

UNOFFICIAL COPY



2135028046

loc# 2135028046 Fee \$88.00

HSP FEE:\$9.00 RPRF FEE: \$1.00

AREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 12/16/2021 04:11 PM PG: 1 OF 79

CCH12104004C0 RJD

This document prepared by
and when recorded return to:

Randall Johnson
Senior Assistant Corporation Counsel
City of Chicago
121 North LaSalle Street - Room 600
Chicago, Illinois 60602

LOW INCOME HOUSING TAX CREDITS

REGULATORY AGREEMENT

THIS LOW INCOME HOUSING TAX CREDITS REGULATORY AGREEMENT dated as of this 16th day of December, 2021 (this "Regulatory Agreement"), by and among the City of Chicago, Illinois (the "City"), an Illinois municipal corporation, by and through its Department of Housing ("DOH"), with offices at 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602, and 43RD and Calumet Phase I LP, a Delaware limited partnership (the "Owner").

WITNESSETH

WHEREAS, DOH is an executive department of the City established the Municipal Code of Chicago, which supervises and coordinates the formulation and execution of projects and programs creating safe, decent and affordable housing for residents of the City; and

UNOFFICIAL COPY

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

WHEREAS, the City is a "housing credit agency" with respect to the Rental Project (as hereinafter defined) for purposes of Section 42 of the Code; and

WHEREAS, in order to comply with the requirements of Section 42 of the Code, and any implementing regulations thereunder, the City and the Owner must enter into an extended low income housing commitment, as provided in Section 42 of the Code, to be recorded in the Cook County Office of the Recorder of Deeds in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Rental Project; and

WHEREAS, under this Regulatory Agreement, the Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Rental Project shall be and are covenants running with the land for the Compliance Period and Extended Use Period, are binding upon all subsequent owners and operators of the Rental Project during such Compliance Period and Extended Use Period, and are not merely personal covenants of the Owner;

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

SECTION 1. DEFINITIONS AND INTERPRETATIONS.

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

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

"Affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, 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

"Annual Owner's Certification" shall mean the report from the Owner in substantially the form set forth in Exhibit C attached hereto and hereby made a part hereof, as the same may be amended from time to time.

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

"Area Median Gross Income" shall mean the Chicago-area median gross income, adjusted for family size, as such adjusted income and Chicago-area median gross income are determined from time to time by HUD.

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

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

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

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

"Correction Period" shall have the meaning assigned to such term in Section 6.6 hereof.

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

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

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

"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, including but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.); (ii) any so-called "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.); (v) the Clean Air Act (42 U.S.C. §7401 et seq.); (vi) the Clean Water Act (33 U.S.C. §1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (viii) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.); (ix) Executive Order 11738; (x) regulations of the United States Environmental Protection Agency (40 C.F.R. Part 15); (xi) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and

UNOFFICIAL COPY

(xii) the Municipal Code of Chicago, including but not limited to, Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560.

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

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

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

"Foreclosure Date" shall mean the date of a Transfer, provided that such Transfer is not part of an arrangement with the Owner a purpose of which is to terminate the Extended Use Period.

"General Contractor" shall mean Bowa McHugh 43 Green LLC.

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

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

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

"Increased-Income Unit" shall have the meaning given to such term in Section 2.10(b) hereof.

"Inspection Period" shall mean a period beginning on the date hereof and ending on the Inspection Period Termination Date.

"Inspection Period Termination Date" shall mean the earlier of (a) a Foreclosure Date; or (b) the Extended Use Period Termination Date.

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

"Low Income" means, with respect to any tenant in the Rental Project, an income level not exceeding 50% or 60% of the Area Median Gross Income, as applicable to the Rental Project pursuant to the Minimum Low Income Set-Aside Election.

UNOFFICIAL COPY

“Low Income Unit” means a Unit in the Rental Project that is occupied by (or, pursuant to the Code, treated as occupied by) a Qualifying Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(i)(3).

“Minimum Low Income Set-Aside Election” means the minimum number of Units in the Rental Project required to be Low Income Units for purposes of determining the income level for Qualifying Tenants, which Minimum Low Income Set-Aside Election for this Rental Project is 40% of the Units in the Rental Project must be occupied by tenants at or below 60% of Area Median Gross Income, as modified by Exhibit B, if applicable.

"Noncompliance Condition" shall have the meaning assigned to such term in Section 6.6 hereof.

"Noncompliance Notice" shall have the meaning assigned to such term in Section 6.6 hereof.

"Permitted Tenants" shall have the meaning assigned to such term in Section 6.3 hereof.

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

“Plan” shall mean the Housing Tax Credit Plan of the City pursuant to which the Tax Credits are allocated to the Rental Project.

“Preference Arrangement” shall have the meaning assigned to such term in Section 2.5(b) hereof.

"Project" shall mean the acquisition and construction of a residential rental housing development located at the addresses and as legally described on Exhibit A hereto and the buildings located thereon, which shall contain, as of the completion of construction thereof, 99 residential rental Units.

"Project Term" shall mean the number of years during which the Tax Credit Eligible Units must comply with this Regulatory Agreement. The Project Term shall begin on the date hereof and shall continue, except as provided in Sections 2.9, 2.15, 2.17, 5.2, 6.3, 6.6 and 17 hereof, through and including the Tax Credit Termination Date.

“Qualifying Tenants” means individuals or families whose income is less than or equal to the percentage of Area Median Gross Income, as applicable to the Rental Project pursuant to the Minimum Low Income Set-Aside Election, as determined in accordance with Section 42. Individuals or families meeting this requirement shall be referred to herein as “Qualifying Tenants”. For so long as a tenant, which had been determined to be a Qualifying Tenant, occupies the particular Unit, the tenant will remain a Qualifying Tenant if the tenant's income,

UNOFFICIAL COPY

upon the most recent income certification, does not exceed 140% of the applicable Low Income limit.

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

"Rent-Restricted" means, with respect to any Tax Credit Eligible Unit, that the Gross Rent with respect to such Tax Credit Eligible Unit is not more than 30% of the Imputed Income Limitation applicable to such Tax Credit Eligible Unit.

"Rental Project" means the Tax Credit Eligible Units in the Project that are required to be occupied by Qualifying Tenants.

"State" shall mean the State of Illinois.

"Subcontract" shall mean any contract between the General Contractor or a Subcontractor and any Subcontractor for the equipping of any portion of the Project or the furnishing of labor or materials for any portion of the Project.

"Subcontractor" shall mean any person or entity having a contract with the General Contractor or any Subcontractor for the construction or rehabilitation (as applicable), equipping or supplying of labor or materials by such Subcontractor of any portion of the Project.

"Tax Credits" means the low income housing tax credits for which owners of a Qualified Low Income Housing Project may qualify pursuant to Section 42 of the Code.

"Tax Credit Authority" means the maximum amount of Tax Credits which, pursuant to an allocation by the City under Section 42(h)(1) of the Code, may be received by the owner of a Qualified Low Income Housing Project in any one year.

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

"Tax Credit Eligible Units" shall mean those 51 Units in the Project that are occupied by (or, pursuant to the Code, treated as occupied by) Tax Credit Eligible Families, are Rent-Restricted and meet the other requirements of Section 42 of the Code, in particular Section 42(i)(3).

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

UNOFFICIAL COPY

"Tax Credit Termination Date" shall mean the earlier to occur of (a) a Foreclosure Date or (b) the Extended Use Period Termination Date.

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

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

"Transfer" shall mean the transfer of the Rental Project (a) by foreclosure of a mortgage thereon or (b) by an instrument in lieu of foreclosure of a mortgage thereon.

"Unit" means any residential rental unit in the Project consisting of an accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy units used on a nontransient basis may be treated as Units.

"Violence Against Women Act (VAWA) Requirements" shall mean those requirements set forth in Exhibit D hereto.

SECTION 2. OWNER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.

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

2.1 The Project shall be acquired and constructed for the purpose of providing residential rental property, and the Owner shall own, manage and operate the Rental Project as residential rental Units and facilities functionally related and incidental thereto.

2.2 The Rental Project shall consist of residential Units, together with facilities functionally related and incidental thereto, and which Units are similar in quality and type of construction and amenities.

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

2.4 None of the Tax Credit Eligible Units in the Rental Project shall at any time be used on a transient basis, and neither the Rental 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.

UNOFFICIAL COPY

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

(b) Notwithstanding anything in this Regulatory Agreement to the contrary, the Tax Credit Eligible Units in the Rental Project may preferentially be made available for lease by a particular segment of the population if: (i) the Rental Project receives funding from a federal program that limits eligibility to a particular segment of the population, and the limit or preference is tailored to serve that segment of the population ("Preference Arrangement"); (ii) the Owner has submitted to the City on or before the date of this Regulatory Agreement a tenant selection plan for Tax Credit Eligible Families that fully complies with the Preference Arrangement; and (iii) the Preference Arrangement does not violate other State or local applicable law, including but not limited to the Chicago Human Rights Ordinance, Chapter 2-160 of the Municipal Code of Chicago, the Chicago Fair Housing Ordinance, Section 5-8-010 et seq. of the Municipal Code of Chicago, the Cook County Human Rights Ordinance, and the Illinois Human Rights Act, 775 ILCS 5/ et seq.

2.6 The Owner shall not discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, State or local housing assistance program or on the basis that they have a minor child or children who will be residing with them. The Owner shall not refuse to lease any Tax Credit Eligible Unit in the Rental Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

2.7 All of the Tax Credit Eligible Units in the Rental Project shall be, after completion of the construction or rehabilitation (as applicable) of the Rental Project, and shall remain suitable for occupancy.

2.8 After completion of the construction or rehabilitation (as applicable) of the Rental Project and subject to Section 2.10(a) hereof, all of the Tax Credit Eligible Units shall be occupied or available for occupancy by Tax Credit Eligible Families.

2.9 After completion of the construction or rehabilitation (as applicable) of the Rental Project and prior to the Tax Credit Termination Date, the Gross Rent charged each month for any Tax Credit Eligible Unit shall not exceed at any time 30 percent of the Imputed Income Limitation applicable to such Tax Credit Eligible Unit. Following the Tax Credit Termination Date, but only if the Tax Credit Termination Date is a Foreclosure Date, the rent increase restriction contained in Section 42(h)(6)(E)(ii) of the Code shall apply to each Tax Credit Eligible Unit for the Three-Year Period.

2.10 (a) For purposes of satisfying the requirements set forth in Section 2.8 above, a Tax Credit Eligible Unit occupied by a Tax Credit Eligible Family whose income has exceeded

UNOFFICIAL COPY

the applicable Tax Credit Income Limit after initial occupancy of such Tax Credit Eligible Unit by such Tax Credit Eligible Family shall, subject to subsection (b) of this Section 2.10, be deemed to comply with Section 2.8 hereof if the rent for such Tax Credit Eligible Unit complies with the requirements of Section 2.9 hereof applicable to Tax Credit Eligible Units.

(b) A Tax Credit Eligible Unit (the "Increased-Income Unit") occupied by a Tax Credit Eligible Family whose income has increased above 140% of the Tax Credit Income Limit shall be deemed to comply with Section 2.8 hereof if the rent for the Increased-Income Unit complies with the requirements of Section 2.9 hereof applicable to Tax Credit Eligible Units, but only if a unit of a comparable size with or smaller than the Increased-Income Unit, and which is then available or subsequently becomes available, is occupied by a new tenant who is a Tax Credit Eligible Family, until the number of Tax Credit Eligible Units initially claimed is again achieved.

2.11 (a) The Owner shall include in leases for all Tax Credit Eligible Units provisions which authorize the Owner to immediately terminate the tenancy, in accordance with applicable lease provisions, of any tenant who misrepresented any fact material to the tenant's qualification as a Tax Credit Eligible Family.

(b) The Owner shall not evict or terminate the tenancy of any tenant of a Tax Credit Eligible Unit other than for good cause. The Owner shall not terminate the tenancy or refuse to renew the lease of a tenant of a Tax Credit Eligible Unit in violation of the occupancy rights tenant has as set forth in the VAWA Requirements. Good cause shall not include an incident of actual or threatened domestic violence, dating violence, sexual assault or stalking as described in the VAWA Requirements.

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

2.13 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 Tax Credit Eligible Units shall contain clauses, inter alia, wherein each individual lessee: (i) certifies the accuracy of the statements made in the Tenant Income Certification and (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy, that he/she will comply with all requests for information with respect thereto from the Owner, the City or HUD, and that the failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a substantial violation of an

UNOFFICIAL COPY

obligation of his/her tenancy. No tenant lease shall contain an agreement by the tenant to waive any occupancy rights tenant has as set forth in the VAWA Requirements.

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

2.15 The Owner shall obtain and keep the records required under the Plan and 26 C.F.R. Section 1.42-5(b) for the periods described therein. This covenant shall survive beyond the Tax Credit Termination Date (if such date is not also a Foreclosure Date), but shall terminate as of a Foreclosure Date.

2.16 The Owner shall obtain and maintain on file during the Project Term a sworn and notarized Tenant Income Certification with respect to each and every individual, group of unrelated individuals or family who is a tenant in the Tax Credit 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 tenant in the Tax Credit Eligible Units. The Owner shall assist each of the tenants in the Tax Credit Eligible Units in completing the Tenant Income Certification if necessary.

2.17 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 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 Tax Credit Termination Date (if such date is not also a Foreclosure Date), but shall terminate as of a Foreclosure Date.

2.18 The Owner shall provide to the City a tenant profile (in the form provided to the Owner by DOH) for each Tax Credit Eligible Unit within 30 days after such unit is leased to such tenant(s) (or, for Units occupied by Tax Credit Eligible Families as of the date hereof, within 30 days from the date hereof). For each unit in the Tax Credit Eligible Units, promptly after the first leasing of such unit after the completion of construction or rehabilitation (as applicable) of the Rental Project, the Owner shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics of (a) the tenants, if any, occupying such unit before construction or rehabilitation (as applicable), (b) the tenants moving into such unit initially after completion of construction or rehabilitation (as applicable) of the Rental Project, and (c) the applicants for tenancy of such unit within 90 days following completion of construction or rehabilitation (as applicable) of the Rental Project. For each subsequent leasing of the unit, the Owner shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics (including gender identification of the head(s) of household) of each tenant moving into the unit.

UNOFFICIAL COPY

2.19 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.

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

2.21 The acquisition of the real property on which the Rental Project is located is subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 4601 et seq., and the requirements of 49 C.F.R. Part 24, Subpart B.

2.22 The Owner shall obtain and maintain flood insurance for the Rental Project if the Rental Project is located in an area which is identified by the Federal Emergency Management Agency as having special flood hazards.

2.23 The Owner is not a primarily religious entity and the Rental Project will be used solely for secular purposes.

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

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

2.26 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 Rental Project remain true and in effect as of the date hereof, and 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 Rental Project remain true and in effect as of the date hereof.

2.27 The Owner shall inform DOH of the date the Tax Credit Eligible Units are "placed in service" within the meaning of Section 42 of the Code and of the dollar amount of Tax Credits to be claimed by the Owner with respect to the Rental Project and shall provide DOH with a cost certification and all other documentation required by DOH to issue an Internal

UNOFFICIAL COPY

Revenue Service Form 8609 with respect to the Tax Credit Eligible Units, all within 90 days following such "placed-in-service" date.

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

2.29 The Owner hereby acknowledges and affirms that it has reviewed the provisions of, and that the Project shall during the Project Term be in compliance with, each of the following: (a) The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000c-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; (b) the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; (c) title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; (d) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; (e) the requirements of Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise); and (f) the Cook County Human Rights Ordinance.

2.30 Additional representations and covenants of the Owner contained on Exhibit B hereto and the VAWA Requirements of Exhibit D hereto are hereby incorporated herein by reference.

2.31 Neither the Owner 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 judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

2.32 To the best of the Owner's knowledge, after diligent inquiry, the Rental Project and the property are in compliance with all applicable federal, state and local laws, statutes,

UNOFFICIAL COPY

ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Rental Project and the property, including, but not limited to, the Environmental Laws.

2.33 The Owner has not executed, nor shall execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 3. RELIANCE.

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

SECTION 4. SALE OR TRANSFER OF THE RENTAL PROJECT.

The Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Rental Project, or any portion thereof (including without limitation, a transfer by assignment of any beneficial interest under a land trust) at any time during the Project Term, except as expressly permitted by the City. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Rental Project in violation of this Section 4 shall be null, void and without effect, shall cause a reversion of title to the Owner or any successor or assignee of the Owner last permitted by the City, and shall be ineffective to relieve the Owner or such successor or assignee, as applicable, of its obligations hereunder.

SECTION 5. TERM.

5.1 This Regulatory Agreement shall become effective upon its execution and delivery. Subject to Sections 2.9, 2.15, 2.17, 5.2, 6.3, 6.6 and 17 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.

5.2 If the Project Term shall end on a Tax Credit Termination Date which is also a Foreclosure Date, the occurrence of such Termination Date shall not be construed to permit, during the Three-Year Period, either (i) the eviction or termination of the tenancy (other than for good cause) of an existing tenant of any Tax Credit Eligible Unit, or (ii) any increase in the

UNOFFICIAL COPY

Gross Rent with respect to any Tax Credit Eligible Unit not otherwise permitted under Section 42 of the Code.

SECTION 6. ENFORCEMENT.

6.1 Subject to Section 6.6 hereof, if a violation of any of the foregoing representations or covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of 30 days after notice thereof from the City to the Owner (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Owner 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 to the City delivered during such 30-day period, and upon further written request from the Owner to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days; provided further, however, that the City shall not be precluded during any such periods from exercising any remedies hereunder if the City shall receive a request or notice from the Internal Revenue Service to do so or if the City shall determine that the continuation of such uncorrected occurrence or attempt shall result in any liability by the City to the Internal Revenue Service), the City and its successors and assigns, without regard to whether the City or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by the Owner of its 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 violation or any similar breach or violation hereof at any later time.

6.2 All fees, costs and expenses of the City incurred in taking any action pursuant to this Section 6 shall be the sole responsibility of the Owner.

6.3 The Owner and the City each acknowledge that a primary purpose of requiring the Owner to comply with the restrictions provided in this Regulatory Agreement is to assure compliance of the Rental Project and the Owner with Section 42 of the Code and for that reason the Owner, in consideration of receiving Tax Credits for the Rental Project, agrees and consents that the City and any Permitted Tenant shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Regulatory Agreement in a court of competent jurisdiction. To the extent permitted by law, all individuals who are or may qualify as Tax Credit Eligible Families with respect to the Rental Project (whether as prospective, present or former tenants of the Rental Project) (the "Permitted Tenants") shall have the right to enforce in any court of the State the requirements of Exhibit B II (1) and (2) hereto and the terms of Section 5.2 hereof.

UNOFFICIAL COPY

6.4 The Owner further specifically acknowledges that the beneficiaries of the Owner'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.

6.5 Upon any failure of the Owner to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Internal Revenue Service or the City from time to time pertaining to the obligations of the Owner as set forth therein or herein, and upon compliance by the City with the procedures described in Section 6.6 hereof, the City may, in addition to all of the remedies provided by law or in equity, request the Internal Revenue Service to decertify the Rental Project for Tax Credit dollars and to immediately commence recapture of the Tax Credit dollars heretofore allocated to the Rental Project. Failure to comply with the VAWA Requirements hereunder alone shall not cause the City to request the Internal Revenue Service to decertify the Rental Project for Tax Credit dollars and recapture the Tax Credit dollars allocated to the Rental Project, but the City shall retain all other remedies available by law or in equity to enforce the VAWA Requirements.

6.6 The City shall provide prompt written notice (a "Noncompliance Notice") to the Owner if the City (a) does not receive from the Owner an Annual Owner's Certification when due, (b) is not permitted to inspect, as provided in Section 18 hereof, the records maintained by the Owner pursuant to Section 2.15 hereof, or (c) discovers by inspection, review or in some other manner that the Rental Project is not in compliance with the provisions of Section 42 of the Code. The Noncompliance Notice shall specify a period (the "Correction Period") during which the Owner is required to correct the condition (the "Noncompliance Condition") causing the production of the Noncompliance Notice. After the end of the Correction Period (and within 45 days of the end of such period), the City shall file with the Internal Revenue Service Form 8823 describing the Noncompliance Condition, whether or not the Noncompliance Condition shall have been corrected during the Correction Period. Notwithstanding any other provision herein to the contrary, this Section 6.6 shall survive beyond the Tax Credit Termination Date, if the Tax Credit Termination Date (a) is not also a Foreclosure Date, and (b) shall occur prior to October 1 of the second calendar year following the end of the Compliance Period; notwithstanding the foregoing part of this sentence, this Section 6.6 shall terminate as of a Foreclosure Date.

SECTION 7. 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. The Owner agrees that the City may withhold the Internal Revenue Service Form 8609 with respect to the Rental

UNOFFICIAL COPY

Project unless and until the City has received the recorded executed original of this Regulatory Agreement.

SECTION 8. PREVAILING WAGE

The Owner hereby covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the federal government pursuant to the Davis-Bacon Act, to all Project employees as required by applicable law. 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 Section 8.

SECTION 9. MBE/WBE COMMITMENT

9.1 The Owner agrees for itself and shall contractually obligate the General Contractor to agree that during the Project:

(a) Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 9.1, during the course of the Project, at least the following percentages of the aggregate hard construction costs (as set forth in the Project Budget) shall be expended for contract participation by minority-owned businesses ("MBEs") and by women-owned businesses ("WBEs"):

- (1) At least 26 percent by MBEs.
- (2) At least six percent by WBEs.

(b) For purposes of this Section 9.1 only, the Owner (and any party to whom a contract is let by the Owner in connection with the Project) shall be deemed a "contractor" and this Regulatory Agreement (and any contract let by the Owner in connection with the Project) shall be deemed a "contract" as such terms are defined in Section 2-92-420, Municipal Code of Chicago. In addition, the term "minority-owned business" or "MBE" shall mean a business enterprise identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise; and the term "women-owned business" or "WBE" shall mean a business enterprise identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise.

UNOFFICIAL COPY

(c) Consistent with Section 2-92-440, Municipal Code of Chicago, the Owner's MBE/WBE commitment may be achieved in part by the Owner's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Owner) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Owner utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Owner's MBE/WBE commitment as described in this Section 9.1.

(d) The Owner shall deliver quarterly reports to DOH during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by the Owner or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist DOH in determining the Owner's compliance with this MBE/WBE commitment. The Owner shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and DOH shall have access to all such records maintained by the Owner, on five Business Days' notice, to allow the City to review the Owner's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE General Contractor or Subcontractor, if such status was misrepresented by the disqualified party, the Owner shall be obligated to discharge or cause to be discharged the disqualified General Contractor or Subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Section 2-92-540, Municipal Code of Chicago.

(f) Any reduction or waiver of the Owner's MBE/WBE commitment as described in this Section 9.1 shall be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

(g) Prior to the commencement of the Project, the Owner shall be required to meet with the monitoring staff of DOH with regard to the Owner's compliance with its obligations under this Section 9.1. The General Contractor and all major Subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Owner shall demonstrate to DOH its plan to achieve its obligations under this Section 9.1, the sufficiency of which shall be approved by DOH. During the Project, the Owner shall submit the documentation required by

UNOFFICIAL COPY

this Section 9.1 to the monitoring staff of DOH. Failure to submit such documentation on a timely basis, or a determination by DOH, upon analysis of the documentation, that the Owner is not complying with its obligations under this Section 9.1, shall, upon the delivery of written notice to the Owner, be subject to the provisions of Section 6 hereof. Upon the occurrence of any such event of non-compliance with this subparagraph (g), in addition to any other remedies provided under this Regulatory Agreement, the City may: (1) issue a written demand to the Owner to halt the Project, or (2) seek any other remedies against the Owner available at law or in equity.

SECTION 10. CITY RESIDENT EMPLOYMENT REQUIREMENT

10.1 The Owner agrees for itself and its successors and assigns, and shall contractually obligate the General Contractor and shall cause the General Contractor to contractually obligate the Subcontractors, as applicable, to agree, that during the Project they shall 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.

10.2 The Owner may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City (the "Chief Procurement Officer").

10.3 "Actual residents of the City" shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

10.4 The Owner, the General Contractor and the Subcontractors shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the Project. The Owner, the General Contractor and the Subcontractors shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

10.5 Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DOH in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

10.6 The Owner, the General Contractor and the Subcontractors shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of

UNOFFICIAL COPY

DOH, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Owner, the General Contractor and the Subcontractors shall maintain all relevant personnel data and records for a period of at least three years after final acceptance of the work constituting the Project.

10.7 At the direction of DOH, affidavits and other supporting documentation will be required of the Owner, the General Contractor and the Subcontractors to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

10.8 Good faith efforts on the part of the Owner, the General Contractor and the Subcontractors to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section 10 concerning the worker hours performed by actual Chicago residents.

10.9 When work at the Project is completed, in the event that the City has determined that the Owner failed to ensure the fulfillment of the requirement of this Section 10 concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section 10. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent, 0.0005, of the aggregate hard construction costs set forth in the Project Budget (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Owner to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Owner, the General Contractor and/or the Subcontractors to prosecution. Any retainage to cover contract performance that may become due to the Owner pursuant to Section 2-97-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination whether the Owner must surrender damages as provided in this paragraph.

10.10 Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Regulatory Agreement.

10.11 The Owner shall cause or require the provisions of this Section 10 to be included in the Construction Contract and all applicable Subcontracts.

SECTION 11. COVENANTS TO RUN WITH OWNER'S INTEREST IN THE PROJECT.

UNOFFICIAL COPY

The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City 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 Rental 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 Rental 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 12. GOVERNING LAW.

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

SECTION 13. 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 Owner hereby expressly agrees to enter into all amendments hereto which, in the opinion of the City, are reasonably necessary for maintaining compliance under Section 42 of the Code.

SECTION 14. 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: Department of Housing
 City of Chicago
 121 North LaSalle Street, Room 1000
 Chicago, Illinois 60602

UNOFFICIAL COPY

Attention: Commissioner

WITH COPIES TO: Department of Finance
City of Chicago
121 North LaSalle Street, Room 700
Chicago, Illinois 60602
Attention: Comptroller

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

IF TO OWNER: As specified on Exhibit B hereto.

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

SECTION 15. 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 16. COUNTERPARTS.

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

SECTION 17. EFFECTIVE DATE.

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

SECTION 18. RIGHT TO INSPECT.

UNOFFICIAL COPY

The Owner agrees that the City shall have the right to perform an on-site inspection of the Rental Project and to review the records maintained by the Owner or its agent as described in Section 2.15 hereof, upon 30 days' prior notice by the City to the Owner, at least annually during each year of the Inspection Period. Notwithstanding the foregoing sentence, this Section 18 shall terminate as of Foreclosure Date.

SECTION 19. NO THIRD PARTY BENEFITS.

Subject to Section 6.3 hereof, this Regulatory Agreement is made for the sole benefit of the City and the Owner and their respective successors and assigns and, except as provided in Section 6.3 hereof or otherwise expressly provided herein, no other party shall have any legal interest of any kind hereunder or by reason of this Regulatory Agreement. Whether or not the City elects to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third party by reason of this Regulatory Agreement or any of the City's actions or omissions pursuant hereto or otherwise in connection herewith.

SECTION 20. 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 21. NO BUSINESS RELATIONSHIP WITH CITY ELECTED OFFICIALS

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 any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(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 transactions contemplated thereby, shall be grounds for termination of the Regulatory Agreement and the transaction contemplated thereby. The Owner 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 the Regulatory Agreement or the transaction contemplated thereby.

UNOFFICIAL COPY

SECTION 22. COMPLIANCE WITH THE MULTI-PROJECT LABOR AGREEMENT

Owner shall cause the General Contractor to comply with that certain Settlement Agreement dated November 3, 2011, by and among the City, Chicago Regional Council of Carpenters, the Metropolitan Pier and Exposition Authority, the Public Building Commission of the City of Chicago, and the State of Illinois, because the Project budget is in excess of \$25,000,000, and, therefore, is subject to the provisions of that certain City of Chicago Multi-Project Labor Agreement (the "MPLA") dated February 9, 2011, by and among the City and the labor organizations comprising the Chicago & Cook County Building & Construction Trades Council. The Borrower shall cause the General Contractor to comply with the MPLA to the fullest extent legally permissible without violating other requirements applicable to the construction of the Project, including, without limitation, the requirements of the MBE/WBE Program as defined in the Loan Agreement, the City resident employment provisions contained in the Loan Agreement, Housing Act Section 3, Davis-Bacon Act, the Contract Work Hours and Safety Standards Act and the Labor Standards Deposit Agreement. At the direction of HED, affidavits and other supporting documentation shall be required of the Borrower, the General Contractor and the Subcontractors to verify or clarify compliance with the MPLA.

[signatures on the next page]

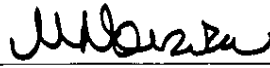
COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

UNOFFICIAL COPY

IN WITNESS WHEREOF, the City and the Owner have executed this Low Income Housing Tax Credits Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

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

By: 
Marisa Novara, Commissioner

43RD AND CALUMET PHASE I LP,
a Delaware limited partnership

By: 43rd and Calumet Phase I LLC,
an Illinois limited liability company,
its General Partner

By: 43 Green JV LLC,
an Illinois limited liability company,
its Manager

By: Habitat 43 Green LLC,
an Illinois limited liability company,
its Managing Member

By: Habitat Acquisitions Company LLC,
an Illinois limited liability company,
its Manager

By: The Habitat Company LLC,
an Illinois limited liability company,
its Manager/Sole Member

By: _____

Name: Stephen F. Galler

Its: Executive Vice President & General Counsel

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the City and the Owner have executed this Low Income Housing Tax Credits Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove.

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

By: _____
Marisa Novara, Commissioner

43RD AND CALUMET PHASE I LP,
a Delaware limited partnership

By: 43rd and Calumet Phase I LLC,
an Illinois limited liability company,
its General Partner

By: 43 Green JV LLC,
an Illinois limited liability company,
its Manager

By: Habitat 43 Green LLC,
an Illinois limited liability company,
its Managing Member

By: Habitat Acquisitions Company LLC,
an Illinois limited liability company,
its Manager

By: The Habitat Company LLC,
an Illinois limited liability company,
its Manager/Sole Member

By: _____
Name: Stephen F. Galler
Its: Executive Vice President & General Counsel

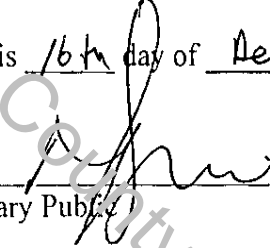
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

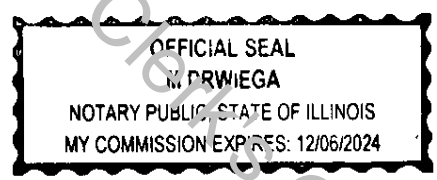
I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Stephen F. Galler, personally known to me to be the Executive Vice President & General Counsel of **The Habitat Company, LLC**, an Illinois limited liability company and the Manager and Sole Member of **Habitat Acquisitions Company, LLC**, an Illinois limited liability company and the Manager of **Habitat 43 Green, LLC**, an Illinois limited liability company and the Managing Member of **43 Green JV LLC**, an Illinois limited liability company and the Manager of **43rd and Calumet Phase I LLC**, (the "**General Partner**"), an Illinois limited liability company and the sole general partner **43rd and Calumet Phase I LP** (the "**Owner**"), a Delaware limited partnership, 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 Executive Vice President & General Counsel he signed and delivered the said instrument pursuant to authority given by the Board of Directors of the General Partner, and as his respective free and voluntary act and deed and as the free and voluntary act and deed of the General Partner and the Owner for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 16th day of December, 2021.



Notary Public

(SEAL)



UNOFFICIAL COPY

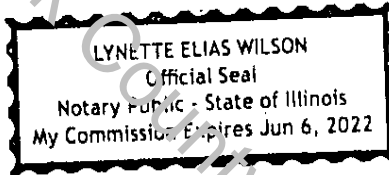
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Marisa Novara, personally known to me to be the Commissioner of the Department of Housing of the City of Chicago, Illinois (the "City") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such 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 16th day of December
2021.

Lynette Elias Wilson
Notary Public

(SEAL)



UNOFFICIAL COPY

EXHIBIT A

Lots 1 through 5, both inclusive, in the Subdivision of Lots 25 to 28 inclusive in Honore's Subdivision of part of the Northeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Also

Lots 29 through 32, both inclusive, in H. H. Honore's Subdivision of part of the Northeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

ADDRESS COMMONLY KNOWN AS:

321 E. 43rd Street
4310-14 South Calumet Avenue
Chicago, Illinois 60653

PERMANENT INDEX NO(s):

20-03-304-024-0000
20-03-304-025-0000
20-03-304-026-0000
20-03-304-044-0000

UNOFFICIAL COPY

EXHIBIT B

I. ADDITIONAL DEFINITIONS

[INTENTIONALLY LEFT BLANK]:

II. ADDITIONAL REPRESENTATIONS AND COVENANTS OF OWNER

1. Fifty-one (51) of the Units in the Project shall be Tax Credit Eligible Units. The Owner has received an allocation of \$1,950,000 low-income housing tax credits from the City in connection with the Rental Project.

2. (a) The Project shall consist of the following unit configuration of the Tax Credit Eligible Units with the following initial rents:

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Income Restriction</u>	<u>Initial Rent</u>
Studio	19	60% AMI	\$870.00
1 bedroom/1 bath	23	60% AMI	\$915.00
2 bedroom/1 bath	9	60% AMI	\$1,080.00
3 bedroom	0	-----	-----
4 bedroom	0	-----	-----
Total	51	-----	-----

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

<u>Building Address</u>	<u>Applicable Fraction</u>
4308 South Calumet Avenue Chicago IL 60653	51.52%

3. For purposes of Section 14, the Owner's address shall be:

43rd and Calumet Phase I Limited Partnership
c/o The Habitat Company,
350 W. Hubbard Street, Suite 500
Chicago, IL 60654
Attn: Matthew G. Fiascone

With a copy to: Katten Muchin Rosenman LLP;
525 W. Monroe Street
Chicago, Illinois 60661
Attention: David P. Cohen, Partner.

UNOFFICIAL COPY

And to: Stratford 43 Green Investors Limited Partnership
c/o Stratford Capital Group LLC
100 Corporate Place, Suite 404
Peabody, MA 01960
Attn: Asset Management (43 Green Apartments)

And to: Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, MA 02116
Attn: Jonathan I. Sirois, Esq.

4. INTENTIONALLY LEFT BLANK

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

ANNUAL OWNER'S CERTIFICATION (AOC) FOR RENTAL PROJECT RECEIVING LOW-INCOME HOUSING TAX CREDITS FROM THE CITY OF CHICAGO, DEPARTMENT OF HOUSING

Owner: _____

Rental Project Name: _____

Rental Project Number: _____

Owner Federal Employer Identification Number: _____

Pursuant to Section 42 of the Code, the Owner is required to maintain certain records concerning the Rental Project and the City is required to monitor the Rental Project's compliance with the Code and the agreements executed by the City and the Owner in connection with the Rental Project. The Owner further agreed, in the Low Income Housing Tax Credits Regulatory Agreement dated as of _____ between the City and the Owner (the "Regulatory Agreement"), to maintain certain records and prepare and deliver certain reports to the City. This Annual Owner's Certification must be completed in its entirety and must be executed by the Owner, 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 construction or rehabilitation (as applicable) of the Rental Project, and ending on the later of (1) the first October 1 following the end of the Compliance Period, or (2) the first October 1 following the Tax Credit Termination Date. In addition, a copy of Schedule I must be completed for each building which comprises a part of the Rental Project. No changes may be made to the language contained herein without the prior approval of the City. Except as otherwise specifically indicated, capitalized terms contained herein shall have the meanings ascribed to them in the Regulatory Agreement.

A. INFORMATION

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

Building Identification Number

Building Address

UNOFFICIAL COPY

_____	_____
_____	_____
_____	_____
_____	_____

2. Complete Schedule I for each building included in the Rental Project.

3. Has any change occurred, either directly or indirectly, (a) in the identity of the Owner, (b) in the identity of any general partner(s), if any, of the Owner, (c) in the ownership of any interests in any general partner of the Owner or in any shareholder, trustee or beneficiary of the Owner, or (d) which would otherwise cause a change in the identity of the individuals who possess the power to direct the management and policies of the Owner since the date of the Regulatory Agreement or the most recent Annual Owner's Certification?

Yes _____ No _____

If Yes, provide all the appropriate documents.

4. 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.

5. Provide the City with independently audited financial statements for the Rental Project for the most recent fiscal year, including an income and expense statement, a balance sheet listing assets and liabilities, a detailed schedule of operating, maintenance and administrative expenses and a cash flow statement.

6. Has the Owner been a recipient of a federal grant during this year, as defined in Section 42 of the Code, or has there been any other event, either of which would cause a reduction in the Eligible Basis (as hereinafter defined) of any building in the Rental Project?

Yes _____ No _____

If Yes, provide the details.

UNOFFICIAL COPY

7. Provide the City all data on the amount and use of program income for projects, including the number of projects and owner and tenant characteristics, and data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

B. REPRESENTATIONS, WARRANTIES AND COVENANTS

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 _____.
 - (f) ___ other [please describe]: _____.

2. The Owner is [check as applicable] (a) _____ the owner of fee simple title to, or a ground lease interest to, or (b) _____ the owner of 100% of the beneficial interest in, the hereinafter described Rental Project. The Owner received an allocation of low-income housing tax credits from the City in the amount of \$ _____ on _____, pursuant to Section 42 of the Code.

3. The Rental Project consists of _____ building(s) containing a total of _____ residential unit(s).

4. If the date of this Annual Owner's Certification is (a) not prior to the start of the Compliance Period and (b) not later than the first October 1 following the end of the Compliance Period, the following subparagraphs apply:
 - (a) _____ of the residential rental unit(s) (the "Tax Credit Eligible Units") in the Rental Project is/are occupied by Qualifying Tenants (as hereinafter defined).

 - (b) For the 12-month period preceding the date hereof (the "Year"):
 1. [check as applicable] (i) _____ 20% or more of the residential units in the Rental Project were both rent-restricted (within the meaning of Section 42(g)(2) of the Code) and occupied by individuals (the "Qualifying Tenants") whose income as of the first date of initial occupancy is 50% or less of area median income, or (ii) 40% or more of the residential units in the Rental Project were both rent-restricted (within the meaning of Section 42(g)(2) of the Code) and occupied by individuals

UNOFFICIAL COPY

- (the "Qualifying Tenants") whose income as of the first date of initial occupancy is 60% or less of area median income;
2. there was no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) of any building in the Rental Project, or if there were any such changes, attached hereto as Schedule II is a true and complete description of all such changes;
 3. the Owner has received an annual income certification from each Qualifying Tenant in substantially the form attached hereto as Schedule III or in such other form as shall have been approved by the City (for a Qualifying Tenant receiving Section 8 housing assistance payments, such documentation may be a statement from the Chicago Housing Authority to the Owner declaring that the Qualifying Tenant's income does not exceed the applicable income limit under Section 42(g) of the Code), and the Owner assisted each of the Qualifying Tenants in completing the Tenant Income Certifications if necessary;
 4. each Tax Credit Eligible Unit in the Rental Project was rent-restricted (within the meaning of Section 42(g)(2) of the Code);
 5. all of the units in the Rental Project were for use by the general public and used on a non-transient basis (except for units used for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code, all of which units complied with the applicable requirements of Section 42 of the Code and the hereinafter defined Tax Credit Regulations);
 6. each building in the Rental Project was suitable for occupancy, taking into account the health, safety and building codes of the City;
 7. there was no change in the "eligible basis" as defined in Section 42(e) of the Code (the "Eligible Basis") of any building in the Rental Project, or if there were any such changes, attached hereto as Schedule IV is a true and complete description of the nature of all such changes;
 8. all tenant facilities included in the Eligible Basis of any building in the Rental Project, such as swimming pools, other recreational facilities and parking areas, were provided on a comparable basis to all tenants in such building;
 9. if a Tax Credit Eligible Unit became vacant during the Year, reasonable attempts were or are being made to rent such Tax Credit Eligible Unit or the next available residential unit in the Rental Project of a comparable or smaller size to one or more Qualifying Tenants before any residential units in the Rental Project were or will be rented to tenants who are not Qualifying Tenants;

UNOFFICIAL COPY

10. if after the first date of initial occupancy the income of any Qualifying Tenant increased above 140% of the applicable income limit described in (1) above, the next available residential unit in the Rental Project of a comparable or smaller size was or will be rented to one or more Qualifying Tenants; and
11. the Regulatory Agreement constitutes an "extended low-income housing commitment" as defined in Section 42(h)(6) of the Code and was in effect.
- (c) Any savings realized in a construction line item of the Rental Project were either dedicated to the benefit of the Rental Project through enhancement of the Rental Project, or resulted in a decrease of the Rental Project's Eligible Basis for purposes of calculating the Tax Credits for which the Rental Project qualifies, and except as disclosed to and approved by the City, no amounts paid or payable to the Owner as developer fees exceeded the amount set forth in the Owner's original application for the Tax Credits and such fees will not be increased without the consent of the City.
- (d) The Rental Project constitutes a "qualified low-income housing project" as defined in Section 42 of the Code and the Tax Credit Regulations.
- (e) All of the Schedule I is attached hereto constitute a true, correct and complete schedule showing, for the Year, the rent charged for each Tax Credit Eligible Unit in the Rental Project and the income of the Qualifying Tenants in each Tax Credit Eligible Unit.
- (f) None of the incomes of the Qualifying Tenants exceeds the applicable limits under Section 42(g) of the Code.
5. The Rental Project is in compliance with all of the currently applicable requirements of the Regulatory Agreement, Section 42 of the Code, the applicable Treasury regulations under Section 42 of the Code (the "Tax Credit Regulations") and the City's Housing Tax Credit Allocation Plan pursuant to which the Tax Credits were allocated (the "Plan"). The Owner will take whatever action is required to ensure that the Rental Project complies with all requirements imposed by the Regulatory Agreement, Section 42 of the Code, the Tax Credit Regulations, and, if applicable, the Plan during the periods required thereby.

The Owner shall retain, for the periods required under the Plan and 26 C.F.R. Section 1.42-5(b), 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 Rental Project at reasonable times, and all tenancy-related documents to determine continued compliance of the Rental Project with all applicable requirements.

UNOFFICIAL COPY

6. No litigation or proceedings have been threatened or are pending which may affect the interest of the Owner in the Rental Project or the ability of the Owner to perform its obligations with respect thereto, except as disclosed on Schedule V attached hereto.
7. The Owner has taken affirmative action to ensure that women- and minority-owned businesses have had the maximum opportunity to compete for and perform as contractors for supplies and/or services, and will continue to do so with future contracts and awards as provided in Sections 2-92-420 through 2-92-570, inclusive, of the Municipal Code of Chicago, as from time to time supplemented, amended and restated.
8. The Owner has not demolished any part of the Rental Project or substantially subtracted from any real or personal property of the Rental 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 Rental 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 Rental 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 42 of the Code, the Tax Credit Regulations and, if applicable, the Plan, as well as any additional records which the City has determined to be necessary to the compliance and administration of the Rental Project.
10. The Owner has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Regulatory Agreement and in any event the requirements of the Regulatory Agreement are paramount and controlling as to the rights and obligations therein set forth and supersede any other requirements in conflict therewith. The Owner shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the Regulatory Agreement, Section 42 of the Code, the Tax Credit Regulations, the Plan (if applicable) and the City or the City's counsel.
11. The Owner shall, annually, provide to the City data on the amount and use of program income for projects, including the number of projects and owner and tenant characteristics, and data on emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359, pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests. The Owner shall cooperate with the City on collecting and providing the City any additional data reasonably requested by the City for purposes of the City's performance report requirements to HUD set forth at 24 CFR 91.520(e).

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

UNOFFICIAL COPY

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.

C. INDEMNIFICATION

The Owner hereby agrees to fully and unconditionally indemnify, defend and hold harmless the City from and against any judgments, losses, liabilities, damages (including consequential damages), costs and expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and any other professional fees and litigation expenses or other obligations, incurred by the City that may arise in any manner out of or in connection with actions or omissions which result from the Owner's responses or documents provided pursuant to the terms of this Annual Owner's Certification including breaches of the representations and warranties herein contained.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SCHEDULE I

Owner:

Mailing Address:

Date of Regulatory Agreement:

Rental Project Name and No.:

Building Address:

Building Identification Number:

1. Is the date of the attached Annual Owner's Certification 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 Owner's Certification 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 Assigned to this Rental Project:

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

Studios _____ 1 Br _____ 2 Br _____ 3 Br _____
 4 Br _____ 5 or more Br _____

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

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

Studios _____ 1 Br _____ 2 Br _____
 3 Br _____ 4 Br _____ 5 or more Br _____

(e) Total Eligible Basis of this Building:

UNOFFICIAL COPY

(f) Amount reduced due to receiving a federal grant or for any other reason: (If applicable)

(g) Total Qualified Basis of this Building:

4. (a) Note utilities paid by tenants:

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

(c) For each Residential Rental Unit in the Rental Project, provide the following:

TAX CREDIT ELIGIBLE UNITS:

<u>Unit</u>	<u>Br</u>	<u>Rent</u>	<u>Family's Income</u>	<u>Family Size</u>
-------------	-----------	-------------	------------------------	--------------------

UNOFFICIAL COPY

OTHER UNITS:

<u>Unit</u>	<u>Br</u>	<u>Rent</u>	<u>Family's Income</u>	<u>Family Size</u>
-------------	-----------	-------------	------------------------	--------------------

Property of Cook County Clerk's Office

5. Has the rent in any Tax Credit Eligible Unit in the building identified above increased since the filing of the previous Annual Owner's Certification, or, if this Annual Owner's Certification is the first Annual Owner's Certification 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.

6. How many 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 Owner's Certification filed for this building?

UNOFFICIAL COPY

7. What steps did the Owner take to insure that the new tenants qualified as Tax Credit Eligible Families, as applicable?

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

Yes _____ No _____

If Yes, please provide details

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

Yes _____ No _____

If Yes, please provide details.

UNOFFICIAL COPY

SCHEDULE II

CHANGES IN APPLICABLE FRACTION

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SCHEDULE III

TENANT INCOME CERTIFICATION (TIC)

See attached.

Property of Cook County Clerk's Office
COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

UNOFFICIAL COPY

ANNUAL INCOME CERTIFICATION/RECERTIFICATION (TO BE COMPLETED BY OWNER/MANAGEMENT)



TENANT INCOME CERTIFICATION

Initial Certification Recertification Other _____

Effective Date: _____

Move-in Date: _____
(MM/DD/YYYY)

PART I: DEVELOPMENT DATA

Property Name: _____ TC #: _____

Property Address: _____ City: _____ State: _____

Zip: _____

BIN #: _____ County: _____ Unit Number: _____ #

Bedrooms: _____

PART II: HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. N.
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III: GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above			TOTAL INCOME (E):	\$ _____

PART IV: INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset

UNOFFICIAL COPY

TOTALS:			\$	\$
Enter Column (H) Total If over \$5000	\$ _____	Passbook Rate X Currently <u>2.00%</u>	= (J) Imputed Income	\$ _____
Enter the greater of the total of column I. or J: imputed income			TOTAL INCOME FROM ASSETS (K)	\$ _____
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$ _____

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 \$ 	Household Meets Income Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> Other _____%	RECERTIFICATION ONLY Current Income Limit x 140%: \$ _____ Household Income exceeds 140% recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No
Current Income Limit per Family Size: \$ _____		
Household Income at Move-in: \$ _____		Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$ _____ Utility Allowance \$ _____	Rent Assistance: \$ _____ Other non-optional charges: \$ _____	
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges) \$ 	Unit Meets Rent Restriction at: <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> Other _____%	
Maximum Rent Limit for this unit: (as of recertification effective date) \$ _____		

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS? If yes, Enter student explanation* (also attach documentation)

Yes No

Enter 1-5	*Student Explanation: 1 TANF assistance 2 Job Training Program 3 Single parent/dependent child 4 Married/joint return 5 Former Foster Child
-----------	--

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

UNOFFICIAL COPY

a. Tax Credit <input type="checkbox"/> See Part V above.	b. HOME <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	c. Tax Exempt <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	d. AHDP <input type="checkbox"/> <i>Income Status</i> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	e. Other _____ <input type="checkbox"/> <i>(Name of Program)</i> <i>Income Status</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> OI**
---	--	--	---	--

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

PART IX. HOUSEHOLD DEMOGRAPHIC

HH Mbr #	Race Code	Ethnicity Code	Disabled? (Y/N)	Race Code		Ethnicity Code	
1				1	White	1	Hispanic or Latino
2				2	Black/African American	2	Not Hispanic or Latino
3				3	American Indian/Alaska Native		
4				4	Asian		
5				5	Native Hawaiian/other Pacific Island		
6				6	Other		
7							

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student. I/we agree to provide upon request source documents evidencing the income and other information disclosed above. I/we consent and authorize the disclosure of such information and any such source documents to the City, County or IHDA and HUD and any agent acting on their behalf. I/we understand that the submission of this information is one of the requirements for tenancy and does not constitute an approval of my application, or my acceptance as a tenant.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenancy Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, the Land Use Restriction Agreement (if applicable), and Section 1602 Program requirements (if applicable) to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE	DATE
-----------------------------------	------

UNOFFICIAL COPY

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I - Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 4609).

TC # Enter the Tax Credit Identification Number for the development.

Property Address Enter the address of the building.

Unit Number Enter the unit number.

Bedrooms Enter the number of bedrooms in the unit.

Part II - Household Composition

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H	-	Head of household	S	-	Spouse
A	-	Adult co-tenant	O	-	Other family member
C	-	Child	F	-	Foster child(ren)/adult(s)
L	-	Live-in caretaker	N	-	None of the above

Enter the date of birth, student status, and social security number or alien registration number for each occupant.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III - Annual Income

UNOFFICIAL COPY

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. Indicate the anticipated income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family age 18 or older. Complete a separate line for each income-earning member. List the respective household member number from Part II.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.).
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D), above. Enter this amount.

Part IV - Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.).
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% (or current passbook rate, if different) and enter the amount in (J). Imputed Income.

UNOFFICIAL COPY

Row (K) Enter the greater of the total in Column (I) or (J)

Row (L) Total Annual Household Income From all Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

Total Annual Household Income from all Sources Enter the number from item (L).

Current Income Limit per Family Size Enter the Current Move-in Income Limit for the household size.

Household income at move-in Household size at move-in For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.

Household Meets Income Restriction Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

Current Income Limit x 140% For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI - Rent

Tenant Paid Rent Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).

Rent Assistance Enter the amount of rent assistance, if any.

Utility Allowance Enter the utility allowance. If the owner pays all utilities, enter zero.

Other non-optional charges Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.

Gross Rent for Unit Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.

Maximum Rent Limit for this unit Enter the maximum allowable gross rent for the unit.

Unit Meets Rent Restriction at Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

UNOFFICIAL COPY

Part VII - Student Status

If all household members are full time* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

**Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household's designation.
Tax Exempt	If the property participates in the Tax Exempt Bond Program, mark the appropriate box indicating the household's designation.
AHDP	If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicating the household's designation.
Other	If the property participates in any other affordable housing program, complete the information as appropriate.

Part IX – Household Demographic

Please ask applicant/resident(s) to provide their demographic information and disability status. If the applicant/resident(s) refuses, it is management's responsibility to complete the information based on observation or derived from other sources.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

UNOFFICIAL COPY

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

UNOFFICIAL COPY

SCHEDULE IV

CHANGES IN ELIGIBLE BASIS

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

Property Cook County Clerk's Office

UNOFFICIAL COPY

SCHEDULE V

LITIGATION SUMMARY

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

UNOFFICIAL COPY

EXHIBIT D

Violence Against Women Act (VAWA) Requirements

The Violence Against Women Act (“VAWA”) of 1994, as amended (42 USC 13925 and 42 USC 1401e, et seq.), by and through its implementing regulations, found at 81 FR 80724 et seq. (“VAWA Regulations”), provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. **VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.**

The VAWA Regulations became effective December 16, 2016. Under the VAWA Regulations:

- DOH is a participating jurisdiction and, under certain provisions of the VAWA Regulations, is also a covered housing provider;
- the Rental Project is a covered housing program; and
- Owner is a covered housing provider.

DOH and the Owner agree as follows:

Amendment of this Regulatory Agreement, When

In order to effectuate the City’s pending Emergency Transfer Plan under the VAWA Regulations, or to accommodate changes that may become necessary to these VAWA Requirements, the Owner agrees to amend this Regulatory Agreement, and re-record same, at the request of the City.

Precedence of VAWA Regulations

When there is conflict between the VAWA Regulations and the program-specific regulations of the Tax Credit Regulations, the program-specific regulations shall govern.

Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

Certain Definitions as set forth in the VAWA Regulations:

“Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a

UNOFFICIAL COPY

spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

"Dating violence" means violence committed by a person: (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; and (iii) The frequency of interaction between the persons involved in the relationship.

"Sexual assault" means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) Fear for the person's individual safety or the safety of others; or (2) Suffer substantial emotional distress.

Emergency Transfer Plan

The Owner shall have:

- drafted an Emergency Transfer Plan, based upon the model plan set forth below as Appendix B, and meeting the requirements of 24 CFR 5.2005(e), and
- submitted the draft Owner's Plan to DOH for DOH's prior written review, and
- adopted the Owner's Plan.

For the Project Term, the Owner must make its Plan available upon request and, when feasible, must make its Plan publicly available.

The Owner must keep a record of all emergency transfers requested under its Plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as otherwise specified by DOH. Requests and outcomes of such requests must be reported to HUD annually.

Owner covenants neither to begin marketing to attract applicants nor to commence application-taking until after both of the following have occurred:

- the Owner's Emergency Transfer Plan has been adopted, and

UNOFFICIAL COPY

- the City has provided Owner the language translations referred to below.

Notification Rights.

For the Project Term, Owner shall ensure that the following three documents are given (i) to each Tenant and (ii) to each applicant as appropriate:

- a Notice of Occupancy Rights Under the Violence Against Women Act [Appendix A hereto], both in English and in any translation appropriate for the applicant's or tenant's primary language (to the extent that the City has provided Owner such translation), and
- a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation Form [Appendix C hereto], both in English and in any translation appropriate for the applicant's or tenant's primary language (to the extent that the City has provided Owner such translation), and
- an Emergency Transfer Request form [Appendix D hereto], both in English and in any translation appropriate for the applicant's or tenant's primary language (to the extent that the City has provided Owner such translation),

at each of the following times:

- at the time of application for a Tax Credit Eligible Unit AND either (i) the time of admission to a Tax Credit Eligible Unit or (ii) the time of denial of admission to a Tax Credit Eligible Unit, and
- at the time of notification of eviction from a Tax Credit Eligible Unit, OR notification of termination of assistance, and
- until December 16, 2017, at the time of annual recertification or during the lease renewal process, if any.

Prohibited Bases for Denial or Termination

For the Project Term, the Owner cannot deny a tenant admission to, or assistance under, and cannot terminate from participation in, or evict from, the lease, on the basis or as a direct result of the fact that the tenant is or has been a victim of:

- domestic violence,
- dating violence,
- sexual assault, or
- stalking.

UNOFFICIAL COPY

if the tenant otherwise qualifies for admission, assistance, participation, or occupancy.

For the Project Term, the Owner cannot deny tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:

- (i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and
- (ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

For the Project Term, the Owner cannot construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as:

- (1) a serious or repeated violation of the lease by the victim or threatened victim of such incident; or
- (2) good cause for terminating the assistance, tenancy, or occupancy rights under the lease of the victim or threatened victim of such incident.

For the Project Term, the Owner cannot subject the tenant, if he or she is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

Attempts at Other Alternatives

For the Project Term, Owner shall make a good faith attempt to utilize eviction or assistance termination only when there are no other actions that could be taken by Owner to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

Emergency Transfer Rights

For the Project Term, the Owner must recognize that the tenant has the right to request, from the Owner, an emergency transfer from the tenant's current unit to another unit. To make such a request, the tenant must begin by:

- notifying the Owner's management office of the desire to transfer, and

UNOFFICIAL COPY

- submitting a written Emergency Transfer Request [Appendix D hereto] for a transfer to _____ [location] stating that (i) the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit; OR (ii) the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Upon receiving an emergency transfer request that meets these requirements, the Owner must implement its Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking to determine whether the Owner is able to honor the transfer request.

The tenant may terminate the lease without penalty if DOH determines that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e).

To the extent possible under the VAWA Regulations, the Owner and DOH shall cooperate as needed for the provision of "external" emergency transfers, if any, that are being attempted to "safe unit" locations outside of the Rental Project.

Lease Bifurcation

If a family living in a Tax Credit Eligible Unit separates as a result of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, the Owner may bifurcate the lease or remove a household member from the lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member. However, the Owner is encouraged by HUD and DOH to undertake whatever actions are permissible and feasible to assist individuals residing in its units who are victims of domestic violence, dating violence, sexual assault, or stalking, to remain in their units or other Tax Credit Eligible Units at the Rental Project or other Tax Credit Eligible Units at other projects elsewhere in the City, and for the Owner to bear the costs of any transfer, where permissible.

The Owner must notify DOH before the Owner bifurcates any lease or provides notification of eviction to the tenant.

The Owner must perform any bifurcation of the Lease only in the manner set forth in 24 CFR 5.2009(a).

Pursuant to 24 CFR 5.2009(b), if a lease bifurcation is exercised by the Owner, and if the individual who was evicted or for whom assistance was terminated was the eligible tenant, the Owner must provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

(A) Establish eligibility for the program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease; or

UNOFFICIAL COPY

(B) Establish eligibility under another housing program covered by the VAWA Regulations; or

(C) Find alternative housing.

The Owner may extend the 90-calendar-day period up to an additional 60 calendar days, unless prohibited from doing so by statutory requirements of the program or unless the time period would extend beyond expiration of the lease.

Limitations of VAWA Protections

The Owner retains a number of rights and responsibilities under the lease, including:

- complying with court orders that relate to the right of access to the Tax Credit Eligible Unit under civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking, or the distribution or possession of property among members of a household.
- the right to evict or terminate assistance to a tenant:
 - for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant, or
 - if the Owner can demonstrate that an actual and imminent threat to other tenants or those employed at or providing service to the building would be present if that tenant or lawful occupant is not evicted or terminated from assistance.

Documenting Occurrences: Confidentiality

For the Project Term, if an applicant for a Tax Credit Eligible Unit or a tenant therein informs the Owner that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking, the Owner may request of the person, in writing, written documentation thereof.

The time frame for receiving the documentation, and the acceptable forms of documentation, shall be as set forth in 24 CFR 5.2007(a) and (b).

Any information submitted to the Owner, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, shall be treated and maintained by Owner as strictly confidential information under the protocol set forth in 24 CFR 5.2007(c). Confidential treatment shall include, but is not limited to:

- not allowing any individual administering assistance on behalf of the Owner or any

UNOFFICIAL COPY

persons within their employ (e.g., contractors) or in the employ of the Owner to have access to confidential information unless explicitly authorized by the Owner for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

Cooperation with DOH Regarding On-Site Inspections, VAWA Data Collection, Reporting

For the Project Term, Owner covenants to cooperate with DOH and the City concerning the collection of VAWA data (including but not limited to data on emergency transfers requested pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests), the performance of on-site compliance inspections at the Rental Project site, and the reporting of such data to HUD from time to time, pursuant to 24 CFR 91.520(e).

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Appendix A

[Insert Name of Housing Provider]

Notice of Occupancy Rights Under the Violence Against Women Act

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. **VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.** The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that [insert name of program or rental assistance] is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.

Protections for Applicants

If you otherwise qualify for assistance under [insert name of program or rental assistance], you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under [insert name of program or rental assistance], you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under [insert name of program or rental assistance] solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator From the Household

UNOFFICIAL COPY

[insert name of housing provider] may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If [insert name of housing provider] chooses to remove the abuser or perpetrator, [insert name of housing provider] may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, [insert name of housing provider] must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, [insert name of housing provider] must follow Federal, State, and local eviction procedures. In order to divide a lease, [insert name of housing provider] may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, [insert name of housing provider] may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, [insert name of housing provider] may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- (2) You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
- (3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault,

UNOFFICIAL COPY

then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

[insert name of housing provider] will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

[insert name of housing provider]'s emergency transfer plan provides further information on emergency transfers, and **[insert name of housing provider]** must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

[insert name of housing provider] can, but is not required to, ask you to provide documentation to “certify” that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from **[insert name of housing provider]** must be in writing, and **[insert name of housing provider]** must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. **[insert name of housing provider]** may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to **[insert name of housing provider]** as documentation. It is your choice which of the following to submit if **[insert name of housing provider]** asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by **[insert name of housing provider]** with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.

UNOFFICIAL COPY

- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that **[insert name of housing provider]** has agreed to accept. If you fail or refuse to provide one of these documents within the 14 business days, **[insert name of housing provider]** does not have to provide you with the protections contained in this notice. If **[insert name of housing provider]** receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), **[insert name of housing provider]** has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, **[insert name of housing provider]** does not have to provide you with the protections contained in this notice.

Confidentiality

[insert name of housing provider] must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

[insert name of housing provider] must not allow any individual administering assistance or other services on behalf of **[insert name of housing provider]** (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

[insert name of housing provider] must not enter your information into any shared database or disclose your information to any other entity or individual. **[insert name of housing provider]**, however, may disclose the information provided if:

- You give written permission to **[insert name of housing provider]** to release the information on a time limited basis.
- **[insert name of housing provider]** needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.

UNOFFICIAL COPY

- A law requires **[insert name of housing provider]** or your landlord to release the information. VAWA does not limit **[insert name of housing provider]**'s duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights Under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, **[insert name of housing provider]** cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if **[insert name of housing provider]** can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If **[insert name of housing provider]** can demonstrate the above, **[insert name of housing provider]** should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance With The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

UNOFFICIAL COPY

You may view a copy of HUD's final VAWA rule at **81 FR 80724 et seq.**

Additionally, **[insert name of housing provider]** must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please call or text the **Illinois Domestic Violence Hotline at 1-877-863-6338.**

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also call or text the **Illinois Domestic Violence Hotline at 1-877-863-6338.**

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at [https:// www.victimsofcrime.org/our-programs/ stalking-resource-center](https://www.victimsofcrime.org/our-programs/stalking-resource-center).

For help regarding sexual assault, you may contact **Chicago Rape Crisis Hotline – 1-888-293-2080.**

Victims of stalking seeking help may call or text the **Illinois Domestic Violence Hotline at 1-877-863-6338.**

Attachment:

Certification form HUD- XXXXX **[Appendix C below]**

UNOFFICIAL COPY

Appendix B

[Insert name of covered housing provider]

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Emergency Transfers

[insert name of housing provider] is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA), [insert name of housing provider] allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation. The ability of [insert name of housing provider] to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether [insert name of housing provider] has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees that [insert name of program or rental assistance here] is in compliance with VAWA.

Eligibility for Emergency Transfers

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if: The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

UNOFFICIAL COPY

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify **[insert name of housing provider]**'s management office and submit a written request for a transfer to _____ **[insert location]**. **[insert name of housing provider]** will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under **[insert name of housing provider]**'s program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90- calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

[insert name of housing provider] will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives **[insert name of housing provider]** written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants for more information about **[insert name of housing provider]**'s responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

[insert name of housing provider] cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. **[insert name of housing provider]** will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. **[insert name of housing provider]** may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If **[insert name of housing provider]** has no safe and available units for which a tenant who needs an emergency is eligible, **[insert name of housing provider]** will assist the tenant in

UNOFFICIAL COPY

identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, **[insert name of housing provider]** will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Safety and Security of Tenants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1- 800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1- 800-787-3224 (TTY). Tenants may also call or text the Illinois Domestic Violence Hotline at 1- 877-863-6338.

Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>. Tenants may also call Chicago Rape Crisis Hotline – 1-888-293-2080.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at [https:// www.victimsofcrime.org/our-programs/stalking-resource-center](https://www.victimsofcrime.org/our-programs/stalking-resource-center).

Attachment:

Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking:

Chicago Domestic Violence Hotline – 877-863-6338

Chicago Rape Crisis Hotline – 888-293-2080

UNOFFICIAL COPY

Appendix C

CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION

U.S. Department of Housing
and Urban Development

OMB Approval No. XXXX-XXX
Exp. XX/XX/2XXXX

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

UNOFFICIAL COPY

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

- 1. Date the written request is received by victim: _____
- 2. Name of victim: _____
- 3. Your name (if different from victim's): _____
- 4. Name(s) of other family member(s) listed on the lease: _____
- 5. Residence of victim: _____
- 6. Name of the accused perpetrator (if known and can be safely disclosed):

- 7. Relationship of the accused perpetrator to the victim: _____
- 8. Date(s) and times(s) of incident(s) (if known): _____
- 10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and

UNOFFICIAL COPY

Appendix D--Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, Or Stalking

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you submit Form HUD-XXXXX, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database.

UNOFFICIAL COPY

Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____
2. Your name (if different from victim's) _____
3. Name(s) of other family member(s) listed on the lease: _____
4. Name(s) of other family member(s) who would transfer with the victim: _____
5. Address of location from which the victim seeks to transfer: _____
6. Address or phone number for contacting the victim: _____
7. Name of the accused perpetrator (if known and can be safely disclosed): _____
8. Relationship of the accused perpetrator to the victim: _____
9. Date(s), Time(s) and location(s) of incident(s): _____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

UNOFFICIAL COPY

EXHIBIT E

HUD RIDER TO RESTRICTIVE COVENANTS

This RIDER TO RESTRICTIVE COVENANTS is made as of December ____, 2021, by 43RD and Calumet Phase I LP, a Delaware limited partnership ("**Borrower**") and the City of Chicago, an Illinois municipal corporation ("**Agency**").

WHEREAS, Borrower has obtained financing from Bellwether Real Enterprise Real Estate Capital, LLC ("**Lender**") for the benefit of the project known as 43 Green Apartments ("**Project**"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("**Security Instrument**") dated as of December ____, 2021 and recorded in the Recorder's Office of Cook County, Illinois ("**Records**") on December ____, 2021 as Document Number _____ and is insured by the United States Department of Housing and Urban Development ("**HUD**");

WHEREAS, Borrower has received an allocation of Low Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code of 1986 ("Section 42") from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and or other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- (a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.
- (b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

UNOFFICIAL COPY

"Lender" means Bellwether Real Enterprise Real Estate Capital, LLC, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act, 12 USC § 1701 *et seq.*, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

- (c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any act on that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.
- (d) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.

UNOFFICIAL COPY

- (c) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants will does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.
- (f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
- i. Available surplus cash, if the Borrower is a for-profit entity;
 - ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
 - iii. Available residual receipts authorized for release by HUD, if the Borrower is a non-profit entity[.]; or
 - iv. A HUD-approved collateral assignment of any HAP contract.
- (g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of nonsubstantive matters, without HUD's prior written consent.
- (h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.
- (i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to

UNOFFICIAL COPY

determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

BORROWER:

By: _____

Name: _____

Title: _____

AGENCY:

By: _____

Name: _____

Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this _____, 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 (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of _____ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

Notary Public

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this _____, 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 (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of _____ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

Notary Public

[Attach Exhibit A - Legal Description]

UNOFFICIAL COPY

REC
 118
 CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
 RECORDING DIVISION
 118 N. CLARK ST. ROOM 120
 CHICAGO, IL 60602-1387

Property of Cook County Clerk's Office