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THIS INSTRUMENT WAS PREPARED  
BY AND AFTER RECORDING RETURN

TO: Kristi S. Poskus  
Illinois Housing Development  
Authority  
401 N. Michigan Ave.  
Chicago, Illinois 60611  
Permanent Tax Index  
Identification No.:  
14-05-406-021-0000  
Property Address:  
5700 North Sheridan Road  
Chicago, Illinois



Doc#: 0835211108 Fee: \$80.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/17/2008 03:14 PM Pg: 1 of 23

HTF-7908

MAIL  
TO

## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (this "Agreement"), made and entered into as of this 1st day of December 2008, by and between **HOLLYWOOD HOUSE LIMITED PARTNERSHIP**, an Illinois limited partnership ("Borrower"), 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., Chicago, Illinois 60611;

### WITNESSETH:

**WHEREAS**, Borrower is the fee owner of certain real property upon which a housing development consisting of One Hundred Ninety-Seven (197) residential rental units (the "Units") has been constructed, legally described in **Exhibit A** attached to and made a part of this Agreement (the "Real Estate"), located at 5700 North Sheridan Road, all in Chicago, Illinois. The Real Estate and the improvements to be constructed on it are collectively referred to in this Agreement as the "Development"; and

**WHEREAS**, Hollywood-Sheridan Neighborhood Development Corp., NFP is the general partner of the Borrower (the "General Partner"); 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"). All capitalized terms used in this Agreement and not otherwise defined shall have the meanings established in the Trust Fund Act or, if not so established, in the Rules; and

**CERTAIN OF THE PROVISIONS HEREOF MAY CONTINUE IN EFFECT**

**NOTWITHSTANDING THE PAYMENT IN FULL OF THE LOAN  
PRIOR TO THE MATURITY DATE.**

Near North National Title  
222 N. LaSalle  
Chicago, IL 60601

NO 1071417 11 DEC 22

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**WHEREAS**, the Authority has also entered into a Financing Adjustment Factor Refunding Agreement (the "FAF Agreement") with the United States Department of Housing and Urban Development ("HUD") on April 6, 1990. Under the terms of the FAF Agreement, the Authority is entitled to receive fifty percent (50%) of the savings (the "FAF Proceeds") resulting from the refunding of bonds originally issued by the Authority to provide financing for certain multi-family residential housing developments, provided that the Authority uses the FAF Proceeds to provide decent, safe and sanitary housing to low income households.

**WHEREAS**, the Authority has agreed to make two (2) loans to Borrower as follows: (i) a loan from the Trust Fund in the amount of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) (the "TF Loan") and (ii) a loan from FAF Proceeds in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) (the "FAF Loan"), to be used with other monies, if any, for the acquisition, rehabilitation and permanent financing of the Development. The TF Loan and the FAF Loan shall collectively be referred to herein as the "Loans"; and

**WHEREAS**, contemporaneously with the execution and delivery of this Agreement, Borrower has executed and delivered to the Authority its mortgage notes (together with any renewals, modifications, extensions, amendments and replacements, the "Notes") of even date herewith, as evidence of its indebtedness to the Authority in the principal sum of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) in regards to the TF Loan and Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) in regards to the FAF Loan; and

**WHEREAS**, the Loans are evidenced, secured and governed by, among other things: (a) the Conditional Commitment Letter from the Authority to or for the benefit of Borrower dated October 1, 2008 (the "Commitment"); (b) the Loan Agreement (the "Loan Agreement") dated as of the date of this Agreement between Borrower and the Authority; (c) the Notes executed by Borrower; (d) that certain Third Junior Mortgage, Security Agreement and Assignment of Rents and Leases (the "TF Mortgage") dated as of the date hereof executed by Borrower, as mortgagor, and delivered to the Authority, as mortgagee and that certain Fourth Junior Mortgage, Security Agreement and Assignment of Rents and Leases (the "FAF Mortgage") dated as of the date hereof executed by Borrower, as mortgagor and delivered to the Authority, as mortgagee (the TF Mortgage and FAF Mortgage are collectively referred to herein as the "Mortgages"); (e) that certain Guaranty dated as of the date hereof (the "Guaranty") executed by Heartland Housing, Inc. (the "Guarantor") for the benefit of the Authority; (f) that certain Environmental Indemnity (the "Environmental Indemnity") dated as of the date hereof executed by Borrower and the General Partner, as indemnitors, and delivered to the Authority, as indemnitee; and (g) this Agreement. This Agreement, the Commitment, the Notes, the Loan Agreement, the Mortgages, the Guaranty, the Environmental Indemnity and all other documents executed by Borrower that evidence, secure or govern the Loans are sometimes collectively referred to in this Agreement as the "Loan Documents"; the other Loan documents are incorporated in this Agreement by this reference; and

**WHEREAS**, as an inducement to the Authority to make the Loans, Borrower has agreed to enter into this Agreement and consents to be regulated and restricted by the Authority as provided in

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it, and as provided for in the Trust Fund Act, the Rules, 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, as applicable.

**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**. Borrower agrees that at all times its acts regarding the Development shall be in conformance with the applicable provisions of the Trust Fund Act, the Rules, 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**. Borrower further represents and agrees that:

a. At least Fifty (50) of the Units shall be occupied by a person, family or unrelated persons living together (collectively, the "Tenants") whose adjusted income is less than or equal to fifty percent (50%) of the median income of the area median income for the metropolitan statistical area of Chicago, Illinois, 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 the purposes of Section 8 of the United States Housing Act of 1937 (the "Area Median Income"); at least One Hundred Twenty-Seven (127) of the Units shall be occupied by Tenants whose adjusted income is less than or equal to sixty percent (60%) of the Area Median Income (the foregoing one hundred seventy-seven (177) Units are collectively referred to herein as the "Restricted Units"). Twenty (20) of the Units, including a manager's unit, may be occupied by Tenants at market rates (the "Market Units"). Borrower shall obtain evidence, satisfactory to the Authority, of each prospective Tenant's income prior to occupancy of a Restricted Unit;

b. In the advertising, marketing, and rental of Units and the selection of Tenants, Borrower agrees to abide by the terms and conditions of the Tenant Selection Plan executed by Borrower, approved by the Authority as it may be amended from time to time with the prior written consent of the Authority;

c. In the management and operation of the Development, Borrower agrees to abide by the terms and conditions of the Affirmative Fair Housing Marketing Plan; the Management Plan; and the Management Agreement; all as approved by the Authority, as such documents may be amended from time to time with the prior written approval of the Authority. Borrower shall be responsible for ensuring the management agent's compliance with applicable provisions of the Trust Fund Act, the Rules and all applicable ordinances, regulations and statutes and the rules, procedures and requirements of the Authority. At the Authority's direction, Borrower shall terminate the Management Agreement with the

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management agent and select another management agent satisfactory to the Authority;

d. On forms approved by the Authority, Borrower shall obtain from each prospective Very Low Income Tenant and Low Income Tenant prior to his or her admission to a Restricted Unit in the Development, a certification of income (the "Certification"). Borrower shall submit such Certifications to the Authority in the manner prescribed by the Authority;

e. In the manner prescribed by the Authority, Borrower 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, Borrower shall certify to the Authority that, at the time of such certification and during the preceding calendar year, Borrower was in compliance with the requirements of this **Paragraph 3**, or, if Borrower is not or has not been in compliance with such requirements, Borrower shall give notice to the Authority of its failure to comply and the corrective action Borrower is taking or has taken;

f. Borrower shall comply with the rent limitations contained in Section 360.904(c) of the Rules; Borrower shall annually submit a schedule of rents for the Restricted Units in the Development for the Authority's approval, and shall not change the rent schedule for the Restricted Units in the Development without the Authority's approval.

g. Borrower shall require all Tenants to execute a lease (the "Lease") in a form approved by the Authority;

h. Borrower shall obtain all federal, state and local governmental approvals required by law for its acquisition, rehabilitation, ownership and operation of the Development;

i. Borrower shall not evict any Tenant from the Development without good cause; and

j. Borrower shall design and rehabilitate the Development in conformity (i) with applicable federal, state and local statutes, regulations, ordinances, standards and codes (except as otherwise approved by the Authority) and (ii) with all applicable rules, contracts, agreements, procedures, guides and other requirements of the Authority provided to Borrower in writing.

4. **Acts Requiring Authority Approval.** Except as permitted pursuant to the other Loan Documents, Borrower shall not, without the prior written approval of the Authority, which may be given or withheld in the Authority's sole discretion:

a. Convey, transfer or encumber the Development or any part of it, or permit the conveyance, transfer or encumbrance of the Development or any part of it;

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- b. Convey, assign or transfer any right to manage, or receive the rents and profits from, the Development;
- c. Initially rent any Unit for a period other than one (1) year, and after such initial one (1) year period, rent any Unit for less than six (6) months or more than one (1) year;
- d. Lease or sublease any non-residential facility in the Development or amend or modify any such lease or sublease, which, to the best of Borrower's knowledge, would result in a conflict of interest between any of the parties to such contracts and the Authority, its board members, officers, employees, agents or members of their respective immediate families; or
- e. Require, as a condition of the occupancy or leasing of any Unit in the Development, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not to exceed one (1) month's rent to guarantee the performance by the Tenant of the covenants of the Lease. Any funds collected by Borrower as security deposits shall be kept separate and apart from all other funds of the Development.

5. **Borrower Duties.** In addition to, but not by way of limitation of, the other duties of Borrower set forth in this Agreement, Borrower shall comply with the following:

- a. **Maintenance.** Upon completion of the rehabilitation of the Development, Borrower 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.
- b. **Management.** Borrower shall provide for the management of the Development in a manner satisfactory to the Authority.
- c. **Audit.** The Development and the equipment, buildings, plans, specifications, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it, and the books and records relating to Borrower, shall at all times be maintained in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority or its agent or representative upon reasonable prior notice during normal business hours, as the Authority reasonably requires.
- d. **Financial and Expense Reports.** Within ninety (90) days following the end of the Borrower's fiscal year, in a manner prescribed by the Authority in writing, Borrower shall furnish the Authority with a complete annual financial report for the Development based upon an examination of the books and records of the Development, prepared at Borrower's expense in accordance with the written requirements of the Authority, and certified to Borrower by an Illinois licensed certified public accountant.

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e. Furnishing Information. At the request of the Authority, Borrower shall furnish such reports, projections, certifications, budgets, operating reports, tax returns and analyses as required pursuant to the statutes, rules and regulations of the Authority and the Trust Fund Act, as amended from time to time, or by other applicable federal or state statutes or requirements, and from time to time shall give specific answers to written questions in connection with Borrower's income, assets, liabilities, contracts and operation, all relating to the Development, and the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Development.

f. Relocation Plan. Any temporary relocation or permanent displacement of Tenants of the Development shall occur only in accordance with the relocation plan as submitted by Borrower to, and approved by, the Authority (the "Relocation Plan"). Borrower shall be responsible for ensuring compliance with all provisions of the Relocation Plan.

g. Compliance with Certain Laws. Borrower shall comply with the provisions of the Environmental Barriers Act (410 ILCS 25/1 *et seq.*, as amended from time to time), the Illinois Accessibility Code (71 Ill. Adm. Code 400), 47 Ill. Adm. Code 310, Subpart I, as amended from time to time, except as otherwise approved by the Authority, and the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, as amended, if applicable, and the Executive Order for Reduction of Earthquake Hazards, if applicable; and IED's property standards for rehabilitated housing, if applicable.

## 6. Accounts.

a. Replacement Reserve Account. Unless required by the Senior Lender (as defined in the Commitment), on or before the later of Final Closing Date or the funding date required by the Senior Lender, Borrower shall establish a Replacement Reserve Account (the "Replacement Reserve Account") for the Development with the Authority into which shall be deposited (i) Forty-Nine Thousand Five Hundred and No/100 Dollars (\$49,500.00); and (ii) commencing on the first month thereafter on a pro-rata basis, Two Hundred Fifty and No/100 Dollars (\$250.00) per Unit per year, the amount of which deposit shall be subject to the Authority's future review and adjustment; and (iii) such additional sums as are set forth in the construction budget for the construction of the Development for that purpose. Funds held in the Replacement Reserve Account shall be disbursed in accordance with the provisions of the Regulatory Agreement. If the Senior Lender: (i) does not require a Replacement Reserve Account, or (ii) no longer requires one, or (iii) requires one for less than the amounts required in this Paragraph, the Borrower shall comply with the requirements of this Paragraph, except that if (iii) is applicable, the Borrower shall deposit with the Authority the difference between the requirements of the Senior Lender and the Authority.

b. Tax and Insurance Reserve Account. Unless required by the Senior Lender, on or before the later of the Final Closing Date or the funding date required by the Senior Lender, Borrower shall deposit with the Authority the sum of (i) Three Hundred Thousand

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and No/100 Dollars (\$300,000.00) for payment of real estate taxes on the Development, and (ii) Sixty-Six Thousand Seven Hundred and No/100 Dollars (\$66,700.00) for payment of insurance policies, which the Authority shall deposit in the tax and insurance reserve account for the Development (the "Tax and Insurance Reserve Account"). Commencing on the first Payment Date (as defined in the Note), Borrower shall pay to the Authority for deposit into the Tax and Insurance Reserve Account monthly payments in an amount sufficient so that (i) as of the first (1<sup>st</sup>) day of the month before each installment of real estate taxes is due, there shall be on deposit in the Tax and Insurance Reserve Account for real estate taxes an amount equal to one half (1/2) of one hundred five percent (105%) of the real estate tax bill for the Development for the previous calendar year, or such other amount as the Authority shall determine, in its reasonable discretion; and (ii) as of the first (1<sup>st</sup>) day of the month before the insurance bill is due, there shall be on deposit in the Tax and Insurance Reserve Account for insurance an amount equal to one hundred five percent (105%) of the insurance bill for the Development for the previous calendar year, or such other amount as the Authority shall determine, in its reasonable discretion. If the Senior Lender: (i) does not require a Tax and Insurance Reserve Account, or (ii) no longer requires one, or (iii) requires one for less than the amounts required in this Paragraph, the Borrower shall comply with the requirements of this Paragraph, except that if (iii) is applicable, the Borrower shall deposit with the Authority the difference between the requirements of the Senior Lender and the Authority.

c. **Operating Deficit Reserve Account.** Unless required by the Senior Lender, on or before the later of the Final Closing Date or the funding date required by the Senior Lender, Borrower shall deposit with the Authority Five Hundred Fifty-Six Thousand Three Hundred Sixteen and No/100 Dollars (\$556,316.00) for operating deficits, which the Authority shall deposit in an operating reserve account for the Development (the "Operating Reserve Account") and which shall be used at the Authority's sole direction. If the Senior Lender: (i) does not require an Operating Reserve Account, or (ii) no longer requires one, or (iii) requires one for less than the amounts required in this Paragraph, the Borrower shall comply with the requirements of this Paragraph, except that if (iii) is applicable, the Borrower shall deposit with the Authority the difference between the requirements of the Senior Lender and the Authority.

d. **Interest.** If held by the Authority, the funds in the Replacement Reserve Account, the Tax and Insurance Reserve Account, and the Operating Reserve Account, shall be held as additional security for the Loans in an account containing replacement reserves, tax and insurance reserves, operating reserves and other reserves for other Authority-financed developments (the "Authority Reserve Account"); the funds in the Authority Reserve Account will be invested by the Authority in accordance with its then-current standard policies and practices. Earnings on the Authority Reserve Account are pooled and, subject to the terms of the Loan Documents, paid to Borrower in proportion to funds attributable to it, based on the actual earnings from the investment of the funds in the Authority Reserve Account.

e. **Release of Amounts in Accounts** If held by the Authority, the funds in the Replacement Reserve Account, the Tax and Insurance Reserve Account, and the Operating

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Reserve Account (each, an "Account") shall constitute additional security for the repayment of the Loans. If the Accounts are held by the Authority, the Authority shall have the right, in its sole discretion, to approve each withdrawal of funds, prior to such withdrawal, from the Accounts or any other fund or account established pursuant to this Agreement or in connection with the Loans; in the event of a Default, the Authority may, but shall not be required to, draw on the funds in any Account (i) to pay administrative expenses, operating expenses and maintenance expenses of the Development or (ii) to apply such funds against the outstanding principal balance of the Loans or any delinquencies under the Loans.

## 7. Non-Discrimination in Housing.

a. Borrower 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. Notwithstanding the foregoing, Borrower may operate the Development as housing for older persons (age 62 and older) in accordance with the Fair Housing Act, as amended, 42 U.S.C. 3607 (b)(2)(B) and Section 221(d) (4) of the National Housing Act of 1934, as amended.

b. Borrower shall comply with all of the provisions of Paragraph 3805/13 of the Act, Paragraph 65/10(a) of the Trust Fund Act and all other provisions of federal, state and local law relating to non-discrimination.

8. Violation of Agreement by Borrower. Upon violation of any of the provisions of this Agreement by Borrower, the Authority may give notice of such violation to Borrower 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 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 Borrower's reasonable efforts to cure it, Borrower 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, (ii) Borrower continues to diligently pursue such cure in good faith and (iii) the Authority's security for the Loans are not, in the sole judgment of the Authority, impaired as a result of the existence of such failure; after the expiration of such one hundred fifty (150) day period, the Authority may declare a default under this Agreement, effective on the date of notice of such declaration of default to Borrower, and upon such default, and so long as such default is continuing, the Authority may do the following:

a. Declare the whole of the indebtedness under the Notes immediately due and payable and then proceed to exercise the rights and remedies set forth in any Loan Document;

b. Take possession of the Development, bring any action necessary to enforce any rights of Borrower growing out of the operation of the Development and operate the Development in accordance with the terms of this Agreement until such time as the



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Authority, in its sole discretion, determines that Borrower is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Notes;

c. Collect all rents and charges in connection with the operation of the Development and use such collections to pay Borrower's obligations under this Agreement, the Notes, the Mortgages or any other Loan Document and such other obligations of Borrower in connection with the Development and the necessary expenses of preserving and operating it;

d. 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, Borrower 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 Trust Fund Act; or

e. 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.

9. **Termination of Liabilities.** In the event of a sale or other transfer of the Development, all of the duties, obligations, undertakings and liabilities of Borrower or other transferor (the "Transferor") under the terms of this Agreement shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by the Transferor that occurred or arose prior to such sale or transfer. As a condition precedent to the termination of the liability of the Transferor under this Agreement, the transferee of the Development (a "New Borrower"), as a condition precedent to its admission as a New Borrower, shall assume in writing, on the same terms and conditions as apply to the Transferor, all of the duties and obligations of the Transferor arising under this Agreement from and after the date of such sale or transfer. Such assumption shall be in form and substance acceptable to the Authority. Any such New Borrower shall not be obligated with respect to matters or events that occur or arise before its admission as a New Borrower.

10. **Definitions.** Intentionally omitted.

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11. **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 New Borrower and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it for so long as the Notes are outstanding and in effect. However, if the date of the cancellation of the Notes (the "Cancellation Date") is prior to the date that the Notes were originally scheduled to mature (the "Maturity Date"), the covenants and agreements set forth in **Paragraphs 2, 3(a)-(f), 3(j), 5(a), 7, 8(d)-(e), and 9-21** hereof (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing on the Cancellation Date and ending on the Maturity Date, irrespective of whether the Loans are prepaid voluntarily by Borrower or tendered by any party following an acceleration by the Authority of the Notes or enforcement by the Authority of its remedies in connection with the Loans.

Borrower expressly acknowledges that its undertakings and agreements stated in this Agreement are given to induce the Authority to make the Loans and that, even if the Loans have been repaid prior to the Maturity Date, the Borrower's undertaking to perform the Continuing Obligations for the period set forth in the previous paragraph is a condition precedent to the willingness of the Authority to make the Loans.

Notwithstanding anything to the contrary in this Agreement, the Authority shall not waive the provisions of this **Paragraph 11** under any circumstances during the first ten years of the term of the Loans.

12. **Liability of Borrower – Nonrecourse.** Except as otherwise set forth in this **Paragraph 12**, or in the Commitment, the Guaranty and the Environmental Indemnity, Borrower's liability created under the Loan Documents shall be nonrecourse and neither Borrower nor any of Borrower's general or limited partners shall have any personal liability for repayment of the Loans. The Authority shall look only to the Development and its reserves and any other funds relating to the Development for repayment of the Loans. The foregoing shall in no way limit (x) Guarantor's liability for completion of the Development pursuant to the Guaranty, and (y) Borrower's liability for or as a result of (i) fraudulent acts, or willful and wanton acts or omissions in violation of the provisions of this Agreement and the other Loan Documents, by through or under Borrower; (ii) the fair market value of the personalty or fixtures removed or disposed of from the Development in violation of the terms of the Loan Documents; (iii) the misapplication, in violation of the terms of the Loan Documents, of any funds to the full extent of such misapplied funds or proceeds, including, without limitation, any funds or proceeds received under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain; (iv) any misapplication of any security deposits attributable to any leases of Units, failure to pay interest on such security deposits as required by law; and (v) waste committed on the Development to the extent Replacement Reserves are available to remedy such waste and Borrower has failed to remedy the waste despite the written instructions of the Authority; and/or (vii) the occurrence of a Prohibited Transfer (as defined in the Mortgages), without the Authority's prior written consent.

13. **Amendment of Agreement.** This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.

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14. **Execution of Conflicting Documents.** Borrower warrants that it has not executed, and it agrees that it shall not execute, any other agreement with provisions contradictory, or in opposition, to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are and shall be paramount and controlling as to the rights and obligations set forth in such other agreement and supersede any other requirements in conflict with this Agreement. To the extent this Agreement conflicts with any provisions or requirements set forth in the Mortgages or the Notes, the provisions of the Mortgages or the Notes, as the case may be, shall prevail and control.

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

16. **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, successors in office or interest and assigns; however, Borrower may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of the Authority.

17. **Indemnification of the Authority.** Borrower 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; provided however, that this indemnity shall not apply to events arising from solely the Authority's gross negligence or willful misconduct. Borrower further agrees that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

18. **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.

19. **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.

20. **Notices.** Notices under this Agreement shall be given as provided in **Exhibit B** hereof.

21. **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.

22. **Incorporation of HUD-Required Provisions Rider.** The document entitled "HUD-Required Provisions Rider" attached hereto as **Exhibit C** is hereby incorporated into this Agreement

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as if fully set forth herein and shall remain a part of this Agreement so long as the Secretary of HUD or his/her successors or assigns are the insurers of holders of the promissory note evidencing the Senior Loan (known as the Mortgage Note) in the HUD-Required Provisions Rider). Upon such time as HUD is no longer the insurer or holder of the foregoing Mortgage Note or such time as the Note is paid in full, the parties hereto agree that the HUD-Required Provisions Rider shall no longer be a part of this Agreement.

23. **Subordination.** In addition to its subordination to the documents listed in the attached HUD Required Provisions Rider, this Agreement shall be subject and subordinate to that certain Hollywood House Apartments Redevelopment Agreement by and between the City of Chicago (the "City"), the Project Owner and the Sponsor, dated of even date herewith, that certain Junior Mortgage, Security Agreement and Financing Statement by and between the City and the Project Owner, dated of even date herewith, that certain Regulatory Agreement by and between the City and the Project Owner, dated of even date herewith, and that certain Assignment of Rents and Leases by and between the City and the Project Owner, dated of even date herewith.

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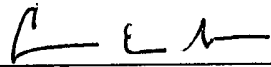
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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized representatives.

**BORROWER:**

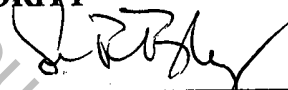
**HOLLYWOOD HOUSE LIMITED PARTNERSHIP**, an Illinois limited partnership

By: Hollywood Sheridan Neighborhood Development Corp. NFP,  
an Illinois not-for-profit corporation

By:   
Printed Name: Andrew E. Geer  
Its: Secretary

**AUTHORITY:**

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

By:   
Printed Name: Jane R. Bilger *JRP*  
Its: Assistant Executive Director

12/9/08/J:\TFFORMS\MF-FORMS\1stloan\regag1st.frm

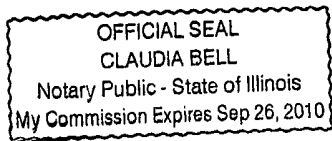
# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Andrew E. Geer, personally known to me to be the Secretary of Hollywood Sheridan Neighborhood Development Corp. NFP, 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 in his capacity as Secretary of Hollywood Sheridan Neighborhood Development Corp. NFP, as his free and voluntary act and deed and as the free and voluntary act and deed of Hollywood Sheridan Neighborhood Development Corp. NFP, as General Partner for Hollywood House Limited Partnership, for the uses and purposes therein set forth.

Given under my hand and official seal this 12<sup>th</sup> day of December, 2008.

Claudia Bell  
Notary Public



# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Jane R. Bilger, personally known to me to be the Assistant 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 Assistant 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 10<sup>th</sup> day of December, 2008.



Tanika King  
Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

THE SOUTH 20 FEET OF LOT 9, ALL OF LOTS 10, 11 AND 12 IN BLOCK 6 IN COCHRAN'S ADDITION TO EDGEWATER BEING A SUBDIVISION OF SOUTH 1946 FEET OF WEST 1320 FEET OF EAST FRACTIONAL 1/2 OF SECTION 5, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN 14-05-406-021-0000

Commonly known as 5700 N. Sheridan Road, Chicago, Illinois 60660

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## 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 the Authority:

Illinois Housing Development Authority  
401 North Michigan Avenue, Suite 700  
Chicago, Illinois 60611  
Attention: Managing Director for Multifamily Programs

with a copy to:

Illinois Housing Development Authority  
401 North Michigan Avenue, Suite 700  
Chicago, Illinois 60611  
Attention: General Counsel

If to Borrower:

Hollywood House Limited Partnership  
208 South LaSalle Street, Suite 1818  
Chicago, Illinois 60604  
Attention: Mr. Andrew E. Geer

with a courtesy copy to:

Applegate & Thorne-Thomsen, P.C.  
322 South Green Street, Suite 412  
Chicago, Illinois 60607  
Attention: Mr. William G. Skalitzky

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In connection with the courtesy copy to Applegate & Thorne-Thomsen, P.C., the Authority will exercise reasonable efforts to provide copies of any notices given to Borrower; however, the Authority's failure to furnish copies of such notices shall not limit the Authority's exercise of any of its rights and remedies under any document evidencing, securing or governing the loans from the Authority to the Borrower.

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.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## HUD-REQUIRED PROVISIONS RIDER TO ILLINOIS HOUSING DEVELOPMENT AUTHORITY REGULATORY AND LAND USE RESTRICTION AGREEMENT

**THIS RIDER** (the "Rider") is attached to and made a part of that certain Regulatory and Land Use Restriction Agreement (the "Document"), dated as of December 1, 2008, entered into by and between the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body politic and corporate established pursuant to the Illinois Housing Development Act, ILCS 3805/1 et seq. (the "Authority"), and **HOLLYWOOD HOUSE LIMITED PARTNERSHIP**, an Illinois limited partnership (the "Partnership" or "Owner"), relating to the property known as Hollywood House and located at 5700 North Sheridan Road, Chicago, Illinois. In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the Document, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Document. As used herein, the term "HUD" shall mean the United States Department of Housing and Urban Development; the term "FHA" shall mean the Federal Housing Administration, an organizational unit within HUD; the term "Project" shall have the same meaning as in the HUD Regulatory Agreement described below; and the term "HUD/FHA Loan Documents" shall mean the following documents relating to the HUD-insured mortgage loan for the Project (Project No. 071-35795):

- A. Commitment for Insurance dated October 24, 2008, issued by the Secretary of HUD pursuant to Section 221(d)(4) to Developers Mortgage Corporation and assigned to PNC Bank, N.A. ("Mortgage") in the original principal amount of \$11,511,100;
- B. Building Loan Agreement, dated December 1, 2008, between the Owner and Mortgagee;
- C. Mortgage Note, dated December 1, 2008, made by the Owner payable to the order of Mortgagee in the principal amount of \$11,511,100 (the "Mortgage Note");
- D. Mortgage, dated December 1, 2008, made by the Owner in favor of Mortgagee and encumbering the project as security for the said Mortgage Note (the "Mortgage");
- E. Financing Statements made by the Owner, as debtor, in favor of Mortgagee and/or the Secretary of HUD as their interests may appear, as secured party recorded with the Cook County Recorder's Office and to be filed with the Illinois Secretary of State;
- F. Regulatory Agreement for Multifamily Housing Projects, dated December 1, 2008, between the Owner and HUD (the "HUD Regulatory Agreement");

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- G. Assignment of Rents and Leases from Owner to Mortgagee dated as of December 1, 2008;
- H. Assignment of Contracts and Documents from Borrower to Mortgagee dated as of December 1, 2008; and
- I. Security Agreement dated as of December 1, 2008 between the Owner, as debtor, and Mortgagee and/or the Secretary of HUD as their interests may appear, as secured party.
- R-1 Notwithstanding anything in the Document to the contrary, the provisions of the Document are subordinate to all applicable Federal statutes, HUD mortgage insurance regulations and related HUD directives and administrative requirements; other than those HUD mortgage insurance regulations, related HUD directives and/or administrative requirements which have been waived in writing by HUD with respect to the Project. The provisions of the Document are also expressly subordinate to the HUD/FHA Loan Documents. In the event of any conflict between the Document and the provisions of applicable Federal statutes, HUD mortgage insurance regulations, related HUD directives and administrative requirements, or HUD/FHA Loan Documents, the Federal statutes, HUD mortgage insurance regulations, related HUD directives and administrative requirements and HUD/FHA Loan Documents shall control, unless waived in writing by HUD with respect to the Project.
- R-2 Failure on the part of the Partnership to comply with the covenants contained in the Document shall not serve as the basis for default on any HUD-insured or HUD-held mortgage on the Project. Additionally, and notwithstanding any term or condition to the contrary in the Document or any of the Subordinate Lender's Loan Documents, no failure on the part of the Owner or its successors or assigns to comply with the covenants in the Mortgage Note, the HUD Mortgage, the HUD Regulatory Agreement, or any of the other HUD/FHA Loan Documents shall serve as a basis for the Subordinate Lender, its successors or assigns, or any other party acting by or through the rights provided therein, to declare a default under the Document or any of the Subordinate Lender's Loan Documents or to exercise any other rights provided in the Subordinate Lender's Loan Documents, without the express written approval of the Senior Lender, or its successors and assigns to the HUD Mortgage, and HUD.
- R-3 Compliance by the Partnership with the provisions and covenants of the Document and enforcement of the provisions and covenants contained in the Document, but not limited to, any indemnification provisions or covenants, will not and shall not result in any claim or lien against the Project, any asset of the Project, the proceeds of the Mortgage, any reserve, or deposit required by HUD in

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connection with the Mortgage transaction or the rents or other income from the Project, other than distributable "Surplus Cash" (as that term is defined in the HUD Regulatory Agreement).

- R-4 No amendment to the Document made after the date of the HUD initial endorsement of the Mortgage Note shall have any force or effect until and unless such amendment is approved in advance in writing by HUD. No amendment made after the aforesaid date to any HUD/FHA Loan Document shall be binding upon the Authority unless the Authority has consented thereto in writing.
- R-5 Unless waived in writing by HUD with respect to the Project, any action prohibited or required by HUD pursuant to applicable Federal law, HUD regulations, HUD directives and administrative requirements or the HUD/FHA Loan Documents, shall supersede any conflicting provision of the Document; and the performance or failure to perform of the Partnership in accordance with such laws, regulations, directives, administrative requirements or HUD/FHA Loan Documents shall not constitute an event of default under the Document.
- R-6 Intentionally deleted.
- R-7 So long as HUD is the insurer or holder of any mortgage on the Project or any indebtedness secured by a mortgage on the Project, the Partnership shall not and is not permitted to pay any amount required to be paid under the provisions of the Document except from distributable Surplus Cash, as such term is defined in, and in accordance with the conditions prescribed in the HUD Regulatory Agreement.
- R-8 In the event of the appointment, by any court, of any person, other than HUD or Mortgagee, as a receiver, as a mortgagee or party in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the Document, with or without court action, no rents, revenue or other income of the Project collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Document, except from distributable Surplus Cash in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Project in accordance with all provisions of the HUD/FHA Loan Documents.
- R-9 A duplicate of each notice given, whether required or permitted to be given, under the provisions of the Document shall also be given to:

Department of Housing and Urban Development  
77 West Jackson Boulevard  
Chicago, IL 60604

Attention: Director of Multifamily Housing

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Project No. 071-35795

HUD may designate any further or different addresses for such duplicate notices.

- R-10 Notwithstanding anything in the Document to the contrary, and expressly excepting residential leases and subleases which conform to the HUD Regulatory Agreement and HUD directives and policies, the Partnership and its successors and assigns may sell, convey, transfer, lease, sublease or encumber the Project or any part thereof, provided it obtains the prior written consent of HUD to any such sale, conveyance, transfer, lease, sublease or encumbrance. Notwithstanding anything in the Document to the contrary, the Partnership may make application to HUD for approval of a Transfer of Physical Assets in accordance with HUD regulations, directives and policies. A duplicate copy of such application shall be served on the Authority. Within 90 days after such service, the Authority shall serve written notice of its approval of such transfer, or of its requirements for approval of such transfer, on HUD, the Mortgagee and the Partnership. No such transfer shall occur or be effective until the requirements shall have been satisfied. In the event the Authority fails to serve such notices on HUD, the Mortgagee and the Partnership within said time, then any consent by HUD to such transfer shall be deemed to be the Authority's prior written consent to such transfer and consummation of such transfer shall not be a default under the Document.
- R-11 Notwithstanding anything in the Document to the contrary, the provisions of this HUD-Required Rider are for the benefit and are enforceable by HUD and the Mortgagee.
- R-12 Intentionally deleted.
- R-13 The Document and all covenants and provisions therein and all lien rights created thereby, if any, shall automatically terminate in the event of a deed in lieu of foreclosure of any mortgage insured or held by HUD with respect to the Project or any portion thereof. Upon such termination, the Authority shall furnish to HUD and the Mortgagee such releases and other documentation as HUD or the Mortgagee shall deem necessary or convenient to confirm or evidence such termination.
- R-14 This Rider may be executed in several counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties, notwithstanding that all parties are signatory to the original or the same counterpart. Any such counterpart shall be admissible into evidence as an original hereof against the party who executed it.

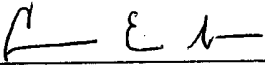
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Executed as of the date set forth above.

**OWNER:**

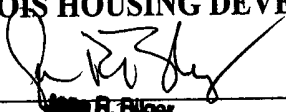
**HOLLYWOOD HOUSE LIMITED PARTNERSHIP**, an Illinois limited partnership

By: Hollywood Sheridan Neighborhood Development Corp., NFP, an Illinois not-for-profit corporation

By:   
Printed Name: Andrew E. Geer  
Its: Secretary

**AUTHORITY:**

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

By:   
Name: John R. Elger  
Title: Assistant Executive Director

*None*

Property of Cook County Clerk's Office