

***This instrument prepared by
and after recording return to:***

Sujyot S. Patel
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Notice to Recorder:

This instrument to be indexed against Rosewood Apartments Limited Partnership and the Assignee identified below.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** (the “Agreement”) is made on [SALE DATE], by and between Rosewood Apartments Limited Partnership, an Ohio limited partnership (“Assignor”), and Rosewood Harmony Housing LLC, a Delaware limited liability company (“Assignee”), and consented to by The County of Lake, Illinois (the “Issuer”) and The Bank of New York Mellon Trust Company, N.A. as trustee and as successor to J.P. Morgan Trust Company, National Association (the “Trustee”). Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Indenture (as defined below).

A. Assignor is the owner of Rosewood Apartments located at 318 W. Forest Avenue, Round Lake, Illinois 60073 (the “Project”), the acquisition and rehabilitation of which was financed with the proceeds of The County of Lake, Illinois Variable Rate Demand Multifamily Housing Revenue Bonds (Rosewood Apartments Project), Series 2004 in the original principal amount of \$8,800,000 (the “Bonds”).

B. The Bonds were issued pursuant to the Trust Indenture dated as of October 1, 2004 (the “Indenture”), by and between the Issuer and the Trustee.

C. The Issuer, the Assignor and the Trustee each entered into a Land Use Restriction Agreement (the “Land Use Restriction Agreement”), dated as of October 1, 2004, relating to the Project recorded in the Recorder’s Office, Lake County, Illinois as instrument number 5680966 on November 12, 2004.

D. Assignor and Harmony Housing Advisors, Inc., a Delaware corporation (“Harmony”) entered into a Real Estate Purchase and Sale Agreement with Escrow Instructions (the “Purchase Contract”), dated as December 14, 2020, with respect to the sale and transfer of the Project, and Harmony subsequently assigned its rights under the Purchase Contract to its affiliate, Assignee.

E. Pursuant to the Purchase Contract, the Assignor will sell and transfer the Project (the “Transfer”) to the Assignee on [SALE DATE] (the “Transfer Date”).

F. In connection with the Transfer, Assignor desires to assign, and Assignee desires to assume, from and after the Transfer Date, all the duties and obligations of Assignor which arise on and after the Transfer Date under the Land Use Restriction Agreement.

G. In connection with the Transfer, the Bonds will be redeemed in full.

H. Freddie Mac will agree that the Freddie Mac Rider attached to the Land Use Restriction Agreement will not be in effect after the Bonds have been redeemed in full.

I. The Transfer requires that the Assignee assume in writing, in a form acceptable to the Issuer and the Trustee, all duties and obligations of the Assignor under this Agreement. The acceptance by the Trustee and the Issuer of this form of Agreement is evidenced by their respective signatures to this Agreement.

J. Assignee has agreed to assume the obligations of Assignor under the Land Use Restriction Agreement as follows:

AGREEMENT

NOW THEREFORE, for the premises contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Assignment.** As of the Transfer Date, Assignor hereby assigns all of its right, title, duties, obligations and interest in and to the Land Use Restriction Agreement and Assignee hereby accepts such assignment.

2. **Assumption.** Assignee hereby assumes the obligations evidenced by the Land Use Restriction Agreement in accordance with the terms thereof and agrees to pay, perform and observe such portion of Assignor's obligations arising on and after the Transfer Date, including representations and warranties from and after the Transfer Date, contained in and in accordance with the provisions of the Land Use Restriction Agreement. Assignor and Assignee agree that all references to Assignor in the Land Use Restriction Agreement (and any of them) as "Borrower" and "Owner" shall mean and refer to Assignee as of the Transfer Date.

3. **Qualified Project Period.** The Assignor represents that the Qualified Project Period, as defined in the Land Use Restriction Agreement, began on _____.

4. **Indemnification.** Assignee shall be obligated to indemnify each indemnified party for all matters arising on and after the Transfer Date relating to the Project in accordance with Sections 20 and 21 of the Land Use Restriction Agreement.

5. **Reaffirmation.** All terms and conditions of the Land Use Restriction Agreement not expressly modified by this Agreement are expressly reaffirmed as if set forth in their entirety herein and shall remain unaffected, unchanged and unimpaired by any reason of this Agreement.

6. **Notices.** From and after the date hereof, all notices required or permitted to be sent to the "Borrower" and the "Owner" and all other designations which had previously referred to Assignor in the Land Use Restriction Agreement shall also be sent to Assignee at the following address, in the manner required under the respective document:

Harmony Housing Advisors, Inc.
c/o Greystone & Co., Inc.
152 West 57th Street, 60th Floor
New York, NY 10019
Attn: Robert Barolak

7. **Representations and Warranties.** Each of Assignor and Assignee represents and warrants as to itself (except where otherwise stated), as of the Transfer Date, as follows:

(a) It is duly organized and existing under the laws of the jurisdiction of its organization and is authorized to transact business in any jurisdiction in which such party owns property, with full power and authority to execute and deliver this Agreement, to enter into the transactions contemplated hereby and to perform all the duties and obligations to be performed by it hereunder;

(b) It has duly authorized this Agreement and the transactions contemplated hereby and the performance of all the duties and obligations to be performed hereunder by all necessary action;

(c) It has duly executed and delivered this Agreement and this Agreement constitutes its valid, legal and binding obligation enforceable in accordance with its terms,

except as may be limited by bankruptcy, insolvency, reorganization or similar laws or equitable principles relating to or limiting creditors' rights generally;

(d) The execution and delivery of this Agreement and the performance of the transactions contemplated hereby will not violate any agreement by which such party is bound or to which such party or any of its assets are affected, or its organization documents or any statute, regulation, rule, order or judgment applicable to such party;

(e) The Land Use Restriction Agreement will continue to be in full force and effect as of the Transfer Date, and constitutes a valid and binding agreement of each party thereto;

(f) Assignor represents, as of the date hereof, that there is no "Event of Default" under the Land Use Restriction Agreement or any event which, with the passage of time or giving of notice, would constitute an Event of Default;

(g) There are no judgments outstanding against it, and there are no actions, suits, proceedings, inquiries or investigations, at law or in equity, or before or by any court, administrative agency, department or public body or arbitration panel, pending or, to the best of its knowledge, threatened against or affecting it, or any of its assets and properties, including, but not limited to, the Project, nor is there any basis therefor, wherein an unfavorable decision, ruling or finding might, in any way, result in any material adverse change in its business, operations, properties, assets, liabilities or condition (financial or otherwise);

(h) It is in compliance with all applicable laws and ordinances and rules and regulations of governmental bodies or agencies thereunder and with all orders and judgment of any court or governmental body or agency of competent jurisdiction affecting the existence, power and authority of it to own and operate the Project; and

(i) Assignor represents that the Project is in compliance with all applicable laws and ordinances and rules and regulations of governmental bodies or agencies thereunder.

8. **Costs, Expenses and Reimbursements.** Assignor and Assignee agree, jointly and severally, to pay all costs, counsel fees, expenses or liabilities incurred in connection with the execution, delivery and consummation of this Agreement, including, but not limited to, all recording costs, fees and expenses, of the Trustee and the Issuer.

9. **Issuer's Acknowledgment.** By its execution of this Agreement, the Issuer hereby acknowledges that this form of Agreement is acceptable to it. Nothing herein shall be construed or interpreted as the Issuer's consent to any subsequent sale, transfer or encumbrance of all or any portion of the Project, and any such subsequent sale, transfer or encumbrance shall be governed by the provisions of the Land Use Restriction Agreement.

10. **Trustee's Acknowledgement.** By its execution of this Agreement, the Trustee hereby acknowledges that this form of Agreement is acceptable to it. Upon the advice of counsel, the Trustee will consent to certain amendments, or supplements, to the Land Use Restriction Agreement necessary to effectuate the Transfer. Nothing herein shall be construed or interpreted as the Trustee's consent to any subsequent sale, transfer or encumbrance of all or any portion of the Project, and any such subsequent sale, transfer or encumbrance shall be governed by the provisions of the Land Use Restriction Agreement.

11. **Freddie Mac Rider Termination.** Pursuant to and based on *Exhibit A* attached hereto, the parties acknowledge that the terms of the Freddie Mac Rider attached to the Land Use Restriction Agreement will not be in effect commencing on the date of Transfer.

12. **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

13. **Counterparts.** This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.

14. **Severability.** If any covenant, condition, term or provision contained in this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, term or provisions shall not in any way affect any other covenant, condition, term or provisions contained in this Agreement.

15. **Governing Law.** This Agreement shall be governed by all the laws of the State of Illinois.

[Signatures to follow]

IN WITNESS WHEREOF, each of the parties has caused this Instrument to be executed in its name and on its behalf by its duly authorized officers, all as of the date first above written.

ASSIGNOR:

**ROSEWOOD APARTMENTS LIMITED
PARTNERSHIP,**
an Illinois limited partnership

By: Rosewood GP, LLC, an Illinois limited
liability company, General Partner

By: Banner Apartments, LLC, a Delaware
limited liability company, its Sole
Member

By: _____
Milton Pinsky
President

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2021, before me a notary public in and for the county and state aforesaid, personally appeared Milton Pinsky, to me personally known, who being duly sworn, acknowledged himself to be the President of Banner Apartments, LLC, a Delaware limited liability company, the Sole Member of Banner Apartments, LLC, a Delaware limited liability company, the General Partner of Rosewood Apartments Limited Partnership, an Illinois limited partnership, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the owner by himself as such authorized member. No oath or affirmation was administered to the signer hereof.

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

Notary Public

(SEAL)

My Commission Expires:

ASSIGNEE: **ROSEWOOD HARMONY HOUSING LLC**, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2021, before me a notary public in and for the county and state aforesaid, personally appeared _____, to me personally known, who being duly sworn, acknowledged himself to be the _____ of Rosewood Harmony Housing LLC, a Delaware limited liability company, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of Rosewood Harmony Housing LLC, by himself as such authorized officer. No oath or affirmation was administered to the signer hereof.

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

Notary Public

(SEAL)

My Commission Expires:

[Consents to follow]

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

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

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

Notary Public

(SEAL)

My Commission Expires:

THE ISSUER HEREBY ACKNOWLEDGES THAT THIS FORM OF ASSIGNMENT AND ASSUMPTION OF THE LAND USE RESTRICTION AGREEMENT IS ACCEPTABLE TO IT AS PROVIDED IN SECTION 9 HEREOF AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

THE COUNTY OF LAKE, ILLINOIS

SEAL

By: _____
Sandy Hart
Chair of the County Board

By: _____
Robin M. O'Connor
County Clerk and *ex officio* Clerk of the
County Board

STATE OF ILLINOIS)
) SS:
COUNTY OF LAKE)

Before me appeared Sandy Hart and Robin M. O'Connor to me personally known, who being duly sworn, each acknowledged him/herself to be the Chair and County Clerk of The County of Lake, Illinois and that s/he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing on behalf of The County of Lake, Illinois by him/herself as such officer. No oath or affirmation was administered to the signer hereof.

WITNESS my hand and seal, this _____ day of _____, 2021.

(SEAL)

Signature of Notary Public

My Commission expires:

EXHIBIT A

[TO BE INSERTED AT CLOSING]