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 AREN A. YARBROUGH  
 COOK COUNTY CLERK  
 DATE: 12/16/2021 03:55 PM PG: 1 OF 45

Property of Cook County Clerk's Office

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This document prepared by  
 and when recorded return to:  
 Randall Johnson  
 Senior Assistant Corporation Counsel  
 Office of Corporation Counsel  
 121 North LaSalle Street, Room 600  
 Chicago, Illinois 60602

**DONATIONS TAX CREDIT REGULATORY AGREEMENT**

**THIS DONATIONS TAX CREDIT REGULATORY AGREEMENT**, dated as of December 16, 2021, (this "**Regulatory Agreement**"), by and between the City of Chicago, Illinois (the "**City**"), an Illinois municipal corporation, by and through its Department of Housing ("**DOH**"), Generations Housing Initiatives, an Illinois not-for-profit corporation (the "**Sponsor**"), and 43<sup>rd</sup> and Calumet Phase I LP, a Delaware limited partnership (the "**Owner**").

**RECITALS**

**WHEREAS**, DOH is an executive department of the City established pursuant to 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

**WHEREAS**, DOH is an Agency for purposes of allocating affordable housing tax credits pursuant to Section 7.28 of the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as

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amended (the “**Act**”) and the Act’s implementing regulations, 47 Ill. Adm. Code 355 et seq., as amended (the “**Regulations**”); and

**WHEREAS**, the Sponsor received from DOH, pursuant to the Act and the Regulations, on the reservation date identified on Schedule 2 hereto, a reservation of affordable housing tax credits in the amount described on Schedule 2 hereto (the “**Tax Credits**”) in connection with donations to be used in the acquisition and/or construction of a multi-family rental housing development located within the City and further described on Schedule 2 hereto (the “**Project**”); and

**WHEREAS**, the Sponsor has purchased the fee simple interest in certain parcels of real estate and the improvements thereon upon which the Project will be constructed and located (the “**Property**,” as legally described on Schedule 1 hereof), for a discounted price pursuant to Section 355.306 of the Regulations. The difference between the as-is market rate value of the Property and the discounted price of the Property constitutes the value of the “**Donation**.” The Sponsor will loan the proceeds of the Donation to the Owner; and

**WHEREAS**, the Project is owned solely by the Owner; and

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

**WHEREAS**, in order to comply with the requirements of Section 7.28 of the Act, and the Regulations, the Sponsor and the Owner have agreed to execute this Regulatory Agreement with the City governing the use of the Project;

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

## **SECTION 1. DEFINITIONS AND INTERPRETATIONS.**

Additional definitions on Schedule 2 hereto are hereby incorporated in this Section 1 by reference. The following terms shall have the respective meaning assigned to them in this Section 1, unless the context in which they are used clearly requires otherwise:

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

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

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

“Compliance Period” shall mean the period of 10 years beginning on the date a certificate of occupancy is issued by the City for the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Owner” shall mean, 43<sup>rd</sup> and Calumet Phase I LP, a Delaware limited partnership, and at any subsequent time of reference, the Person or Persons, if any, who shall succeed to the legal or beneficial ownership of all or any part of the Project.

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

“Project Term” shall mean the number of years during which the Project must comply with this Regulatory Agreement. The Project Term shall begin on the Closing Date and shall terminate, except as provided in Sections 2.10 and 16 hereof, as of the Termination Date.

“Regulations” shall mean Illinois Administrative Rule, Title 47, Part 355, and any successor regulations under the Act.

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

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

“State” shall mean the State of Illinois.

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

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

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

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

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

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

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

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

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

2.4 None of the units in the Project shall at any time be used on a transient basis, and neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court.

2.5 All of the Eligible Units shall be occupied or available for occupancy by Low-Income Households.

2.6 Prior to the Termination Date, the rent (including tenant-paid heat) charged each month for any Eligible Unit shall not exceed at any time 90 percent of the Imputed Income Limitation applicable to such Eligible Unit.

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

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

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

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2.9 All tenant leases shall be written, shall be in conformity with all applicable laws, including without limitation the City of Chicago Residential Landlord and Tenant Ordinance, and, with respect to Eligible Units, shall contain clauses, inter alia, wherein each individual lessee: (i) certifies the accuracy of the statements made in the Tenant Certification and (ii) agrees that the Household income and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy, that he/she will comply with all requests for information with respect thereto from the Owner or the City, and that the failure to provide accurate information in the Tenant Certification or refusal to comply with a request for information with respect thereto shall be deemed a substantial violation of an obligation of his/her tenancy.

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

- (i) The total number of residential rental units in the Project including the number of bedrooms and the size, in square feet, of each residential rental unit;
- (ii) The percentage of residential rental units in the Project that are low-income units;
- (iii) The rent charged on each residential rental unit in the Project including any utility allowances;
- (iv) The number of occupants in each low-income unit, if the rent is determined by the number of occupants in each unit;
- (v) The low-income unit vacancies in the Project and information that shows when, and to whom, the next available units were rented;
- (vi) The completed rental application, including certification of assets and disposal of assets, if applicable;
- (vii) The completed lease and all lease addenda for each qualified low-income unit;
- (viii) The annual income certification of each tenant in a qualified low-income unit; and
- (ix) Documentation supporting each income certification submitted by a tenant in a qualified low-income unit.

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

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

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individual or individuals whose name or names appear on the lease) and obtained by the Owner (a) prior to such tenant or tenants occupying the unit or signing a lease with respect thereto, and (b) thereafter at least annually so long as such individual, individuals or Family remain as tenants in the Eligible Units.

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

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

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

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

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

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

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

2.18 The Owner shall inform DOH of the date the Project receives a certificate of occupancy from the City, within 60 days following the date of the receipt by the Owner of such certificate of occupancy.

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

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

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

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

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

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

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

## SECTION 4. RELIANCE.

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

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

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



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5.2 (a) The Owner and the Sponsor hereby covenant and agree that the ownership structure of the Owner shall not be materially changed, at any time during the Project Term, without the prior written approval of the City, which may be granted or withheld in its sole discretion. Notwithstanding the foregoing, the City shall not unreasonably withhold its consent to the replacement and/or addition of a general partner of the Owner pursuant to the terms of Owner's Partnership Agreement and to the extent the City so consents, it shall not be considered a prohibited transfer hereunder. Further, no consent by the City shall be required for the withdrawal, replacement and/or addition of any of the Owner's limited partners or of any such limited partner's general partners (or any other ownership interests in and to said limited partners), and the same shall not constitute a prohibited transfer hereunder.

(b) The City consents to the Permitted Encumbrances.

## SECTION 6. TERM.

6.1 This Regulatory Agreement shall become effective upon its execution and delivery. Subject to Sections 2.10 and 16 hereof, this Regulatory Agreement shall remain in full force and effect for a term equal to the Project Term, it being expressly agreed and understood that the provisions hereof are intended to survive throughout the Project Term.

## SECTION 7. ENFORCEMENT.

7.1 If a violation of any of the foregoing representations or covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of 30 days after notice thereof from the City to the Owner and the Sponsor (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Owner and/or the Sponsor shall have commenced to cure such occurrence or attempt within said 30-day period and shall thereafter continue diligently to effect such cure, then said 30-day period shall be extended to 60 days upon written request from the Owner or the Sponsor to the City delivered during such 30-day period, and upon further written request from the Owner and/or the Sponsor to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days), the City will thereby be damaged in the failure to provide the benefit of affordable housing to residents of Chicago to the degree stipulated in this Section. Therefore, in such a case of non-compliance, after the expiration of the notice and cure period, it is agreed that an amount equal to the sale proceeds of the Tax Credits allocated by the City to the Sponsor in connection with the Project shall be surrendered by the Owner to the City as liquidated damages, and not as a penalty.

7.2 If a violation of any of the foregoing representations or covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of 30 days after notice thereof from the City to the Owner and the Sponsor (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Owner and/or the Sponsor shall have commenced to cure such occurrence or attempt within said 30-day

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period and shall thereafter continue diligently to effect such cure, then said 30-day period shall be extended to 60 days upon written request from the Owner or the Sponsor to the City delivered during such 30-day period, and upon further written request from the Owner and/or the Sponsor to the City delivered during such 60-day period, said 60-day period shall be extended to 90 days), the City and its successors and assigns, without regard to whether the City or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by the Owner and/or the Sponsor of their respective obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recovery for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

7.3 All fees, costs and expenses of the City incurred in taking any action pursuant to this Section 7 shall be the sole responsibility of the Owner and the Sponsor.

7.4 The Owner and the Sponsor further specifically acknowledge that the beneficiaries of the Owner's and the Sponsor's obligations hereunder cannot be adequately compensated by monetary damages in the event of any breach or violation of any of the foregoing representations or covenants.

7.5 The City acknowledges that any performance of Owner's duties and/or obligations offered to the City by any partner of the Owner on behalf of the Owner will be evaluated and accepted or rejected by the City as though offered by the Owner.

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

The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the conveyance and real property records of the county in which the Project is located and in such other places as the City may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Owner shall immediately transmit to the City an executed original of this Regulatory Agreement showing the date and recording number of record.

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

The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City, the Sponsor and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall, throughout the Project Term, be deemed covenants, reservations and restrictions running with the land to the extent permitted by law, and shall pass to and be binding upon the Owner's successors in title to the Project throughout the Project Term. The Owner hereby covenants to include the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another Person in order that such transferee has notice

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of, and is bound by, such restrictions, and to obtain from any transferee the agreement to be bound by and comply with the requirements set forth in this Regulatory Agreement; provided, however, that each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (including, without limitation, any transfer of a beneficial interest in a land trust or a portion thereof) shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

## SECTION 10. GOVERNING LAW.

This Regulatory Agreement shall be construed in accordance with and governed by the internal laws of the State without regard to its conflict of laws principles, and, where applicable, the laws of the United States of America.

## SECTION 11. AMENDMENTS.

This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the county in which the Project is located. The Sponsor and the Owner hereby expressly agree to enter into all amendments hereto which, in the opinion of the City, are reasonably necessary or desirable for maintaining compliance under Section 7.28 of the Act.

## SECTION 12. NOTICE.

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier, receipt requested; (d) registered or certified mail, return receipt requested; or (e) electronic communications.

IF TO CITY:           City of Chicago, Illinois  
                               Department of Housing  
                               City Hall, Room 1000  
                               Chicago, Illinois 60602  
                               Attention: Commissioner

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

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IF TO OWNER: As specified on Schedule 2 hereto.

IF TO SPONSOR: As specified on Schedule 2 hereto.

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

## SECTION 13. SEVERABILITY.

If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

## SECTION 14. COUNTERPARTS.

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

## SECTION 15. EFFECTIVE DATE.

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

## SECTION 16. RIGHT TO INSPECT.

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

(b) The Sponsor agrees that the City shall have the right to inspect, examine and copy the records maintained by the Sponsor in connection with the Project, upon 30 days' prior notice by

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the City to the Sponsor, at least annually during each year of the longer of the Project Term or the Compliance Period. Notwithstanding the foregoing sentence, the provisions of this Section 16(b) shall terminate as of a Foreclosure Date.

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

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

## **SECTION 18. REFERENCES TO STATUTES, ETC.**

All references herein to statutes, regulations, rules, executive orders, ordinances, resolutions, rulings, notices or circulars issued by any governmental body shall be deemed to include any and all amendments, supplements and restatements from time to time to or of such statutes, regulations, rules, executive orders, ordinances, resolutions, rulings, notices and circulars.

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

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

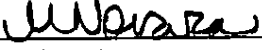
## **SECTION 20. SUBORDINATION TO SENIOR LOAN DOCUMENTS**

This Regulatory Agreement is subject and subordinate in each and every respect to any and all rights created by the Senior Loan Documents (as such term is defined in the Mortgage).

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

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

By:   
Name: Marisa Novara  
Title: Commissioner

**GENERATIONS HOUSING INITIATIVES**, an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Name: Cristina Vera  
Its: Executive Director

**43<sup>RD</sup> AND CALUMET PHASE I LP**, a Delaware limited partnership

By: 43<sup>rd</sup> 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

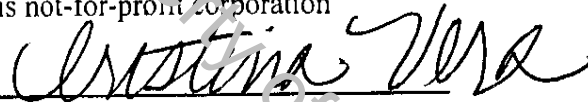
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**CITY OF CHICAGO**, an Illinois municipal corporation, acting by and through its Department of Housing

By: \_\_\_\_\_  
Name: Maria Novara  
Title: Commissioner

**GENERATIONS HOUSING INITIATIVES**, an Illinois not-for-profit corporation

By:   
Name: Cristina Vera  
Its: Executive Director

**43<sup>RD</sup> AND CALUMET PHASE I LP**, a Delaware limited partnership

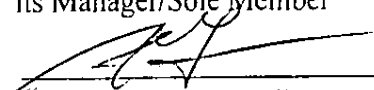
By: 43<sup>rd</sup> and Calumet Phase I LLC,  
an Illinois limited liability company,  
its General Partner

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

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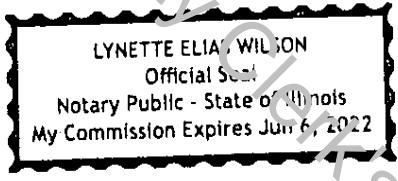
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT 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 said instrument pursuant to authority given by the City 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 16<sup>th</sup> day of December,  
2021.

*Lynette Elia Wilson*  
Notary Public

(SEAL)



Property of Cook County Clerk's Office

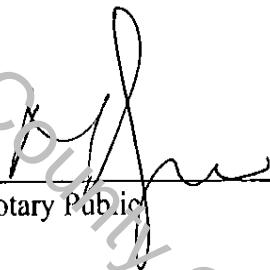


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STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Cristina Vera, personally known to me to be the Executive Director of Generations Housing Initiatives, an Illinois not-for-profit corporation (the "Sponsor"), 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 Director, they signed and delivered the said instrument pursuant to authority as their free and voluntary act and deed and as the free and voluntary act and deed of the Sponsor for the uses and purposes therein set forth.

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

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

(SEAL) 

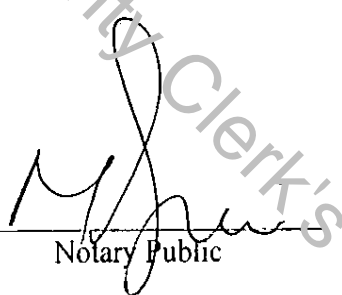
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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that 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 **43<sup>rd</sup> and Calumet Phase I LLC**, (the "**General Partner**"), an Illinois limited liability company and the sole general partner of **43<sup>rd</sup> 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 16<sup>th</sup> day of December,

2021

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

(SEAL)



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## SCHEDULE 1

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.

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

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

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## SCHEDULE 2

### I. ADDITIONAL DEFINITIONS

“Closing Date” shall mean the date on which this Agreement is made effective.

“General Contractor” shall mean Bowa McHugh 43 Green LLC, a Delaware limited liability company and joint venture between Bowa Group Inc., an Illinois corporation (“**Bowa**”), and James McHugh Co., an Illinois corporation (“**McHugh**”) pursuant to that certain Limited Liability Company Agreement dated May 24, 2021 by and between Bowa and McHugh (the “Joint Venture Agreement”).

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

“Mortgage” shall mean that certain Junior Mortgage, Security Agreement and Financing Statement dated as of the date hereof from the Owner to the City securing that certain Note dated as of the date hereof from the Owner in favor of the City in the principal amount of \$3,000,000\_ evidencing a loan from the City to the Owner to finance a portion of the costs of the Project.

“Permitted Encumbrances” shall mean (i) the Mortgage, (ii) those liens and encumbrances shown on Exhibit C to the Mortgage, and (iii) leases of portions of the Property or the Project entered into after the date hereof in the Owner’s ordinary course of business.

“Project” shall mean the acquisition of land and construction of a building located at 321 E. 43rd Street and 4310-14 South Calumet Avenue, in Chicago, Illinois 60653, which shall contain, as of the completion of construction thereof, approximately 99 residential dwelling units contained therein of which approximately 51 units shall be for low- and moderate-income families.

“Project Budget” shall mean the detailed budget, including the General Contractor’s sworn statement, of all Project costs, along with the name of the funding source used to pay each such cost, which Project Budget shall be provided to and approved by the City not later than the Closing Date, together with any changes thereto as may be approved in writing by the City.

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

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

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

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1. 51 units in the Project shall be Eligible Units. The Sponsor received a reservation of Tax Credits from DOH in the amount of \$407,783 dated December 1, 2021. The Sponsor will receive a certificate from DOH evidencing the total allocation of 407,783 of Tax Credits in connection with the Project (which includes the Tax Credits described in Section 2(e) and (f) below).

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

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Income Restrictions</u>	<u>Initial Rent</u>
Studio.....	36 .....	50%/60%/Market .....	\$720--\$870--\$998
1 Bedroom.....	45 .....	60%/Market .....	\$915--\$1,306
2 Bedrooms.....	18 .....	60%/Market .....	\$1,080--\$1,853

(b) The Eligible Units (60% AMI) in the Project consist of the following:

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Income Restrictions</u>	<u>Initial Rent</u>
Studio.....	19 .....	60% .....	\$870--\$998
1 Bedroom.....	23 .....	60% .....	\$915--\$1,306
2 Bedrooms.....	9 .....	60% .....	\$1,080--\$1,853

(c) The Eligible Units in the Project to be occupied by Very Low-Income Households (50% AMI) consist of the following:

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Income Restrictions</u>	<u>Initial Rent</u>
Studio	4	50%	\$720

(d) The type(s) of Households to be served by the Project are as follows:

Low-Income Households, Very Low-Income Households, and unrestricted market rate households.

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

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

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

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(h) The Sponsor has received, on or before the Closing Date, one or more Donations in the aggregate amount totaling not less than \$815,565 and has provided to DOH the documentation required under the Regulations to evidence such Donation(s).

### 3. MBE/WBE Commitment.

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, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 *et seq.*, Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 *et seq.*, Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), 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, 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 only:

(i) 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 Loan Agreement (and any contract let by the Owner in connection with the Project) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

(ii) The term "minority-owned business" or "MBE" shall mean a business 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, related to the Procurement Program or the Construction Program, as applicable.

(iii) The term "women-owned business" or "WBE" shall mean a business 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, related to the Procurement Program or the Construction Program, as applicable.

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(c) Consistent with Sections 2-92-440 and 2-92-720, 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 or services 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. In accordance with Section 2-92-730, Municipal Code of Chicago, the Owner shall not substitute any MBE or WBE General Contractor or Subcontractor without the prior written approval of DOH.

(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 Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.

(f) Any reduction or waiver of the Owner's MBE/WBE commitment as described in this Section shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(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. 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, the sufficiency of which shall be approved by DOH.

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During the Project, the Owner shall submit the documentation required by this Section 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, shall, upon the delivery of written notice to the Owner, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided under any of the Loan Documents, the City may: (1) issue a written demand to the Owner to halt the Project, (2) withhold any further payment of any Loan proceeds to the Owner or the General Contractor, or (3) seek any other remedies against the Owner available at law or in equity.

#### 4. City Resident Employment Requirement.

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.

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").

"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.

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.

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.

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



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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.

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.

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 concerning the worker hours performed by actual Chicago residents.

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 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. 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 retainer to cover contract performance that may become due to the Owner pursuant to Section 2-92-250 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.

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.

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

## 5. Rent Restrictions.

At no time shall the rents for the Eligible Units in the Project exceed, on a monthly basis, maximum gross rent figures as provided under the definition of "Affordable Housing Project" at

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20 ILCS 3805/7.28, as amended from time to time. The Owner shall not increase the rent for any of the Eligible Units in the Project without the prior written approval of DOH. DOH shall annually provide the Owner a chart containing the maximum rents for the Eligible Units in the Project. If the Owner wishes to increase the rents for any of the Eligible Units in the Project (including an increase to any amount which is below the maximum rents provided), the Owner must first submit a rent increase approval request to DOH in a form satisfactory to DOH. No increase in the rent for any of the Eligible Units in the Project shall be permitted without the prior written consent of DOH.

6. (a) For purposes of Section 12, the Owner's address shall be:

43<sup>rd</sup> and Calumet Phase I LP  
c/o The Habitat Company,  
350 W. Hubbard Street, Suite 500  
Chicago, IL 60654; Attn: Stephen F. Galler

With a copy to:

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

And to:

43 Green JV LLC  
c/o The Habitat Company  
350 W. Hubbard Street, Suite 500  
Chicago, IL 60654  
Attn: Stephen F. Galler

With a copy to:

Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, Illinois 60661  
Attention: David P. Cohen, Partner

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)

With a copy to:

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Holland & Knight LLP  
10 St. James Avenue, 11<sup>th</sup> Floor  
Boston, MA 02116  
Attention: Jonathan I. Sirois, Esq.

- (b) For purposes of Section 12, the Sponsor's address shall be:

Generations Housing Initiatives  
350 W. Hubbard Street, Suite 500  
Chicago, IL 60654  
Attn: Cristina Vera

With a copy to:

Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, Illinois 60605  
Nicholas J. Brunick, Esq.

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## SCHEDULE 3

### CITY OF CHICAGO DEPARTMENT OF HOUSING

#### ANNUAL OWNER'S AND SPONSOR'S CERTIFICATION FOR PROJECT RECEIVING AFFORDABLE HOUSING TAX CREDITS

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

Sponsor: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Number: \_\_\_\_\_

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

The Sponsor received from the City an allocation of affordable housing tax credits in connection with the Project pursuant to Section 7.28 of the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as amended (the "Act"), and the regulations promulgated thereunder by the Illinois Housing Development Authority at 47 Illinois Administrative Code Part 355, as amended (the "Regulations"). Pursuant to the Regulatory Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ among the City, the Sponsor and the Owner (the "Regulatory Agreement"), the Owner is required to maintain certain records concerning the Project and the City of Chicago (the "City") is authorized to monitor the Project's compliance with the requirements of the Regulatory Agreement. This Annual Owner's and Sponsor's Certification must be completed in its entirety and must be executed by the Owner and the Sponsor, notarized and returned to the City by October 1 of each year for the period commencing on the earlier of (a) October 1 of the first year of the Compliance Period or (b) the first October 1 following completion of the construction of the Project, and ending on the first October 1 following the end of the Compliance Period. No changes may be made to the language contained herein without the prior approval of the City. Except as otherwise specifically indicated, capitalized terms contained herein shall have the meanings ascribed to them in the Regulatory Agreement.

#### A. INFORMATION

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

Building Identification Number

Building Address

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

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

If Yes, provide all the appropriate documents.

3. Have the Owner's organizational documents been amended or otherwise modified since they were submitted to the City?

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

If Yes, provide all amendments and modifications of the Owner's organizational documents.

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

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

If Yes, provide the details.

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

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

1. The Owner is [check as applicable]:
- (a) \_\_\_ an individual.
  - (b) \_\_\_ a group of individuals.
  - (c) \_\_\_ a corporation incorporated and in good standing in the State of \_\_\_\_\_.
  - (d) \_\_\_ a general partnership organized under the laws of the State of \_\_\_\_\_.
  - (e) \_\_\_ a limited partnership organized under the laws of the State of \_\_\_\_\_.
  - (f) \_\_\_ a limited liability company organized under the laws of the State of \_\_\_\_\_.
  - (g) \_\_\_ other [please describe]: \_\_\_\_\_.
2. The Owner is [check as applicable] (a) \_\_\_\_\_ the owner of fee simple title to, (b) \_\_\_\_\_ the owner of 100 percent of the beneficial interest in, or (c) the owner of a combined leasehold and fee simple interest which in the aggregate is a 100% interest in, the hereinafter described Project.
3. The Project consists of \_\_\_ building(s) containing a total of \_\_\_ residential unit(s).

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4. (a) \_\_\_\_\_ of the residential unit(s) (the “Eligible Units”) in the Project is/are occupied by Low-Income Households (i.e., individuals whose income is 60 percent or less of area median income) and \_\_\_\_\_ of the Eligible Units in the Project is/are occupied by Very Low-Income Households (i.e., individuals whose income is 50 percent or less of area median income).
- (b) For the 12-month period preceding the date hereof (the “Year”):
1. 25 percent or more of the residential units in the Project were both rent-restricted (as described in the Regulatory Agreement) and occupied by Low-Income Households;
  2. the Owner has received an annual income certification from each Low-Income Household and Very Low-Income Household and documentation to support such certification;
  3. all of the units in the Project were for use by the general public and used on a nontransient basis;
  4. each building in the Project was suitable for occupancy, taking into account the health, safety and building codes of the City; and
  5. if an Eligible Unit became vacant during the Year, reasonable attempts were or are being made to rent such Eligible Unit or the next available residential unit in the Project of a comparable or smaller size to one or more Low-Income Households before any residential units in the Project were or will be rented to tenants who are not Low-Income Households.
- (c) The Project constitutes an “Affordable Housing Project” as defined in Section 355.103 of the Regulations.
- (d) None of the incomes of the Low-Income Households exceeds the applicable limits under the Regulations.
5. The Project is in compliance with all of the currently applicable requirements of the Regulatory Agreement, Section 7.28 of the Act, and the Regulations. The Owner will take whatever action is required to ensure that the Project complies with all requirements imposed by the Regulatory Agreement, Section 7.28 of the Act, and the Regulations during the periods required thereby.

The Owner shall retain, for the period required under the Regulatory Agreement, as from time to time amended and supplemented, all tenant selection documents, which include but are not limited to: income verification, employment verification, credit reports, leases and low-income computation forms, to be available for periodic inspections by the City or its representative. The Owner shall additionally retain records evidencing the Sponsor’s Material Participation (as defined in the Regulations and required in the Regulatory Agreement) in the Project. The City, at its option, can periodically inspect the Project, and all tenancy-related and other documents to determine continued compliance of the Project with all applicable requirements.

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6. No litigation or proceedings have been threatened or are pending which may affect the interest of the Owner in the Project or the ability of the Owner to perform its obligations with respect thereto.
7. All units in each building included in the Project are affirmatively marketed and available for occupancy by all persons regardless of race, national origin, religion, creed, sex, age or handicap.
8. The Owner has not demolished any part of the Project or substantially subtracted from any real or personal property of the Project or permitted the use of any residential rental unit for any purpose other than rental housing. The Owner has used its best efforts to repair and restore the Project to substantially the same condition as existed prior to the occurrence of any event causing damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of the Regulatory Agreement.
9. The Owner is in possession of all records which it is required to maintain pursuant to the terms of the Regulatory Agreement, Section 7.28 of the Act, and the Regulations, as well as any additional records which the City has determined to be necessary to the compliance and administration of the Project.
10. The Owner has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Regulatory Agreement. The Owner shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the Regulatory Agreement, Section 7.28 of the Act, the Regulations and the City or the City's counsel.

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

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

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

1. The Sponsor is a not-for-profit corporation incorporated and in good standing in the State of Illinois.
2. The Sponsor received an allocation of affordable housing tax credits from the City in the amount of \$ \_\_\_\_\_ on \_\_\_\_\_, pursuant to Section 7.28 of the Act and the Regulations.
3. The Sponsor received, on or before the Closing Date, one or more Donations in the aggregate amount of \$ \_\_\_\_\_ and provided to DOH the documentation required under the Regulations to evidence such Donation(s).

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4. No litigation or proceedings have been threatened or are pending which may affect the ability of the Sponsor to perform its obligations with respect to the Project.
5. The Sponsor is in possession of all records which it is required to maintain pursuant to the terms of the Regulatory Agreement, Section 7.28 of the Act, and the Regulations, as well as any additional records which the City has determined to be necessary for the Sponsor to hold in connection with the Project, including but not limited to evidence of the Material Participation of the Sponsor in the Project as required by the Regulations and the Regulatory Agreement.
6. The Sponsor has not executed any agreement with provisions contradictory to, or in opposition to, the provisions of the Regulatory Agreement. The Sponsor shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the Regulatory Agreement, Section 7.28 of the Act, the Regulations and the City or the City's counsel.

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

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

## **C. INDEMNIFICATION**

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

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

Owner:

Sponsor:



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

Notary Public

(SEAL)

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

COOK COUNTY CLERK OFFICE  
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CHICAGO, IL 60602-1387

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## EXHIBIT A

Owner:  
 Sponsor:  
 Mailing Address:  
 Date of Regulatory Agreement:  
 Project Name and No.:  
 Building Address:  
 Building Identification Number:

\*\*\*\*\*

1. Is the date of the attached Annual Report prior to the start of the Compliance Period for this Building?  
 \_\_\_ Yes \_\_\_ No [check one]. If "Yes," do not complete (2) or (3) but go directly to (4). If "No," proceed to (2).
  
2. Is the date of the attached Annual Report later than the first October 1 following the end of the Compliance Period for this Building? \_\_\_ Yes \_\_\_ No [check one]. If "Yes," do not complete (3) but go directly to (4). If "No," proceed to (3).
  
3. (a) Tax Credits Allocated to this Project:  
 (b) Number of Residential Rental Units in this Building:  
 Studios \_\_\_\_\_ 1 Br \_\_\_\_\_ 2 Br  
 3 Br \_\_\_\_\_ 4 Br \_\_\_\_\_ 5 or more Br  
 (c) Total Square Feet of space contained in Residential Rental Units in this Building:  
 (d) Total Number of Residential Rental Units rented to Tax Credit Eligible Families:  
 Studios \_\_\_\_\_ 1 Br \_\_\_\_\_ 2 Br  
 3 Br \_\_\_\_\_ 4 Br \_\_\_\_\_ 5 or more Br
  
4. (a) Note utilities paid by tenants:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 (b) Note utilities paid by Owner for which tenants reimburse the Owner  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

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

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TAX CREDIT ELIGIBLE UNITS:

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

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

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

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OTHER HOME-ASSISTED UNITS:

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

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

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

If Yes, please provide details.

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

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

If Yes, please provide details.

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

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

9. Have any Low-Income Families or Tax Credit Eligible Families been evicted since the time of the last Annual Report or if this report is the first Annual Report filed with respect to this building, since the initial rent-up of this building?

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

If Yes, please provide details.

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

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

If Yes, please provide details.

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

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

If Yes, please provide details.

12. Has the Sponsor met the Material Participation requirement in the Project by means of an ownership interest in the Owner?

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

If No, which of the following services has the Sponsor provided on a regular, continuous and substantial basis for more than 300 hours within the last year?

Personal services to tenants	_____
Personal services to prospective tenants	_____
Professional services to the Project	_____

Please provide details of services indicated.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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## SCHEDULE 3

### HUD RIDER TO RESTRICTIVE COVENANTS

This RIDER TO RESTRICTIVE COVENANTS is made as of \_\_\_\_\_, 2021, by 43<sup>RD</sup> and Calumet Phase I LP, a Delaware limited partnership ("**Borrower**"), Generations Housing Initiatives, an Illinois not-for-profit corporation (the "**Sponsor**"), 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**, Sponsor, which is part of the Borrower ownership structure, has received an allocation of affordable housing tax credits in the amount, and pursuant to other terms, otherwise set forth, in Schedule 2 of the Donation Tax Credit Regulatory Agreement dated as of December \_\_\_\_, 2021 by and between Borrower, Sponsor and Agency pursuant to Section 7.28 of the Illinois Housing Development Act, 20 ILCS 3805/1 et seq., as amended (the "**Act**") and the Act's implementing regulations, 47 Ill. Adm. Code 355 et seq., as amended (the "**Regulations**") from the Agency, which Agency is requiring certain restrictions be recorded against the Project of the pursuant to ; 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 for 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.

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"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.

"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 action 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)(I), in] In the event of foreclosure ( or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation,

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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.

- (e) 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) **INTENTIONALLY OMMITTED—provisions to be used only for restrictive covenants to Federal Low Income Housing Tax Credits and Tax--Exempt Bonds.**

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.

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**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: \_\_\_\_\_

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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]