

UNOFFICIAL COPY

and secured by, among other things, a first (1st) mortgage on the Real Estate and the improvements on it (the "Mortgage") and by security interests in certain personal property; and

WHEREAS, the Grant is evidenced, secured and governed by, among other things: (a) the Conditional Commitment Letter from the Authority to or for the benefit of Owner dated May 29, 2013 (the "Commitment"); (b) the Grant Funding Agreement ("Grant Agreement"); (c) the Note executed by Owner; (d) the Mortgage; (e) that certain Guaranty of Completion and Payment (the "Guaranty") executed by the Guarantor (as defined in the Guaranty) for the benefit of the Authority; (f) that certain Environmental Indemnity (the "Environmental Indemnity") delivered to the Authority, as indemnitee; (g) this Agreement. This Agreement, the Commitment, the Note, the Grant Agreement, the Mortgage, the Guaranty, the Environmental Indemnity, and all other documents that evidence, secure or govern the Grant are sometimes collectively referred to in this Agreement as the "Grant Documents"; the Grant Documents are incorporated in this Agreement by this reference; and

WHEREAS, as an inducement to the Authority to make the Grant, Owner has agreed to enter into this Agreement and consents to be regulated and restricted by the Authority as provided in it, and as provided for in the BIBP Program, the Act and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time, as applicable.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation**. The foregoing recitals are incorporated in this Agreement by this reference.

2. **Act and Rules**. Owner agrees that at all times its acts regarding the Development shall be in conformance with the applicable provisions of the Act, the BIBP Program and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time.

3. **Representations and Agreements**. Owner further represents and agrees that:

a. The Unit shall be occupied by Tenants (as defined in **Paragraph 9** hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Extremely Low Income Tenants (as defined in **Paragraph 9** hereof);

b. In the advertising, marketing, and rental of Unit and the selection of Tenants, Owner agrees to abide by the terms and conditions of the Tenant Selection Plan executed by Owner, approved by the Authority as it may be amended from time to time with the prior written consent of the Authority;

c. In the management and operation of the Development, Owner agrees to abide

UNOFFICIAL COPY

by the terms and conditions of the Affirmative Fair Housing Marketing Plan; the Management Plan; and the Management Agreement; all as approved by the Authority, as such documents may be amended from time to time with the prior written approval of the Authority. Owner shall be responsible for ensuring the management agent's compliance with the rules, procedures and requirements of the Authority. At the Authority's direction, Owner shall terminate the Management Agreement with the management agent and select another management agent satisfactory to the Authority;

d. On forms approved by the Authority, Owner shall obtain from each prospective Extremely Low Income Tenant prior to his or her admission to the Development, a certification of income (the "Certification"). Owner shall submit such Certifications to the Authority in the manner prescribed by the Authority;

e. In the manner prescribed by the Authority, Owner shall obtain written evidence substantiating the information given on such Certifications and shall retain such evidence in its files at the Development for three (3) years after the year to which such evidence pertains. Within thirty (30) days after the end of each calendar year, Owner shall certify to the Authority that, at the time of such certification and during the preceding calendar year, Owner was in compliance with the requirements of this **Paragraph 3**, or, if Owner is not or has not been in compliance with such requirements, Owner shall give notice to the Authority of its failure to comply and the corrective action Owner is taking or has taken;

f. Owner shall annually submit a schedule of rents for the Development for the Authority's approval, and shall not change the rent schedule for the Development without the Authority's approval.

g. Owner shall require all Tenants to execute a lease (the "Lease") in a form approved by the Authority;

h. Owner shall obtain all federal, state and local governmental approvals required by law for its rehabilitation, ownership and operation of the Development;

i. Owner shall not evict any Tenant from the Development without good cause; and

j. Owner shall design and rehabilitate the Development in conformity (i) with applicable federal, state and local statutes, regulations, ordinances, standards and codes (except as otherwise approved by the Authority) and (ii) with all applicable rules, contracts, agreements, procedures, guides and other requirements of the Authority provided to Owner in writing.

4. **Acts Requiring Authority Approval.** Except as permitted pursuant to the other Grant Documents, Owner shall not, without the prior written approval of the Authority, which may be given or withheld in the Authority's sole discretion:

UNOFFICIAL COPY

- a. Convey, transfer or encumber the Development or any part of it, or permit the conveyance, transfer or encumbrance of the Development or any part of it;
- b. Convey, assign or transfer any right to manage, or receive the rents and profits from, the Development;
- c. Initially rent any Unit for a period other than one (1) year, and after such initial one (1) year period, rent any Unit for less than six (6) months or more than one (1) year;
- d. Lease or sublease any non-residential facility in the Development or amend or modify any such lease or sublease, which, to the best of Owner's knowledge, would result in a conflict of interest between any of the parties to such contracts and the Authority, its board members, officers, employees, agents or members of their respective immediate families; or
- e. Require, as a condition of the occupancy or leasing of any Unit in the Development, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not to exceed one (1) month's rent to guarantee the performance by the Tenant of the covenants of the Lease. Any funds collected by Owner as security deposits shall be kept separate and apart from all other funds of the Development.

5. **Owner Duties.** In addition to, but not by way of limitation of, the other duties of Owner set forth in this Agreement, Owner shall comply with the following:

- a. **Maintenance.** Owner shall maintain the Development and the grounds and equipment appurtenant to it in a decent, safe and sanitary condition, and in a rentable and tenantable state of repair, and in compliance with all applicable federal, state and local statutes, regulations, ordinances, standards and codes.
- b. **Management.** Owner shall provide for the management of the Development in a manner satisfactory to the Authority.
- c. **Audit.** The Development and the equipment, buildings, plans, specifications, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it, and the books and records relating to Owner, shall at all times be maintained in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority or its agent or representative upon reasonable prior notice during normal business hours, as the Authority reasonably requires.
- d. **Financial and Expense Reports.** Within ninety (90) days following the end of the Owner's fiscal year, in a manner prescribed by the Authority in writing, Owner shall furnish the Authority with a complete annual financial report for the Development based upon an examination of the books and records of the Development, prepared at Owner's expense in accordance with the written requirements of the Authority, and certified to Owner

UNOFFICIAL COPY

by an Illinois licensed certified public accountant.

e. Furnishing Information. At the request of the Authority, Owner shall furnish such reports, projections, certifications, budgets, operating reports, tax returns and analyses as required pursuant to the statutes, rules and regulations of the Authority, as amended from time to time, or by other applicable federal or state statutes or requirements, and from time to time shall give specific answers to written questions in connection with Owner's income, assets, liabilities, contracts and operation, all relating to the Development, and the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Development.

f. Compliance with Certain Laws. Owner shall comply with the provisions of the Environmental Barriers Act (410 ILCS 25/1 *et seq.*, as amended from time to time), the Illinois Accessibility Code (71 Ill. Adm. Code 400), 47 Ill. Adm. Code 310, Subpart I, as amended from time to time, except as otherwise approved by the Authority, and the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, as amended, if applicable, the Executive Order for Reduction of Earthquake Hazards, if applicable; and the Authority's property standards for rehabilitated housing, if applicable. .

6. Non-Discrimination in Housing.

a. Owner shall not, in the selection of Tenants, in the provision of services, or in any other manner unlawfully discriminate against any person on the grounds of race, color, creed, religion, sex, age, unfavorable military discharge, ancestry, handicap, national origin, marital status, familial status or because the prospective Tenant is receiving governmental rental assistance.

b. Owner shall comply with all of the provisions of Paragraph 3805/13 of the Act and all other provisions of federal, state and local law relating to non-discrimination.

7. Violation of Agreement by Owner. Upon violation of any of the provisions of this Agreement by Owner, the Authority may give notice of such violation to Owner as provided in **Exhibit B** attached to and made a part hereof. If such violation is not corrected to the satisfaction of the Authority within thirty (30) days after such notice, the Authority may declare a default under this Agreement; however if such condition is not reasonably curable within thirty (30) days despite Owner's reasonable efforts to cure it, Owner shall have one hundred twenty (120) additional days to cure such default, so long as (i) that cure is commenced within such thirty (30) day period, (ii) Owner continues to diligently pursue such cure in good faith, (iii) the Authority's security for the Grant is not, in the sole judgment of the Authority, impaired as a result of the existence of such failure, (iv) a monetary default does not exist, and (v) the cure period contain herein does not extend the cure period, if any, contained in the Grant Agreement; after the expiration of such one hundred fifty (150) day period, the Authority may declare a default under this Agreement (Notwithstanding the cure periods contained herein, if the Grant Agreement provides for less time period or no time period for a cure of a Default hereunder, the provisions of the Grant Agreement shall control), effective on the date of notice of such declaration of default to Owner, and upon such default, and so long as such

UNOFFICIAL COPY

default is continuing, the Authority may do the following:

- a. Declare the whole of the indebtedness under the Note immediately due and payable and then proceed to exercise the rights and remedies set forth in any Grant Document;
- b. Take possession of the Development, bring any action necessary to enforce any rights of Owner growing out of the operation of the Development and operate the Development in accordance with the terms of this Agreement until such time as the Authority, in its sole discretion, determines that Owner is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Note;
- c. Collect all rents and charges in connection with the operation of the Development and use such collections to pay Owner's obligations under this Agreement, the Note, the Mortgage or any other Grant Document and such other obligations of Owner in connection with the Development and the necessary expenses of preserving and operating it;
- d. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. Because the injury to the Authority arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, Owner acknowledges and agrees that the Authority's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the Authority's public purpose; or
- e. Exercise such other rights or remedies as may be available to the Authority under this Agreement, under the Grant Documents, at law or in equity.

The Authority's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies. No waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure or delay of the Authority in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of its rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights.

8. Termination of Liabilities. In the event of a sale or other transfer of the Development, all of the duties, obligations, undertakings and liabilities of Owner or other transferor (the "Transferor") under the terms of this Agreement shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by the Transferor that occurred or arose prior to such sale or transfer. As a condition precedent to the termination of the liability of the Transferor under this Agreement, the transferee of the Development (a "New Owner"), as a condition precedent to its admission as a New Owner, shall assume in writing, on the same terms and conditions as apply to the Transferor, all of the duties and obligations

UNOFFICIAL COPY

of the Transferor arising under this Agreement from and after the date of such sale or transfer. Such assumption shall be in form and substance acceptable to the Authority. Any such New Owner shall not be obligated with respect to matters or events that occur or arise before its admission as a New Owner.

9. Definitions.

a. "Extremely Low Income Tenant". As used in this Agreement, the phrase "Extremely Low Income Tenant" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to thirty percent (30%) of the median income of the metropolitan statistical area of Chicago, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (the "Median Income").

b. "Tenant". As used in this Agreement, the word "Tenant" means a person, family or unrelated persons leasing a Unit in the Development.

10. Term of Agreement: Covenants Run with Development. The covenants and agreements set forth in this Agreement shall encumber the Development and be binding on any New Owner and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it for so long as the Note is outstanding and in effect. However, if the date of the cancellation of the Note (the "Cancellation Date") is prior to the date that the Note was originally scheduled to be forgiven, the covenants and agreements set forth in **Paragraphs 2, 3(a)-(f), 3(i), 5(a), 6, 7(d)-(e), and 8** hereof (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing on the Cancellation Date and ending on the Forgiveness Date (as defined in the Note), irrespective of whether the Grant is forgiven voluntarily by Owner or tendered by any party following an acceleration by the Authority of the Note or enforcement by the Authority of its remedies in connection with the Grant Documents.

Owner expressly acknowledges that its undertakings and agreements stated in this Agreement are given to induce the Authority to make the Grant and that, even if the Grant has been repaid prior to the Maturity Date, the Owner's undertaking to perform the Continuing Obligations for the period set forth in the previous paragraph is a condition precedent to the willingness of the Authority to make the Grant.

11. Non-Recourse. Except as otherwise set forth in the Environmental Indemnity and the Guaranty, Owner's liability created under this Agreement and the Grant Documents shall be non-recourse and neither Owner, nor the Member (as defined in the Grant Documents) shall have any personal liability for repayment of the Grant. The Authority shall look only to the Development and its reserves and any other funds or letters of credit relating to the Development for repayment of the Grant. The foregoing shall not limit Owner's and Member's liability for damages (or in the case of (xi) hereinbelow, the amount due) as a result of (i) fraudulent acts, or willful and wanton acts or omissions in violation of the provisions of this Agreement and the other Grant Documents; (ii) the fair market value of the personalty or fixtures removed or disposed of from the Premises in violation

UNOFFICIAL COPY

of the terms of the Grant Documents; (iii) the misapplication, in violation of the terms of the Grant Documents, of any funds to the full extent of such misapplied funds and proceeds, including, without limitation, any funds or proceeds received under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain; (iv) any misapplication of any security deposits attributable to any leases of Unit, or failure to pay interest on such security deposits as required by law; (v) waste committed on the Development to the extent that funds in the replacement reserve account or otherwise available in any property account held by Owner, are available to remedy such waste and Owner has failed to remedy the waste despite the written instructions of the Authority; (vi) the occurrence of a Prohibited Transfer (as defined in the Mortgage), without the prior written consent of the Authority; (vii) an oral or written material misrepresentation was made by Owner or any party in the ownership structure of Owner, or any employee or agent of Owner or any other such entity or individual; (viii) a material error or omission was made in the Ownership Structure Certificate (as defined in the Commitment); (ix) the Owner has violated the single asset requirement contained in the Commitment; (x) the Owner has delivered a false certification pursuant to **Paragraph C.10** of the Commitment; and (xi) the full amount of any Recapture Amount that is due, plus other costs, default interest (on the Recapture Amount), and damages due as a result of the Recapture Event (as defined in the Grant Agreement). Any liability incurred pursuant to this Section shall be the personal liability of the Owner and the Member. The provisions of this Paragraph shall have no effect on the liabilities and obligations contained in the Guaranty.

12. Amendment of Agreement. This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.

13. Execution of Conflicting Documents. Owner warrants that it has not executed, and it agrees that it shall not execute, any other agreement with provisions contradictory, or in opposition, to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are and shall be paramount and controlling as to the rights and obligations set forth in such other agreement and supersede any other requirements in conflict with this Agreement. To the extent this Agreement conflicts with any provisions or requirements set forth in any other Grant Document, the Authority shall determine which provision controls.

14. Partial Invalidity. If any term, covenant, condition or provision of this Agreement, or its application to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. Successors. Subject to the provisions of **Paragraph 8** hereof, this Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, successors in office or interest and assigns; however, Owner may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of the Authority.

16. Indemnification of the Authority. Owner agrees to defend and indemnify and hold

UNOFFICIAL COPY

harmless the Authority from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that the Authority may incur or suffer by reason of or in connection with the Real Estate or the Development, except if arising solely due to the Authority's gross negligence, willful misconduct or after the Authority takes possession of the Premises. Owner further agrees that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

17. **Gender**. The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

18. **Captions**. The captions used in this Agreement are used only as a matter of convenience and for reference and in no way define, limit or describe its scope or intent.

19. **Notices**. Notices under this Agreement shall be given as provided in **Exhibit B** hereof.

20. **Counterparts**. This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

(THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.)

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized representatives.

OWNER:

HOME FIRST ILLINOIS, LLC,
an Illinois limited liability company

By: IFF,
an Illinois not-for-profit corporation
Its sole member

By: [Signature]
Its Chief Operating Officer

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: [Signature]
Printed Name: BRYAN E. ZIGON
Its Assistant Executive Director

5/29/15/J:\TFFORMS\MF-FORMS\1stloan\regag1st.frm

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION OF REAL ESTATE

UNIT 609 IN PARK PLACE TOWER I, A CONDOMINIUM AS DELINEATED ON PLAT OF SURVEY, WHICH PLAT OF SURVEY IS ATTACHED AS EXHIBIT "E" TO THE DECLARATION OF CONDOMINIUM RECORDED OCTOBER 31, 2001 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS DOCUMENT NUMBER 0011020878, TOGETHER WITH A PERCENTAGE OF THE COMMON ELEMENTS APPURTENANT TO THE UNIT AS SET FORTH IN SAID DECLARATION OF CONDOMINIUM, IN THE NORTHWEST FRACTIONAL 1/4 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-21-101-054-1060

Common Address: 655 W. Irving Park Road, Unit 609, Chicago, Illinois 60613

UNOFFICIAL COPY

EXHIBIT B NOTICE PROVISIONS

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this document shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to the Authority:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: Assistant to the Executive Director for Multifamily Programs

with a copy to:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: General Counsel

If to Owner:

Home First Illinois, LLC
1 N. LaSalle Street, Suite 700
Chicago, Illinois 60602
Attn: Director, Home First Illinois

Such addresses may be changed by notice to the other party given in the same manner as provided in this Exhibit. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.