

UNOFFICIAL COPY

52599



2103616043

Doc# 2103616043 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/05/2021 12:27 PM PG: 1 OF 26

USE RESTRICTION AGREEMENT

By and Among

ILLINOIS HOUSING DEVELOPMENT AUTHORITY,
as Issuer

CIRCLE PARK PRESERVATION, L.P.,
as Owner

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

\$84,895,000

Illinois Housing Development Authority
Multifamily Revenue Bonds 2021 Series A (Non-AMT)

Dated as of January 1, 2021

Effective as of the Effective Date hereof

This instrument prepared by:

Kutak Rock LLP
One South Wacker Drive
Suite 3910
Chicago, Illinois 60606



UNOFFICIAL COPY

Table of Contents

<u>Section</u>	<u>Name</u>	<u>Page</u>
Section 1.	Definitions.....	2
Section 2.	Number and Gender.....	4
Section 3.	Headings.....	4
Section 4.	Construction.....	5
Section 5.	Benefit.....	5
Section 6.	Covenant with Respect to Tax Status of the Bonds.....	5
Section 7.	Qualified Residential Rental Project Requirements.....	5
Section 8.	Transfer Restrictions.....	9
Section 9.	Certification to Secretary of the Treasury.....	10
Section 10.	Enforcement.....	10
Section 11.	Violations.....	11
Section 12.	No Duty of Issuer to Monitor Compliance.....	12
Section 13.	Amendment.....	12
Section 14.	Severability.....	12
Section 15.	Notices.....	12
Section 16.	Governing Law.....	13
Section 17.	Termination.....	13
Section 18.	Post-Defeasance.....	14
Section 19.	Indemnification.....	14
Section 20.	Recordation.....	15
Section 21.	Covenants to Run with Interest in Land; Successors Bound.....	15
Section 22.	No Conflict with Other Documents.....	15

Exhibit A – Description of Project Site

UNOFFICIAL COPY

USE RESTRICTION AGREEMENT

THIS USE RESTRICTION AGREEMENT (this "Agreement") is made as of January 1, 2021, and effective as of the Effective Date by and among Circle Park Preservation, L.P., a New York limited partnership, its successors and assigns (the "Owner"), Illinois Housing Development Authority, a body politic and corporate of the State of Illinois (the "Issuer") and The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), for the Issuer's \$84,895,000 Multifamily Revenue Bonds, 2021 Series A (Non-AMT) (the "Series F Bonds"), issued pursuant to the Trust Indenture dated as of September 1, 2016, between the Issuer and the Trustee (the "MRB General Indenture"), as supplemented by the 2021 Series A Indenture, dated as of January 1, 2021, between the Issuer and the Trustee (the "2021 Series A Indenture" and together with the MRB General Indenture, the "MRB Indenture").

RECITALS

WHEREAS, the Owner will be the record owner and operator of the buildings (and improvements, furnishings, equipment and related property to be installed therein), which are located at 1111 South Ashland Avenue, 1011 South Ashland Avenue and 1111 South Laflin Avenue in the City of Chicago, Cook County, Illinois, and are described in Exhibit A (the land together with the buildings thereon referred to hereinafter as the "Real Estate"); and

WHEREAS, the Owner intends to operate the Real Estate as a multifamily residential rental housing project (to be referred to as "Circle Park") that comprises 418 residential units to provide rental housing to low or moderate income individuals and families at low or moderate rental amounts (the "Project"); and

WHEREAS, the acquisition, rehabilitation and equipping of the Real Estate will be financed in part by a mortgage loan (the "Risk Share Loan") made to the Owner by the Issuer pursuant to the Issuer's mortgage revenue bond program and insured by the U.S. Department of Housing and Urban Development ("HUD") under the risk sharing provisions of Section 542(c) of the Housing and Community Development Act of 1992; and

WHEREAS, the Risk-Share Loan will be funded from proceeds of the sale of the Series F Bonds; and

WHEREAS, interest on the Bonds is and will remain excludible from gross income for federal income tax purposes, provided, among other things, that the Project is treated as a "qualified residential rental project" under, and continuously complies with the requirements of; Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code") and the applicable Treasury Regulations ("Regulations" or "Treas. Reg."); and

WHEREAS, the Project's compliance with the requirements of Section 142(d) of the Code and the applicable Regulations and the Bonds' treatment as "exempt facility bonds" under Section 142(a)(7) of the Code is in large part within the control of the Owner; and

UNOFFICIAL COPY

WHEREAS, the Issuer, Owner and Trustee have agreed to comply with the requirements set forth in the Arbitrage and Tax Certificate and the Project Certificate, each dated the Effective Date (collectively, the "Tax Agreement"); and

WHEREAS, the Issuer is unwilling to issue the Bonds unless the Owner shall, by agreeing to this Agreement, consent to be regulated by the Issuer to preserve the exclusion of interest on the Bonds from the gross income of their owners under Section 103(a) of the Code.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other good and valuable consideration, the Issuer, the Owner and the Trustee agree as follows:

Section 1. Definitions. In addition to words and terms defined elsewhere in this Agreement, the following words and terms used in this Agreement shall have the following meanings, unless some other meaning is plainly intended, and any terms not defined in this Agreement shall have the same meaning as such terms are defined in the Indentures, the Tax Agreement or in Section 142(d) of the Code and the applicable Regulations:

"Area Median Gross Income" means the median income in the geographic area (as determined for purposes of Section 142(d) of the Code) in which the Residential Rental Property is located, as determined annually in a manner consistent with determinations of lower income families and area median gross income under Section 8 (or, if such program under Section 8 is terminated, under such program in effect immediately before such termination) by HUD, as prescribed by the Secretary of the Treasury. Any determination of Area Median Gross Income shall be made in accordance with and subject to the requirements of Sections 142(d)(2)(B) and 142(d)(2)(E) of the Code.

"Assumption Agreement" means an agreement or undertaking by any transferee, pursuant to a Transfer, to assume the obligations and duties of the Owner described in this Agreement and the Tax Agreement.

"Available Units" means Residential Rental Units that are actually occupied or that are unoccupied and have been leased at least once after first becoming available for occupancy, provided that (a) in the case of an acquisition of an existing facility for the purpose of establishing or continuing a qualified residential rental project under Section 142(d) of the Code, a Residential Rental Unit that is unoccupied on the later of (i) the date such facility is acquired or (ii) the issue date of the first issue of Qualified 142(d) Bonds financing the acquisition of such facility is not an Available Unit and does not become an Available Unit until it has been leased for the first time after such date, and (b) a Residential Rental Unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been leased for the first time after such renovations are completed.

"Bond Counsel" means any nationally recognized bond counsel experienced in municipal finance and, particularly, in the issuance of debt the interest on which is excludible from gross income for federal income tax purposes.

"Business Day" means a day, other than a Saturday or a Sunday, on which (a) banking institutions in the City of New York or in the city in which the Designated Office of the Trustee is

UNOFFICIAL COPY

located is authorized or obligated by law or executive order to be closed, or (b) The New York Stock Exchange is closed.

“Certification of Income” means a certification, including all necessary information and documentation, to substantiate the amount of income of all residents of a Residential Rental Unit, given by a prospective or current Qualified Tenant.

“Effective Date” means the date of issuance of the Bonds.

“Issuer Representative” means the appropriate authorized representative of the Issuer or such representative’s designee (designated in writing).

“Investor Partner” means Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation, and its permitted successors and assigns.

“Low and Moderate Income” means income that does not exceed 60% of the Area Median Gross Income, with appropriate adjustments to income level made for family size, as determined in a manner consistent with the determinations of lower income families and area median gross income under Section 8 (or, if such program under Section 8 is terminated, under such program in effect immediately before such termination), all as made in accordance with and subject to the requirements of Section 142(d)(2)(B) of the Code. For these purposes, income shall be treated as not exceeding 60% of the Area Median Gross Income, with appropriate adjustments to income level made for family size, if the relevant individual’s or family’s adjusted income (computed in the manner described in Treas. Reg. § 1.167(k)-3(h)(3) prior to its removal by T.D. 8474, 1993-1 C.B. 242) does not exceed 60% of the applicable Area Median Gross Income.

“Occupancy Standards” means the requirement that at least 40% of the Available Units must be actually occupied by (or treated as occupied by, as provided herein) Qualified Tenants. An Available Unit shall be treated as “occupied” by a Qualified Tenant during the applicable tenancy for purposes of the Occupancy Standards if the tenant of such Unit was a Qualified Tenant at the commencement of his or her actual occupancy of the Available Unit, even though such tenant ceases to be a Qualified Tenant because he or she ceases to have Low and Moderate Income, provided that the second sentence of paragraph (q) of Section 7 below does not apply to such tenant. Moreover, if an Available Unit vacated by a Qualified Tenant was actually occupied by a Qualified Tenant at the commencement of such Qualified Tenant’s occupancy of such Unit, such Available Unit shall be treated as occupied by a Qualified Tenant until reoccupied, excluding any reoccupation for a temporary period of not more than thirty-one (31) days. The character of any Available Unit described in the immediately preceding sentence shall be redetermined upon expiration of the thirty-one (31)-day period. In calculating the foregoing 40% requirement, if the resulting number of Available Units contains a fraction, it shall be rounded up to the next highest whole number.

“Purpose Investment” means an investment acquired to carry out the governmental purpose of the Bonds, as described in Treas. Reg. § 1.148-1(b).

“Qualified 142(d) Bonds” means obligations that satisfy the requirements of Sections 103 and 142(d) of the Code.

UNOFFICIAL COPY

“Qualified Project Period” means the period commencing on the later of the first day on which at least 10% of the Residential Rental Units in the Residential Rental Property are occupied or the issue date of the Qualified 142(d) Bonds issued to acquire such facility and ending on the latest of the following: (A) the date that is fifteen years after the date on which at least 50% of the Residential Rental Units in the facility are first occupied; (B) the first day on which no tax-exempt private activity bond (as defined in Section 141(a) of the Code) issued with respect to the facility is outstanding; or (C) the date on which any assistance provided with respect to the facility under Section 8 terminates.

“Qualified Tenant” means any individual or family with Low and Moderate Income. However, if all the occupants of a Residential Rental Unit are Students, such individuals may not be treated as Qualified Tenants. Subject to the preceding two sentences, “Qualified Tenant” may include any individual who is (i) a Student and receiving assistance under Title IV of the Social Security Act, (ii) a Student who was previously under the care and placement responsibility of the Illinois agency responsible for administering a plan under part B or part E of Title IV of the Social Security Act or (iii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, state or local laws.

“Related Person” means an individual or entity who, concerning the referenced party, is described in Section 147(a)(2) of the Code.

“Residential Rental Property” means the Real Estate or any other building or structure containing one or more similarly constructed Residential Rental Units used for the Project, including facilities functionally related and subordinate thereto, as provided in Treas. Reg. § 1.103-8(b).

“Residential Rental Unit” means a housing unit containing separate and complete living, sleeping, eating, cooking and sanitation facilities for a single person or a family. Such housing unit shall contain a kitchen that includes a stove, cooking range, full-size refrigerator and sink. A housing unit, however, shall not fail to be treated as a “Residential Rental Unit” merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

“Section 8” means Section 8 of the United States Housing Act of 1937, as amended.

“Student” means any full-time student (within the meaning of Section 42(i)(3)(D) of the Code) unless he or she is described in Section 42(i)(3)(D)(ii) of the Code.

“Transfer” means any conveyance, transfer, whether by sale, exchange, gift or assignment or other disposition of a facility.

Section 2. Number and Gender. Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 3. Headings. The titles and headings of the sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall

UNOFFICIAL COPY

not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent shall arise.

Section 4. Construction. It is intended that this Agreement set forth the terms, conditions, limitations and restrictions applicable to the Project and that the Project be a “qualified residential rental project” under Sections 142(a)(7) and 142(d) of the Code. All provisions herein shall be construed in accordance with such intent.

Section 5. Benefit. The Issuer, the Owner and the Trustee each acknowledges that a primary purpose for requiring compliance by the Owner with this Agreement is to preserve the excludability from gross income for federal income tax purposes of interest on the Bonds, and that the Trustee and the holders of the Bonds shall be entitled, for any breach of the provisions hereof, to all remedies, both at law and in equity, in the event of any default hereunder.

Section 6. Covenant with Respect to Tax Status of the Bonds. The Issuer and the Owner each covenants that it will not knowingly take, or permit to be taken, any action that would adversely affect the excludability from gross income for federal income tax purposes of interest on the Bonds, and the Trustee covenants that it will not invest or use any of the proceeds of the Bonds, except as otherwise directed by the Issuer or the Owner in writing.

Section 7. Qualified Residential Rental Project Requirements. The Owner represents, warrants and covenants that the Project shall, throughout the Qualified Project Period, unless this Agreement is earlier terminated pursuant to Section 17 of this Agreement, satisfy the following terms and conditions, limitations and restrictions:

- (a) *Satisfaction of Applicable Legal Requirements.* The Project is being acquired, renovated and developed for the purpose of providing multifamily Residential Rental Units, and the Project shall be owned, managed and operated as multifamily Residential Rental Units, all in accordance with the qualified residential rental project requirements of Section 142(d) of the Code and the applicable residential rental project provisions of Treas. Reg. § 1.103-8(b) and the administrative guidance issued thereunder;
- (b) *Rehabilitation Requirement.* Except as provided in Subsection (b)(i) below, the Owner certifies that none of the proceeds of the Bonds will be used to acquire any property unless such property was or will be first used by the Owner.
 - (i) Subsection (b) hereof does not apply to any building included in the Project (and the equipment thereof) if the Rehabilitation Expenditures (as such term is defined in Subsection (b)(ii) below) incurred by the Owner with respect to the Project (and the equipment thereof) equal or exceed in the aggregate 15% of the cost of acquiring each such building and equipment that is financed with the proceeds of the Bonds. The Owner covenants that the Rehabilitation Expenditures for each building (and the equipment

UNOFFICIAL COPY

thereof) acquired with proceeds of the Bonds will satisfy the conditions of the preceding sentence.

- (ii) For purposes hereof, the term “Rehabilitation Expenditures” means any amount properly chargeable to capital account that is incurred by the Owner in connection with the rehabilitation of a building; in the case of an integrated operation contained in a building prior to its acquisition, such term includes costs of rehabilitating existing equipment in such building or replacing such equipment with equipment having substantially the same function. The term “Rehabilitation Expenditures” does not include (i) any expenditure described in Section 47(c)(2)(B) of the Code, and (ii) any amount incurred more than two (2) years after the later of (A) the date on which the building is acquired by the Owner, or (B) the date on which the Bonds are issued.
- (c) *Similarly Constructed Residential Rental Units.* All of the Residential Rental Units in the Project shall be similarly constructed;
- (d) *Transient Use.* During the term of this Agreement, (i) none of the Residential Rental Units in the Project shall at any time be utilized on a transient basis, (ii) none of the Residential Rental Units in the Project shall ever be leased or rented for a period of less than thirty (30) days, and (iii) neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer court or park or for any other use on a transient basis;
- (e) *General Public Availability.* During the term of this Agreement, (i) the Residential Rental Units in the Project shall be leased and rented or made available for rental on a continuous basis to members of the general public except as otherwise limited by federal, state or local law, and (ii) the Owner shall not give preference in renting Residential Rental Units in the Project to any particular class or group of persons, other than Qualified Tenants as provided herein; provided, however, that it is understood that setting aside 120 senior units does not violate such agreement, and that Residential Rental Units in the Project may be occupied by maintenance, security or managerial employees of the Owner or its property manager who are reasonably required to maintain residences in the Project, but only to the extent such occupation does not cause the Project to cease to be a qualified residential rental project under Section 142(d) of the Code;
- (f) *Use of Related Facilities by Tenants.* Any functionally related and subordinate facilities (e.g., parking areas, laundry facilities, tenant offices, physical therapy rooms, dining rooms, meeting rooms, common areas, swimming pools, tennis courts, etc.) (the “Related Facilities”) for the Project will be made available to all tenants of the Project on an equal basis.

UNOFFICIAL COPY

Fees charged to residential tenants for use of the Related Facilities will be commensurate with fees charged for similar facilities at similar residential rental properties in the surrounding area and, in no event will any such fees charged to tenants of the Project be discriminatory or exclusionary as to the Low and Moderate Income tenants of the Project. No Related Facilities will be made available to persons other than tenants or their guests. Parking, if available, will be made available to all tenants on a first come, first served basis;

- (g) *Compliance with Set-Aside Election.* In accordance with the Tax Agreement, the Owner covenants that during the Qualified Project Period, 40% of the Residential Rental Units in the Project will be occupied or available for occupancy by individuals earning 60% or less of the area median gross income in accordance with Section 142(d)(1)(A) of the Code.
- (h) *No Cooperative Housing Corporation Ownership.* During the term of this Agreement, no part of the Project will at any time be owned or used by a cooperative housing corporation;
- (i) *Ownership, Structure and Financing.* The Project will consist of one or more buildings or structures, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a single tract of land, consisting of any parcel of land or two or more parcels of land that are contiguous except for being separated only by a road, street, stream or similar property (parcels are contiguous if their boundaries meet at one or more points) and (iii) financed with proceeds of the Bonds or otherwise pursuant to a common plan of financing. Each such building or structure is a discrete edifice or other man-made construction consisting of an independent foundation, outer walls and roof and containing five or more similarly constructed units;
- (j) *Condominium Ownership.* During the term of this Agreement, the Owner will not convert the Project to condominium ownership;
- (k) *Owner Rentals.* During the term of this Agreement, no Residential Rental Unit in the Project shall be occupied by the Owner (or a Related Person) at any time unless the Owner (or a Related Person) resides in a Residential Rental Unit in a building or structure that contains at least five Residential Rental Units and unless the resident of such Residential Rental Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);
- (l) (l) *Certificate of Project Commencement.* The Qualified Project Period with respect to the Bonds and the Project begins on the date on which 10 percent of the Residential Rental Units in the Project are occupied;

UNOFFICIAL COPY

- (m) *No Discrimination.* During the term of this Agreement, the Owner shall not discriminate on the basis of age, race, color, creed, national origin, religion, sex or marital status in the lease, use or occupancy of the Project except as otherwise permitted by federal, state or local law or in connection with the employment or application for employment of persons for the operation and management of the Project; and the Owner specifically agrees that the Owner will not refuse to lease residential rental units or deny occupancy in appropriately sized units to persons whose family includes minor dependents who will occupy such units, unless such refusal is based upon factors not related to the presence of such minors in the family;
- (n) *Payment of Expenses.* During the term of this Agreement, the Owner shall make timely payment of the fees and expenses, if any, of the Trustee in accordance with the provisions of this Agreement and the Indentures, including any expenses incurred by the Trustee in performance of its duties and obligations under this Agreement;
- (o) *Certification of Income.* As a condition of occupancy, each Qualified Tenant shall be required to sign and deliver to the Owner a Certification of Income, in a form designed to establish compliance with the applicable provisions of the Code and the Treasury Regulations, or as otherwise required by the Internal Revenue Service. Such Qualified Tenant shall also be required to provide whatever other information, documents or certifications are deemed necessary by the Owner or the Issuer to substantiate the Certification of Income. All Certifications of Income with respect to each Qualified Tenant who resides in a Residential Rental Unit in the Project or resided in a Residential Rental Unit during the immediately preceding calendar year shall be maintained on file at the main business office of the Project and shall be available for inspection by the Issuer and the Trustee with reasonable notice and at reasonable times, as required in the Tax Agreement;
- (p) *Annual Determinations.* The determination of whether a resident of the Project is a Qualified Tenant shall be made at least annually on the basis of the current income of all the residents of the Residential Rental Unit. Each lease to a Qualified Tenant entered into after the date hereof shall require the tenant to sign the Certification of Income annually, attesting to the combined income of all the occupants of each Residential Rental Unit and at any other time as the Owner may reasonably request;
- (q) *Subsequent Changes to Income.* If a tenant is a Qualified Tenant upon commencement of occupancy of a Residential Rental Unit, the income of such tenant shall be treated as Low or Moderate Income. The preceding sentence shall cease to apply to any tenant whose income as of the most recent annual determination under paragraph (o) of this Section exceeds 140% of Low and Moderate Income if, after such determination, but before the next annual determination, any Residential Rental Unit of comparable

UNOFFICIAL COPY

or smaller size in (i) the same building (within the meaning of Section 42 of the Code), provided that the Project is eligible for low-income housing tax credits under Section 42 of the Code or (ii) the Project, if the Project is not eligible for low-income housing tax credits under Section 42 of the Code, is occupied by a new tenant who does not qualify as a Qualified Tenant;

- (r) *Form of Lease.* Any lease used in renting any Residential Rental Unit to a Qualified Tenant shall provide for termination of the lease and consent by such tenant to immediate eviction, subject to applicable provisions of Illinois and federal laws and regulations, for failure to qualify as a Qualified Tenant as a result of any material misrepresentation made by such tenant with respect to any Certification of Income. Each Qualified Tenant occupying a Residential Rental Unit shall be required to execute a written lease that shall be effective for a term of not less than six (6) months;
- (s) *Owner's Certification.* On the first day of each month after any Residential Unit in the Project is available for occupancy, the Owner shall prepare a record of the percentage of Residential Rental Units of the Project occupied (and treated as occupied) by Qualified Tenants during the preceding month. Such record shall be maintained on file at the main business office of the Project, shall be available for inspection by the Issuer and the Trustee upon reasonable notice and at reasonable times and shall contain such other information and be in the form required by the Issuer and/or the Trustee, as applicable;
- (t) *Occupancy Standards.* The Project shall satisfy the Occupancy Standards; and
- (u) *Records Maintenance and Inspection.* During the term of this Agreement, the Owner shall (i) maintain complete and accurate records pertaining to the Residential Rental Units occupied or to be occupied by Qualified Tenants, and (ii) permit any duly authorized representative of the Trustee, the Issuer, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Owner pertaining to the income of and Certificate of Income of Qualified Tenants residing in the Project upon reasonable notice and at reasonable times.

Section 8. Transfer Restrictions. For the Qualified Project Period, except with respect to foreclosure or deed in lieu of foreclosure or other involuntary loss described in Treas. Reg. § 1.103-8(b)(6)(iii)(a) and not otherwise described in paragraph (b) thereof, the Owner shall not Transfer the Project or any interest therein, in whole or in part, except in accordance with the applicable terms of the Indentures, the Loan Agreement and the Tax Agreement, the Owner's Amended and Restated Operating Agreement dated on or about the date hereof, and this Section 8. Any Transfer of the Project or any interest therein, in whole or in part, shall only be permitted if: (a) the Owner shall not be in default hereunder; (b) the purchaser or assignee shall assume in writing in a form acceptable to the Issuer, all duties and obligations of the Owner under this Agreement, including this Section 8, and execute any necessary or appropriate document

UNOFFICIAL COPY

reasonably requested by the Trustee or the Issuer with respect to assuming its obligations under this Agreement in the form of an Assumption Agreement, which document shall be recorded in the Cook County (Illinois) Recorder's Office; (c) the Trustee and the Issuer shall have received an opinion of Bond Counsel, which opinion is acceptable to the Trustee and the Issuer, to the effect that such transfer will not adversely affect the exclusion of the interest on the Bonds from gross income of the owners thereof for federal income tax purposes; (d) the Owner shall deliver to the Trustee and the Issuer an opinion of counsel to the transferee that the transferee has duly assumed the obligations of the Owner under this Agreement and that such obligations and this Agreement are binding on the transferee; and (e) such other conditions are met as are set forth in or referred to in the Indentures and Tax Agreement and as the Trustee or the Issuer may reasonably impose as part of the Assumption Agreement: (i) to protect the exclusion of the interest on the Bonds from gross income of the owners thereof for federal income tax purposes, (ii) to ensure that the Project is not acquired by a person that has pending against it, or that has a history of, building code violations, as identified by municipal, county, state or federal regulatory agencies, and (iii) to provide that indemnification of the Issuer and the Trustee under Section 19 of this Agreement and elsewhere is assumed by the purchaser or assignee. The Owner shall deliver the Assumption Agreement and required opinions to the Trustee and the Issuer at least ten (10) Business Days prior to a proposed Transfer.

Section 9. Certification to Secretary of the Treasury. The Owner represents, warrants and covenants that it shall file each year with the Internal Revenue Service a Form 8703 (Annual Certificate of a Residential Rental Project) to provide annual information to the Internal Revenue Service that it will use to determine whether the Project continues to be a "qualified residential rental project" under Section 142(d) of the Code. The Owner shall simultaneously send copies of such certification to the Issuer and the Trustee. The Owner acknowledges that failure to file such certification with the Secretary of the Treasury when required would subject the Owner to penalty, as provided in Section 6652(j) of the Code.

Section 10. Enforcement. The Owner further represents, warrants and covenants that:

- (a) *Examination of Records.* The Owner shall permit, after three (3) Business Days prior written notice, and at such reasonable times, any duly authorized representative of the Issuer and/or the Trustee to inspect any books and records of the Owner regarding the Project, particularly with respect to the incomes of Qualifying Tenants that pertain to compliance with the provisions of this Agreement and Section 142(d) of the Code. Any certification, records or other documents deemed necessary by the Issuer or the Trustee to show the Project's compliance with Section 142(d) of the Code shall be maintained on file at the Project site so long as any of the Bonds (and any tax-exempt obligations used to refund any of the Bonds) remain outstanding and for four (4) years thereafter;
- (b) *Other Information.* The Owner shall provide such other information, documents or certifications requested by the Issuer or the Trustee that the Issuer or the Trustee, as applicable, deems reasonably necessary, to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 142(d) of the Code; and

UNOFFICIAL COPY

- (c) *Reliance on Owner or Tenant Certification.* In the enforcement of the Agreement, the Issuer or the Trustee may rely on any certificate delivered by or on behalf of the Owner or any tenant concerning the Project.

Section 11. Violations.

- (a) *Notice.* The Owner further represents, warrants and covenants that it will inform the Issuer, the Investor Partner and the Trustee by written notice of any violation of the Owner's obligations under this Agreement or the occurrence or existence of any situation or event (an "adverse development") that would cause the interest of the Bonds to become includable in the gross income of their holders for federal income tax purposes within five (5) Business Days after discovering any such adverse development;
- (b) *Time to Correct.* The Owner covenants and agrees to use commercially reasonable efforts to correct or rectify any adverse development no later than thirty (30) days after such adverse development is first discovered or should have been discovered by the Owner's exercise of reasonable diligence. The Issuer and the Trustee covenant and agree to provide the Owner (and Investor Partner, at its option) a period of time, which shall be at least thirty (30) days after the date such adverse development is first discovered, or if later, within such further time as the Issuer or the Trustee, as applicable, determines is necessary to correct or rectify the adverse development without loss of tax exemption of interest on the Bonds, not to exceed any limitations set by applicable laws, rules, regulations or administrative guidance, in which to correct any adverse development. The Owner represents, warrants and covenants that if any such adverse development is not corrected to the satisfaction of the Issuer and the Trustee within the period of time specified by the Issuer and the Trustee, without further notice, the Issuer or the Trustee, as applicable, may declare a default under this Agreement, effective on the date of such declaration of default;
- (c) *Specific Performance.* The Owner acknowledges that the Issuer and/or the Trustee and/or, to the extent permitted in the Indentures, any Owner of a Bond, may also apply, individually or collectively, to any court, state or federal, for specific performance of this Agreement, or for an injunction against any violation of this Agreement, or for any other remedies at law or in equity or for any such other actions as shall be necessary or desirable so as to correct non-compliance with this Agreement;
- (d) *Investor Partner Cure Rights.* The Issuer and the Trustee agree that any cure of a violation of this Agreement made or tendered by the Investor Partner shall be deemed to be a cure by the Owner, and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

UNOFFICIAL COPY

Section 12. No Duty of Issuer to Monitor Compliance. The Owner further represents, warrants and covenants that the Issuer and the Trustee shall each have the right to appoint an agent to carry out any of its duties and obligations under this Agreement, and the Issuer and the Trustee shall inform the Owner and the Investor Partner and the other party of any such agency appointment by written notice.

The Trustee shall have no duty to enforce any of the obligations of the Owner under this Agreement but shall be obligated to notify the Issuer and the Investor Partner of the failure of the Owner to comply with such obligations of which the Trustee has actual knowledge. The Owner hereby agrees to pay all reasonable costs and expenses of the Trustee in undertaking the administration services under this Agreement. The Owner hereby agrees, upon reasonable written notice from the Trustee, to make the Project and the books and records relating to tenant income compliance required hereunder available for inspection during regular business hours by the Trustee as an agent of the Issuer. Notwithstanding the foregoing or any other provision herein to the contrary, the Owner acknowledges and agrees that the Issuer shall have no duty to monitor compliance with the terms and conditions of this Agreement.

Section 13. Amendment. This Agreement may be amended to reflect changes in Section 142(d) of the Code, the applicable Regulations and administrative guidance promulgated thereunder. The Issuer, the Owner and the Trustee each covenants to take any lawful action (including amendment of this Agreement) if, in the opinion of Bond Counsel, such action is necessary to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Project. No amendment of this Agreement shall be made without the prior written approval of the Issuer, the Trustee, the Investor Partner and the Owner.

Section 14. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 15. Notices. The Issuer, the Owner and the Trustee each agrees that all notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto, or by hand delivery, or by reputable overnight courier and below at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

The Owner

Circle Park Preservation, L.P.
 c/o Related Companies
 30 Hudson Yards, 72nd Floor
 New York, NY 10001
 Attention: Matthew Finkle
 E-Mail: mfinkle@related.com

UNOFFICIAL COPY

With a copy to: Levitt & Boccio, LLP
423 West 55th Street, 8th Floor
New York, NY 10019
Attention: David S. Boccio, Esq.
E-Mail: dboccio@levittboccio.com

The Issuer: Illinois Housing Development Authority
111 East Wacker Drive, Suite 1000
Chicago, IL 60601
Attention: Director, Multifamily Programs

The Trustee: The Bank of New York Mellon Trust
Company, N.A.
Two North LaSalle Street, Suite 700
Chicago, IL 60601
Attention: Corporate Trust Department
E-Mail: mietka.collins@bnymellon.com

The Investor Partner: Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
301 South College Street
Charlotte, NC 28288
Attention: Director of Tax Credit Asset Management

With a copy to: Sidley Austin LP
One South Dearborn Street
Chicago, IL 60603
Attention: Philip C. Spahn

Section 16. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois and, where applicable, the laws of the United States of America.

Section 17. Termination. The Issuer, the Owner and the Trustee each agrees that this Agreement shall terminate:

- (a) *Completion.* Upon the termination of the Qualified Project Period;
- (b) *Involuntary Non-Compliance.* In the event of an involuntary non-compliance caused by unforeseen events, such as fire, seizure, requisition, change in a federal law or an action of a federal agency after the date of issuance of the Bonds that prevents the Issuer or the Trustee from enforcing the provisions of this Agreement or condemnation or similar event, provided that:
 - (i) the Bonds are retired at their first applicable available call date; or

UNOFFICIAL COPY

- (ii) any insurance proceeds or condemnation award or other amounts received as a result of such loss or destruction are used to provide a project that meets the requirements of Section 142(d) of the Code and Treas. Reg. § 1.103-8(b) as amended, or any successor law or regulation;
- (c) *Certain Transfers.* In the event of foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, following which and within a reasonable period of time the Bonds are redeemed or the amounts received as a consequence of such event are used to provide a qualified residential rental project meeting the applicable requirements of the Code and the Regulations, unless, at any time subsequent to such event and during the Qualified Project Period, the Owner or any direct successor in interest, or any transferee from the Owner or its successor subject to an Assumption Agreement, or any Related Person to such persons, or any other person who was prior to the event of foreclosure or other such event, an obligor on any Purpose Investment issued in connection with any financing for the Project, obtains an ownership interest in the Project for federal tax purposes; or
- (d) *Opinion of Bond Counsel.* Upon the delivery of an opinion of Bond Counsel acceptable to the issuer and the Trustee that continued compliance with the requirements of Section 7 hereof is not required in order for interest on the Bonds to be and continue to be excludible from gross income of the holders of the Bonds for federal income tax purposes.

Section 18. Post-Defeasance. The Owner represents, warrants and covenants that in the event that the Bonds are defeased, but this Agreement remains in full force and effect, it shall contract, at Owner's expense, with a compliance monitoring agent reasonably satisfactory to the Issuer, to review compliance by the Owner with the requirements of this Agreement. The compliance monitoring agent shall be provided all of the compliance documents otherwise required to be provided to the Issuer and the Trustee by this Agreement. Any responsibilities or obligations of the Trustee under this Agreement shall terminate upon payment in full of the Bonds at maturity or upon redemption, or upon the legal defeasance of the Bonds.

Section 19. Indemnification. Provided that this indemnity shall not include the payment of principal and interest under the Loan (it being intended that the repayment of the Loan is a non-recourse obligation of the Owner), the Owner hereby covenants and agrees that it shall indemnify and hold harmless the Issuer, the Trustee and their officers, directors, officials, employees and agents from and against (a) any and all claims arising from any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees, in connection with the Bonds, the Indentures, the Tax Agreement, any mortgage, this Agreement or the Project and (b) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon. In the event that any action or proceeding is brought against the Issuer, the Trustee or any of its officers, directors, officials, employees or agents with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all reasonable expenses. The indemnified party shall have the right to

UNOFFICIAL COPY

participate in the investigation and defense thereof and in the event the indemnified party reasonably determines that a conflict of interest exists between such party and the Owner in connection therewith, the indemnified party may employ separate counsel with the consent and approval of the Owner, which consent shall not be unreasonably withheld, and in such event the Owner shall pay the reasonable fees and expenses of such separate counsel. The obligations of the Owner hereunder are full recourse obligations. Notwithstanding the foregoing, no party shall be indemnified pursuant to this Section 19 against its own gross negligence or willful misconduct. The indemnification obligations hereunder shall be cumulative with all other indemnification obligations owed from the Owner to the Issuer or the Trustee and their related indemnified parties.

Section 20. Recordation. The Issuer, the Owner and the Trustee each agrees that the Owner shall cause this Agreement (and all amendments and supplements hereto) to be recorded and filed in the conveyance and real property records of Cook County, Illinois and in such other places as the Issuer may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording(s). Upon delivery by the Owner to the Trustee of an opinion of independent counsel acceptable to the Trustee that the conditions to termination of this Agreement have been made, the Trustee shall, upon request by the Owner, and at the Owner's expense, file any documentation necessary to release the real estate and Project from the obligations, duties, restrictions and covenants contained in this Agreement from the real estate records of Cook County, Illinois.

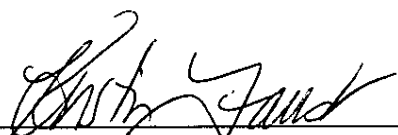
Section 21. Covenants to Run with Interest in Land; Successors Bound. The Owner hereby subjects its interest in the Real Estate to the covenants, reservations and restrictions set forth in this Agreement. The Issuer, the Trustee and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants, reservations and restrictions running with the land to the extent permitted by law and shall pass to and be binding upon the Owner's successors in title to its interest in the Real Estate throughout the term of this Agreement. Each and every contract, deed, mortgage, or other instrument hereafter executed covering or conveying such interest in the Real Estate or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed, mortgage or other instrument.

Section 22. No Conflict with Other Documents. The Owner warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede all other requirements in conflict herewith. Notwithstanding anything to the contrary in this Section 22, to the extent that this Agreement conflicts with the requirements in the Risk Share Use Agreement, the requirements of the Risk Share Use Agreement shall prevail and control.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of this 25th day of January, 2021 and effective as of the Effective Date.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: 
Name: Kristin Faust
Title: Executive Director

CIRCLE PARK PRESERVATION, L.P., a New York limited partnership

By: Circle Park Preservation GP, LLC, a New York limited liability company, its General Partner

By: _____
Name: Matthew Finkle
Title: Vice President

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of this 20th day of January, 2021 and effective as of the Effective Date.

**ILLINOIS HOUSING DEVELOPMENT
AUTHORITY**

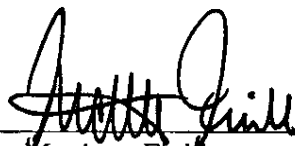
By: _____

Name: Kristin Faust

Title: Executive Director

**CIRCLE PARK PRESERVATION, L.P., a
New York limited partnership**

By: Circle Park Preservation GP, LLC, a
New York limited liability company,
its General Partner

By:  _____

Name: Matthew Finkle

Title: Vice President

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By: _____

Name: _____

Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of this 2nd day of January, 2021 and effective as of the Effective Date.

**ILLINOIS HOUSING DEVELOPMENT
AUTHORITY**

By: _____

Name: Kristin Faust

Title: Executive Director

**CIRCLE PARK PRESERVATION, L.P., a
New York limited partnership**

By: Circle Park Preservation GP, LLC, a
New York limited liability company,
its General Partner

By: _____

Name: Matthew Finkle

Title: Vice President

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By: Michele R. Shrum

Name: Michele R. Shrum

Title: Vice President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

Before me appeared Kristin Faust, to me personally known, who being duly sworn, acknowledged herself to be the Executive Director of the Illinois Housing Development Authority and that she as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the Illinois Housing Development Authority by herself as such officer.

WITNESS my hand and seal, this 25th day of January, 2021.



Liliana Valentino
Signature of Notary Public

My Commission expires: 06/15/21

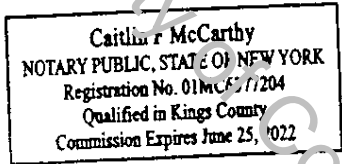
Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for the state aforesaid, do hereby certify that Matthew Finkle, personally known to me to be the Vice President of Circle Park Preservation GP, LLC, General Partner of Circle Park Preservation, L.P., a New York limited partnership ("Circle Park"), 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 signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act and deed of Circle Park, for the uses and purposes therein set forth.

Given under my hand and official seal this 20 day of January, 2021.



Caitlin R. McCarthy

 Notary Public

UNOFFICIAL COPY

STATE OF DUVAL)
) ss.:
 COUNTY OF FLORIDA)

Before me appeared Michele R. Shrum, to me personally known, who being duly sworn, acknowledged herself to be an officer of The Bank of New York Mellon Trust Company, N.A. and that she as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of The Bank of New York Mellon Trust Company, N.A. by herself as such officer.

WITNESS my hand and seal, this 21st day of January, 2021.

Notary Public of
 (SEAL)



Signature of Notary Public

My Commission expires: **Nov. 13, 2023**



Joshua P. Kakareka
 NOTARY PUBLIC
 STATE OF FLORIDA
 Comm# GG931852
 Expires 11/13/2023

UNOFFICIAL COPY

EXHIBIT A

DESCRIPTION OF PROJECT SITE

Property Address: 1111 S. Ashland, Chicago, Illinois 60607

Description of Real Property:

Amended 1/5/21 – mgs

Situated in the County of Cook, State of Illinois, to wit:

Parcel 1:

Lots 61 to 106, inclusive, and Lots 111 to 120, inclusive, in Thomas Stinson's Subdivision of Block 48 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 2:

Lots 1 to 5, inclusive, in Tierney and Brennan's Subdivision of Lots 107, 108, 109 and 110 in Block 48 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 3:

Lots 3, 4 and Lots 13 to 60, inclusive, and Lots 64 to 76, inclusive, (except the North 18 feet of Lots 74 to 76, inclusive, and except the North 18 feet of the West 14 feet of Lot 73), in the Subdivision of Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 4:

Lots 1 through 6, inclusive, and the three-foot private walkway adjoining said lots in the Subdivision of Lots 61 to 63 in the Subdivision of Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 5:

Lots 1 to 7, inclusive, and the private alleys adjoining said Lots 1 to 7 in the Subdivision of Lots 1 and 2 in Block 49 in Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

UNOFFICIAL COPY

Parcel 6:

Lots 1 to 19, inclusive, in Oliver's Subdivision of Lots 5 to 12, inclusive, in Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 7:

All of the **Vacated** East-West twelve-foot alley lying South of and adjoining Lots 81 to 100, inclusive, in Thomas Stinson's Subdivision of Block 48 in Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 8:

All of the **Vacated** East-West sixteen-foot alley lying South of and adjoining Lots 29 through 44, inclusive, in the Subdivision of Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 9:

All of the **Vacated** East-West sixteen-foot alley lying North of and adjoining Lots 45 through 60, inclusive, in the Subdivision of Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 10:

All of the **Vacated** North-South twenty-foot alley lying East of and adjoining the East lines of Lots 1 through 9, inclusive, Lots 10 through 13, inclusive, and Lot 19 and the East line thereof extended North, in Oliver's Subdivision of Lots 5 to 12 inclusive in Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 11:

All of the **Vacated** East-West sixteen-foot alley lying South of and adjoining Lot 13 in Oliver's Subdivision of Lots 5 to 12 inclusive in Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 12:

That part of **Vacated** West Grenshaw Street, lying West of the West Line of South Loomis Street, extended North and South, and lying East of the East line of South Laflin Street, extended North and South, in Thomas Stinson's Subdivision of Block 48 of Canal Trustees Subdivision of the West

UNOFFICIAL COPY

1/2, and the West 1/2 of the Northeast 1/4, of Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

Parcel 13:

That part of **Vacated** West Grenshaw Street lying East of the East Line of South Ashland Boulevard (South Ashland Avenue), as widened, extended, and West of the West line extended, of South Laflin Street, in the Subdivision of Block 49 of Canal Trustees Subdivision of the West 1/2, and the West 1/2 of the Northeast 1/4, of said Section 17, Township 39 North, Range 14, East of the Third Principal Meridian.

For Information Only: Said premises are known as 1111 S. Ashland Avenue and as PIN 17-17-324-028-0000, 17-17-324-029-0000, 17-17-327-051-0000, 17-17-327-052-0000, 17-17-327-053-0000, 17-17-327-054-0000, 17-17-328-045-0000, 17-17-328-062-0000 and 17-17-328-063-0000 in Cook County, IL.