April 5, 2007, as amended and restated

By: \_\_\_\_\_  
Barbara Lange, Trustee of Raymond K. and Marilyn A. Biddle Revocable Trust date April 5, 2007, as amended and restated

**MORTGAGEE:**

**REDEVELOPMENT AUTHORITY OF THE CITY OF RACINE**

By: \_\_\_\_\_  
Authorized Signer for Redevelopment Authority of the City of Racine

**LENDER:**

**BMO HARRIS BANK N.A.**

X \_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
This Subordination of Mortgage was drafted by: Brad Eastep, Documentation Specialist  
\_\_\_\_\_

Complete either Authentication Section or Acknowledgment Section

**AUTHENTICATION**

Signature(s) of Redevelopment Authority of the City of Racine authenticated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Title: Member State Bar of Wisconsin or

authorized under Section 706.06, Wis. Stats.

**LIMITED LIABILITY COMPANY ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned Notary Public, personally appeared **Marilyn A. Biddle, Member of Biddle Enterprises, LLC; Marilyn A. Biddle, Trustee of Raymond K. and Marilyn A. Biddle Revocable Trust date April 5, 2007, as amended and restated, Member of Biddle Enterprises, LLC; and Barbara Lange, Trustee of Raymond K. and Marilyn A. Biddle Revocable Trust date April 5, 2007, as amended and restated, Member of Biddle Enterprises, LLC,** and known to me to be members or designated agents of the limited liability company that executed the Subordination of Mortgage and acknowledged the Subordination to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Subordination and in fact executed the Subordination on behalf of the limited liability company.

By \_\_\_\_\_ Residing at \_\_\_\_\_

[Type or Print Name]

Notary Public in and for the State My commission expires \_\_\_\_\_  
of \_\_\_\_\_

**GOVERNMENT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_,

and known to me to be (an) authorized agent(s) of the governmental entity that executed the Subordination of Mortgage and acknowledged the Subordination to be the free and voluntary act and deed of the governmental entity, by authority of its enabling laws or by resolution of its governing body, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Subordination and in fact executed the Subordination on behalf of the governmental entity.

By \_\_\_\_\_ Residing at \_\_\_\_\_

[Type or Print Name]

Notary Public in and for the State My commission expires \_\_\_\_\_  
of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
**LENDER ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

)

) SS

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

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ and known to me to be the \_\_\_\_\_, authorized agent for **BMO Harris Bank N.A.** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **BMO Harris Bank N.A.**, duly authorized by **BMO Harris Bank N.A.** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **BMO Harris Bank N.A.**.

By \_\_\_\_\_

Residing at \_\_\_\_\_

\_\_\_\_\_  
[Type or Print Name]

Notary Public in and for the State My commission expires \_\_\_\_\_  
of \_\_\_\_\_