



1611822250

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:
Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attn: Gina Llanas

Doc#: 1611822250 Fee: \$82.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/27/2016 04:00 PM Pg: 1 of 20

61T 400 19379 9/12
Property Identification No(s):
See Exhibit A

**ILLINOIS AFFORDABLE HOUSING TAX CREDIT
REGULATORY AGREEMENT**

Project Summary

Project Owner: Damen Court Preservation, L.P
Project Owner's Address: 325 North Wells, 8th Floor, Chicago, Illinois 60654
"Sponsor": Hispanic Housing Development Corporation
Project Name: Damen Court Apartments
Project Address: 2040 West Jackson Boulevard, Chicago, Illinois 60612
County/MSA: Cook County
SHTC No.: 11170
Project Unit Count: 38/150 (number of Low Income units/total number of units in project)

THIS ILLINOIS AFFORDABLE HOUSING TAX CREDIT REGULATORY AGREEMENT (this "Agreement") is made as of the 1st day of April, 2016, by and between **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** (the "Authority"), a body politic and corporate established pursuant to the Illinois Housing Development Act, ILCS 3805/1 *et seq.*, as amended from time to time (the "Act") with its principal offices located at 401 North Michigan Avenue, Suite 700, Chicago, Illinois 60611, and **DAMEN COURT PRESERVATION, L.P.**, (the "Owner"), an Illinois limited partnership with its principal offices located at 325 North Wells, 8th Floor, Chicago, Illinois 60654, and **HISPANIC HOUSING DEVELOPMENT CORPORATION** (the "Sponsor"), an Illinois not-for-profit corporation with its principal offices located at 325 North Wells, 8th Floor, Chicago, Illinois 60654.

RECITALS:

A. The Owner is the holder of legal title of certain real property upon which a housing Project is erected, or to be erected, with the common address set forth above in the Project Summary, and legally described on **Exhibit A** attached to and made a part of this Agreement (the "Real Estate"). The Real Estate and the improvements to be constructed on it are collectively referred to in this Agreement as the "Project."

B. The Authority is administrator of the Affordable Housing Tax Credit Program (the "Program") for the State of Illinois, as authorized under Section 7.28 of the Illinois Housing Development Act (the "Act"), and the rules promulgated thereunder (the "Rules"). As Administrator of the Program, the Authority is responsible for reserving

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and allocating Affordable Housing Tax Credits in connection with qualified Affordable Housing Projects. All capitalized terms used in this Agreement and not otherwise defined shall have the meanings established in the Rules.

C. The Sponsor, an Illinois not-for-profit corporation, has received a Donation for the Project, which is of financial benefit to Owner; the Authority has determined that the Project qualifies as an Affordable Housing Project and has allocated or will allocate Affordable Housing Tax Credits in connection with that Donation.

D. It is a requirement of the allocation of Affordable Housing Tax Credits that Owner and Sponsor enter into this Regulatory Agreement and consent to be regulated and restricted by the Authority as provided herein, and as provided for in the Act and the Rules.

NOW, THEREFORE, in consideration of the foregoing recitals and the allocation of Affordable Housing Tax Credits in connection with the Donation made to the Project, the Owner agrees as follows:

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

2. **Act and Rules**. Owner agrees that for so long as this Agreement is in effect, its acts regarding the Project shall be in conformance with Section 7.28 of the Act and the Rules, as they may be amended and supplemented from time to time.

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

a. At least the number of the units set forth above in the Project Summary shall be occupied by Households (as defined in **Paragraph 8** hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Very Low Income Households (as defined in **Paragraph 8** hereof) and at least the number of the units set forth above in the Project Summary shall be occupied by Households whose income, at the time of initial occupancy, does not exceed the income limits for Low Income Households (as defined in **Paragraph 8** hereof);

b. On forms approved by the Authority, Owner shall obtain from each prospective Very Low Income Household and Low Income Household prior to its admission to the Project, a certification of income (the "Certification"). Owner shall submit such Certifications to the Authority in the manner prescribed by the Authority;

c. 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 Project for three (3) years after the year to which such evidence pertains. Within thirty (30) days after the end of each

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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;

d. Owner shall comply with the rent limitations contained in the definition of Affordable Housing Project in Section 355.103 of the Rules; Owner shall annually submit to the Authority for approval a schedule of rents for the units in the Project subject to the income restrictions set forth in this Agreement; Owner shall not change the rent schedule for such units without the Authority's approval.

4. **Transfer or Change of Ownership.** Owner shall not, without the prior written approval of the Authority (which may be given or withheld in the Authority's reasonable discretion) transfer or change the ownership of the Project.

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. **Audit.** The Project and the 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, 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.

b. **Furnishing Information.** At the request of the Authority, Owner shall furnish such operating reports, certifications and other information as may be required by the Authority to monitor the Project's compliance with this Agreement.

6. **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 **Paragraph 15** 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, effective on the date of notice of such declaration of default to Owner, and upon such default, and so long as such default is continuing, the Authority may do the following:

a. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation 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 under the Act; or

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b. Exercise such other rights or remedies as may be available to the Authority under this Agreement, at law or in equity.

If the Authority takes legal action to enforce this Agreement and prevails in its position, Owner shall pay the Authority's reasonable attorneys' fees, costs, disbursements, and other expenses in connection with such legal action.

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.

7. **Termination of Liabilities.** In the event of a sale or other transfer of the Project, 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 Project (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 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.

8. **Definitions.**

a. "Very Low Income Household". As used in this Agreement, the phrase "Very Low Income Household" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to fifty percent (50%) of the median income of the County, or the metropolitan statistical area set forth above in the Project Summary (the "Median Income"), adjusted for family size, as such adjusted income and median income are determined from time to time by the United States Department of Housing and Urban Housing for purposes of Section 8 of the United States Housing Act of 1937.

b. "Low Income Household". As used in this Agreement, the phrase "Low Income Household" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to sixty percent (60%) of the Median Income.

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c. "Household". As used in this Agreement, the word "Household" means a person, family or unrelated persons leasing a Unit in the Project.

9. Term of Agreement; Covenants Run with Project.

a. The term of this Agreement shall be ten (10) years from the date the building is placed in service. Placed in service shall mean the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law.

b. The covenants and agreements set forth in this Agreement shall encumber the Project and be binding on any New Owner and any other future owners of the Project and the holder of any legal, equitable or beneficial interest in it for the term of this Agreement.

c. Notwithstanding any of the provisions of this **Paragraph 9** and **Paragraphs 7** and **13** hereof, if the Project is foreclosed or title to the Project is transferred pursuant to a deed in lieu of foreclosure, this Agreement and all covenants and agreements contained in it shall automatically terminate upon either entry of a final, non-appealable order confirming the foreclosure sale and delivery of a deed to a purchaser at such a sale, or delivery of the deed in lieu of foreclosure to a new owner, as the case may be. Any such foreclosure or transfer that occurs prior to the maturity of any loan shall not terminate the covenants and restrictions contained in this Agreement if such foreclosure or transfer is pursuant to an arrangement between Owner and any other party, a purpose of which is to terminate such covenants and restrictions.

10. Amendment of Agreement. This Agreement shall not be altered or amended without the prior written approval of the Authority.

11. 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.

12. 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.

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13. **Successors.** Subject to the provisions of **Paragraph 7** hereof, this Agreement shall bind Owner, its 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.

14. **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.

15. **Notices.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement 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 Owner:

Damen Court Preservation, L.P.
325 North Wells, 8th Floor
Chicago, Illinois 60654
ATTN: Hipolito Roldan
proldan@hhdevcorp.com – email
312-602-6500 – phone
312-602-6530 – fax

With a copy to:

Laura E. Tilly
Miner, Barnhill & Galland, P.C.
14 W. Erie Street
Chicago, IL 60654
ltilly@lawmbg.com – email
312-751-1170 – phone
312-751-9490 - fax

If to Authority:

Illinois Housing Development Authority
401 N. Michigan Ave., Suite 700
Chicago, Illinois 60611
Attention: Legal Department

Such addresses may be changed by notice to the other party given in the same manner as provided in this **Paragraph 15**. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (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

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subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

16. 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.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day and year set forth above.

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: Audra Hamernik
Printed Name: Audra Hamernik
Its: Executive Director

OWNER:

DAMEN COURT PRESERVATION, L.P.,
an Illinois limited partnership

By: Damen Court Preservation NFP, an Illinois
not-for-profit corporation
Its: General Partner

By: _____
Name: Hipolito Roldan
Its: President

SPONSOR:

HISPANIC HOUSING DEVELOPMENT CORPORATION,
an Illinois not-for-profit corporation

By: _____
Printed Name: _____
Its: _____

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day and year set forth above.

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____
Printed Name: _____
Its: _____

OWNER:

DAMEN COURT PRESERVATION, L.P.,
an Illinois limited partnership

By: Damen Court Preservation NFP, an Illinois
not-for-profit corporation
Its: General Partner

By: *Hipolito Roldan*
Name: Hipolito Roldan
Its: President

SPONSOR:

HISPANIC HOUSING DEVELOPMENT CORPORATION,
an Illinois not-for-profit corporation


By: *Hipolito Roldan*
Printed Name: HIPOLITO ROLDAN
Its: PRESIDENT

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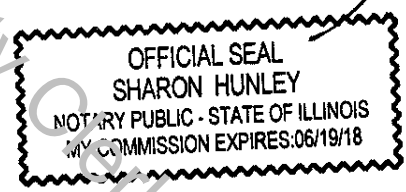
STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that **Audra Hamernik** personally known to me to be the **Executive Director** of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument in his/her capacity as the **Executive Director** of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** as his/her free and voluntary act and deed and as the free and voluntary act and deed of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** for the uses and purposes therein set forth.

Given under my hand and official seal this 21st day of April, 2016.



 Notary Public



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STATE OF ILLINOIS)
) SS
COUNTY OF cooke)

I, Laura E. Tilly, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Hipolito Roldan, personally known to me to be the President of Damen Court Preservation, NFP, an Illinois not-for-profit corporation, the General Partner of Damen Court Preservation, L.P., an Illinois limited partnership, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President of Damen Court Preservation, NFP he signed and delivered the said instrument pursuant to authority given by said limited partnership as his free and voluntary act, and as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

Given under my hand and official seal this 22nd day of April, 2016.



Laura E. Tilly
Notary Public

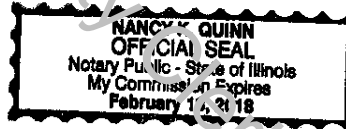
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STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Hipolito Roldan, personally known to me to be the President of Hispanic Housing Development Corporation and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument in his/her capacity as President of Hispanic Housing Development, as his/her free and voluntary act and deed and as the free and voluntary act and deed of Hispanic Housing Development Corp., for the uses and purposes therein set forth.

Given under my hand and official seal this 22nd day of April, 2016.

Nancy Quinn
Notary Public



UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION**

PARCEL 1:

LOT 3 (EXCEPT THE NORTH 37 FEET THEREOF) THE NORTH 1/2 OF LOT 9 AND ALL OF LOTS 4, 5, 6, 7, 10, AND 11 IN BLOCK 3 IN OWSLEY'S SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH LOT 1 IN WILSON'S SUBDIVISION SOUTH OF AND ADJOINING THERETO, IN COOK COUNTY, ILLINOIS;

ALSO

LOTS 1 TO 12, INCLUSIVE, IN THE RESUBDIVISION OF LOTS 1, 2, 12, 13, 14, AND THE NORTH 37 FEET OF LOT 3 IN BLOCK 3 IN OWSLEY'S SUBDIVISION AFORESAID;

ALSO

ALL OF THE NORTH-SOUTH AND EAST-WEST VACATED ALLEYS FURTHER DESCRIBED AS ALL OF THE ALLEYS IN THE BLOCK BOUNDED BY WEST ADAMS STREET, WEST JACKSON BOULEVARD, SOUTH SEELEY AVENUE AND SOUTH DAMEN AVENUE VACATED BY ORDINANCE PASSED APRIL 23, 1941 AND RECORDED APRIL 25, 1941 AS DOCUMENT NO. 12667268;

ALSO

LOTS 1 TO 9, INCLUSIVE, (BEING ALL THE LOTS) AND ALLEY FOR THE USE OF OWNERS OF LOTS IN THIS SUBDIVISION ONLY (WHICH ALLEY WAS VACATED BY THE INSTRUMENT RECORDED APRIL 11, 1924 AS DOCUMENT NO. 8359301), IN WILLIAM LAWRENCE'S SUBDIVISION, BEING A SUBDIVISION OF LOT 46 OF E. SMITH'S SUBDIVISION, AND LOT 8 AND THE SOUTH 1/2 OF LOT 9 IN BLOCK 3 IN OWSLEY'S SUBDIVISION AND THE 3 FEET, MORE OR LESS, LYING BETWEEN SAID LOTS 8 AND 46, ALL IN THE EAST 1/2 OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 18 AFORESAID;

ALSO

LOT 45 (EXCEPT THAT PART, IF ANY, TAKEN FOR JACKSON BOULEVARD) IN ELIJAH SMITH'S SUBDIVISION OF A 5 ACRES TRACT IN THE SOUTH 1/2 OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 18 AFORESAID.

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PARCEL 2:

THE SOUTH 1/2 OF LOT 2 AND ALL OF LOTS 3 TO 17, INCLUSIVE, (EXCEPT THAT PART OF LOTS 10 AND 11 TAKEN FOR STREET BY DEED RECORDED MAY 10, 1898 AS DOCUMENT NO. 2684289), IN BLOCK 4 IN OWSLEY'S SUBDIVISION AFORESAID.

PARCEL 3:

LOTS 1 TO 3, INCLUSIVE, IN J. L. SPROGLE'S SUBDIVISION OF LOT 1 AND THE NORTH 1/2 OF LOT 2 IN BLOCK 4 OF OWSLEY'S SUBDIVISION AFORESAID.

PARCEL 4:

ALL OF THE EAST-WEST 12 FOOT ALLEYS (2) AND THE NORTH-SOUTH 13 FOOT ALLEY AS LAID OUT IN BLOCK 4 IN OWSLEY'S SUBDIVISION, AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 5:

ALL OF SEELEY AVENUE LYING BETWEEN BLOCKS 3 AND 4 IN OWSLEY'S SUBDIVISION AFORESAID AND LYING BETWEEN THE NORTH AND SOUTH LINES OF SAID BLOCKS EXTENDED (EXCEPTING THEREFROM THAT PART OF SAID SEELEY AVENUE LYING BETWEEN THE WEST 9 FEET THEREOF AND THE EAST 18 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

PARCEL 6

EASEMENTS CREATED BY GRANT FROM THE CITY OF CHICAGO TO DAMEN COURT ASSOCIATES DATED NOVEMBER 18, 1979 AND RECORDED AS DOCUMENT NO. 25263133, FOR THE USE OF THE GRANTEE FOR PARKING AND PLAY AREAS IN CONJUNCTION WITH THE REDEVELOPMENT OF LOW AND MODERATE INCOME HOUSING ON ABUTTING PARCELS (PARCELS 1, 2, 3 AND 4), OVER THAT PART OF SEELEY AVENUE LYING BETWEEN DAMEN AND HOYNE AVENUE, ADAMS STREET AND JACKSON BOULEVARD (EXCEPTING THEREFROM THE WEST 9 FEET AND THE EAST 18 FEET OF SEELEY AVENUE) BEING MORE PARTICULARLY DESCRIBED AS ALL OF SEELEY AVENUE LYING BETWEEN BLOCKS 3 AND 4 IN OWSLEY'S SUBDIVISION AFORESAID AND LYING BETWEEN THE NORTH AND SOUTH LINES OF SAID BLOCKS EXTENDED (EXCEPTING THEREFROM THE WEST 9 FEET AND THE EAST 18

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FEET THEREOF), IN COOK COUNTY, ILLINOIS.

Address: 2040 W. Jackson Blvd.
Chicago, IL 60612

PINs: 17-18-118-001-0000
17-18-118-002-0000
17-18-118-003-0000
17-18-118-004-0000
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17-18-119-013-0000

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This RIDER TO ILLINOIS AFFORDABLE HOUSING TAX CREDIT REGULATORY AGREEMENT is made as of April 1, 2016, by Damen Court Preservation, L.P., an Illinois limited partnership ("Borrower") and Illinois Housing Development Authority, a corporate and body politic of the State of Illinois ("Agency").

WHEREAS, Borrower has obtained financing from PNC Bank, N.A. ("Lender") for the benefit of the project known as Damen Court Apartments ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of April 1, 2016, and recorded in the Recorder's Office of Cook County, Illinois ("Records") on April 27, 2016 and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, the Agency is preparing Borrower has received a reservation of Illinois Affordable Housing Tax Credits from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

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

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

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 Rider, the provision contained in this Rider 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 PNC Bank, N.A., 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.

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“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, ~~{use for tax credit transactions only: 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 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) ~~{Use for tax credit transactions only: In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in} 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, ~~{use for tax credit transactions only: with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, 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 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 of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- 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, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.

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(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) ~~***{Use only with Low-Income Housing Tax Credits:***~~ Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. 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 Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. 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. ~~***{Use only with tax-exempt bonds:***~~ No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations. }

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BORROWER:

DAMEN COURT PRESERVATION, L.P.

By: Damen Court Preservation, NFP, its general partner

By: 
Name: Hipolito Roldan
Title: President

STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this April 22, 2016, Hipolito Roldan, President of the General Partner of Damen Court Preservation, L.P., personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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 Damen Court Preservation, L.P., for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]


Notary Public



UNOFFICIAL COPY

AGENCY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: Audra Hamernik
Name: **Audra Hamernik**
Title: **Executive Director**

STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this April 26, 2016, **Audra Hamernik**, the **Executive Director** of the Illinois Housing Development Authority, personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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 the Illinois Housing Development Authority for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Margaret A. Vizzini

Notary Public

