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Doc#: 2302045287 Fee: \$98.00
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Date: 01/20/2023 03:50 PM Pg: 1 of 9

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HUD Amendment to Restrictive Covenant (Land Use Restriction Agreement)

Cook County, IL

O'Keefe Apartments Owner LLC

Chicago Metropolitan Housing
Development Corporation

New York Mellon Trust Company, N.A.

Effective Date: January 19, 2023

This instrument was prepared by Michael B. Reichert, Attorney-at-Law, Dinsmore & Shohl, LLP 211 North, Pennsylvania St. Ste 1800, Indianapolis, IN 46204

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Recording Requested by:
 Michael B. Reichert
 Dinsmore & Shohl LLP
 One Indiana Square, Suite 1800
 Indianapolis, Indiana 46204

After Recording return to:
 Michael B. Reichert
 Dinsmore & Shohl LLP
 One Indiana Square, Suite 1800
 Indianapolis, Indiana 46204

Cross Reference: Document Nos. 27409982, 86444633 and 1532245044

HUD AMENDMENT TO RESTRICTIVE COVENANTS

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of January 19, 2023 by O'KEEFE APARTMENTS OWNER LLC, an Illinois limited liability company ("Borrower"), successor in interest to BENNETT ASSOCIATES, an Illinois limited partnership, and CHICAGO METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation ("Issuer"), THE BANK OF NEW YORK MELLON TRUST Company, N.A., ("Trustee"), successor in interest to BANK ONE, COLUMBUS, N.A. (Issuer and Trustee hereinafter referred to together as "Agency").

WHEREAS, Borrower has obtained financing from Merchants Capital Corp., an Indiana corporation ("Lender") for the benefit of the project known as O'Keefe Apartments ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of January 19, 2023, and recorded in the Recorder's Office of Cook County, Illinois ("Records") contemporaneously herewith, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received tax-exempt bond financing from the Issuer, which Issuer has required certain restrictions be recorded against the Project; and

WHEREAS, Bennett Associates, an Illinois limited partnership, Borrower's predecessor in interest in the Project, entered into that certain Land Use Restriction Agreement with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of September 1, 1984, and recorded in the Records on January 17, 1985, as Document Number 27409982, as amended by that certain Form of First Supplemental Land Use Restriction Agreement dated as of August 1, 1985, and recorded in the Records on September 30, 1986, as Document Number 86444633, as subsequently amended by a HUD Amendment to Restrictive Covenants dated as of November 1, 2015, and recorded in the Records on November 18, 2015, as Document Number 1532245044, (the Land Use Restriction Agreement dated as of September 1, 1984, the Form of First Supplemental Land

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Use Restriction Agreement dated as of August 1, 1985, and HUD Amendment to Restrictive Covenants dated as of November 1, 2015, are collectively referred to in this HUD Amendment as the "Restrictive Covenants").

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 Amendment.

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

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

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

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

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

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

"Lender" means Merchants Capital Corp., an Indiana corporation, 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 12 USC § 1701 *et seq.*, as amended.

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

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

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

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

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(c) Notwithstanding anything in the Restrictive Covenants to the contrary, 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) 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.

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

(f) 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 for release 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.

(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

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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) 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.

The statements and representations contained in this Amendment and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

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EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1:

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

Parcel ID(s): 20-24-425-001-0000

7001, 7009 S. Paxton Ave. 2201-05 E. 70th St., Chicago, IL 60649

PARCEL 2:

LOTS 1 AND 2 IN B. J. KELLEY'S SUBDIVISION OF BLOCK 2 IN COMMISSIONER'S PARTITION BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel ID(s): 20-24-422-013-0000

7000-08 S. Clyde Ave. and 2049-2059 E. 70th St., Chicago, IL 60649

PARCEL 3:

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

Parcel ID(s): 20-24-415-012-0000

6900-02 South Clyde Ave. and 2049-2059 East 69th Street, Chicago, IL 60649

PARCEL 4:

LOT 13 AND THE SOUTH 1/2 OF LOT 12 IN BLOCK 2 IN SOUTH KENWOOD A RESUBDIVISION OF BLOCKS 2, 7 AND 8 IN GEORGE W. CLARKE'S SUBDIVISION OF THE EAST 1/2 OF THE NORTHWEST 1/4 WITH PART OF B3 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 ALL IN SECTION 25, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel ID(s): 20-25-108-018-0000

7150 S. Euclid Ave., Chicago, IL 60649

PARCEL 5:

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

Parcel ID(s): 20-25-107-020-0000

7152-56 South Bennett Ave. and 1834 -42 East 72nd Street, Chicago, IL 60649