

PERFORMANCE SECURITY AGREEMENT

This PERFORMANCE SECURITY AGREEMENT dated as of _____, 2022 (this “Agreement”), by and between The County of Lake, Illinois, a political subdivision duly organized and validly existing under the Constitution and the laws of the State of Illinois (“County”), and Rosewood Essential Housing LLC, an Illinois limited liability company (“Purchaser”),

WITNESSETH:

WHEREAS, the Purchaser will be the record owner of land, buildings and related improvements and furnishings, equipment and related property commonly known as Rosewood Apartments and located at 318 W. Forest Avenue, in the Village of Round Lake in Lake County, Illinois, comprised of 168 units of housing for residential rental purposes (such land, buildings, improvements, furnishings, equipment and related property being collectively referred to herein as the “Project”); and

WHEREAS, the acquisition, rehabilitation and installation of the Project in 2004 was financed in part from the proceeds of the sale of the Variable Rate Demand Multifamily Housing Revenue Bonds, Series 2004 (Rosewood Apartments Project) of the County in the aggregate principal amount of \$8,800,000 (the “Bonds”), issued by the County under that certain Trust Indenture dated as of October 1, 2004, by and between the County and The Bank of New York Mellon Trust Company, N.A., as trustee and as successor to J.P. Morgan Trust Company, National Association (“Indenture”); and

WHEREAS, the Purchaser is purchasing the Project from Rosewood Harmony Housing LLC, a Delaware limited liability company (the “Seller”), which purchased the Project from Rosewood Apartments Limited Partnership, which was the original borrower (the “Original Borrower”) under the terms of the Indenture for the Bonds; and

WHEREAS, previously, the Seller entered into an Assignment and Assumption Agreement, pursuant to which the Seller assumed the obligations of the Original Borrower with respect to the Project under that certain Land Use Restriction Agreement dated as of October 1, 2004, recorded in the Recorder’s Office, Lake County, Illinois as instrument number 5680966 on November 12, 2004 (“Land Use Restriction Agreement”); and

WHEREAS, as part of the purchase of the Project, the Purchaser is entering into an Assignment and Assumption Agreement (“Assignment Agreement”), pursuant to which the Purchaser is assuming the obligations of the Seller with respect to the Project under Land Use Restriction Agreement; and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the County and the Purchaser hereby agree as follows:

1. Incorporation by Reference. The Recitals to the Assignment Agreement are incorporated into and made a part of this Agreement. All capitalized terms used in this Agreement have the meanings given to those terms in the Assignment Agreement, Land Use Restriction Agreement or elsewhere in this Agreement unless the context or use clearly indicates a different meaning.

2. Cash Deposit. It is hereby acknowledged that the security deposit in the total amount of \$25,000 plus accrued interest currently held in escrow by the County Administrator (“Cash Deposit”) as security to the County for the performance by the Seller of its obligations to the County under the Land Use Restriction Agreement is being assigned to Purchaser pursuant to that certain Assignment of Security Deposit and Termination Agreement of even date herewith. The Purchaser shall, as a condition precedent to the County’s approval of the assumption of obligations under the Land Use Restriction Agreement, maintain the Cash Deposit, at \$25,000, and replenish the Cash Deposit to that amount as necessary, to secure Purchaser’s obligations under the Land Use Restriction Agreement until the expiration of the Qualified Project Period in the Land Use Restriction Agreement plus the period of the applicable statute of limitations with no claims filed and pending that would allow the County to make subsequent draws on the Cash Deposit pursuant to this Agreement (“Release Date”), except as otherwise provided below with respect to investment losses. Upon receipt of written notice from the County that the expiration of the Qualified Project Period has occurred, the County Administrator shall release any amounts remaining in the Cash Deposit to Purchaser.

3. Interest. The Cash Deposit shall be invested jointly with other funds of the County (“Invested Monies”), with interest to be allocated monthly to the Cash Deposit based upon that proportion of the interest earned by the County on the Invested Monies that the balance of the Cash Deposit as of the allocation date bears to the total amount of the Invested Monies as of the same allocation date. Interest shall accrue for the use and benefit of the County until released to the Purchaser upon request. Requests for release of interest shall be made in writing no more frequently than semi-annually. The County shall not be liable for any loss suffered in connection with any investment of the Cash Deposit if invested in accordance with the Public Funds Investment Act, 30 ILCS 235/0.01 *et seq.* The Purchaser shall not be obligated to replenish the Cash Deposit as a result of losses suffered in connection with the investment of the Cash Deposit.

4. Use of Funds. If the Purchaser fails or refuses to fulfill any of the obligations for which the Cash Deposit is security, as stated in Section 2 above, then the County shall have the right to take any action it deems reasonable and appropriate to mitigate the effects of such failure or refusal and to reimburse itself from the proceeds of the Cash Deposit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Purchaser's failure or refusal to fully meet its obligations under the Land Use Restriction Agreement, and shall furnish written notice thereof to the Purchaser. Upon notice of any draw on the Cash Deposit by the County, the Purchaser (within five (5) business days) shall deposit with the County such additional funds as may be necessary to replenish the Cash Deposit to its original amount. Failure to so replenish the amount of the Cash Deposit shall be grounds for the County to draw on and retain all or any part of the Cash Deposit to continue to reimburse itself for costs and expenses authorized under this Agreement.

{SIGNATURE PAGE TO FOLLOW}

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year first above written.

THE COUNTY OF LAKE, ILLINOIS

ROSEWOOD ESSENTIAL HOUSING LLC

By: _____

Sandy Hart

Its: Chair

By: _____

Name: _____

Its: _____

ATTEST:

By: _____

Robin M. O'Connor

Its: County Clerk