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Doc#: 0835211117 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/17/2008 03:29 PM Pg: 1 of 12

THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING RETURN
TO: Kristi S. Poskus
Illinois Housing Development
Authority
401 N. Michigan Ave., Ste. 700
Chicago, Illinois 60611
Permanent Tax Index
Identification No.:
14-05-406-021-0000
Property Address:
5700 North Sheridan Road
Chicago, Illinois



SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of this 1st day of December, 2008, between the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body politic and corporate of the State of Illinois (the "Senior Lender") 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 North Michigan Avenue, Suite 700, Chicago, Illinois 60611, and **HEARTLAND HOUSING, INC.**, an Illinois corporation (the "Subordinated Lender") having its principal office at 208 South LaSalle Street, Suite 1818, Chicago, Illinois.

RECITALS

A. The Senior Lender is the owner and holder of two (2) certain mortgage note each dated December 1, 2008, and in the original principal amounts of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) (the "Trust Fund Note") and Seven Hundred Fifty and No/100 Dollars (\$750,000.00) (the "FAF Note"), each made by Hollywood House Limited Partnership, an Illinois limited partnership (the "Borrower") payable to the order of the Senior Lender. The Trust Fund Note and the FAF Note are collectively referred to herein as the "Senior Notes". The Senior Notes are (i) secured by a certain Third Junior Mortgage, Security Agreement and Assignment of Rents and Leases (the "Trust Fund Mortgage") and a certain Fourth Junior Mortgage, Security Agreement and Assignment of Rents and Leases (the "FAF Mortgage") each made by the Borrower in favor of the Senior Lender and dated December 1, 2008 and recorded with the Recorder of Deeds of Cook (the "Recorder's Office") encumbering certain property (the "Real Estate") commonly known as 5700 North Sheridan Road, Chicago, Illinois, and legally described on **Exhibit A** attached to and made a part of this Agreement (the Real Estate and the improvements constructed are referred to in this Agreement as the "Development"); (ii) governed by a certain Regulatory and Land Use Restriction Agreement dated December 1, 2008 and recorded in the Recorder's Office; and evidenced, secured and governed by certain other loan documents (the "Other Documents"). The Senior Notes, Trust Fund Mortgage, the FAF Mortgage and the Other Documents are collectively referred to in this Agreement as the "Senior Loan Documents."

NO1071417 20 DEC 22

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

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B. The Subordinated Lender is the owner and holder of two (2) certain Notes each dated December 1, 2008, and in the original principal amounts of Two Million Five Hundred Thousand Seven Hundred Ninety-Nine and No/Dollars (\$2,500,799.00) (the "Seller Financing Note") and Four Million and No/100 Dollars (\$4,000,000.00) (the "Sponsor Note") each made by Borrower payable to the order of Subordinated Lender. The Seller Financing Note and the Sponsor Note are collectively referred to herein as the "Subordinate Notes". The Subordinated Notes are evidenced, secured and governed by (i) a certain Fifth Junior Mortgage, Assignment of Rents and Security Agreement (the "Seller Financing Mortgage"), in regards to the Seller Financing Note, and (ii) a certain Sixth Junior Mortgage, Assignment of Rents and Security Agreement (the "Sponsor Mortgage"), in regards to the Sponsor Note, each dated December 1, 2008, made by the Borrower in favor of Subordinated Lender and recorded in the Recorder's Office. The Seller Financing Mortgage and the Sponsor Mortgage are collectively referred to herein as the "Subordinated Mortgages". The Subordinated Mortgages and all other documents evidencing, securing and governing the Subordinated Notes are hereinafter collectively referred to as the "Subordinated Loan Documents."

C. All obligations of the Borrower to the Senior Lender now existing or hereafter arising, due or to become due, under the Senior Notes and the Senior Loan Documents are referred to in this Agreement as the "Senior Liabilities;" all obligations of the Borrower to the Subordinated Lender now existing or hereafter arising, due or to become due, under the Subordinated Notes and the Subordinated Loan Documents are referred to in this Agreement as the "Subordinated Liabilities."

D. The Senior Lender has agreed to make the loans evidenced by the Senior Notes on the condition that Subordinated Lender enters into this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and as an inducement to the Senior Lender to make the loans evidenced by the Senior Notes, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto represent, warrant and agree as follows:

1. Warranties of Subordinated Lender. The Subordinated Lender represents and warrants that true, correct and complete copies of all documents evidencing and securing the Subordinated Liabilities have previously been delivered to Senior Lender and are described in **Recital D** above.

2. Subordination of Liens. The Subordinated Lender agrees that the Subordinated Liabilities are and shall be subordinate to the Senior Liabilities and that the liens and security interests created by the Subordinated Loan Documents are and shall be subordinate to the liens and security interests created by the Senior Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents pursuant to their terms.

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3. **Subordination of Payment.** Until such time as the date on which the Senior Liabilities have been paid in full, the payment of the Subordinated Liabilities shall be postponed and subordinated to the payment of all of the Senior Liabilities, and the Subordinated Lender shall accept no payments or other distributions whatsoever (including without limitation distributions of casualty insurance or condemnation proceeds) on account of the Subordinated Liabilities, nor shall any property or assets of the Borrower be applied to the purchase or acquisition or retirement of any Subordinated Liabilities. Notwithstanding the foregoing, so long as (a) no notice of default has been given under any document evidencing or securing the Senior Liabilities (except any such notice of default which has subsequently been waived in writing by the party giving such notice), and (b) in the sole judgment of Senior Lender, the financial condition of Borrower shall be established from time to time to be sufficient for the Borrower to pay without limitation all amounts due under the Senior Liabilities and the Subordinated Liabilities, then Senior Lender shall not unreasonably withhold its consent for Borrower to make regularly scheduled payments to Subordinated Lender (but not prepayments) as provided in the Subordinated Loan Documents; however, no such payment to Subordinated Lender shall be permitted so long as the Subordinated Lender is then in default in the performance of any of its obligations under this Agreement.

4. **Constructive Trust.** If the Subordinated Lender receives any payment or other distribution of any kind or character from the Borrower or from any other source whatsoever in respect to any of the Subordinated Liabilities, other than as expressly permitted by the terms of this Agreement, such payment or other distribution shall be received and shall be held by the Subordinated Lender in trust for the Senior Lender and promptly turned over by the Subordinated Lender to the Senior Lender. The Subordinated Lender shall cause to be clearly inserted in all promissory notes or other instruments which at any time evidence or secure any of the Subordinated Liabilities statements to the effect that the payment thereof is subordinated in accordance with the terms of this Agreement. The Subordinated Lender shall execute such further documents or instruments and take such further action as Senior Lender may reasonably require from time to time to carry out the intent of this Agreement.

5. **Waiver by Subordinated Lender.** The Subordinated Lender waives (a) notice of the existence, creation or nonpayment of all or any of the Senior Liabilities; and (b) all diligence in collection, protection of or realization upon the Senior Liabilities or any security therefor.

6. **Covenants of Subordinated Lender.** The Subordinated Lender shall not, without the prior written consent of the Senior Lender, (a) modify, amend or consent to any modification or amendment of any document evidencing or securing the Subordinated Liabilities; (b) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower; (c) seek to appoint a receiver for (i) the Development or any part of it, or (ii) the Borrower, or seek to obtain possession of the Development, or seek any accounting from the Senior Lender in connection with the proceeds of the Development; or (d) take any action affecting any lease of the Property in which the Senior Lender claims a security interest (including without limitation any action to subordinate any such lease to the Subordinated Loan Documents, or any of them).

7. **Bankruptcy of Borrower.** In the event of any dissolution, winding-up, liquidation,

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readjustment, reorganization or other similar proceedings relating to the Borrower, the Borrower's creditors, or to the Borrower's property (whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment to benefit creditors, or any other marshalling of the assets and liabilities of the Borrower, or any sale of all or substantially all of the assets of the Borrower, or otherwise), the Senior Liabilities shall first be paid in full before Subordinated Lender shall be entitled to receive and to retain any payment or distribution with respect to the Subordinated Liabilities.

8. Notices of Default. The Subordinated Lender agrees to give the Senior Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under the Subordinated Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Subordinated Loan Documents. The Subordinated Lender agrees that the indebtedness evidenced, secured and guaranteed by the Subordinated Loan Documents shall not be accelerated, nor shall any remedies be pursued thereunder unless (a) in the case of default in the payment of a sum of money due under the Subordinated Loan Documents and after expiration of all applicable grace periods, the Senior Lender shall have been given written notice of such failure and the Senior Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice; or (b) in the case of any other default under the Subordinated Loan Documents, the Senior Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to the Borrower to cure such default. The Senior Lender agrees to give to the Subordinated Lender, contemporaneously with the giving of them to the Borrower, copies of any notices given to the Borrower regarding any default under the Senior Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Senior Loan Documents. The Senior Lender agrees that the indebtedness evidenced, secured and guaranteed by the Senior Loan Documents shall not be accelerated, nor shall any remedies be pursued there under unless (a) in the case of default in the payment of a sum of money due under the Senior Loan Documents and after expiration of all applicable grace periods, the Subordinated Lender shall have been given written notice of such failure and the Subordinated Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice; or (b) in the case of any other default under the Senior Loan Documents, the Subordinated Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to Borrower to cure such default.

9. Insurance Proceeds and Condemnation Awards. The Subordinated Lender agrees that in the event of a casualty to the Development, or a condemnation or taking under a power of eminent domain of the Development, or a threat of such a condemnation or taking, all adjustments of insurance claims, condemnation claims and settlements in anticipation of such a condemnation or taking shall be prosecuted, at the Senior Lender's election, by the Senior Lender and all payment and settlements of insurance claims or condemnation awards or payments in anticipation of condemnation or a taking shall be paid to the Senior Lender. The Subordinated Lender irrevocably assigns to the Senior Lender all of its interests in any such claims, settlements or awards (the "Award") and irrevocably grants to the Senior Lender a power of attorney, coupled with an interest,

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to execute any and all documents on the Subordinated Lender's behalf necessary in connection with the prosecution or settlement of the Award. If the amount of the Award is in excess of all amounts due under the Senior Liabilities, the Senior Lender agrees that such excess Award shall be paid to or held for the benefit of the Subordinated Lender.

10. **Consent to Easements and Plats of Subdivision.** If the Borrower requests that the Senior Lender and all other mortgagees or trustees under trust deeds of record execute any easements or plats of subdivision or similar documents in connection with the construction, development, operation or maintenance of the Development, and if Senior Lender executes them, the Subordinated Lender agrees to execute such documents and instruments as its interests appear.

11. **Acquisition of Fee Title by Senior Lender.** The Subordinated Lender agrees that an acquisition of fee title to the Property by Senior Lender, its nominee, or any other person or entity through a foreclosure of the Senior Mortgage (where such foreclosure does not extinguish the security interests created by the Subordinated Loan Documents) or through a deed in lieu of foreclosure is not a "sale or disposition" and will not constitute an event of default under the Subordinated Loan Documents.

12. **Subrogation.** Until such time as the Senior Liabilities have been paid in full, the Subordinated Lender waives and releases any and all rights of Subrogation which it has against the Development and which Subrogation would result in the Subordinated Lender obtaining a priority equal or superior to the priority of the Senior Loan Documents for any funds which Subordinated Lender may advance either to cure defaults under security instruments or pay liens encumbering the Development or otherwise protect the lien of the Subordinated Loan Documents or any of them.

13. **Permitted Actions by Senior Lender.** The Senior Lender may, from time to time, in its sole discretion and without notice to the Subordinated Lender, take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Senior Liabilities; (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Liabilities; (c) extend or renew for one or more periods of time (whether or not longer than the original period), alter or modify any of the Senior Liabilities, or release or compromise any obligation of any nature of any obligor with respect to any of the Senior Liabilities; and (d) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of the property securing any of the Senior Liabilities, or extend or renew for one or more periods of time (whether or not longer than the original period) or release, compromise, alter or modify any obligation of any nature of any obligor with respect to any such property.

14. **Assignment.** The Senior Lender may, from time to time, without notice to the Subordinated Lender, assign or transfer any or all of the Senior Liabilities or any interest in them; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement, and every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest in them shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were the Senior Lender; however, unless the Senior Lender otherwise consents

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in writing, the Senior Lender shall have the unimpaired right prior and superior to that of any such assignee or transferee, to enforce this Agreement for the benefit of the Senior Lender as to those of the Senior Liabilities which the Senior Lender has not assigned or transferred.

15. **Successors and Assigns.** This Agreement shall be binding upon the Subordinated Lender and its respective successors and assigns, whether immediate or remote.

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

17. **No Waiver by Senior Lender.** The Senior Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by the Borrower or the Subordinated Lender, or any non-compliance of the Borrower or the Subordinated Lender with any agreement or obligation, regardless of any knowledge of such agreement or obligation the Senior Lender may have or with which the Senior Lender may be charged; and no action of the Senior Lender permitted under this Agreement shall in any way affect or impair the rights of the Senior Lender and the obligations of the Subordinated Lender under this Agreement. No delay on the part of the Senior Lender in the exercise of any rights or remedies shall operate as a waiver of such rights, and no single or partial exercise by Senior Lender of any right or remedy shall preclude other or further exercise of such right or remedy or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon the Senior Lender except as expressly set forth in a writing duly signed and delivered on behalf of the Senior lender.

18. **Effect on Due on Sale Provisions.** The Subordinated Lender waives any due on sale or due on refinancing provisions of the Subordinated Documents as they relate to the Senior Liabilities.

19. **Notices.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement 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 Senior Lender:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: Legal Department

If to Subordinated Lender:

Heartland Housing, Inc.
208 South LaSalle Street, Suite 1818
Chicago, Illinois 60604
Attention: Mr. Andrew E. Geer

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with a courtesy copy to:

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

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

20. Construction and Interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

21. Termination. This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Liabilities, provided that all rights of the Subordinated Lender under this Agreement shall automatically terminate at such time as the Subordinated Liabilities have been paid in full.

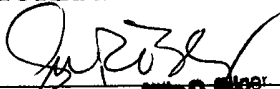

22. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

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IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of the parties.

SENIOR LENDER:

**ILLINOIS HOUSING DEVELOPMENT
AUTHORITY**

By: 
Printed Name: Andrew E. Geer
Title: Assistant Executive Director 

SUBORDINATED LENDER:

HEARTLAND HOUSING, INC.

By: _____
Printed Name: Andrew E. Geer
Title: Executive Director

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of the parties.

SENIOR LENDER:

**ILLINOIS HOUSING DEVELOPMENT
AUTHORITY**

By: _____

Printed Name: _____

Title: _____

SUBORDINATED LENDER:

HEARTLAND HOUSING, INC.

By: A E N

Printed Name: Andrew E. Geer

Title: Executive Director

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, certify that Jane R. Bilger, personally known to me to be the Assistant Executive Director of **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 **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, as her free and voluntary act and deed and as the free and voluntary act and deed of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, for the uses and purposes therein set forth.

Given under my hand and official seal this 10th day of December, 2008.



Tanika King
Notary Public

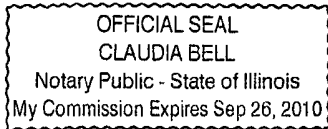
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Andrew E. Geer, personally known to me to be the Executive Director of Heartland Housing, Inc., and personally known to be to be the same persons whose names are 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 Executive Director of Heartland Housing, Inc. as his free and voluntary act and deed and as the free and voluntary act and deed of Heartland Housing, Inc., for the uses and purposes therein set forth.

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

Claudia Bell
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