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Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 08/03/2007 02:55 PM Pg: 1 of 39

This document prepared by  
and when recorded return to:  
Saundra N. Fried  
Assistant Corporation Counsel  
Office of Corporation Counsel  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602

## **DONATIONS TAX CREDIT REGULATORY AGREEMENT**

**THIS DONATIONS TAX CREDIT REGULATORY AGREEMENT**, dated as of August 1, 2007, (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, Room 200 Chicago, Illinois 60602, Heartland Housing, Inc., an Illinois not-for profit corporation (the "Sponsor") and Sutherland Limited Partnership, an Illinois limited partnership (the "Owner" or "Partnership"), both with offices at 208 South LaSalle Street, Suite 1818, Chicago, Illinois 60604, Attn: Andy Geer, Executive Director.

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## RECITALS

**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**, DOH is an Agency for purposes of allocating affordable housing tax credits pursuant to Section 7.28 of the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as amended (the "Act") and the Act's implementing regulations, 47 Ill. Adm. Code 355 et seq., as amended (the "Regulations"); and

**WHEREAS**, the Sponsor received from DOH, pursuant to the Act and the Regulations, on the reservation date identified on Schedule 2 hereto, a reservation of affordable housing tax credits in the amount described on Schedule 2 hereto (the "Tax Credits") in connection with the preservation and rehabilitation of that certain multi-family rental housing development located within the City and further described on Schedule 2 hereto (the "Project"); and

**WHEREAS**, Chicago Equity Fund 1988 Partnership, an Illinois general partnership ("CEF88") and Holsten Real Estate Development Corporation, an Illinois corporation ("Holsten") have each donated to the Sponsor (collectively, the "Donation") the value of their 99.0% limited partner interest in Owner and 0.3% co-general partner interest in Owner, respectively, pursuant to the Regulations by executing (a) the Assignment and Assumption of Limited Partner Interest and Amendment of Partnership Agreement date November 20, 2006 by CEF88; and (b) the Assignment and Assumption of Co-General Partner Interest and Amendment of Partnership Agreement dated March 15, 2007 by Holsten, each conveying the partnership interests in the Partnership to the Sponsor; and

**WHEREAS**, the Sponsor and Sutherland Neighborhood Development Corporation are the co-general partners of the Owner; and

**WHEREAS**, the Project may qualify for low-income housing tax credits under Section 7.28 of the Act, provided that all applicable requirements under said Section 7.28 are satisfied, including (without limitation) the execution and recording of a regulatory agreement pursuant to Section 7.28(f) of the Act; and

**WHEREAS**, in order to comply with the requirements of Section 7.28 of the Act, and the Regulations, the Sponsor 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

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hereinafter set forth, and of other valuable consideration, the Sponsor and the City each agree as follows:

## SECTION 1. DEFINITIONS AND INTERPRETATIONS.

Additional definitions on Schedule 2 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:

“Annual Owner’s and Sponsor’s Certification” shall mean the report from the Owner and Sponsor, in substantially the form set forth in Schedule 3 attached hereto and hereby made a part hereof, as the same may be amended from time to time.

“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.

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

“Compliance Period” shall mean the period of 10 years beginning from the Closing Date.

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

“Donation” shall have the meaning given to such term in the recitals hereof.

“Eligible Units” shall mean twenty-five percent of the total units in the Project which will be occupied by or available for occupancy to Low-Income Households.

“First Reporting Date” shall mean October 1 of the first year of the Compliance Period.

“Foreclosure Date” shall mean the date of the transfer of the Project (a) by foreclosure of a mortgage thereon or (b) by an instrument in lieu of foreclosure of a mortgage thereon.

“General Operating Support” shall have the meaning given to such term in the Regulations.

“Household” shall mean and include an individual, a group of unrelated individuals or a family, in each case residing in one dwelling unit.

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“HUD” shall mean the United States Department of Housing and Urban Development, and its successors and assigns.

“Imputed Income Limitation” shall mean, for each Eligible Unit, the Income Limit which would apply to the Household occupying such Eligible Unit if the number of individuals in the Household were as follows: (a) in the case of an Eligible Unit which does not have a separate bedroom, one individual; and (b) in the case of an Eligible Unit which has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

“Income Limit” shall mean 60 percent of the Chicago-area median income, adjusted for Household size, as such adjusted income and Chicago-area median income are determined from time to time by HUD for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437), and thereafter such income limits shall apply to this definition.

“Last Reporting Date” shall mean the first October 1 following the end of the Compliance Period.

“Low-Income Households” shall mean and include Households whose adjusted annual income does not exceed the Income Limit.

“Material Participation” shall have the meaning given to such term in the Regulations.

“Owner” shall mean, initially, Sutherland Limited Partnership, an Illinois limited partnership, 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.

“Persons” shall mean natural persons, firms, partnerships, associations, corporations, limited liability companies, trusts and public bodies.

“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 Closing Date and shall terminate, except as provided in Sections 2.10 and 16 hereof, as of the Termination Date.

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

“Sponsor” shall mean Heartland Housing, Inc., an Illinois not-for profit corporation, and its successors and assigns.

“State” shall mean the State of Illinois.

“Technical Assistance” shall have the meaning given to such term in the Regulations.

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“Tenant Certification” shall mean the certification of the tenant(s) in each Eligible Unit with respect to annual Household income and on HUD Form 50059 or such other form as may be acceptable to the City.

“Termination Date” shall mean the earlier to occur of (a) a Foreclosure Date or (b) the tenth anniversary of the first date of the Compliance Period; provided, however, that the “Termination Date” shall not mean a Foreclosure Date if the City determines that such transfer of title to the Project by foreclosure or an instrument in lieu of foreclosure is part of an arrangement with the Owner a purpose of which is to terminate the restrictions set forth herein.

“Very Low-Income Households” shall mean and include Households whose adjusted annual income does not exceed 50 percent of the Chicago-area median income, adjusted for Household size, as such adjusted income and Chicago-area median income are determined from time to time by HUD for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437), and thereafter such income limits shall apply to this definition.

## **SECTION 2. OWNER’S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

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

2.1 The Owner shall be subject to, obey and adhere to any and all federal, state and local laws, statutes, ordinances, rules, regulations and executive orders as are now or may be in effect during the Project Term which may be applicable to the Owner or the Project.

2.2 The Project is being preserved and rehabilitated for the purpose of providing residential rental property, and the Owner shall own, manage and operate the Project as residential rental units and facilities functionally related and incidental thereto.

2.3 The Project consists of residential units, together with facilities functionally related and incidental thereto, and which units are similar in quality and type of construction and amenities.

2.4 None of the units in the Project shall at any time be used on a transient basis, and neither the 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 All of the Eligible Units shall be occupied or available for occupancy by Low-Income Households.

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2.6 Prior to the Termination Date, the rent (including tenant-paid heat) charged each month for any Eligible Unit shall not exceed at any time 30 percent of the Imputed Income Limitation applicable to such Eligible Unit.

2.7 (a) The Owner shall include in leases for all Eligible Units provisions which authorize the Owner to immediately terminate the tenancy of any tenant who misrepresented any fact material to the tenant's qualification as a Low-Income Household.

(b) The Owner shall not evict or terminate the tenancy of any tenant of an Eligible Unit other than for good cause.

2.8 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 Owner which is unrelated to the Project, shall be maintained, as required by the City, in a reasonable condition for proper audit and subject to examination and copying during business hours by representatives of the City. If the Owner employs a management agent for the Project, the Owner shall require such agent to comply with the requirements of his Regulatory Agreement and shall include such requirements in any and all management agreements or contracts entered into with respect to the Project.

2.9 All tenant leases shall be written, shall be in conformity with all applicable laws, including without limitation the City of Chicago Residential Landlord and Tenant Ordinance, and, with respect to Eligible Units, 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 Household 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 Owner or the City, 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.

2.10 (a) The Owner shall obtain and keep records on an annual basis during the Compliance Period and retain such records for a period of at least 7 years after the end of the Compliance Period. The owner is required to keep records for the Project showing the following:

- (i) The total number of residential rental units in the Project including the number of bedrooms and the size, in square feet, of each residential rental unit;
- (ii) The percentage of residential rental units in the Project that are Eligible Units;
- (iii) The rent charged on each residential rental unit in the Project including any utility allowances;

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- (iv) The number of occupants in each Eligible Unit, if the rent is determined by the number of occupants in each unit;
- (v) The Eligible Unit vacancies in the Project and information that shows when, and to whom, the next available units were rented;
- (vi) The completed rental application, including certification of assets and disposal of assets, if applicable;
- (vii) The completed lease and all lease addenda for each Eligible Unit;
- (viii) The annual income certification of each tenant in an Eligible Unit; and
- (ix) Documentation supporting each income certification submitted by a tenant in each Eligible Unit

This covenant shall survive beyond the Termination Date (if such date is not also a Foreclosure Date), but shall terminate as of a Foreclosure Date.

(b) The Owner shall obtain and maintain on file during the Project Term a Tenant Certification with respect to each and every individual, group of unrelated individuals or Family who is intended to be a tenant in the Eligible Units, signed by the tenant or tenants (i.e., the individual or individuals whose name or names appear on the lease) and obtained by the Owner (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 Eligible Units.

2.11 The Owner agrees that it will take any and all actions required by the City to substantiate the Owner's compliance with the restrictions set forth herein, including, but not limited to, submitting to the City an Annual Owner's and Sponsor's Certification executed by the Owner commencing on the First Reporting Date and on each October 1 thereafter through and including the Last Reporting Date. This covenant shall survive beyond the Termination Date (if such date is not also a Foreclosure Date), but shall terminate as of a Foreclosure Date.

2.12 The Owner shall provide to the City a tenant profile (in the form provided to the Owner by DOH or, in the sole discretion of DOH, in such other form as shall be acceptable to DOH) for each Eligible Unit within 30 days after such unit is leased to such tenant(s).

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

2.14 The Owner is not a primarily religious entity and the Project will be used solely for

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secular purposes.

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

2.16 The Owner has not and shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

2.17 Except as otherwise disclosed to the City in writing, all of the statements, representations and warranties of the Owner contained in any document submitted by the Owner to the City in connection with the Project remain true and in effect as of the date hereof.

## **SECTION 3. SPONSOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

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

3.1 The Sponsor qualifies as a "sponsor" under Section 7.28 of the Act and under the Regulations.

3.2 The Sponsor will have a Material Participation in the development and operation of the Project throughout the Compliance Period as required by the Regulations.

3.3 The Sponsor and the Project will be in full compliance with the requirements of Section 7.28 of the Act and the Regulations during the Compliance Period.

3.4 The Sponsor will notify the City promptly if the Sponsor hereafter receives any future donations under the Act in connection with the Project.

3.5 The value of the Donation has been determined by a current independent appraisal done by a State-licensed appraiser.

## **SECTION 4. RELIANCE.**

The City, the Sponsor and the Owner hereby recognize and agree that the representations and covenants set forth herein made by the City, the Sponsor and the Owner, respectively, may be relied upon by the Owner, the Sponsor and the City, respectively. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner, the Sponsor, Low-Income Households and Very Low-Income Households and upon audits of the books and records of the Sponsor and/or the Owner pertaining to occupancy of the Project. In



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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, the Sponsor and the Owner agree that it is the Owner's responsibility to determine that each potential tenant for an Eligible Unit qualifies as a Low-Income Household and/or Very Low-Income Household, and that in making each such determination, the Owner shall exercise due diligence.

## **SECTION 5. NO SALE OR TRANSFER OF THE PROJECT OR CHANGE IN OWNERSHIP STRUCTURE.**

5.1 Except for the Permitted Encumbrances, the Owner hereby covenants and agrees that, in consideration for the Tax Credits, the Owner shall not sell, transfer or otherwise dispose of all or any portion of the Project (including without limitation, a transfer by assignment of any beneficial interest under a land trust), at any time during the Project Term, without the prior written approval of the City, which may be granted or withheld in its sole discretion.

5.2 (a) The Owner and the Sponsor hereby covenant and agree that the ownership structure of the Owner shall not be materially changed, at any time during the Project Term, without the prior written approval of the City, which may be granted or withheld in its sole discretion.

Notwithstanding the foregoing, the City shall not unreasonably withhold its consent to the replacement and/or addition of a general partner of the Owner pursuant to the terms of Owner's partnership agreement and to the extent the City so consents, it shall not be considered a prohibited transfer hereunder. Further, no consent by the City shall be required for the withdrawal, replacement and/or addition of any of the Owner's limited partners or of any such limited partner's general partners (or any other ownership interests in and to said limited partners), and the same shall not constitute a prohibited transfer hereunder.

(b) The City consents to the Permitted Encumbrances.

## **SECTION 6. TERM.**

6.1 This Regulatory Agreement shall become effective upon its execution and delivery. Subject to Sections 2.10 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.

## **SECTION 7. ENFORCEMENT.**

7.1 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

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thereof from the City to the Owner and the Sponsor (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Owner and/or the Sponsor 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 Owner or the Sponsor to the City delivered during such 30-day period, and upon further written request from the Owner and/or the Sponsor to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days), the City will thereby be damaged in the failure to provide the benefit of affordable housing to residents of Chicago to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that the amount of the proceeds from the sale of the Tax Credits allocated by the City to the Sponsor in connection with the Project shall be surrendered by the Owner and the Sponsor to the City as liquidated damages which shall be reduced pro rata on a yearly basis during the Compliance Period.

7.2 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 Owner and the Sponsor (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Owner and/or the Sponsor 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 Owner or the Sponsor to the City delivered during such 30-day period, and upon further written request from the Owner and/or the Sponsor to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days), 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 Owner and/or the Sponsor of their respective obligations hereunder. 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 violations or any similar breach or violation hereof at any later time.

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 Owner and the Sponsor.

7.4 The Owner and the Sponsor further specifically acknowledge that the beneficiaries of the Owner's and the Sponsor'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.

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

The Owner 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 Owner shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Owner shall immediately transmit to the City an executed original of this Regulatory Agreement showing the date and recording number of record.

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

The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City, the Sponsor and the Owner 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 Owner's successors in title to the Project throughout the Project Term. The Owner 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.

## **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 Sponsor and the Owner hereby expressly agree to

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enter into all amendments hereto which, in the opinion of the City, are reasonably necessary or desirable for maintaining compliance under Section 7.28 of the Act.

## 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, Room 200  
Chicago, Illinois 60602  
Attention: Deputy Commissioner, Developer Services

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

IF TO OWNER: As specified on Schedule 2 hereto.

IF TO SPONSOR: As specified on Schedule 2 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.

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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 7.28 of the Act, this Regulatory Agreement shall be deemed to be in effect as of the date first set forth above.

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

(a) The Owner agrees that the City shall have the right to perform an on-site inspection of the Project and to inspect, examine and copy the records maintained by the Owner or its agent in connection with the Project, upon 30 days' prior notice by the City to the Owner, at least annually during each year of the longer of the Project Term or the Compliance Period. Notwithstanding the foregoing sentence, the provisions of this Section 16(a) shall terminate as of a Foreclosure Date.

(b) The Sponsor agrees that the City shall have the right to inspect, examine and copy the records maintained by the Sponsor in connection with the Project, upon 30 days' prior notice by the City to the Sponsor, at least annually during each year of the longer of the Project Term or the Compliance Period. Notwithstanding the foregoing sentence, the provisions of this Section 16(b) shall terminate as of a Foreclosure Date.

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

This Regulatory Agreement is made for the sole benefit of the City, the Sponsor and the Owner and their respective successors and assigns and 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.

## **SECTION 19. NON LIABILITY OF PUBLIC OFFICIALS**

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No official, employee or agent of the City shall be charged personally by the Sponsor or the Partnership, or by any assignee of the Sponsor or the Partnership, with any liability or expenses of defense or shall be held personally liable to the Sponsor or the Partnership, under any terms or provisions of this Agreement because of the City's execution or attempted execution hereof or because of any breach hereof.

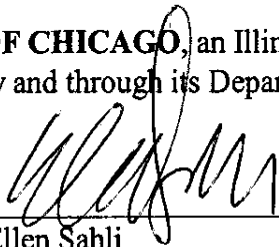
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**IN WITNESS WHEREOF**, the City, the Sponsor and the Owner have executed, by their duly authorized representatives, this Regulatory Agreement as of the date first written hereinabove.

**CITY OF CHICAGO**, an Illinois municipal corporation,  
acting by and through its Department of Housing

By:   
Name: Ellen Sahli  
Title: Acting Commissioner

*wfe 8/2/07*

**Heartland Housing, Inc.**, an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Name: Andrew E. Geer  
Title: Executive Director

**Sutherland Limited Partnership**, an Illinois limited partnership

By: Heartland Housing, Inc., its co-general partner

By: \_\_\_\_\_  
Name: Andrew E. Geer  
Title: Executive Director

By: Sutherland Neighborhood Development Corporation,  
its co-general partner

By: \_\_\_\_\_  
Name: Andrew E. Geer  
Title: Assistant Secretary

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

**CITY OF CHICAGO**, an Illinois municipal corporation,  
acting by and through its Department of Housing

By: \_\_\_\_\_  
Name: Ellen Sahli  
Title: Acting Commissioner

**Heartland Housing, Inc.**, an Illinois not-for-profit corporation

By:           A E Geer            
Name: Andrew E. Geer  
Title: Executive Director

**Sutherland Limited Partnership**, an Illinois limited partnership

By: Heartland Housing, Inc., its co-general partner

By:           A E Geer            
Name: Andrew E. Geer  
Title: Executive Director

By: Sutherland Neighborhood Development Corporation,  
its co-general partner

By:           A E Geer            
Name: Andrew E. Geer  
Title: Assistant Secretary

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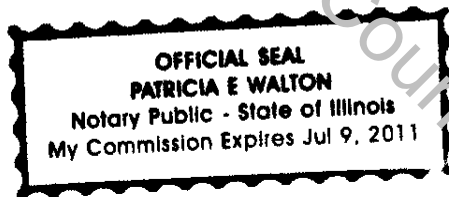
STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Ellen Sahli, personally known to me to be the Acting 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 Commissioner, she signed and delivered the said instrument pursuant to authority, as 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 3<sup>rd</sup> day of August, 2007.

*Patricia E. Walton*  
\_\_\_\_\_  
Notary Public

(SEAL)



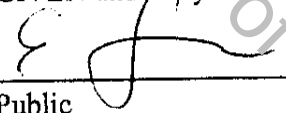
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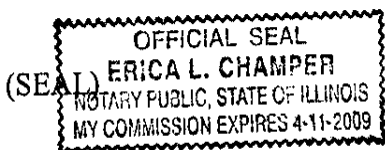
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STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Andrew E. Geer, personally known to me to be the Executive Director of Heartland Housing, Inc., an Illinois not-for-profit corporation, 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 officer he/she signed and delivered the said instrument pursuant to authority as his/her free and voluntary act and deed and as the free and voluntary act and deed of the Sponsor for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 3<sup>rd</sup> day of August, 2007.

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




Property of Cook County Clerk's Office

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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 Andrew E. Geer, personally known to me to be the Executive Director of Heartland Housing, Inc., an Illinois not-for-profit corporation, a co-general partner of Sutherland Limited Partnership, an Illinois limited partnership (the "Owner"), 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 officer he signed and delivered the said instrument pursuant to authority as his free and voluntary act and deed and as the free and voluntary act and deed of the Owner for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 3<sup>rd</sup> day of August, 2007.

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



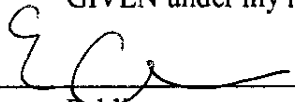
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# UNOFFICIAL COPY

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 Andrew E. Geer, personally known to me to be the Assistant Secretary of Sutherland Neighborhood Development Corporation, an Illinois corporation, a co-general partner of Sutherland Limited Partnership, an Illinois limited partnership (the "Owner"), 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 officer he signed and delivered the said instrument pursuant to authority as his free and voluntary act and deed and as the free and voluntary act and deed of the Owner for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 3<sup>rd</sup> day of August, 2007.

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



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## SCHEDULE 1

### LEGAL DESCRIPTION OF PROJECT SITE

LOTS 1, 2, 3 AND 4 IN OWNERS DIVISION OF LOT 5 AND THE SOUTH 19 FEET OF LOT 6, TOGETHER WITH THE WEST 1 FOOT OF THE 16 FOOT STRIP FORMERLY AN ALLEY EAST OF AND ADJOINING LOTS 5 AND THE SOUTH 19 FEET OF LOT 6 (EXCEPT FROM ALL OF THE ABOVE DESCRIBED PROPERTY THE SOUTH 7 FEET CONDEMNED FOR WIDENING EAST 47<sup>TH</sup> STREET) IN CLARK AND LAYTON'S SUBDIVISION OF LOTS 7 TO 10, BOTH INCLUSIVE IN BLOCK 8 IN WALKER AND STINSON'S SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN(s): 20-02-316-009

Common Address as: 4659 South Drexel Boulevard, Chicago, Illinois 60653

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## SCHEDULE 2

### I. ADDITIONAL DEFINITIONS

“Closing Date” shall mean the date of the allocation of Tax Credits for this Project as evidenced by the Illinois Affordable Housing Tax Credit Certificate issued by the City for the Project.

“General Contractor” shall mean any general contractor which the Owner employs in connection with work to be performed on the Project.

“MBE” and “MBE/WBE Program” shall have the respective meanings given to such terms in Section 3 hereof.

“Permitted Encumbrances” shall mean 1) those certain encumbrances disclosed on the Title Policy issued effective June 23, 2005 to Local Initiative Support Corporation, policy number 1301-004355340, which has a mortgage lien against the Project, and 2) residential leases entered into in connection with the ordinary course of operation of the Project.

“Project” shall mean the preservation and rehabilitation of property at 4659 South Drexel Boulevard, Chicago, Illinois, which contains 143 multi-family residential dwelling units.

“Project Budget” shall mean a detailed budget of all work to be performed in connection with the preservation and rehabilitation of the Project, along with the name of the funding source used to pay each such cost, which Project Budget shall be provided to and approved by the City, together with any changes thereto aggregating in excess of \$5,000 as may be approved in writing by the City.

“Subcontractor” shall mean any person or entity having a contract with the General Contractor or any Subcontractor for the construction, equipping or supplying of labor or materials by such Subcontractor in connection with any work performed on any portion of the Project.

“WBE” shall have the meaning given to such term in Section 3 hereof.

### II. ADDITIONAL REPRESENTATIONS AND COVENANTS OF SPONSOR AND OWNER.

1. 36 units in the Project shall be Eligible Units. The Sponsor received a reservation of Tax Credits from DOH in the amount of \$530,000 pursuant to a Conditional Reservation Letter from DOH dated March 27, 2007. The Sponsor received a certificate dated as of the date hereof from DOH evidencing the allocation by DOH of \$508,000 of Tax Credits in connection

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with the Project (which includes the Tax Credits described in Section 2(e) and (f) below).

2. (a) The Project shall consist of the following unit configuration:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Zero (Studio)	100
1	38
2	5

- (b) The Eligible Units in the Project consist of the following:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Zero (Studio)	36
1	0
2	0

- (c) The type(s) of Households to be served by the Project are as follows: Low-Income Households.

- (d) The amount of Tax Credits allocated by the City to the Sponsor, in connection with the Project, for General Operating Support is \$0.

- (e) The amount of Tax Credits allocated by the City to the Sponsor, in connection with the Project, for Technical Assistance is \$0.

- (f) The aggregate amount of Tax Credits described in (d) and (e) above does not exceed 10 percent of the total amount of Tax Credit allocated for the Project as described in Section 1 above.

- (g) The Sponsor has received, on or before the Closing Date, a Donation valued in the aggregate in the amount of \$1,076,000 and has provided to DOH the documentation required under the Regulations to evidence such Donation.

3. **MBE/WBE Commitment.** The Sponsor and the Owner certify that the Owner will take affirmative action to ensure that women and minority businesses have had the maximum opportunity to compete for and perform as contractors for supplies and/or services for the Project, and will continue to provide such maximum opportunities with future contracts and awards for the Project in order to make reasonable efforts toward compliance with the requirements of Sections 2-92-420 et seq. and 2-92-650 et seq. of the Municipal Code of Chicago which affirms the City's intent to award approximately 24% of Project contracts to Minority Business Enterprises (MBE) and 4% to Women Business Enterprises (WBE). Any of Sponsor, Owner and General Contractor's failure to achieve the City's target MBE/WBE percentages shall

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not be an event of default under this Regulatory Agreement and shall not subject any of Sponsor, Owner or General Contractor to monetary damages or fines under the Chicago Municipal Code or otherwise.

4. **City Resident Employment Requirement.** The Sponsor and the Owner certify that the Owner will take affirmative action to ensure that the Owner, its successors and assigns, the General Contractor, and the Subcontractors will undertake reasonable efforts to comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the Owner, the General Contractor and the Subcontractors shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. Any of Sponsor, Owner, General Contractor and/or Subcontractor's failure to achieve the City's target city residence employment percentages shall not be an event of default under this Regulatory Agreement and shall not subject any of Sponsor, Owner, General Contractor or Subcontractor to monetary damages or fines under the Chicago Municipal Code or otherwise.

5. **Rent Restrictions.** At no time shall the rents for the Eligible Units in the Project exceed, on a monthly basis, maximum gross rent figures as provided under the definition of "Affordable Housing Project" at 20 ILCS 380.5/7-28, as amended July 24, 2003 by Public Act 93-0369. During the Project Term, rents for all the Eligible Units in the Project shall not exceed 30 percent of the gross income of a Household whose income equals 60 percent of the median income for the Chicago area, adjusted for Household size, and as such monthly adjusted income and Chicago-area median income are determined from time to time by HUD, less utilities.

6. For purposes of Section 12, the Owner's and Sponsor's address shall be:

Heartland Housing, Inc.  
208 South LaSalle Street, Suite 1818  
Chicago, Illinois 60604  
Attention: Executive Director

7. Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on a matter involving the person with whom as elected official has a Business Relationship. Violation of Section 2-



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150-030(b) by any elected official, or any person acting at the direction of such official, with respect to this Regulatory Agreement, or in connection with the transaction contemplated hereby, shall be grounds for termination of the Regulatory Agreement and the transaction contemplated hereby. The Owner and Sponsor each hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Regulatory Agreement or the transaction contemplated hereby.

8. The Owner hereby covenants and agrees to pay, and to contractually obligate and cause any General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Owner shall provide the City with copies of all such contracts entered into by the Owner or the General Contractor to evidence compliance with this paragraph 8.

9. Owner and Sponsor (each a "Party" for purposes of this paragraph 9) each agrees that such Party, any person or entity who directly or indirectly has an ownership or beneficial interest in such Party of more than 7.5 percent ("Co-Parties"), spouses and domestic partners of such Co-Parties, Parties' contractors (i.e., any person or entity in direct contractual privity with the Parties regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-Parties") and spouses and domestic partners of such Sub-Parties (Parties and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this Agreement by the Parties, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between the Parties and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

The Parties each represents and warrants that from the later of (i) February 10, 2005, (ii) the date the City approached the Parties regarding the formulation of this Agreement, or (iii) the date the Parties approached the City regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

The Parties each agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

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The Parties each agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

The Parties each agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If a Party intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

“Bundle” means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

“Other Contract” means any other agreement with the City of Chicago to which Owner is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are “Domestic Partners” if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:

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1. The partners have been residing together for at least 12 months.
2. The partners have common or joint ownership of a residence.
3. The partners have at least two of the following arrangements:
  - a. joint ownership of a motor vehicle;
  - b. a joint credit account;
  - c. a joint checking account;
  - d. a lease for a residence identifying both domestic partners as tenants.
4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

10. Without limiting any other provisions hereof, the Owner and Sponsor each agrees to indemnify, defend and hold the City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against the City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of the Owner: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the Property or (B) any other real property in which the Owner, or any person directly or indirectly controlling, controlled by or under common control with the Owner, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by the Owner), or (ii) any liens against the Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of the City or the Owner or any of its Affiliates under any Environmental Laws relating to the Property.

"Environmental Laws" shall mean any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago.

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11. Neither Owner, Sponsor nor any Affiliate thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgement: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to Owner or Sponsor that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Owner or Sponsor, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

**UNOFFICIAL COPY****SCHEDULE 3****CITY OF CHICAGO  
DEPARTMENT OF HOUSING****ANNUAL OWNER'S AND SPONSOR'S CERTIFICATION FOR PROJECT  
RECEIVING  
AFFORDABLE HOUSING TAX CREDITS**

Owner: Sutherland Limited Partnership

Sponsor: Heartland Housing, Inc.

Project Name: Sutherland Apartments

Project Number: 1DTC-07-002

Owner Federal Employer Identification Number: \_\_\_\_\_

The Sponsor received from the City an allocation of affordable housing tax credits in connection with the Project pursuant to Section 7.28 of the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.*, as amended (the "Act"), and the regulations promulgated thereunder by the Illinois Housing Development Authority at 47 Illinois Administrative Code Part 355, as amended (the "Regulations"). Pursuant to the Regulatory Agreement dated as \_\_\_\_, \_\_\_\_ among the City, the Sponsor and the Owner (the "Regulatory Agreement"), the Owner is required to maintain certain records concerning the Project and the City of Chicago (the "City") is authorized to monitor the Project's compliance with the requirements of the Regulatory Agreement. This Annual Owner's and Sponsor's Certification must be completed in its entirety and must be executed by the Owner and the Sponsor, 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 rehabilitation of the Project, and ending on the first October 1 following the end of the Compliance Period. 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.

**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.)

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Building Identification Number      Building Address

N/A

2. Has any change occurred, either directly or indirectly, (a) in the identity of the Owner, (b) in the identity of any shareholder, partner, member, trustee or other owner of the Owner or (c) which would otherwise cause a change in the identity of the individuals who possess the power to direct the management and policies of the Owner since the date of the Regulatory Agreement or the most recent Annual Owner's and Sponsor's Certification?

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

If Yes, provide all the appropriate documents.

3. Have the Owner'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 Owner's organizational documents.

4. Has the Sponsor been a recipient of any Donations during this year in connection with the Project?

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

If Yes, provide the details.

## **B. REPRESENTATIONS, WARRANTIES AND COVENANTS**

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

1. The Owner 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 \_\_\_\_\_.

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- (f) \_\_\_ a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_.
- (g) \_\_\_ other [please describe]: \_\_\_\_\_.
2. The Owner 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.
3. The Project consists of \_\_\_ building(s) containing a total of \_\_\_ residential unit(s).
4. (a) \_\_\_ of the residential unit(s) (the "Eligible Units") in the Project is/are occupied by Low-Income Households (i.e., individuals whose income is 60 percent or less of area median income) and \_\_\_ of the Eligible Units in the Project is/are occupied by Very Low-Income Households (i.e., individuals whose income is 50 percent or less of area median income).
- (b) For the 12-month period preceding the date hereof (the "Year"):
1. 25 percent or more of the residential units in the Project were both rent-restricted (as described in the Regulatory Agreement) and occupied by Low-Income Households;
  2. the Owner has received an annual income certification from each Low-Income Household and Very Low-Income Household and documentation to support such certification;
  3. all of the units in the Project were for use by the general public and used on a nontransient basis;
  4. each building in the Project was suitable for occupancy, taking into account the health, safety and building codes of the City; and
  5. if an Eligible Unit became vacant during the Year, reasonable attempts were or are being made to rent such Eligible Unit or the next available residential unit in the Project of a comparable or smaller size to one or more Low-Income Households before any residential units in the Project were or will be rented to tenants who are not Low-Income Households.
- (c) The Project constitutes an "Affordable Housing Project" as defined in Section 355.103 of the Regulations.
- (d) None of the incomes of the Low-Income Households exceeds the applicable limits under the Regulations.

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5. The Project is in compliance with all of the currently applicable requirements of the Regulatory Agreement, Section 7.28 of the Act, and the Regulations. The Owner will take whatever action is required to ensure that the Project complies with all requirements imposed by the Regulatory Agreement, Section 7.28 of the Act, and the Regulations during the periods required thereby.

The Owner shall retain, for the period required under the Regulatory Agreement, as from time to time amended and supplemented, 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 have been threatened or are pending which may affect the interest of the Owner in the Project or the ability of the Owner to perform its obligations with respect thereto.
7. 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.
8. The Owner 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 Owner 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.
9. The Owner is in possession of all records which it is required to maintain pursuant to the terms of the Regulatory Agreement, Section 7.28 of the Act, and the Regulations, as well as any additional records which the City has determined to be necessary to the compliance and administration of the Project.
10. The Owner has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Regulatory Agreement. The Owner shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the Regulatory Agreement, Section 7.28 of the Act, the Regulations and the City or the City's counsel.

If the Owner is unable to make any representation or warranty set forth above, the Owner



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must immediately contact the City and inform the City of the reason that the Owner is unable to make such representation or warranty.

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

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

1. The Sponsor is a not-for-profit corporation incorporated and in good standing in the State of \_\_\_\_\_.
2. The Sponsor received an allocation of affordable housing tax credits from the City in the amount of \$ \_\_\_\_\_ on \_\_\_\_\_, pursuant to Section 7.28 of the Act and the Regulations.
3. The Sponsor received, on or before the Closing Date, one or more Donations in the aggregate amount of \$ \_\_\_\_\_ and provided to DOH the documentation required under the Regulations to evidence such Donation(s).
4. No litigation or proceedings have been threatened or are pending which may affect the ability of the Sponsor to perform its obligations with respect to the Project.
5. The Sponsor is in possession of all records which it is required to maintain pursuant to the terms of the Regulatory Agreement, Section 7.28 of the Act, and the Regulations, as well as any additional records which the City has determined to be necessary for the Sponsor to hold in connection with the Project.
6. The Sponsor has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Regulatory Agreement. The Sponsor shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the Regulatory Agreement, Section 7.28 of the Act, the Regulations and the City or the City's counsel.

If the Sponsor is unable to make any representation or warranty set forth above, the Sponsor must immediately contact the City and inform the City of the reason that the Sponsor is unable to make such representation or warranty.

Under penalties of perjury, the Sponsor declares that, to the best of its knowledge and belief, each response, representation, warranty and document delivered by the Sponsor in

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connection herewith is true, correct and complete and will continue to be true, correct and complete.

### C. INDEMNIFICATION

The Owner and the Sponsor hereby agree, jointly and severally, 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 Owner's and/or the Sponsor's responses or documents provided pursuant to the terms of this Annual Owner's and Sponsor's Certification, including breaches of the representations and warranties herein contained.

**IN WITNESS WHEREOF**, the Owner and the Sponsor have executed this Annual Owner's and Sponsor's Certification this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Owner: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Sponsor: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

\_\_\_\_\_  
Notary Public  
  
(SEAL)

**UNOFFICIAL COPY****EXHIBIT A**

Owner: \_\_\_\_\_

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 \_\_\_\_\_

4. (a) Note utilities paid by tenants:

\_\_\_\_\_

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(b) Note utilities paid by Owner for which tenants reimburse the Owner

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(c) For each Residential Rental Unit in the Project, provide the following from the most current Rent Roll (as of \_\_\_\_\_):

**TAX CREDIT ELIGIBLE UNITS:**

Unit   Br            Rent            Square Footage   Family's Income   Family Size

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**HOME-ASSISTED UNITS RENTED TO VERY LOW-INCOME FAMILIES:**

Unit   Br            Rent            Square Footage   Family's Income   Family Size

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OTHER HOME-ASSISTED UNITS:

<u>Unit</u>	<u>Br</u>	<u>Rent</u>	<u>Square Footage</u>	<u>Family's Income</u>	<u>Family Size</u>
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OTHER UNITS:

<u>Unit</u>	<u>Br</u>	<u>Rent</u>	<u>Square Footage</u>	<u>Family's Income</u>	<u>Family Size</u>
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5. Are there any services provided to the tenants by the Owner, directly or indirectly, which require payments by the tenants to the Owner in excess of the rental rate?

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

If Yes, please provide details.


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- 6. Has the rent in any Low-Income Unit or Tax Credit Eligible Unit in the building identified above increased since the filing of the previous Annual Report, or, if this Annual Report is the first Annual Report filed with respect to such building, has the rent been increased from the amounts projected during the construction period?

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

If Yes, please provide details.

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- 7. How many Low-Income Units or Tax Credit Eligible Units in this building are now occupied by tenants that did not occupy such units at the time of the last Annual Report filed for this building?

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- 8. What steps did the Owner take to insure that the new tenants qualified as Low-Income Families or Tax Credit Eligible Families, as applicable?

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

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

If Yes, please provide details.

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11. Has any legal or administrative action been instituted by any City Department against the Owner or building within the last year, i.e. Building Code violations, non-payment of water/sewer bills etc.?

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

If Yes, please provide details.

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12. Provide the total amount expended by the Owner in connection with the maintenance and repair of the building. Also, provide details regarding any expenditures made by the Owner for repair and maintenance of the building. Attach most current annual certified audit.

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Signature

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