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John W. Hamilton  
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One Indiana Square  
Suite 1800  
Indianapolis, Indiana 46204

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Cross Reference: Document No. 1035631128

## HUD AMENDMENT TO RESTRICTIVE COVENANTS

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of November 1, 2015 by O'KEEFFE MULFORD, LLC, an Illinois limited liability company ("Borrower"), and ILLINOIS HOUSING DEVELOPMENT AUTHORITY ("Agency").

WHEREAS, Borrower has obtained financing from P/R Mortgage & Investment Corp. ("Lender") for the benefit of the project known as O'Keeffe Apartments ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of November 1, 2015, and recorded in the Recorder's Office of Cook County, Illinois ("Records") on November 18, 2015 as Document Number 1532245040, and is insured by the United States Department of Housing and Urban Development ("HUD").

WHEREAS, Borrower has received an allocation of 1602 Exchange funds from the Agency, which Agency has required certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Regulatory Agreement ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of December 1, 2010 and recorded in the Records on December 22, 2010, as Document No. 1035631128;

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

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WHEREAS, the Agency have agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means P/R Mortgage & Investment Corp., its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive

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Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, or as otherwise approved by HUD.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the terms of the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement in enforcing the Restrictive Covenants, the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity;
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity; or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) Borrower and Agency further agree that if at any time any covenant or restriction of this Amendment shall be determined by the Internal Revenue Service to be an event invalidating or terminating the 1602 Exchange funds awarded to the Project, then in such event such covenant or restriction provided herein shall immediately and

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automatically terminate. Notwithstanding anything to the contrary contained in this Amendment, it is not the intent of any of the parties hereto to cause a recapture of the 1602 award or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants and this Amendment Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by §42 of the Code. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants.

able to comply with the HUD Requirements and its obligations under the Restrictive Covenants

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AGENCY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY *HP*

By: *[Signature]*  
Its: Bryan E. Zises  
Printed: Executive Director

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 16<sup>th</sup> day of October, 2015, Bryan E. Zises, the Executive Director of Illinois Housing Development Authority, personally known to me to be the same person whose name is subscribed to the foregoing HUD Amendment to Restrictive Covenants, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of for the purposes therein set forth.

Given under my hand and official seal this 16<sup>th</sup> day of October 2015.



*[Signature]*  
Notary Public

This instrument was prepared by John W. Hamilton, Attorney-at-Law, Wooden & McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204-4208.

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EXHIBIT A

## LEGAL DESCRIPTION

**\*\*\*PARCEL 1:**

LOT 13 AND THE SOUTH HALF OF LOT 12 IN BLOCK 2 IN SOUTH KENWOOD A RESUBDIVISION OF BLOCKS 2, 7 AND 8 IN GEORGE W. CLARKE'S SUBDIVISION OF THE EAST HALF OF THE NORTHWEST QUARTER WITH PART OF BLOCK 3 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST QUARTER ALL IN SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

LOT 100 IN THE FIRST ADDITION TO BRYN MAWR HIGHLANDS BEING A SUBDIVISION OF THE NORTH THREE QUARTERS OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE WEST 500 1/2 FEET THEREOF AND EXCEPT BRYN MAWR HIGHLANDS SUBDIVISION AND EXCEPT EAST 67TH STREET AND EAST 68TH STREET HERETOFORE DEDICATED), IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

LOTS 1 AND 2 IN B.J. KELLY'S SUBDIVISION OF BLOCK 2 IN COMMISSIONERS PARTITION BEING A SUBDIVISION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

LOTS 6 AND 7 IN SUBDIVISION OF THE WEST HALF OF THE SOUTH THREE-FIFTHS OF LOT 3 IN GEORGE W. CLARKE'S SUBDIVISION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PARCEL 5:**

LOT 13 (EXCEPT THE EAST 17 1/2 FEET THEREOF) AND ALL OF LOTS 14 AND 15 IN BLOCK 1 IN THE RESUBDIVISION OF BLOCKS 10 AND 11 AND PART OF BLOCK 12 IN SOUTH SHORE DIVISION NO. 5, BEING A SUBDIVISION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.\*\*\*

PERMANENT REAL ESTATE INDEX NO. 20-25-108-018-0000, Vol. 262

Affects: Parcel 1

PERMANENT REAL ESTATE INDEX NO. 20-24-415-012-0000, Vol. 261

Affects: Parcel 2

PERMANENT REAL ESTATE INDEX NO. 20-24-422-013-0000, Vol. 261

Affects: Parcel 3

PERMANENT REAL ESTATE INDEX NO. 20-25-107-020-0000, Vol. 262

Affects: Parcel 4

PERMANENT REAL ESTATE INDEX NO. 20-24-425-001-0000, Vol. 261

Affects: Parcel 5

7000-7008 SOUTH CLYDE AVENUE & 2049-2059 EAST 70<sup>TH</sup> STREET, CHICAGO, IL