

# UNOFFICIAL COPY



0704711035

THIS INSTRUMENT WAS PREPARED BY  
AND AFTER RECORDING RETURN TO:  
Thomas Graham  
Illinois Housing Development Authority  
401 N. Michigan Ave., Ste. 700  
Chicago, Illinois 60611

Doc#: 0704711035 Fee: \$48.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/16/2007 10:22 AM Pg: 1 of 13

30/6  
FIRST AMERICAN TITLE  
ORDER # 1562508

## REGULATORY AND LAND USE RESTRICTION AGREEMENT

This REGULATORY AND LAND USE RESTRICTION AGREEMENT (this "Agreement"), made and entered into as of JANUARY 30, 2007, by and between WAFEEK AIYASH ("Owner"), an individual, and the ILLINOIS HOUSING DEVELOPMENT AUTHORITY (the "Authority"), a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as amended from time to time (the "Act"), having its principal office at 401 N. Michigan Ave., Suite 700, Chicago, Illinois 60611;

### W I T N E S S E T H:

WHEREAS, on May 19, 1993, the Authority made a non-recourse mortgage loan (the "1993 Loan") to Kingston Apartments Limited Partnership (the "Partnership") for the acquisition, rehabilitation, and permanent financing of a multifamily housing development known as Kingston Apartments, located on the real estate legally described on Exhibit A (the "Real Estate") attached to and made a part of this Agreement; the Real Estate and the improvements constructed on it are collectively referred to in this Agreement as the "Development"; and

WHEREAS the 1993 Loan is evidenced by a note (the "1993 Note") in the amount of One Hundred Fifty-Six Thousand Two Hundred Dollars (\$156,200) and secured by a Mortgage and Security Agreement on the Development originally dated as of May 19, 1993 (the "1993 Mortgage") and recorded in the Office of the Cook County Recorder of Deed (the "Recorder's Office") on May 19, 1993 as Document No. 93360697. A Regulatory and Land Use Restriction Agreement is also recorded against the Development, originally dated as of May 19, 1993 (the "1993 Regulatory Agreement") and recorded in the

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Recorder's Office on May 19, 1993 as Document No. 93380698. The 1993 Loan was modified by that certain Loan Modification Agreement dated as of August 21, 2000; and

WHEREAS, on December 23, 2002, the Authority entered into another Loan Modification Agreement with the Partnership, which Loan Modification was recorded in the Recorder's Office as document number 30009298; and

WHEREAS, to stabilize the financial viability of the Development; the Authority made a non-recourse loan (the "2002 Loan") to the Partnership. The 2002 Loan is evidenced by a note in the amount of Three Hundred Eighty-Three Thousand Eighty-Seven Dollars (\$383,087) (the "2002 Note") and is secured by a Mortgage and Security Agreement on the Development dated as of December 23, 2002 (the "2002 Mortgage") and recorded in the Recorder's Office on January 3, 2003 as Document No. 30009297, and is governed by a Regulatory and Land Use Restriction Agreement on the Development dated as of December 23, 2002 (the "2002 Regulatory Agreement") and recorded in the Recorder's Office on January 3, 2003 as Document No. 30009296. All documents evidencing or securing the 2002 Loan are referred to herein as the "2002 Loan Documents". The 1993 Loan Documents and the 2002 Loan Documents are referred to collectively as the "Loan Documents"; and

WHEREAS, the Chicago Equity Fund ("CEF") was the sole limited partner of the Partnership. Under the provisions of the partnership agreement that created the Partnership, CEF has previously replaced the general partner of the Partnership with Investment Management Corporation ("IMC"), an affiliate of CEF. Moreover, CEF was recently replaced as the Limited Partner by New Management Solutions II LLC; and

WHEREAS, the Authority is selling or has sold the Loans to Owner (the "Sale"); following the completion of the Sale, Owner, may become the fee owner of the Real Estate, or any part or parcel thereof; the Real Estate and the improvements constructed on it are collectively referred to in this Agreement as the "Development"; and

WHEREAS, the Authority is the program administrator of the Illinois Affordable Housing Program, as that program is authorized by the Illinois Affordable Housing Act, 310 ILCS 65/1 et seq., as amended from time to time (the "Trust Fund Act"), and the rules promulgated thereunder (the "Rules"); and

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WHEREAS, as a condition of the Sale, Owner has agreed to comply with all of the terms, covenants and restrictions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Incorporation. The foregoing recitals are incorporated in this Agreement by this reference.
2. Act and Rules. Owner agrees that at all times its acts regarding the Development shall be in conformance with the Act and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time.
3. Representations and Agreements. Owner further represents and agrees that:
  - a. The Development contains nineteen (19) units (each a "Unit"). At least ten (10) of the Units shall be occupied by Tenants (as defined in Paragraph 7 hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Very Low Income Tenants (as defined in Paragraph 7 hereof), and the remaining Units shall be occupied by Tenants whose income, at the time of initial occupancy, does not exceed the income limits for Low Income Tenants (as defined in Paragraph 7 hereof);
  - b. On forms approved by the Authority, Owner shall obtain from each prospective Very Low Income Tenant and Low Income Tenant prior to his or her admission to the Development, a certification of income (the "Certification"). Owner shall submit such Certifications to the Authority in the manner prescribed by the Authority;
  - c. In the manner prescribed by the Authority, Owner shall obtain written evidence substantiating the information given on such Certifications and shall retain such evidence in its files at the Development for three (3) years after the year to which such evidence pertains. Within thirty (30) days after the end of each calendar year, Owner shall certify to the Authority that, at the time of such certification and during the preceding

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calendar year, Owner was in compliance with the requirements of this Paragraph 3, or, if Owner is not or has not been in compliance with such requirements, Owner shall give notice to the Authority of its failure to comply and the corrective action Owner is taking or has taken;

- d. Owner shall comply with the rent limitations contained in Section 360.904(c) of the Rules; Owner shall annually submit a schedule of rents for the Development for the Authority's approval, and shall not change the rent schedule for the Development without the Authority's approval; and
  - e. Owner shall obtain all federal, state and local governmental approvals required by law for its acquisition, rehabilitation, ownership and operation of the Development.
4. Maintenance. In addition to, but not by way of limitation of, the other duties of Owner set forth in this Agreement, Owner shall maintain the Development and the grounds and equipment appurtenant to it in a decent, safe and sanitary condition, and in a rentable and tenantable state of repair, and in compliance with all applicable federal, state and local statutes, regulations, ordinances, standards and codes.
5. Non-Discrimination in Housing.
- a. Owner shall not, in the selection of Tenants, in the provision of services, or in any other manner unlawfully discriminate against any person on the grounds of race, color, creed, religion, sex, age, unfavorable military discharge, ancestry, handicap, national origin, marital status, familial status or because the prospective Tenant is receiving governmental rental assistance.
  - b. Owner shall comply with all of the provisions of Paragraph 3805/13 of the Act and all other provisions of federal, state and local law relating to non-discrimination.
6. Violation of Agreement by Owner. Upon violation of any of the provisions of this Agreement by Owner, the Authority may give notice of such violation to Owner as provided in Exhibit B attached to and made a part hereof. If such violation is not corrected to the satisfaction of the Authority within

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thirty (30) days after such notice, the Authority may declare a default under this Agreement; however if such condition is not reasonably curable within thirty (30) days despite Owner's reasonable efforts to cure it, Owner shall have one hundred twenty (120) additional days to cure such default, so long as (i) that cure is commenced within such thirty (30) day period, and (ii) Owner continues to diligently pursue such cure in good faith. Effective on the date of notice of such declaration of default to Owner, and upon such default, and so long as such default is continuing, the Authority may do the following:

- a. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. Because the injury to the Authority arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, Owner acknowledges and agrees that the Authority's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the Authority's public purpose under the Act; or
- b. Exercise such other rights or remedies as may be available to the Authority under this Agreement, at law or in equity.

The Authority's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies. No waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure or delay of the Authority in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of its rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights.

## 7. Definitions.

- a. "Very Low Income Tenant". As used in this Agreement, the phrase "Very Low Income Tenant" means a single person, family or unrelated persons living together

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whose adjusted income is less than or equal to sixty percent (60%) of the median income of the metropolitan statistical area of Chicago, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937.

- b. "Low Income Tenant". As used in this Agreement, the phrase "Low Income Tenant" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to eighty percent (80%) of the median income of the metropolitan statistical area of Chicago, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937.
- c. "Tenant". As used in this Agreement, the word "Tenant" means a person, family or unrelated persons leasing a Unit in the Development.
8. Term of Agreement; Covenants Run with Development. The covenants and agreements set forth in this Agreement shall encumber the Development and be binding on any Transferee and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it until December 31, 2032 (the "Termination Date"). Owner expressly acknowledges that its undertakings and agreements stated in this Agreement are given to induce the Authority to sell the Loan, Owner's undertaking to perform the obligations herein is a condition precedent to the willingness of the Authority to sell the Loan.
9. Amendment of Agreement. This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.
10. Partial Invalidity. If any term, covenant, condition or provision of this Agreement, or its application to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant,

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condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. Successors. Subject to the provisions of Paragraph 9 hereof, this Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, executors, administrators, successors in office or interest and assigns; however, Owner may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of the Authority.
12. Indemnification of the Authority. Owner agrees to defend and indemnify and hold harmless the Authority from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that the Authority may incur or suffer by reason of or in connection with the Real Estate or the Development. Owner further agrees that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims.
13. Gender. The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.
14. Captions. The captions used in this Agreement are used only as a matter of convenience and for reference and in no way define, limit or describe its scope or intent.
15. Notices. Notices under this Agreement shall be given as provided in Exhibit B hereof.
16. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

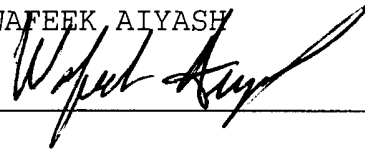
SIGNATURES APPEAR ON THE FOLLOWING PAGE[S]

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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized officers as of the day and year first above written.


OWNER:

WAFEEK AIYASH



AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT  
AUTHORITY

By:  DeShana L. Jorney  
Printed Name: DeShana L. Jorney  
Its: Executive Director

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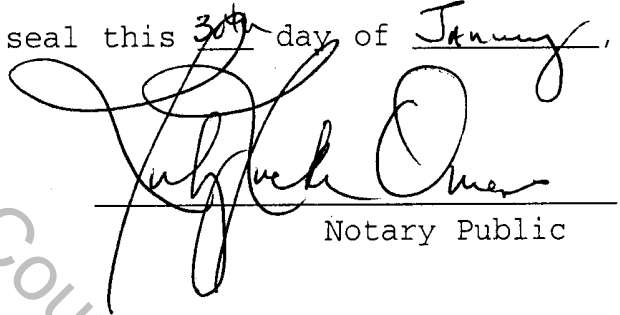


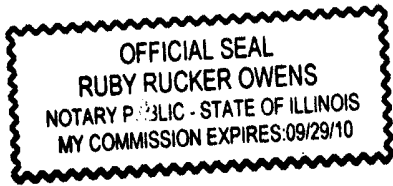
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STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that WAFEEK AIYASH, personally known to me and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and official seal this 30<sup>th</sup> day of January, 2007.

  
\_\_\_\_\_  
Notary Public



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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, certify that DESHANA L. FOENEY, personally known to me to be the EXECUTIVE DIRECTOR of the ILLINOIS HOUSING DEVELOPMENT AUTHORITY, 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 SHE signed and delivered the said instrument in her capacity as EXECUTIVE DIRECTOR of the ILLINOIS HOUSING DEVELOPMENT AUTHORITY as her free and voluntary act and deed and as the free and voluntary act and deed of the ILLINOIS HOUSING DEVELOPMENT AUTHORITY for the uses and purposes therein set forth.

Given under my hand and official seal this 30 day of JANUARY, 2007.

Susan E Miller  
Notary Public



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## EXHIBIT A LEGAL DESCRIPTION

LOT 17 AND THE EAST 32 FEET OF LOT 18 IN HIGH RIDGE BEING A SUBDIVISION OF LOTS 41 TO 52, INCLUSIVE, IN THE FOURTH DIVISION OF SOUTH SHORE SUBDIVISION OF THE NORTH FRACTIONAL HALF OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 21-30-117-010 VOL. 274  
COMMONLY KNOWN AS: 7436 S. KINGSTON AVENUE  
CHICAGO, ILLINOIS

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## EXHIBIT B

### NOTICE PROVISIONS

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this document shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Illinois Housing Development Authority:

Illinois Housing Development Authority  
401 North Michigan Avenue, Suite 700  
Chicago, Illinois 60611  
Attention: Executive Director

with a copy to:

Illinois Housing Development Authority  
401 North Michigan Avenue  
Chicago, Illinois 60611  
Attention: General Counsel

If to Owner:

Wafeek Aiyash  
3756 Monarch Circle  
Naperville, Illinois 60564

with a courtesy copy to:

Wonais & Wonais, Ltd.  
910 West Jackson Blvd.  
Suite 1 W  
Chicago, Illinois 60607-3024  
Attention: Peter Wonais, Esq

In connection with the courtesy copy to Wonais & Wonais, Ltd., the Illinois Housing Development Authority will exercise reasonable efforts to provide copies of any notices given to Owner; however, the Illinois Housing Development Authority's failure to furnish copies of such notices shall not limit the

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Illinois Housing Development Authority's exercise of any of its rights and remedies.

Such addresses may be changed by notice to the other party given in the same manner as provided in this Exhibit. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

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