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Near North National Title Corp  
222 North LaSalle Street  
Chicago, Illinois 60601



This document prepared by  
and when recorded return to:

Michael L. Gaynor  
Assistant Corporation Counsel  
City of Chicago - Room 600  
Office of Corporation Counsel  
121 North LaSalle Street  
Chicago, Illinois 60602

## REGULATORY AGREEMENT

**THIS REGULATORY AGREEMENT** entered into and effective this 22<sup>nd</sup> day of December, 2004 (this "Regulatory Agreement"), by and between the City of Chicago, Illinois (the "City"), an Illinois municipal corporation, by and through its Department of Housing ("DOH"), with offices at 33 North LaSalle Street, Suite 200, Chicago, Illinois 60602, and Senior Suites Chicago Bridgeport, LLC, an Illinois limited liability company (the "Borrower").

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## WITNESSETH

**WHEREAS**, DOH is an executive department of the City established pursuant to Title 2 of the Municipal Code of Chicago, Chapter 2-44, Section 2-44-010, which supervises and coordinates the formulation and execution of projects and programs creating safe, decent and affordable housing for residents of the City; and

**WHEREAS**, the City has received from the United States Department of Housing and Urban Development ("HUD") an allocation of HOME Investment Partnerships Program ("HOME Program") grant funds, pursuant to the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. Section 12701 *et seq.*, as amended, supplemented and restated from time to time, which authorizes HUD to make funds available to participating jurisdictions to increase the number of families served with decent, safe, sanitary and affordable housing and to expand the long-term supply of affordable housing, through, among other things, acquisition, new construction, reconstruction and rehabilitation; and

**WHEREAS**, the City intends to loan a sum (hereinafter referred to as the "Loan") of HOME Program funds to the Borrower for the purposes set forth below, and has requested that DOH administer the Loan; and

**WHEREAS**, the Borrower will utilize the Loan proceeds in connection with the Project (as legally described on Exhibit A attached hereto and hereby made a part hereof and as further defined on Exhibit B attached hereto and hereby made a part hereof); and

**WHEREAS**, the Borrower has received from DOH, in connection with the Project, an allocation of low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986 (the "Tax Credits") in the amount described on Exhibit B hereto; and

**WHEREAS**, as a specific condition precedent to the Borrower receiving the Loan and in connection with the allocation of Tax Credits to the Project, the Borrower has agreed to execute this Regulatory Agreement with the City governing the use of the Project;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Borrower and the City each agree as follows:

### **SECTION 1. DEFINITIONS AND INTERPRETATIONS.**

Additional definitions on Exhibit B hereto are hereby incorporated in this Section 1 by reference.

The following terms shall have the respective meaning assigned to them in this Section 1 unless the context in which they are used clearly requires otherwise:

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"1937 Act" shall mean the United States Housing Act of 1937, 42 U.S.C. Section 1437 et seq.

"Affirmative Marketing Plan" shall mean the affirmative marketing plan submitted by the Borrower and approved by DOH.

"Annual Report" shall mean the report from the Borrower in substantially the form set forth in Exhibit D attached hereto and hereby made a part hereof, as the same may be amended from time to time.

"Applicable Fraction" shall have the meaning assigned to such term in Section 42(c)(1)(B) of the Code.

"Associate Person" shall mean any Person that includes the Borrower or those with whom the Borrower has or had family or business ties.

"Borrower" shall mean initially, Senior Suites Chicago Bridgeport, LLC, an Illinois limited liability company, and at any subsequent time of reference, the Person or Persons, if any, who shall succeed to the legal or beneficial ownership of all or any part of the Project.

"Business Day" shall mean a day on which banks in the City of Chicago, Illinois are not authorized or required to remain closed and which shall not be a public holiday under the laws of the State or any ordinance or resolution of the City of Chicago, Illinois.

"City" shall mean the City of Chicago, Illinois, an Illinois municipal corporation, and its successors and assigns.

"Code" shall mean the Internal Revenue Code of 1986, and all applicable regulations or rulings thereunder.

"Completion Date" shall mean the date as of which (i) the necessary title transfer requirements and the construction and/or rehabilitation (as applicable) work have been performed, (ii) the Project complies with the requirements of the HOME Regulations (including meeting the property standards set forth in 24 C.F.R. Section 92.251), (iii) the final disbursement of Loan proceeds derived from HOME Funds for the Project shall have been made, and (iv) the project completion information has been entered in the disbursement and information system established by HUD.

"Compliance Period" shall mean the period of fifteen taxable years beginning with the first taxable year of the Credit Period.

"Correction Period" shall have the meaning assigned to such term in Section 7.7 hereof.

"Credit Period" shall mean the 10-year period described in Section 42(f) of the Code.

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"DOH" shall mean the Department of Housing of the City, and any successor to said Department.

"Eligible Costs" shall mean those costs for which HOME Funds may be used to pay, as described in 24 C.F.R. Section 92.206.

"Extended Use Period" shall mean the "extended use period" (within the meaning of Section 42(h)(6)(D) of the Code) for the Project.

"Extended Use Period Termination Date" shall mean the fifteenth anniversary of the last day of the Compliance Period.

"Family" shall have the meaning assigned to such term in 24 C.F.R. Section 5.403.

"First Reporting Date" shall mean the earlier of (a) October 1 of the first year of the Compliance Period, or (b) the first October 1 following completion of construction and/or rehabilitation (as applicable) of the Project.

"Foreclosure Date" shall mean the date of a Transfer.

"Gross Rent" shall have the meaning assigned to such term in Section 42(g) of the Code.

"HOME Funds" shall mean the HOME Program funds awarded by HUD to the City under the National Affordable Housing Act.

"HOME Program" shall mean the HOME Program created under the National Affordable Housing Act.

"HOME Regulations" shall mean 24 C.F.R. Part 92, and such additional regulations, orders, rulings, interpretations and directives for the HOME Program as may be promulgated or issued by HUD from time to time.

"HUD" shall mean the U.S. Department of Housing and Urban Development.

"Imputed Income Limitation" shall have the meaning assigned to such term in Section 42(g) of the Code.

"Increased-Income Unit" shall have the meaning given to such term in Section 2.9(b) hereof.

"Inspection Period" shall mean a period beginning on the date hereof and ending on the latest of (a) the Termination Date, (b) the last day of the Compliance Period, or (c) the fifth anniversary of the Repayment Date.

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"Last Reporting Date" shall mean the later of (a) the first October 1 following the end of the Compliance Period, or (b) the first October 1 following the end of the Project Term.

"Loan" shall mean a loan by the City to the Borrower in the principal amount of \$5,248,243 for financing a portion of the costs of the Project.

"Loan Agreement" shall mean the Housing Loan Agreement, of even date herewith, between the City and the Borrower with respect to the Loan, as hereafter amended, supplemented and restated from time to time.

"Loan Documents" shall have the meaning given to such term in the Loan Agreement.

"Low-income Families" shall mean and include Families whose annual income does not exceed 80 percent of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling that is higher or lower than 80 percent of the Chicago-area median income, and thereafter such income limit shall apply to this definition.

"Mortgage" shall mean that certain Junior Mortgage, Security Agreement and Financing Agreement of even date herewith from the Borrower to the City, as hereafter supplemented, amended and restated from time to time.

"National Affordable Housing Act" shall mean the Cranston- Gonzalez National Affordable Housing Act, 42 U.S.C. Section 12701 et seq.

"Noncompliance Condition" shall have the meaning assigned to such term in Section 7.7 hereof.

"Noncompliance Notice" shall have the meaning assigned to such term in Section 7.7 hereof.

"People" shall have the meaning assigned to such term in Section 2.28 hereof.

"Permitted Tenants" shall have the meaning assigned to such term in Section 7.4 hereof.

"Persons" shall mean natural persons, firms, partnerships, associations, corporations, trusts and public bodies.

"Plan" shall mean the Housing Tax Credit plan of the City for the year [2003] pursuant to which Tax Credits were allocated to the Project.

"Project Term" shall mean the number of years during which the Project must comply with this Regulatory Agreement. The Project Term shall begin on the date hereof and shall

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continue, except as provided in Sections 2.6, 2.19, 2.20, 2.21, 6.2, 7.4, 7.7 and 16 hereof, through and including the Termination Date.

"Regulatory Agreement" shall mean this Regulatory Agreement, as supplemented, amended and restated from time to time.

"Renewal Date" shall have the meaning given to such term in Section 6.2(b) hereof.

"Repayment Date" shall mean the date as of which the principal of and interest, if any, on the Loan and all other amounts due and payable to the City under the Loan Documents shall have been paid in full (or deemed by the City in its sole discretion to have been paid in full).

"Section 3 Regulations" shall mean the 24 C.F.R. Part 135, and such additional regulations, orders, rulings, interpretations and directives in connection with the Housing Act Section 3 as may be promulgated or issued by HUD from time to time.

"Senior Citizen" shall mean a person 62 years of age or older.

"Senior Citizen Family" shall mean an individual Senior Citizen or a family where each resident in the household is a Senior Citizen.

"Senior Lender" shall have the meaning provided in Exhibit B.

"Senior Loan" shall have the meaning provided in Exhibit B.

"Senior Mortgage" shall have the meaning provided in Exhibit B.

"Source Documentation" shall have the meaning given to such term in Section 2.20 hereof.

"State" shall mean the State of Illinois.

"Tax Credit Eligible Families" shall mean and include individuals, groups of unrelated individuals or families whose adjusted annual income does not exceed the Tax Credit Income Limit.

"Tax Credit Eligible Units" shall mean those units in the Project which will be occupied by or available for occupancy to Tax Credit Eligible Families.

"Tax Credit Income Limit" shall mean 60% of the Chicago area median income, adjusted for Family size, as such adjusted income and Chicago area median income are determined from time to time by HUD, and thereafter such income limited shall apply to this definition.

"Tax Credit Termination Date" shall mean the earlier to occur of (a) a Foreclosure Date or (b) the Extended Use Period Termination Date; provided, however, that the "Tax Credit

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"Termination Date" shall not mean a Foreclosure Date if such transfer of title to the Project by foreclosure or an instrument in lieu of foreclosure is part of an arrangement with the Borrower a purpose of which is to terminate the Extended Use Period.

"Tenant Certification" shall have the meaning assigned to such term in Exhibit D hereto.

"Termination Date" shall mean the latest to occur of (a) the HUD Restrictions Termination Date, (b) the Repayment Date, or (c) the Tax Credit Termination Date.

"Three-Year Period" shall mean a period commencing on the Tax Credit Termination Date (but only if the Tax Credit Termination Date shall be a Foreclosure Date) and ending on the third anniversary thereof.

"Transfer" shall mean the transfer of title to the Project (a) by foreclosure of the Senior Mortgage (or, if the City so elects, of the Mortgage), or (b) by an instrument in lieu of foreclosure of the Senior Mortgage (or, if the City so elects, of the Mortgage).

"URA" shall have the meaning assigned to such term in Section 2.28 hereof.

"Utilities" shall mean the monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant.

"Very Low-Income Family" shall mean any Low-Income Family whose annual income does not exceed 50 percent of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling that is higher or lower than 50 percent of the Chicago-area median income, and thereafter such income limit shall apply to this definition.

"Very, Very Low Income Family" shall mean any Low-Income Family whose annual income does not exceed 30 percent of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD. Notwithstanding the foregoing, the City may establish an income ceiling that is higher or lower than 30 percent of the Chicago-area median income, and thereafter such income limit shall apply to this definition.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings given such terms in the Loan Agreement.

## **SECTION 2. BORROWER'S REPRESENTATIONS AND COVENANTS.**

The Borrower hereby represents, warrants, covenants and agrees as follows:

2.1 Attached hereto as Exhibit C and hereby made a part hereof is a description of the use of the Loan proceeds, including the tasks to be performed, a Construction Schedule and a

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Project Budget. The Borrower shall use the Loan proceeds solely for Eligible Costs in connection with the Project. No Loan proceeds shall be used for activities described in 24 C.F.R. Section 92.214.

2.2 The Project shall be acquired, constructed and/or rehabilitated, as applicable, for the purpose of providing residential rental property, and the Borrower shall own, manage and operate the Project as residential rental units and facilities functionally related and incidental thereto.

2.3 Each unit in the Project shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless, in which case such unit(s) shall comply with the applicable requirements of Section 42 of the Code).

2.4 None of the units in the Low-Income Project shall at any time be used on a transient basis, and neither the Low-Income Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court.

2.5 (a) After completion of the construction and/or rehabilitation, as applicable, of the Project and subject to Section 2.9(a) hereof, all of the Tax Credit Eligible Units shall be occupied or available for occupancy by Tax Credit Eligible Families.

(b) After completion of the construction and/or rehabilitation, as applicable, of the Project and subject to Sections 2.9(c) and 2.11 hereof, all of the units in the Low-Income Project shall be occupied by households who are Low-Income Families. [§92.252(a)(3); 92.504(c)(3)(iv)]

2.6 (a) After completion of the construction and/or rehabilitation, as applicable, of the Project and prior to the Tax Credit Termination Date, the Gross Rent charged each month for any Tax Credit Eligible Unit shall not exceed at any time 30 percent of the Imputed Income Limitation applicable to such Tax Credit Eligible Unit.

(b) Following the Tax Credit Termination Date, but only if the Tax Credit Termination Date is a Foreclosure Date, the rent increase restriction contained in Section 42(h)(6)(E)(ii) of the Code shall apply to each Tax Credit Eligible Unit for the Three-Year Period; if such Tax Credit Termination Date is also the Termination Date, such rent increase restriction shall survive beyond the Termination Date for the duration of the Three-Year Period.

2.7 The rents for all the units in the Low-Income Project shall not exceed the lesser of (a) the fair market rent for comparable units in the area as established by HUD under 24 C.F.R. Section 888.111, less Utilities or (b) 30 percent of the adjusted income of a Family whose gross income equals 60 percent of the median income for the Chicago area, with adjustment for the number of bedrooms in the unit (as determined by HUD), as such adjusted income and Chicago-area median income are determined from time to time by HUD, less Utilities. Notwithstanding the foregoing, the City may establish an income ceiling higher or lower than 60 percent of the



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median income for the Chicago area (which shall not in any event exceed the maximum income ceiling permitted under the HOME Regulations), and thereafter such income ceiling shall apply. [§92.252(a)]

2.8 A minimum of 20 percent of the units in the Low-Income Project shall be either (a) occupied by Very Low-Income Families who pay not more than 30 percent of the Family's monthly adjusted income, as determined by HUD, for rent (excluding any federal or State rental subsidy provided on behalf of the Family) less Utilities; or (b) occupied by Very Low-Income Families and bearing rents not greater than 30 percent of the gross income of a Family whose income equals 50 percent of the median income for the Chicago area, adjusted for Family size, and as such monthly adjusted income and Chicago-area median income are determined from time to time by HUD, less Utilities. [§92.252(b)]

2.9 (a) For purposes of satisfying the requirements set forth in Section 2.5(a) above, a Tax Credit Eligible Unit occupied by a Tax Credit Eligible Family whose income has exceeded the applicable Tax Credit Income Limit after initial occupancy of such Tax Credit Eligible Unit by such Tax Credit Eligible Family shall, subject to paragraph (b) of this Section 2.9, be deemed to comply with Section 2.5(a) hereof if the rent for such Tax Credit Eligible Unit complies with Section 2.6 hereof.

(b) A Tax Credit Eligible Unit (the "Increased-Income Unit") occupied by a Tax Credit Eligible Family whose income has increased above 140 percent of the Tax Credit Income Limit shall be deemed to comply with Section 2.5(a) hereof if the rent for the Increased-Income Unit complies with Section 2.6 hereof, but only if all units (i) in the same building as the Increased-Income Unit, (ii) of a comparable size with or smaller than the Increased-Income Unit, and (iii) which are then available or subsequently become available, are occupied by a new tenant who is a Tax Credit Eligible Family.

(c) Sections 2.5(b) and 2.8 shall be deemed satisfied, despite a temporary noncompliance therewith, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this Regulatory Agreement until the noncompliance is corrected. [§92.252(f)(1)]

2.10 The rents described in Sections 2.7 and 2.8 as prepared by the Borrower shall be subject to review and approval by DOH annually and shall be less than the maximum amount(s) provided by DOH annually to the Borrower for the Project. The amount(s) proposed by the Borrower as Utilities shall also be subject to the annual review and approval of DOH. The Borrower shall not increase rents for units of the Project during any year during the Project Term until after receiving the updated maximum rent limits for such year from DOH; any such rent increase shall thereafter be promptly reported by the Borrower in writing to DOH. [§92.252(f)]

2.11 100 percent of the units in the Low-Income Project shall, at all times during the Project Term, be occupied by Families whose adjusted annual incomes at initial occupancy do not exceed 60 percent of the median Family income for the Chicago area, as determined by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling higher or lower

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than 60 percent of the median income for the Chicago area in accordance with 24 C.F.R. Section 92.216, and thereafter such income ceiling shall apply. [§92.216]

2.12 (a) The Tax Credit Eligible Units in the Project shall be made available for lease by members of the general public and the Borrower shall not give preference in renting Tax Credit Eligible Units in the Project to any particular class or group of individuals other than Tax Credit Eligible Families as provided herein.

(b) The Borrower shall not refuse to lease any unit of the Project to a holder of a voucher or certificate of eligibility under Section 8 of the 1937 Act or under 24 C.F.R. Part 982, or of a comparable document evidencing participation in a HOME Program tenant-based rental assistance program because of the status of the prospective tenant as a holder of such voucher, certificate or comparable HOME Program tenant-based assistance document. [§92.252(d); §42(h)(6)(B)(iv)]

2.13 All tenant leases for Tax Credit Eligible Units and the Low-Income Project shall be written, shall be in conformity with all applicable laws, including without limitation the City of Chicago Residential Landlord and Tenant Ordinance and the HOME Regulations, and shall contain clauses, inter alia, wherein each individual lessee: (i) certifies the accuracy of the statements made in the Tenant Certification and (ii) agrees that the Family income and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy, that he/she will comply with all requests for information with respect thereto from the Borrower, the City or HUD, and that the failure to provide accurate information in the Tenant Certification or refusal to comply with a request for information with respect thereto shall be deemed a substantial violation of an obligation of his/her tenancy.

2.14 All tenant leases for Tax Credit Eligible Units shall be for a period of not less than six months; provided, however, that notwithstanding the foregoing, each tenant lease for a Tax Credit Eligible Unit constituting a "single-room occupancy unit" within the meaning of Section 42(i)(3)(B)(iv) of the Code shall be for a period of not less than one month.

2.15 All leases for the Low-Income Project shall be for a period of not less than one year, unless by mutual agreement of the tenant and the Borrower. Notwithstanding the foregoing, rents will not be set more than one year in advance. Leases for units in the Low-Income Project shall not contain any of the following provisions:

- (a) agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease;
- (b) agreement by the tenant that the Borrower may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties (this prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit; the Borrower may dispose of this personal property in accordance with applicable local and State law);

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- (c) agreement by the tenant not to hold the Borrower or the Borrower's agents legally responsible for any action or failure to act, whether intentional or negligent;
- (d) agreement by the tenant that the Borrower may institute a lawsuit without notice to the tenant;
- (e) agreement by the tenant that the Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties;
- (f) agreement by the tenant to waive any right to a trial by jury;
- (g) agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; or
- (h) agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Borrower against the tenant (provided, however, that the tenant may be obligated to pay costs if the tenant loses).  
[§92.253(a) and (b)]

2.16 (a) The Borrower shall not terminate the tenancy or refuse to renew the lease of a tenant of the Low-Income Project except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal, State or local law, or for other good cause. Any refusal to renew shall be preceded by not less than 30 days by the Borrower's service upon the tenant of a written notice specifying the grounds for the action. For each tenant of the Low-Income Project whose tenancy is to be terminated, the Borrower shall provide a written notice specifying the grounds for termination to such tenant and shall not cause any such tenant to be evicted less than 30 days after receipt by the tenant of such written notice. [§92.253(c)]

(b) The Borrower shall not evict or terminate the tenancy of any tenant of a Tax Credit Eligible Unit other than for good cause.

2.17 Any increase in rents on the Low-Income Project shall be subject to the provisions of outstanding leases. Where the leases allow an increase in rent, the Borrower shall provide tenants with not less than 30 days' prior written notice before implementing any increase in rents. [§92.252(f)(3)]

2.18 All tenant lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower which is unrelated to the Project, shall be maintained, as required by the City, in a reasonable condition for proper audit and shall be subject to examination during business hours by representatives of the City. If the Borrower employs a management agent for the Project, the Borrower shall require such agent to comply with the requirements of this Regulatory Agreement and shall include such

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requirements in any and all management agreements or contracts entered into with respect to the Project.

2.19 (a) The Borrower shall obtain and keep the records required under the Plan and 26 C.F.R. Section 1.42-5(b) for the periods described therein.

(b) The Borrower shall maintain records evidencing compliance with all the requirements of the HOME Program for the Low-Income Project; such records shall be maintained for the Inspection Period.

(c) Subject to Section 6.2 hereof, this Section shall survive beyond the Termination Date.

2.20 The Borrower shall obtain and maintain on file during the Project Term a sworn and notarized Tenant Certification with respect to each and every individual, group of unrelated individuals or Family who is a tenant in the Low-Income Project, signed by the tenant or tenants (i.e., the individual or individuals whose name or names appear on the lease) and obtained by the Borrower (a) prior to such tenant or tenants occupying the unit or signing a lease with respect thereto, and (b) thereafter at least annually so long as such individual, individuals or Family remain as tenants in the Low-Income Project. The first Tenant Certification obtained from any tenant shall have attached thereto copies of source documentation (e.g., wage statements, interest statements and unemployment compensation statements) for such tenants' income (the "Source Documentation"). Each Tenant Certification shall be kept on file with the Borrower during the Inspection Period; subject to Section 6.2 hereof, this covenant shall survive beyond the Termination Date. The Borrower shall assist each of the tenants in the Low-Income Project in completing the Tenant Certification if necessary. If the Borrower shall become aware of evidence that any Tenant Certification failed to state completely and accurately information about the Family size or income of the applicable tenants, the Borrower shall examine Source Documentation for such tenants. If the HUD Restrictions Termination Date is not less than 10 years after the Completion Date, the Borrower shall examine, during the sixth year following the Completion Date and every sixth year thereafter during the Project Term, Source Documentation evidencing annual income for each tenant in any unit of the Low-Income Project. [§92.252(h)]

2.21 The Borrower agrees that it will take any and all actions required by the City to substantiate the Borrower's compliance with the restrictions set forth herein, including, but not limited to, submitting to the City an Annual Report executed by the Borrower, commencing on the First Reporting Date and on each October 1 thereafter through and including the Last Reporting Date. Subject to Section 6.2 hereof, this covenant shall survive beyond the Termination Date.

2.22 The Borrower shall provide to the City a tenant profile (in the form provided to the Borrower by DOH) for each Low-Income Family for each unit in the Low-Income Project and for each Tax Credit Eligible Unit within 30 days after such unit is leased to such tenant(s) (or, for units occupied by Low-Income Families or Tax Credit Eligible Families as of the date hereof, within 30 days from the date hereof). For each unit in the Low-Income Project, promptly after the first leasing of such unit after the Completion Date, the Borrower shall provide the City,

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unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics (including gender identification of the head(s) of household) of (a) the tenants, if any, occupying such unit before rehabilitation, (b) the tenants moving into such unit initially after completion of construction and/or rehabilitation, as applicable, of the Project, and (c) the applicants for tenancy of such unit within 90 days following the Completion Date. For each subsequent leasing of the unit, the Borrower shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics (including gender identification of the head(s) of household) of each tenant moving into the unit. [§92.508(a)(7)(A)]

2.23 The Borrower shall notify the City of the occurrence of any event of which the Borrower has notice and which event would violate any of the provisions of this Regulatory Agreement.

2.24 For every unit in the Low-Income Project (other than a unit occupied by a Family receiving Section 8 tenant-based rental housing assistance or tenant-based rental assistance provided with HOME Funds), the Borrower shall comply with affirmative marketing requirements established by DOH from time to time, including the following:

- (a) based on the Affirmative Marketing Plan, advertise in pre-identified commercial media, contact pre-identified churches, community groups and other agencies, and undertake other means to inform targeted groups of the availability of such units in the Low-Income Project;
- (b) display conspicuously HUD's fair housing poster wherever rentals and showings of such units take place;
- (c) provide DOH upon request with an annual report describing the Borrower's affirmative marketing activities with respect to the Low-Income Project, including a description of the Borrower's outreach efforts (including copies of all advertisements and brochures) and, unless prohibited by law, a record of the racial/ethnic/gender characteristics of all individuals who look at units in the Low-Income Project, those who apply for leases for such units, and those who actually sign such leases; and
- (d) maintain records of affirmative marketing efforts with respect to the leasing or re-leasing of each such unit to be made available for review by DOH for a period equal to the Project Term.

2.25 The Borrower has submitted to the City a tenant selection plan containing policies and criteria that: (a) are consistent with the purpose of providing housing for Very Low-Income Families and Low-Income Families, (b) are reasonably related to HOME Program eligibility and the applicants' ability to perform the obligations of the lease, (c) give reasonable consideration to the housing needs of Families that would have a federal preference under Section 6(c)(4)(A) of the 1937 Act, and (d) provide for (1) the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and (2) the

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prompt notification in writing to any rejected applicant of the grounds for any rejection. [§92.253(d)]

2.26 No Person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with the Project. In addition, the Borrower shall cause the Project to comply at all times with the Chicago Fair Housing Ordinance, Section 5-8-010 et seq. of the Municipal Code of Chicago.

2.27 The Borrower hereby acknowledges and affirms that it has reviewed the provisions of, and that the Project shall during the Project Term be in compliance with, each of the following: (a) the requirements of the Fair Housing Act, 42 U.S.C. §§3601-19 and implementing regulations at 24 C.F.R. Part 100 et seq.; Executive Order 11063, as amended by Executive Order 12892 (3 C.F.R., 1958-63 Comp., p. 652 and 59 F.R. 2939) (Equal Opportunity in Housing) and implementing regulations at 24 C.F.R. Part 107; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d - 2000d-4, and implementing regulations at 24 C.F.R. Part 1; (b) the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq., and the implementing regulations at 24 C.F.R. Part 146; (c) the prohibitions against discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and implementing regulations at 24 C.F.R. Part 8; (d) the requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (3 C.F.R., 1964-65 Comp., p. 339; 3 C.F.R., 1966-70 Comp., p.684; 3 C.F.R., 1966-70 Comp., p.803; 3 C.F.R., 1978 Comp., p.230 and 3 C.F.R., 1978 Comp., p.264, respectively) (Equal Employment Opportunity Programs) and the implementing regulations issued at 41 C.F.R. Chapter 60; and (e) the requirements of Executive Order 11625, as amended by Executive Order 12007 (3 C.F.R., 1971-75 Comp., p.616 and 3 C.F.R., 1977 Comp., p.139) (Minority Business Enterprises); Executive Order 12432 (3 C.F.R., 1983 Comp., p.198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 C.F.R., 1977 Comp., p.393 and 3 C.F.R., 1987 Comp., p.245) (Women's Business Enterprise).

2.28 The Borrower shall take all reasonable steps to minimize the displacement of Families, individuals, businesses, not-for-profit organizations and farms (herein for the purposes of this paragraph collectively called "People") as a result of the Project. If displacement of People does occur as a result of the Project, the Borrower shall comply with the requirements of 24 C.F.R. Section 92.353, with respect to, among other things, temporary and permanent relocation of displaced People. The Borrower shall provide or cause all "displaced persons" (as defined in 24 C.F.R. Section 92.353(c)(2)) to be provided with relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), 42 U.S.C. Section 4601 et seq., and 49 C.F.R. Part 24, and shall cause all such "displaced persons" to be advised of their rights under the Fair Housing Act, 40 U.S.C. Section 3601 et seq. [§92.353]

2.29 The acquisition of the real property on which the Project is located is subject to the requirements of the URA and the requirements of 49 C.F.R. Part 24, Subpart B. [§92.353(f)]

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2.30 The Project shall constitute HUD-associated housing for purposes of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4821 et seq.), and comply with the requirements thereof and of 24 C.F.R. Part 35 and 24 C.F.R. Section 982.401(j) (except Section 982.401(j)(1)(i)), including without limitation the requirements of notice to tenants, prohibition of the use of lead-based paint and for the elimination of the hazards of lead-based paint. Any lead-based paint and defective paint debris shall be disposed of in accordance with applicable federal, State or local requirements. [§92.355]

2.31 The Borrower has not executed and shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

2.32 Following completion of construction and/or rehabilitation, as applicable, of the Project and throughout the Project Term, all of the units in the Project shall be suitable for occupancy and the Borrower shall keep the Project in compliance with (a) the Multi-Unit Rehabilitation Construction Guidelines of DOH, (b) the accessibility requirements at 24 C.F.R. Part 8 which implement Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, (c) the design and construction requirements at 24 C.F.R. §100.205 which implement the Fair Housing Act, 42 U.S.C. §§3601-19, and (d) all applicable local codes, rehabilitation standards, ordinances and zoning ordinances. [§92.251]

2.33 The Borrower shall not request disbursement of HOME Funds until the HOME Funds are needed to pay for Eligible Costs of the Project. The amount of each such request shall not exceed the amount needed. [§92.504(c)(viii)]

2.34 The Borrower is not a primarily religious organization and the Project will be used solely for secular purposes. [§92.257]

2.35 (a) No individual who is an employee, agent, consultant, officer or elected or appointed official of the City (and no individual who was an employee, agent, consultant, officer or elected or appointed official within one year prior to the date hereof) and who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME Funds or who is or was in a position to participate in a decision-making process or gain inside information with regard to such activities, has obtained, is obtaining or will obtain a financial interest or benefit from the Project, or has or will have any interest in any contract, subcontract or agreement with respect to the Project, or the proceeds thereunder, either for himself or for those with whom he has family or business ties.

(b) No individual who is an officer, employee, agent, consultant or elected or appointed official of the Borrower shall occupy a residential unit in the Project, except for any such individual who shall occupy a unit as the Project manager or maintenance worker. [§92.356]

2.36 Except as otherwise disclosed to the City in writing, all of the statements, representations and warranties of the Borrower contained in (i) the Borrower's application for the

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Loan, (ii) the Borrower's application for Tax Credits, and (iii) any other document submitted by the Borrower to the City in connection with the Project remain true and in effect as of the date hereof.

2.37 The Borrower agrees that it will pay any reasonable fee which the City may hereafter assess in its sole discretion to underwrite the costs of monitoring activities performed by the City in connection with the Tax Credits allocated for the Project.

2.38 The Project shall constitute, during each year of the Extended Use Period, a "qualified low-income housing project" as defined in Section 42 of the Code, commencing with the first year of the Compliance Period and continuing until the end of the Extended Use Period.

2.39 The Borrower shall inform DOH of the date the Tax Credit Eligible Units are "placed in service" within the meaning of Section 42 of the Code and of the dollar amount of Tax Credits to be claimed by the Borrower with respect to the Project and shall provide DOH with a cost certification and all other documentation required by DOH to issue an Internal Revenue Service Form 8609 with respect to the Tax Credit Eligible Units, all within 60 days following such "placed-in-service" date.

2.40 The Borrower shall provide DOH with a copy of the completed, fully executed Internal Revenue Service Form 8609 with respect to the Tax Credit Eligible Units for the first year of the Credit Period, at the same time that the Borrower submits such Form 8609 to the Internal Revenue Service.

2.41 No individual providing consultant services in an employer-employee type relationship with the Borrower shall be compensated in excess of the limits specified in 24 C.F.R. Section 92.358.

2.42 Additional representations and covenants of the Borrower contained on Exhibit B hereto are hereby incorporated herein by reference.

### **SECTION 3. AGREEMENT TO PROVIDE LOAN, START CONSTRUCTION; COMPLETION DATE.**

3.1 The City agrees to provide the Loan to the Borrower in accordance with the terms and conditions of the Loan Agreement, for the purposes described on Exhibit C hereto. The Borrower agrees to start construction on the Project within 12 months from the date hereof.

3.2 The City agrees to provide, upon the written request of the Borrower, a certification, in a form eligible for recordation in the conveyance and real property records of the county in which the Project is located, identifying the Completion Date promptly after such date. The Borrower shall pay all expenses of recordation of such certificate.

### **SECTION 4. RELIANCE.**



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The City and the Borrower hereby recognize and agree that the representations and covenants set forth herein made by the City and the Borrower, respectively, may be relied upon by the Borrower and the City, respectively. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Borrower, Tax Credit Eligible Families and Low-Income Families and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the City may consult with counsel and the opinion of such counsel shall be evidence that such action or failure to act by the City was in good faith and in conformity with such opinion. The City and the Borrower agree that it is the Borrower's responsibility to determine that (i) each potential tenant in the Low-Income Project qualifies as a Low-Income Family, and (ii) that each potential tenant for a Tax Credit Eligible Unit qualifies as a Tax Credit Eligible Family, and that in making each such determination, the Borrower shall exercise due diligence.

## SECTION 5. SALE OR TRANSFER OF THE PROJECT.

The Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (including, without limitation, a transfer by assignment of any beneficial interest under a land trust), or to violate any provision of the Mortgage relating to prohibitions on sales or transfers of the Project or any interest therein (whether or not the Mortgage remains of record), at any time during the Project Term, except with respect to Permitted Encumbrances under the Mortgage or as expressly permitted by the City and except as provided on Exhibit B hereto. The Borrower hereby agrees and covenants that no portion of any building to which this Regulatory Agreement applies shall be transferred to any Person unless all of such building is transferred to such Person. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 5 shall be null, void and without effect, shall cause a reversion of title to the Borrower or any successor or assignee of the Borrower last permitted by the City, and shall be ineffective to relieve the Borrower or such successor or assignee, as applicable, of its obligations hereunder.

## SECTION 6. TERM.

6.1 This Regulatory Agreement shall become effective as of the date hereof. Subject to Sections 2.6, 2.19, 2.20, 2.21, 6.2, 7.4, 7.7 and 16 hereof, this Regulatory Agreement shall remain in full force and effect for a term equal to the Project Term, it being expressly agreed and understood that the provisions hereof are intended to survive throughout the Project Term.

6.2 (a) Subject to the terms of Sections 2.6, 6.2(b) and (c) and 7.4 hereof and before the HUD Restrictions Termination Date, the terms and provisions of this Regulatory Agreement shall cease to be enforceable as of a Foreclosure Date subject to the following conditions:

- (i) the Foreclosure Date shall be on or after the Tax Credit Termination Date; and
- (ii) the Transfer on the Foreclosure Date shall:

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- (1) recognize any contractual or legal rights of public agencies, nonprofit sponsors or others to take actions that would avoid termination of low-income affordability of the Project, and
- (2) not be for the purpose of avoiding low-income affordability restrictions pertaining to the Project, as determined by HUD.

(b) If at any time following the occurrence of a cessation of enforceability of the terms and provisions of this Regulatory Agreement pursuant to Section 6.2(a) hereof, but not later than the HUD Restrictions Termination Date, the Borrower or any Associated Person obtains an ownership interest in the Project, the terms and provisions of this Regulatory Agreement shall again be enforceable as of the date (the "Renewal Date") the Borrower or any Associated Person obtains such interest. If a Renewal Date shall occur on or after the Tax Credit Termination Date, the terms and provisions of Sections 2.5(a), 2.6(a), 2.9(a), 2.9(b), 2.12(a), 2.14 and 2.38 and the parenthetical in Section 2.3 hereof and Sections 1, 3(c), 3(f) and 13 of Part II to Exhibit B hereto shall, subject to Sections 2.6(b), 2.19, 2.20, 2.21, 6.2(c), 7.4, 7.7 and 16, cease and terminate as of such Renewal Date.

(c) Neither (1) any cessation of enforceability of the terms and provisions of this Regulatory Agreement pursuant to Section 6.2(a) hereof, (2) the termination of the terms and provisions of this Regulatory Agreement pursuant to Section 6.2(d) hereof, nor (3) the occurrence of the Tax Credit Termination Date (but only if the Tax Credit Termination Date is also a Foreclosure Date) or of a Renewal Date, shall be construed to permit, during the Three-Year Period, either (i) the eviction or termination of the tenancy (other than for good cause) of an existing tenant of any Tax Credit Eligible Unit, or (ii) any increase in the Gross Rent with respect to any Tax Credit Eligible Unit not otherwise permitted under Section 42 of the Code.

(d) Subject to the provisions of Sections 2.6(b), 6.2(c) and 7.4 hereof and prior to the Termination Date, the terms and provisions of this Regulatory Agreement shall cease and terminate upon a Transfer, subject to the following conditions:

- (i) if the Transfer shall occur prior to the HUD Restrictions Termination Date, the terms and conditions hereof shall cease and terminate as of the HUD Restrictions Termination Date, but only if the HUD Restrictions Termination Date shall occur on or after the Tax Credit Termination Date,
- (ii) if the Transfer shall occur on or after the HUD Restrictions Termination Date and after the Tax Credit Termination Date, the terms and conditions hereof shall cease and terminate on the date of such Transfer, and
- (iii) if the Transfer shall occur on or after the HUD Restrictions Termination Date and on or prior to the Tax Credit Termination Date, the

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terms and provisions hereof shall cease and terminate as of the Tax Credit Termination Date.

## SECTION 7. ENFORCEMENT.

7.1 Subject to Section 7.7 hereof, if a violation of any of the foregoing representations or covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of 30 days after notice thereof from the City to the Borrower (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Borrower shall have commenced to cure such occurrence or attempt within said 30-day period and shall thereafter continue diligently to effect such cure, then said 30-day period shall be extended to 60 days upon written request from the Borrower to the City delivered during such 30-day period, and upon further written request from the Borrower to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days; provided further, however, that the City shall not be precluded during any such periods from exercising any remedies hereunder if the City shall receive a request or notice from HUD or the Internal Revenue Service to do so or if the City shall determine that the continuation of such uncorrected occurrence or attempt shall result in any liability by the City to HUD or the Internal Revenue Service), the City and its successors and assigns, without regard to whether the City or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by the Borrower of its obligations hereunder, or may declare an event of default under the Loan Documents and exercise its rights thereunder, including without limitation foreclosure under the Mortgage. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recovery for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time.

7.2 The Borrower shall repay, as a recourse obligation of the Borrower, to the City upon demand the amount described in Section 3.07(d) of the Loan Agreement, as a repayment of the Loan, pursuant to the terms and conditions of Section 8.06(c) of the Loan Agreement. [§92.205(d), §92.503, §92.504(2)]

7.3 All fees, costs and expenses of the City incurred in taking any action pursuant to this Section 7 shall be the sole responsibility of the Borrower.

7.4 The Borrower and the City each acknowledge that a primary purpose of requiring the Borrower to comply with the restrictions provided in this Regulatory Agreement is to assure compliance of the Project and the Borrower with Section 42 of the Code and for that reason and the Borrower, in consideration of receiving Tax Credits for the Project, agrees and consents that the City and any Permitted Tenant shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Borrower of its obligations under this Regulatory Agreement in a court of competent jurisdiction. To the extent permitted by law, all individuals who are or may qualify as Tax Credit

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Eligible Families with respect to the Project (whether as prospective, present or former tenants of the Project) (the "Permitted Tenants") shall have the right to enforce in any court of the State the requirement of Section (3)(f) of Part II to Exhibit B hereto and the terms of Section 6.2(c) hereof.

7.5 The Borrower further specifically acknowledges that the beneficiaries of the Borrower's obligations hereunder cannot be adequately compensated by monetary damages in the event of any breach or violation of any of the foregoing representations or covenants.

7.6 Upon any failure of the Borrower to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of Treasury, the Internal Revenue Service or the City from time to time pertaining to the obligations of the Borrower as set forth therein or herein, and upon compliance by the City with the procedures described in Section 7.7 hereof, the City may, in addition to all of the remedies provided by law or in equity, request the Internal Revenue Service to decertify the Project for Tax Credit dollars and to immediately commence recapture of the Tax Credit dollars heretofore allocated to the Project.

7.7 The City shall provide prompt written notice (a "Noncompliance Notice") to the Borrower if the City (a) does not receive from the Borrower an Annual Report when due, (b) is not permitted to inspect, as provided in Section 16 hereof, the records maintained by the Borrower pursuant to Section 2.19(a) hereof, or (c) discovers by inspection, review or in some other manner that the Project is not in compliance with the provisions of Section 42 of the Code. The Noncompliance Notice shall specify a period (the "Correction Period") during which the Borrower is required to correct the condition (the "Noncompliance Condition") causing the production of the Noncompliance Notice. After the end of the Correction Period (and within 45 days of the end of such period), the City shall file with the Internal Revenue Service Form 8823 describing the Noncompliance Condition, whether or not the Noncompliance Condition shall have been corrected during the Correction Period. Subject to Section 6.2 hereof, this Section 7.7 shall survive beyond the Termination Date, if the Termination Date shall occur prior to October 1 of the second calendar year following the end of the Compliance Period.

## **SECTION 8. RECORDING AND FILING.**

The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the conveyance and real property records of the county in which the Project is located and in such other places as the City may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Borrower shall immediately transmit to the City an executed original of this Regulatory Agreement showing the date and recording number of record. The Borrower agrees that the City may withhold the Internal Revenue Service Form 8609 with respect to the Project unless and until the City has received the recorded executed original of this Regulatory Agreement.

## **SECTION 9. COVENANTS TO RUN WITH THE LAND.**

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The Borrower hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall, throughout the Project Term, 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 Borrower's successors in title to the Project throughout the Project Term, subject to Section 6.2 hereof. The Borrower hereby covenants to include the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another Person in order that such transferee has notice of, and is bound by, such restrictions, and to obtain from any transferee the agreement to be bound by and comply with the requirements set forth in this Regulatory Agreement; provided, however, that each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (including, without limitation, any transfer of a beneficial interest in a land trust or a portion thereof) 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 or other instrument.

## SECTION 10. GOVERNING LAW.

This Regulatory Agreement shall be construed in accordance with and governed by the internal laws of the State without regard to its conflict of laws principles, and, where applicable, the laws of the United States of America. In the event of any conflict between this Regulatory Agreement and the National Affordable Housing Act, the HOME Regulations or Section 42 of the Code, the requirements of the National Affordable Housing Act, the HOME Regulations or Section 42 of the Code, as applicable, shall control.

## SECTION 11. AMENDMENTS.

This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the county in which the Project is located. The Borrower hereby expressly agrees to enter into all amendments hereto which, in the opinion of the City, are reasonably necessary for maintaining compliance under the National Affordable Housing Act, the HOME Regulations and Section 42 of the Code.

## SECTION 12. NOTICE.

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

IF TO CITY:

City of Chicago, Illinois  
c/o Department of Housing  
33 North LaSalle Street, Suite 200

# UNOFFICIAL COPY

Chicago, Illinois 60602  
Attention: Commissioner

WITH COPIES TO:

Department of Finance  
City of Chicago  
33 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attention: City Comptroller

and

Office of the Corporation Counsel  
City Hall, Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Finance and Economic  
Development Division

IF TO BORROWER: As specified on Exhibit B hereto.

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the Business Day immediately following deposit with the overnight courier, and any notice, demand or request sent pursuant to clause (d) above shall be deemed received two Business Days following deposit in the mail.

### SECTION 13. SEVERABILITY.

If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

### SECTION 14. COUNTERPARTS.

This Regulatory Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same Regulatory Agreement.

### SECTION 15. EFFECTIVE DATE.

For purposes of Section 42 of the Code, this Regulatory Agreement shall be deemed to be in effect as of the date first set forth above.

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## **SECTION 16. RIGHT TO INSPECT.**

Subject to Section 6.2 hereof and upon 30 days' prior notice to the Borrower, the Borrower shall permit, and shall cause any management agent for the Project to permit, the City, HUD and/or the Comptroller General of the United States to inspect the Project at all reasonable times and access thereto shall be permitted for that purpose. At any time during normal business hours and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary, the Borrower shall make available to the City, HUD and/or representatives of the Comptroller General of the United States all of its records with respect to matters covered by this Regulatory Agreement. The Borrower shall permit, and shall cause any management agent for the Project to permit, the City, HUD and/or representatives of the Comptroller General of the United States to audit, examine and make excerpts or transcripts from such records, and to make copies of records relating to personnel, conditions of employment and other data covered by this Regulatory Agreement.

## **SECTION 17. NO THIRD PARTY BENEFITS.**

Subject to Section 7.4 hereof, this Regulatory Agreement is made for the sole benefit of the City and the Borrower and their respective successors and assigns and, except as provided in Section 7.4 hereof or otherwise expressly provided herein, no other party shall have any legal interest of any kind hereunder or by reason of this Regulatory Agreement. Whether or not the City elects to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third party by reason of this Regulatory Agreement or any of the City's actions or omissions pursuant hereto or otherwise in connection herewith.

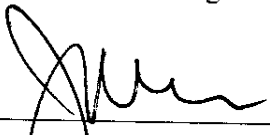
## **SECTION 18. REFERENCES TO STATUTES, ETC.**

All references herein to statutes, regulations, rules, executive orders, ordinances, resolutions, rulings, notices or circulars issued by any governmental body shall be deemed to include any and all amendments, supplements and restatements from time to time to or of such statutes, regulations, rules, executive orders, ordinances, resolutions, rulings, notices and circulars.

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IN WITNESS WHEREOF, the City and the Borrower have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

CITY OF CHICAGO, ILLINOIS, acting by and through its  
Department of Housing

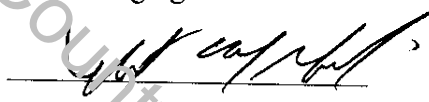
By: 

Name: John G. Markowski

Title: Commissioner

SENIOR SUITES CHICAGO BRIDGEPORT LLC, an Illinois  
limited liability company

By: Senior Suites Chicago Corporation, an Illinois corporation  
and its sole managing member

By: 

Name: Robert M. Grawanski

Title: Asst. Treas.

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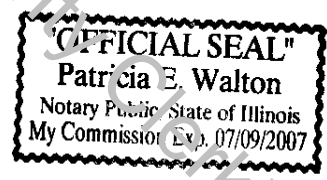
STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT John Markowski personally known to me to be the \_\_\_\_\_ Commissioner of the Department of Housing of the City of Chicago, Illinois (the "City") 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 J. Markowski Commissioner, (s)he signed and delivered the said instrument pursuant to authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22nd day of December, 2004

Patricia E. Walton  
Notary Public

(SEAL)



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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, do hereby certify that Robert Gawronski, personally known to me to be the ASST TREAS. of Senior Suites Chicago Corporation (the "Managing Member"), an Illinois corporation and sole managing member of Senior Suites Chicago Bridgeport, LLC (the "Borrower"), an Illinois limited liability company, and 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 ASST TREAS. he/she signed and delivered the said instrument pursuant to authority given by the Board of Directors of the Managing Member, and as his/her respective free and voluntary act and deed and as the free and voluntary act and deed of the Managing Member and the Borrower for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22 day of December, 2004



R Kent Layton  
 Notary Public

(SEAL)

Cook County Clerk's Office

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## EXHIBIT A

Lots 35 to 45 (except the Northerly 10 feet thereof), both inclusive, in Block 2 in Albert Crane's Subdivision of the South 3/4 of the West 1/4 of the Southwest 1/4 of Section 28, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Address Commonly Known as: 2825 South Halsted Street, Chicago, Illinois 60608

Permanent Index Numbers: 17-28-309-001  
17-28-309-002  
17-28-309-003  
17-28-309-004  
17-28-309-005  
17-28-309-006  
17-28-309-007  
17-28-309-008  
17-28-309-009

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## EXHIBIT B

### I. ADDITIONAL DEFINITIONS

"Davis-Bacon Act" shall mean 40 U.S.C. Section 276a et seq.

"Housing Act Section 3" shall mean Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. Section 1701u.

"HUD Restrictions Termination Date" shall mean the twentieth anniversary of the Completion Date.

"Loan" shall mean a loan by the City to the Borrower in the principal amount of \$5,248,243 for financing a portion of the costs of construction of the Project.

"Low-Income Project" shall mean the 85 units in the Project financed with HOME Funds and required to be occupied by Low-Income Families.

"Plan" shall mean the Housing Tax Credit Plan of the City pursuant to which Tax Credits were allocated to the Project.

"Project" shall mean the one building to be located at 2825 South Halsted Street, Chicago, Illinois, and which shall contain, as of the completion of construction thereof, 85 units for occupancy by low-and moderate income Senior citizens.

"Section 3 Regulations" shall mean 24 C.F.R. Part 135 and such additional regulations, orders, rulings, interpretations and directives in connection with Housing Act Section 3 as may be promulgated or issued by HUD from time to time.

"Senior Lender" shall mean Harris Trust and Savings Bank, located at 111 West Monroe Street, Chicago Illinois 60603, and its successors and assigns.

"Senior Loan" shall mean a loan by the Senior Lender to the Borrower in the principal amount of \$1,747,000 for financing a portion of the costs of construction of the Project.

"Senior Mortgage" shall mean that certain Construction Mortgage, Personal Property Security Agreement, Assignment of Leases and Rentals and Financing Statement dated as of the date hereof granted by the Borrower to the Senior Lender and securing repayment of the Senior Loan.

"Tax Credit Income Limit" shall mean 60 percent of the Chicago-area median income, adjusted for Family size, as such adjusted income and Chicago-area median income are determined from time to time by HUD, and thereafter such income limits shall apply to this definition.

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“Very Low-Income Project” shall mean the 34 units in the Project required to be occupied by Very Low-Income Families.

“Very, Very Low-Income Project” shall mean 0 units in the Project required to be occupied by Very, Very Low-Income Families.

## II. ADDITIONAL REPRESENTATIONS AND COVENANTS OF BORROWER.

1. At least 85 of the units in the Project shall be Tax Credit Eligible Units. The Borrower received an allocation of \$831,584 of Tax Credits from the City in connection with the Project.

2. (a) Eighty Five (85) of the units in the Low-Income Project shall be occupied by Low-Income Families, thirty four (34) of the units in the Low-Income Project shall be occupied by Very-Low Income Families and none of the units in the Low-Income Project shall be occupied by Very, Very Low-Income Families, for the Project Term, subject to the provisions of section 2 hereof.

(b) The rents for all of the units in the Very Low-Income Project shall not exceed 30 percent of adjusted income of a Family whose gross income equals 50 percent of the median income for the Chicago area, with adjustment for the number of bedrooms in the unit (as determined by HUD), as such adjusted income and Chicago-area median income are determined from time to time by HUD, less Utilities.

(c) The rents for all of the units in the Very, Very Low-Income Project shall not exceed 30 percent of the adjusted income of a Family whose gross income equals 30 percent of median income for the Chicago area, with adjustment for the number of bedrooms in the unit (as determined by HUD), as such adjusted income and Chicago-area median income are determined from time to time by HUD, less Utilities.

3. (a) The Project shall consist of the following unit configuration with the following initial rents:

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Rent</u>
Studio	13	\$625
Studio	20	\$640
1-bedroom	21	\$695
1-bedroom	31	\$750

The initial rents may be increased up to the limits set forth in Section 2 and Exhibit B, Section 2 hereof.

(b) The Low-Income Project shall consist initially of the following unit configuration for Low-Income Families with the following initial rents:

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<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Rent</u>
Studio	13	\$625
Studio	20	\$640
1-bedroom	21	\$695
1-bedroom	31	\$750

The initial rents may be increased up to the limits set forth in Section 2 and Exhibit B, Section 2 hereof.

(c) The Tax Credit Eligible Units in the Project shall consist initially of the following:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Studio	33
1-bedroom	52

(d) The principal amount of the Loan (i.e., \$5,248,243) divided by the total number of units in the Low-Income Project (i.e., 85) equals \$61,744 per each such unit, which is greater than the minimum per-unit requirement of 24 C.F.R. Section 92.205(c) (i.e., \$1,000 per unit).

(e) The product of the total number of units in the Low-Income Project multiplied by the applicable maximum per-unit subsidy provided in 24 C.F.R. Section 92.250(a) (i.e., \$8,605,565), as shown below, is greater than the principal amount of the Loan (i.e., \$5,248,243):

<u>No. of Bedrooms</u>	<u>No. of Units</u>	<u>Maximum Subsidy</u>	<u>Maximum Subsidy</u>	<u>Product</u>
		<u>Non-Elevator Building</u>	<u>Elevator Building</u>	
Studios	33	\$ 88,300	\$ 92,925	\$3,066,525
One Bedroom	52	\$101,810	\$106,520	\$5,539,040
Two Bedroom	0	\$122,842	\$129,528	\$ 0
Three Bedroom	0	\$157,164	\$177,565	\$ 0
Four + Bedroom	0	\$175,087	\$183,935	\$ 0
TOTAL:				<u>\$8,605,565</u>

(f) The Applicable Fraction for each building in the Project shall be, for each taxable year in the Extended Use Period, not less than the following amount:

<u>Building Address</u>	<u>Applicable Fraction</u>
2825 South Halsted Street	100%

4. Intentionally Omitted

5. Intentionally Omitted

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6. Every contract for the construction of the Project shall contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the United States Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the construction of the Project. All such contracts shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-332, the regulations promulgated in connection therewith and with the Davis-Bacon Act, and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Notwithstanding the foregoing, the requirement of this Section with respect to the payment of prevailing wages shall not apply to (i) an individual who receives no compensation or is paid expenses, reasonable benefits or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed in the construction work on the Project, and (ii) members of an eligible Family who provide labor in lieu of, or as a supplement to, rent payments.

7. Following construction and throughout the Project Term, the Project shall comply with the requirements in the then current edition, as of completion of construction, of the Model Energy Code published by the Council of American Building Officials.

8. Intentionally Omitted

9. The first sentence of Section 5 is hereby modified by adding the following language:

provided, however, that after payment in full of the Loan and all other amounts due and payable to the City under the Loan Documents, such permission by the City shall not be unreasonably withheld.

10. The Project shall be: constructed in accordance with the Construction Schedule, the Project Budget and any Change Orders hereafter approved by the City.

11. For purposes of Section 12, the Borrower's address shall be:

Senior Suites Chicago Bridgeport, LLC  
111 West Wacker Drive, Suite 2200  
Chicago, Illinois 60601  
Attention: William B. Kaplan

With Copies to:

KMZ Rosenman  
525 West Monroe Street  
Suite 1900  
Chicago, Illinois 60661-3693  
Attention: Howard Richard

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and

c/o Alliant Asset Management Company, LLC  
21600 Oxnard Street, Suite 1200  
Woodland Hills, California 91367  
Attention: Shawn Horwitz

12. (a) The work to be performed in connection with the Project is subject to the requirements of Housing Act Section 3. The purpose of Housing Act Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Housing Act Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income individuals, particularly individuals who are recipients of HUD assistance for housing.

(b) The Borrower hereby agrees to comply with the Section 3 Regulations in connection with the Project. As evidenced by its execution of this Regulatory Agreement, the Borrower hereby certifies that it is under no contractual or other impediment that would prevent the Borrower from complying with the Section 3 Regulations in connection with the Project.

(c) The Borrower hereby agrees to (1) send to each labor organization or representative of workers with which the Borrower has a collective bargaining agreement or other understanding, if any, and which concerns workers whose positions are subject to compliance with the Section 3 Regulations in connection with the Project, a notice advising the labor organization or workers' representative of the Borrower's commitments under this Section, and (2) post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Housing Act Section 3 preference and shall set forth: (i) the minimum number of jobs and job titles subject to hire, the availability of apprenticeship and training positions, and the qualifications for each; (ii) the name and location of the Person(s) taking applications for each of the positions; and (iii) the anticipated date the work shall begin.

(d) The Borrower hereby agrees to (1) include the language contained in this Section in every contract entered into by the Borrower in connection with the Project and subject to compliance with the Section 3 Regulations, including the Construction Contract, and (2) take appropriate action, as provided in an applicable provision of such contract or in this Section, upon a finding that any Person with whom the Borrower contracts, including the General Contractor, is in violation of the Section 3 Regulations. The Borrower covenants and agrees that the Borrower shall not contract with any Person in connection with the Project where the Borrower has notice or knowledge that such Person has been found in violation of the Section 3 Regulations.

(e) The Borrower agrees to cause the General Contractor to (1) include the language contained in this Section in every Subcontract subject to compliance with the Section 3



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Regulations, and (2) take appropriate action, as provided in an applicable provision of such Subcontract or in this Section, upon a finding that any Subcontractor with whom the General Contractor contracts is in violation of the Section 3 Regulations. The Borrower shall cause the General Contractor to agree that the General Contractor shall not subcontract with any Person where the General Contractor has notice or knowledge that such Person has been found in violation of the Section 3 Regulations.

(f) The Borrower hereby certifies that any vacant employment positions in connection with the Project, including training positions, that were filled prior to the Closing Date and with Persons other than those to whom the Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Borrower's obligations under the Section 3 Regulations.

(g) Noncompliance with the Section 3 Regulations may result in sanctions, including, but not limited to, the declaration by the City of an event of default under the Loan Documents and the exercise by the City of its remedies thereunder, as well as debarment or suspension from future HUD-assisted contracts.

(h) The Borrower acknowledges receipt from the City of a copy of the City of Chicago Section 3 Compliance Plan booklet (the "Booklet"). The Borrower agrees to complete or cause to be completed, as applicable, those forms contained in the Booklet as requested by the City and to submit such forms to the City promptly upon the City's request. The Borrower hereby represents and warrants to the City that all such forms heretofore submitted by or on behalf of the Borrower are true and correct. The Borrower hereby covenants to the City that all such forms hereafter submitted by the Borrower shall be true and correct, and that work on the Project shall be carried out in accordance with the existing employee list (with respect to number of employees and job classifications only), hiring plan, training plan, contracting plan and compliance effort narrative, as applicable, as submitted by the Borrower to the City, unless otherwise agreed to in writing by the City.

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## EXHIBIT C

### USE OF LOAN PROCEEDS

Description of the tasks to be performed, a schedule for completing the tasks and a project budget:

- see attached Owner's Sworn Statement
- see attached Construction Schedule

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**UNOFFICIAL COPY****EXHIBIT D****ANNUAL REPORT FOR PROJECT RECEIVING  
HOME FUNDS AND LOW-INCOME HOUSING TAX CREDITS  
FROM THE CITY OF CHICAGO, DEPARTMENT OF HOUSING**

Borrower: Senior Suites Chicago Bridgeport, LLC

Project Name: \_\_\_\_\_

Project Number: \_\_\_\_\_

Borrower Federal Employer Identification Number: \_\_\_\_\_

The City of Chicago, Illinois, acting by and through its Department of Housing (the "City"), has entered into a Housing Loan Agreement dated as of \_\_\_\_\_ with the Borrower pursuant to which the City has loaned HOME Funds to the Borrower for the Project. The City has also allocated low-income housing tax credits (the "Tax Credits") to the Borrower for the Project. Pursuant to Section 12 of the Internal Revenue Code of 1986 (the "Code"), the Borrower is required to maintain certain records concerning the Project and the City is required to monitor the Project's compliance with the HOME Regulations and the Code and the agreements executed by the City and the Borrower in connection with the Project. The Borrower further agreed, in the Regulatory Agreement dated as of \_\_\_\_\_ between the City and the Borrower (the "Regulatory Agreement"), to maintain certain records and prepare and deliver certain reports to the City. This Annual Report must be completed in its entirety and must be executed by the Borrower, notarized and returned to the City by October 1 of each year for the period commencing on the earlier of (a) October 1 of the first year of the Compliance Period, or (b) the first October 1 following completion of the construction or rehabilitation of the Project, and ending on the later of (1) the first October 1 following the end of the Compliance Period, or (2) the first October 1 following the Termination Date. In addition, a copy of Schedule I must be completed for each building which comprises a part of the Project. No changes may be made to the language contained herein without the prior approval of the City. Except as otherwise specifically indicated, capitalized terms contained herein shall have the meanings ascribed to them in the Regulatory Agreement.

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## A. INFORMATION

1. Please list the building identification numbers and address for each building included in the Project: (If there are additional buildings in the Project, please provide the requested information on a separate sheet and attach to this document.)

Building Identification Number

Building Address

<u>Building Identification Number</u>	<u>Building Address</u>

2. Complete Schedule I for each building included in the Project.
3. Has any change occurred, either directly or indirectly, (a) in the identity of the Borrower, (b) in the identity of any managing member(s), if any, of the Borrower, (c) in the ownership of any interests in any managing member of the Borrower or in any shareholder, trustee or beneficiary of the Borrower, or (d) which would otherwise cause a change in the identity of the individuals who possess the power to direct the management and policies of the Borrower since the date of the Regulatory Agreement or the most recent Annual Report?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, provide all the appropriate documents.

4. Have the Borrower's organizational documents been amended or otherwise modified since they were submitted to the City?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, provide all amendments and modifications of the Borrower's organizational documents.

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5. Provide the City with independently audited financial statements for the Project for the most recent fiscal year, including an income and expense statement, a balance sheet listing assets and liabilities, a detailed schedule of operating, maintenance and administrative expenses and a cash flow statement.
6. Has the Borrower been a recipient of a federal grant during this year, as defined in Section 42 of the Code, or has there been any other event, either of which would cause a reduction in the Eligible Basis (as hereinafter defined) of any building in the Project?

Yes \_\_\_\_\_

No \_\_\_\_\_

If Yes, provide the details.

7. If the date of this Annual Report is not later than the first October 1 following the Termination Date, the following certifications apply:
- (a) The Borrower hereby certifies to the City that (1) the Project is in full compliance with all currently applicable provisions of the HOME Regulations, (2) the Project shall continue to comply with the HOME Regulations during the Project Term as required by the HOME Regulations, and (3) no change shall occur in the Borrower or any managing member, if any, of the Borrower without the prior written consent of the City, except as may be permitted pursuant to Section 8 of the Mortgage.
  - (b) Provide to the City copies of each lease and each Tenant Certification executed in connection with the Low-Income Project since the later of the execution of the Regulatory Agreement or the last Annual Owner's Certification submitted to the City. For each such unit in the Low-Income Project, provide to the City the data with respect to tenant characteristics as required by Section 2.22 of the Regulatory Agreement.
  - (c) Provide the City with evidence of compliance with Section 2.39 of the Regulatory Agreement since the later of the execution of the Regulatory Agreement or the last Annual Owner's Certification, including copies of any required notices given to prospective tenants regarding lead-based paint with the signature of each tenant in the Low-Income Project. [24 C.F.R. §35.5(b)(1)]
  - (d) Did the Project cause the displacement of any People?

Yes \_\_\_\_\_

No \_\_\_\_\_



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If Yes, provide evidence to the City of compliance with Section 2.28 of the Regulatory Agreement, including the information required under 24 C.F.R. Section 92.508(a)(7)(iv). (The information required by this question need only be supplied to the City once.)

- (e) If the Low-Income Project has 12 or more units, provide to the City payroll records of the General Contractor indicating compliance with the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act.
- (f) Provide to the City evidence of compliance with the affirmative marketing requirements of Section 2.24 of the Regulatory Agreement.

## B. REPRESENTATIONS, WARRANTIES AND COVENANTS

The Borrower hereby represents and warrants to the City that each of the following statements is true and accurate and covenants as follows:

1. The Borrower is [check as applicable]:
  - (a)  an individual.
  - (b)  a group of individuals.
  - (c)  a corporation incorporated and in good standing in the State of \_\_\_\_\_.
  - (d)  a general partnership organized under the laws of the State of \_\_\_\_\_.
  - (e)  a limited partnership organized under the laws of the State of \_\_\_\_\_.
  - (f)  other [please describe]: \_\_\_\_\_.
  
2. The Borrower is [check as applicable] (a) \_\_\_\_\_ the owner of fee simple title to, or (b) \_\_\_\_\_ the owner of 100 percent of the beneficial interest in the hereinafter described Project. The Borrower received an allocation of low-income housing tax credits from the City in the amount of \$ \_\_\_\_\_ on \_\_\_\_\_, pursuant to Section 42 of the Code.
  
3. The Project consists of \_\_\_\_\_ building(s) containing a total of \_\_\_\_\_ residential unit(s).
  
4. If the date of this Annual Report is (a) not prior to the start of the Compliance Period and (b) not later than the first October 1 following the end of the Compliance Period, the following subparagraphs apply:
  - (a) \_\_\_\_\_ of the residential unit(s) (the "Tax Credit Eligible Units") in the Project is/are occupied by Qualifying Tenants (as hereinafter defined).
  - (b) For the 12-month period preceding the date hereof (the "Year"):

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1. [check as applicable] (i) \_\_\_\_\_ 20 percent or more of the residential units in the Project were both rent-restricted (within the meaning of Section 42(g)(2) of the Code) and occupied by individuals (the "Qualifying Tenants") whose income is 50 percent or less of area median income, or (ii) \_\_\_\_\_ 40 percent or more of the residential units in the Project were both rent-restricted (within the meaning of Section 42(g)(2) of the Code) and occupied by individuals (the "Qualifying Tenants") whose income is 60 percent or less of area median income, or (iii) \_\_\_\_\_ 40 percent or more of the residential units in each building in the Project were both rent-restricted (within the meaning of Section 42(g)(2) of the Code) and occupied by individuals whose income is 50 percent or less of area median income;
2. there was no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) of any building in the Project, or if there were any such changes, attached hereto as Schedule II is a true and complete description of all such changes;
3. the Borrower has received an annual income certification from each Qualifying Tenant in substantially the form attached hereto as Schedule III or in such other form as shall have been approved by the City (a "Tenant Certification") and documentation to support that Tenant Certification (for a Qualifying Tenant receiving Section 8 housing assistance payments, such documentation may be a statement from the Chicago Housing Authority to the Borrower declaring that the Qualifying Tenant's income does not exceed the applicable income limit under Section 42(g) of the Code), and the Borrower assisted each of the Qualifying Tenants in completing the Tenant Certifications if necessary;
4. each Tax Credit Eligible Unit in the Project was rent-restricted (within the meaning of Section 42(g)(2) of the Code);
5. all of the units in the Project were for use by the general public and used on a nontransient basis (except for units used for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code, all of which units complied with the applicable requirements of Section 42 of the Code and the hereinafter defined Tax Credit Regulations);
6. each building in the Project was suitable for occupancy, taking into account the health, safety and building codes of the City;
7. there was no change in the "eligible basis" as defined in Section 42(d) of the Code (the "Eligible Basis") of any building in the Project, or if there

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- were any such changes, attached hereto as Schedule IV is a true and complete description of the nature of all such changes;
8. all tenant facilities included in the Eligible Basis of any building in the Project, such as swimming pools, other recreational facilities and parking areas, were provided on a comparable basis to all tenants in such building;
  9. if a Tax Credit Eligible Unit became vacant during the Year, reasonable attempts were or are being made to rent such Tax Credit Eligible Unit or the next available residential unit in the Project of a comparable or smaller size to one or more Qualifying Tenants before any residential units in the Project were or will be rented to tenants who are not Qualifying Tenants;
  10. if the income of any Qualifying Tenant increased above 140 percent of the applicable income limit described in (1) above, the next available residential unit in the Project of a comparable or smaller size was or will be rented to one or more Qualifying Tenants; and
  11. the Regulatory Agreement constitutes an "extended low-income housing commitment" as defined in Section 42(h)(6) of the Code and was in effect.
- (c) Any savings realized in a construction line item of the Project were either dedicated to the benefit of the Project through enhancement of the Project, or resulted in a decrease of the Project's Eligible Basis for purposes of calculating the Tax Credits for which the Project qualifies, and except as disclosed to and approved by the City, no amounts paid or payable to the Borrower as developer fees exceeded the amount set forth in the Borrower's original application for the Tax Credits and such fees will not be increased without the consent of the City.
  - (d) The Project constitutes a "qualified low-income housing project" as defined in Section 42 of the Code and the Tax Credit Regulations.
  - (e) All of the Schedule Is attached hereto constitute a true, correct and complete schedule showing, for the Year, the rent charged for each Tax Credit Eligible Unit in the Project and the income of the Qualifying Tenants in each Tax Credit Eligible Unit.
  - (f) None of the incomes of the Qualifying Tenants exceeds the applicable limits under Section 42(g) of the Code.
5. The Project is in compliance with all of the currently applicable requirements of the National Affordable Housing Act, the HOME Regulations, the Regulatory Agreement, Section 42 of the Code, the applicable Treasury regulations under Section 42 of the Code

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(the "Tax Credit Regulations"), the terms of the City's letter reserving Tax Credits for the Project (the "Reservation Letter"), and, if applicable, the City's Housing Tax Credit Plan for the year in which the Project received its allocation of Tax Credits (the "Plan"). The Borrower will take whatever action is required to ensure that the Project complies with all requirements imposed by the National Affordable Housing Act, the HOME Regulations, the Regulatory Agreement, Section 42 of the Code, the Tax Credit Regulations, the terms of the Reservation Letter and, if applicable, the Plan during the periods required thereby.

The Borrower shall retain all tenant selection documents, which include but are not limited to: income verification, employment verification, credit reports, leases and low-income computation forms, to be available for periodic inspections by the City or its representative. The City, at its option, can periodically inspect the Project, and all tenancy-related documents to determine continued compliance of the Project with all applicable requirements.

6. No litigation or proceedings are pending or, to the Borrower's knowledge, threatened, which may affect the interest of the Borrower in the Project or the ability of the Borrower to perform its obligations with respect thereto, except as disclosed on Schedule \_\_\_\_\_ attached hereto.
7. The Borrower has taken affirmative action to ensure that women- and minority-owned businesses have had the maximum opportunity to compete for and perform as contractors for supplies and/or services, and will continue to do so with future contracts and awards as provided in Sections 2-92-420 through 2-92-570, inclusive, of the Municipal Code of Chicago, as from time to time supplemented, amended and restated.
8. All units in each building included in the Project are affirmatively marketed and available for occupancy by all persons regardless of race, national origin, religion, creed, sex, age or handicap.
9. The Borrower has not demolished any part of the Project or substantially subtracted from any real or personal property of the Project or permitted the use of any residential rental unit for any purpose other than rental housing. The Borrower has used its best efforts to repair and restore the Project to substantially the same condition as existed prior to the occurrence of any event causing damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of the Regulatory Agreement.
10. The Borrower is in possession of all records which it is required to maintain pursuant to the terms of the National Affordable Housing Act, the HOME Regulations, the Regulatory Agreement, Section 42 of the Code, the Tax Credit Regulations and, if applicable, the Plan, as well as any additional records which the City has determined to be necessary to the compliance and administration of the Project.

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11. The Borrower has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Regulatory Agreement and in any event the requirements of the Regulatory Agreement are paramount and controlling as to the rights and obligations therein set forth and supersede any other requirements in conflict therewith. The Borrower shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the National Affordable Housing Act, the HOME Regulations, the Regulatory Agreement, Section 42 of the Code, the Tax Credit Regulations, the Plan (if applicable) and the City or the City's counsel.

If the Borrower is unable to make any representation or warranty set forth above, the Borrower must immediately contact the City and inform the City of the reason that the Borrower is unable to make such representation or warranty; provided, however, that the foregoing shall not be deemed to negate any notice and/or cure periods available to the Borrower under the Loan Documents (as defined in the Regulatory Agreement).

Under penalties of perjury, the Borrower declares that, to the best of its knowledge and belief, each response, representation, warranty and document delivered by the Borrower in connection herewith is true, correct and complete and will continue to be true, correct and complete.

## C. INDEMNIFICATION

The Borrower hereby agrees to fully and unconditionally indemnify, defend and hold harmless the City from and against any judgments, losses, liabilities, damages (including consequential damages), costs and expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses or other obligations, incurred by the City that may arise in any manner out of or in connection with actions or omissions which result from the Borrower's responses or documents provided pursuant to the terms of this Annual Report, including breaches of the representations and warranties herein contained, other than those judgments, losses, liabilities, damages, costs and expenses arising out of the City's gross negligence or willful misconduct following the City's acquisition of title to or control of the Project, unless such act is taken in response to (1) any willful misconduct or negligent act or omission of the Borrower, the Managing Member, if any, or the Owner, if any (as the last two terms are defined in the Loan Agreement), or (2) any breach (other than failure to repay the Loan) by the Borrower, the Managing Member, if any, or the Owner, if any, of any provisions of the instruments executed by the Borrower, the Managing Member, if any, or the Owner, if any, in connection with the Loan.

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IN WITNESS WHEREOF, the Borrower has executed this Annual Report this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BORROWER: \_\_\_\_\_

By: \_\_\_\_\_

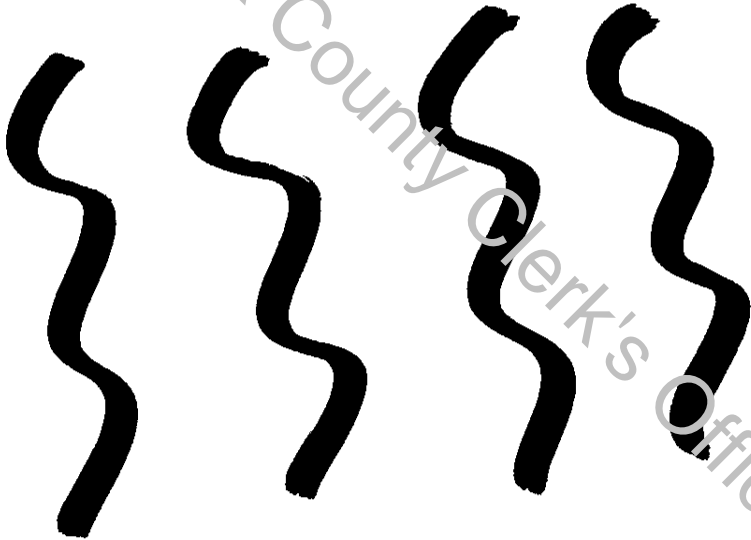
Its: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Notary Public  
(SEAL)

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## SCHEDULE I

Borrower: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Date of Regulatory Agreement: \_\_\_\_\_

Project Name and No.: \_\_\_\_\_

Building Address: \_\_\_\_\_

Building Identification Number: \_\_\_\_\_

\*\*\*\*\*

1. Is the date of the attached Annual Report prior to the start of the Compliance Period for this Building?  
\_\_\_ Yes \_\_\_ No [check one]. If "Yes," do not complete (2) or (3) but go directly to (4). If "No," proceed to (2).

2. Is the date of the attached Annual Report later than the first October 1 following the end of the Compliance Period for this Building? \_\_\_ Yes \_\_\_ No [check one]. If "Yes," do not complete (3) but go directly to (4). If "No," proceed to (3).

3. (a) Tax Credits Allocated to this Project: \_\_\_\_\_

(b) Number of Residential Rental Units in this Building:

Studios \_\_\_\_\_ 1 Br \_\_\_\_\_ 2 Br \_\_\_\_\_  
3 Br \_\_\_\_\_ 4 Br \_\_\_\_\_ 5 or more Br \_\_\_\_\_

(c) Total Square Feet of space contained in Residential Rental Units in this Building: \_\_\_\_\_

(d) Total Number of Residential Rental Units rented to Tax Credit Eligible Families:

Studios \_\_\_\_\_ 1 Br \_\_\_\_\_ 2 Br \_\_\_\_\_  
3 Br \_\_\_\_\_ 4 Br \_\_\_\_\_ 5 or more Br \_\_\_\_\_

(e) Total Eligible Basis of this Building: \_\_\_\_\_









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- 
8. Have any Low-Income Families or Tax Credit Eligible Families been evicted since the time of the last Annual Report or if this report is the first Annual Report filed with respect to this building, since the initial rent-up of this building?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please provide details.

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9. Has any legal or administrative action been instituted by any Low-Income Family or Tax Credit Eligible Family against the Borrower?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please provide details.

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## SCHEDULE II

### CHANGES IN APPLICABLE FRACTION

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## SCHEDULE III

### TENANT CERTIFICATION

RE: \_\_\_\_\_  
Chicago, Illinois

Name of Tenant (i.e., person(s)  
whose name appears on the lease): \_\_\_\_\_

Address of Apartment: \_\_\_\_\_

Apartment Number: \_\_\_\_\_

Some or all of the cost of the apartment development in which you are to lease an apartment was financed by a loan made by the City of Chicago, Illinois (the "City") to the owner of the apartment development, through a U.S. Department of Housing and Urban Development program and by the use of low-income housing tax credits provided by the City for the development. In order for the development to continue to qualify for this loan and these tax credits, there are certain requirements which must be met with respect to the apartment development and its tenants. To satisfy one of those requirements it is necessary for you to provide the information requested in this Tenant Certification at the time you sign your lease and annually thereafter so long as you remain a tenant in the apartment development.

#### CERTIFICATION

I, the undersigned, state that I have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed on the following page:

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## Income Computation (Anticipated Incomes)

<u>Name of Members of the Household</u>	<u>Relation-ship to Head of Household</u>	<u>Age (if 18 or under)</u>	<u>Social Security Number</u>	<u>Place of Employment</u>
_____	HEAD	_____	_____	_____
_____	SPOUSE	_____	_____	_____
_____		_____	_____	_____
_____		_____	_____	_____
_____		_____	_____	_____
_____		_____	_____	_____
_____		_____	_____	_____
_____		_____	_____	_____
_____		_____	_____	_____
_____		_____	_____	_____

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- b. the amount of income expected to be derived from such assets in the 12-month period commencing this date:  
\$ \_\_\_\_\_, and
- c. the amount of such income which is included in item (1):  
\$ \_\_\_\_\_.

(Students)

3. a. Will all of the persons listed in column 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- b. Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?  
Yes \_\_\_\_\_ No \_\_\_\_\_

I acknowledge that all of the above information is or may be the basis of my qualifying as a tenant and further is relevant to the status of the tax credits provided by the City and of the funds provided through the U.S. Department of Housing and Urban Development to finance construction or rehabilitation of the apartment for which application is being made. I agree to provide upon request source documents evidencing the income and other information disclosed above, except as provided below. I consent to and authorize the disclosure of such information and any such source documents to the City and HUD and any agent acting on their behalf. If I am accepted as a tenant or my lease is renewed, and if any of the foregoing information is inaccurate or misleading, I understand that it will constitute a material breach of my lease. I understand that the submission of this information is one of the requirements for tenancy and does not constitute an approval of my application, or my acceptance as a tenant.

If this is the first Tenant Certification submitted by me for the apartment building described on the first page, I have attached to this Tenant Certification copies of source documentation (e.g., wage statements, interest statements and unemployment compensation statements) with respect to the income of the persons described on the preceding pages.

I declare under penalty of perjury that the foregoing is true, correct, complete and accurate.  
Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at Chicago, Illinois.

Tenant \_\_\_\_\_  
Applicant for an apartment \_\_\_\_\_  
or residing in Apt. No. \_\_\_\_\_



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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK         )

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ personally appeared before me \_\_\_\_\_, the  
signer of the above certification, who duly acknowledged to me that he/she executed the same.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

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## FOR COMPLETION BY BORROWER ONLY:

1. Calculation of eligible income:

- a. Total amount entered for entire household in 1 above: \_\_\_\_\_
- b. If the amount entered in 2.a above exceeds \$5,000, enter the greater of (i) the amount entered in 2.b less the amount entered in 2.c and (ii) the passbook savings rate as designated by HUD multiplied by the amount entered in 2.a: \_\_\_\_\_
- c. TOTAL ELIGIBLE INCOME (Line 1.a plus line 1.b): \_\_\_\_\_

2. For each Tax Credit Eligible Unit complete the following:

- a. The amount entered in 1.c is: (place "x" on appropriate line)
- \_\_\_\_\_ Less than \$\_\_\_\_\_ which is the maximum income at which a household of \_\_\_\_\_ persons may be determined to be a Qualifying Tenant (as defined in the Annual Report).
- \_\_\_\_\_ More than the above-mentioned amount.
- b. Number of apartment unit assigned: \_\_\_\_\_

Applicant:

\_\_\_\_\_ Qualifies as a Qualifying Tenant.  
 \_\_\_\_\_ Does not qualify as a Qualifying Tenant.

3. For each Low-Income Unit, complete the following:

- a. The amount entered in 1.c is: (place "x" on appropriate line)
- (i) \_\_\_\_\_ Less than \$\_\_\_\_\_ which is the maximum income at which a household of \_\_\_\_\_ persons may be determined to be a Low-Income Family as that term is defined in the Regulatory Agreement dated as of \_\_\_\_\_, between the City of Chicago, Illinois and \_\_\_\_\_ (the "Regulatory Agreement").

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- (ii)        \_\_\_ Less than \$ \_\_\_ which is the maximum income at which a household of \_  
                 \_\_\_ persons may be determined to be a Very Low-Income Family as that  
                 term is defined in the Regulatory Agreement.
- (iii)        \_\_\_ Less than \$ \_\_\_ which is 60 percent of the median Family income for  
                 the Chicago area as adjusted for a household of \_\_\_ persons.
- (iv)        \_\_\_ More than the amount mentioned in line a.

b. Applicant:

- \_\_\_ Qualifies as Low-Income Family.
- \_\_\_ Qualifies as a Very Low-Income Family.
- \_\_\_ Qualifies as a Family whose Family Income is no more than 60 percent of the median  
Family Income for the Chicago area.
- \_\_\_ Does not qualify as a Low-Income Family.

BORROWER:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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## SCHEDULE IV

### CHANGES IN ELIGIBLE BASIS

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## EXHIBIT E

### HOME-ASSISTED UNITS

All Units are HOME-Assisted

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