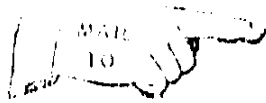


KRM:1\GAJH\REGUL.AGR

This document prepared by
and when recorded return to:
Brendan M. Cournane
Office of Corporation Counsel
Room 511
121 North LaSalle Street
Chicago, Illinois 60602



REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT entered into and effective this First day of August, 1994 (this "Regulatory Agreement"), by and between the City of Chicago, Illinois (the "City"), an Illinois municipal corporation, by and through its Department of Housing ("DOH"), with offices at 318 South Michigan Avenue, Chicago, Illinois 60604, and Senior Suites Chicago Gage Limited Partnership, an Illinois limited partnership (the "Borrower"), having its offices at 737 North Michigan Avenue, Suite 900, Chicago, Illinois 60611.

4
1941722/ms

WITNESSETH

. DEPT-01 RECORDING \$114.50
. T#5555 TRAN 4526 09/02/94 14:31:00
. #6614 J.J. *-94-777544
. COOK COUNTY RECORDER

WHEREAS, DOH is an executive department of the City established pursuant to Title 2 of the Municipal Code of Chicago, Chapter 2-44, Section 2-44-010, which supervises and coordinates the formulation and execution of projects and programs creating safe, decent and affordable housing for residents of the City; and

WHEREAS, the City has received an allocation of \$26,673,000 of HOME Investment Partnership Program ("HOME Program") grant funds for federal fiscal year 1993, pursuant to the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. Section 12701 et seq., as amended, supplemented and restated from time to time, which authorizes the United States Department of Housing and Urban Development to make funds available to participating jurisdictions to increase the number of families served with decent, safe, sanitary and affordable housing and to expand the long-term supply of affordable housing, through, among other things, acquisition, new construction, reconstruction and moderate and substantial rehabilitation; and

WHEREAS, the City intends to lend \$3,755,557 of HOME Program funds (hereinafter referred to as the "Loan") to the Borrower for the purposes set forth below, and has requested that DOH administer the Loan; and

94777544

145⁵⁰ Bmf

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WHEREAS, the Borrower will utilize the Loan proceeds to acquire and construct a building to be located at 3244 West 59th Street, Chicago, Illinois 60629 into eighty-six (86) multi-family residential dwelling units (the "Project"), wherein seventy-six (76) studio units and ten (10) one-bedroom units shall be occupied by elderly individuals, groups of unrelated individuals or families qualifying as Low-Income Families (as hereinafter defined); and

WHEREAS, the Borrower has received an allocation of low-income housing tax credits (the "Tax Credits") pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") in an amount of \$503,340 from DOH in connection with the Project; and

WHEREAS, as a specific condition precedent to the Borrower receiving the Loan and in connection with the allocation of Tax Credits to the Project, the Borrower has agreed to execute this Regulatory Agreement with the City governing the use of the Project;

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

SECTION 1. DEFINITIONS AND INTERPRETATIONS.

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:

"Affirmative Marketing Plan" shall mean the affirmative marketing plan submitted by the Borrower and approved by DOH, identifying those racial, ethnic and gender groups least likely to apply for housing in the Low-Income Project, and specifying the commercial media, community contacts and other means to be used to attract such groups to the Low-Income Project.

"Annual Owner's Certification" shall mean the report from the Borrower in substantially the form set forth in Schedule I 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.

"Associated Person" shall mean any Person that includes the Borrower or those with whom the Borrower has or had family or business ties.

"Borrower" shall mean, initially, Senior Suites Chicago Grand Limited Partnership, an Illinois limited partnership, and at any subsequent time of reference, the Person or Persons, if

9477544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

any, who shall succeed to the legal or beneficial ownership of all or any part of the Project.

"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 home rule unit of government pursuant to the provisions of the Illinois Constitution, and its successors and assigns.

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

"Completion Date" shall mean the date as of which the necessary title transfer requirements and rehabilitation work have been performed and the Project in HUD's judgment complies with the requirements of the HOME Regulations (including meeting the Section 8 Housing Quality Standards for Existing Housing set forth in 24 C.F.R. Section 802.109), and as of which the final disbursement of Loan proceeds derived from HOME Funds for the Project shall have been made, and as of which a project completion report has been submitted and processed in the cash and management information system prescribed by HUD.

"Compliance Period" shall mean the period of fifteen (15) taxable years beginning with the first taxable year of the Credit Period.

"Correction Period" shall have the meaning assigned to such term in Section 7.7 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-5.

"Debarment Certification" shall mean the certificate 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.

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

"Eligible Costs" shall mean those costs for which HOME Funds may be used to pay, as described in 24 C.F.R. Section 92.206.

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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

"Family" shall have the meaning assigned to such term in 24 C.F.R. Section 812.2.

"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 of the Project.

"Foreclosure Date" shall mean the date of a Transfer.

"Gross Rent" shall have the meaning assigned to such term in Section 42(g)(2)(B) of the Code.

"HOME Funds" shall mean the HOME Program funds awarded by HUD to the City under the National Affordable Housing Act.

"HOME Program" shall mean the HOME Program created under the National Affordable Housing Act.

"HOME Regulations" shall mean 24 C.F.R. Part 92, and such additional regulations, orders, rulings, interpretations and directives for the HOME Program as may be promulgated or issued by HUD from time to time.

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

"HUD Restrictions Termination Date" shall mean the twentieth anniversary of the Completion Date.

"Imputed Income Limitation" shall have the meaning assigned to such term in Section 42(g)(2)(C) of the Code.

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

"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.

"Loan" shall mean a loan by the City to the Borrower in the principal amount of \$3,656,563 for financing a portion of the costs of the Project.

"Loan Agreement" shall mean the Housing Loan Agreement of even date herewith, by and between the City and the Borrower with respect to the Loan, as such agreement may be hereafter amended, supplemented and restated from time to time.

"Loan Documents" shall have the meaning given to such term in the Loan Agreement.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

12/11/11

UNOFFICIAL COPY

"Low-Income Families" shall mean and include Families whose annual income does not exceed 80% of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling that is higher or lower than 80% of the Chicago-area median income in accordance with 24 C.F.R. Section 92.252, and thereafter such income limit shall apply to this definition.

"Low-Income Project" shall mean the eighty-six (86) units in the Project financed with HOME Funds and required to be occupied by Low-Income Families.

"Mortgage" shall mean that certain Junior Mortgage and Security Agreement of even date herewith from the Borrower to the City, as may be hereafter supplemented, amended and restated from time to time.

"National Affordable Housing Act" shall mean the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. Section 12701 et seq.

"Noncompliance Condition" shall have the meaning assigned to such term in Section 7.7 hereof.

"Noncompliance Notice" shall have the meaning assigned to such term in Section 7.7 hereof.

"People" shall have the meaning assigned to such term in Section 2.32 hereof.

"Permitted Tenants" shall have the meaning assigned to such term in Section 7.4 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 for the year 1993 pursuant to which Tax Credits were allocated to the Project.

"Project" shall mean the acquisition of real property more particularly described on Exhibit A hereto and the construction on such real property of a building comprised of eighty-six (86) units for occupancy by elderly residents who are Low-Income Families.

"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 date hereof and shall continue, except as provided in Sections 2.7, 2.21, 2.22, 2.23, 6.2, 7.4, 7.7 and 16 hereof, through and including the Termination Date.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

"Regulatory Agreement" shall mean this Regulatory Agreement, dated as of August first, 1994, by and between the City and the Borrower as may be supplemented, amended and restated from time to time.

"Repayment Date" shall mean the date as of which the principal of the Loan and all other amounts due and payable to the City under the Loan Documents shall have been paid in full (or deemed by the City in its sole discretion to have been paid in full).

"Renewal Date" shall have the meaning given to such term in Section 1.2(c) hereof.

"Request Date" shall mean a date (which shall be after the last day of the fourteenth year of the Compliance Period) on which the Borrower submits a written request to DOH or the City to find a Person to acquire the Borrower's interest in the Tax Credit Eligible Units.

"Search Period" shall mean the one-year period commencing on a Request Date.

"Search Period Expiration Date" shall mean the last day of the Search Period, but only if the City is not able to present during such Search Period a "qualified contract" (within the meaning of Section 42(h)(6)(F) of the Code) for the acquisition of the Tax Credit Eligible Units by any Person who will continue to operate the Tax Credit Eligible Units as a "qualified low-income building" (within the meaning of Section 42(c)(2) of the Code).

"Senior Lender" shall mean Avondale Federal Savings Bank, a national banking association, located at 20 North Clark Street, Chicago, Illinois 60602, and its successors and assigns.

"Senior Loan" shall mean a loan by the Senior Lender to the Borrower in the principal amount of \$700,000 for financing a portion of the costs of the Project.

"Senior Mortgage" shall mean that certain Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Financing Statement dated as of August 1st, 1994, granted by the Borrower to the Senior Lender and securing repayment of the Senior Loan.

"State" shall mean the State of Illinois.

"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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2011

UNOFFICIAL COPY

"Tax Credit Eligible Units" shall mean those units in the Project which will be occupied by or available for occupancy to Tax Credit Eligible Families.

"Tax Credit Income Limit" shall mean 60% 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.

"Tax Credit Termination Date" shall mean the earliest to occur of (a) the Foreclosure Date, (b) the Search Period Expiration Date or (c) the Extended Use Period Termination Date; provided, however, that the "Tax Credit Termination Date" shall not mean the Foreclosure Date if such transfer of the Project by foreclosure or an instrument in lieu of foreclosure is part of an arrangement with the Borrower a purpose of which is to terminate the Extended Use Period.

"Tenant Certification" shall have the meaning assigned to such term in Schedule I hereto.

"Termination Date" shall mean the latest to occur of (a) the HUD Restrictions Termination Date, (b) the Repayment Date or (c) the Tax Credit Termination Date.

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

"Transfer" shall mean the transfer of the Project (a) by foreclosure of the Senior Mortgage (or, if the City so elects, of the Mortgage), or (b) by an instrument in lieu of foreclosure of the Senior Mortgage (or, if the City so elects, of the Mortgage).

"URA" shall have the meaning assigned to such term in Section 2.32 hereof.

"Utilities" shall mean the monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant.

"Very Low-Income Family" shall mean any Low-Income Family whose annual income does not exceed 50% of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling that is higher or lower than 50% of the Chicago-area median income in accordance with 24 C.F.R. Section 92.252, and thereafter such income limit shall apply to this definition.

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Capitalized terms used herein and not otherwise defined herein shall have the same meanings given such terms in the Loan Agreement.

SECTION 2. BORROWER'S COVENANTS.

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

2.1 Attached hereto as Exhibit B and hereby made a part hereof is a description of the use of the Loan proceeds, including the tasks to be performed, a Construction Schedule and a Project Budget. The Borrower shall use the Loan proceeds solely for Eligible Costs in connection with the Project. No Loan proceeds shall be used for activities described in 24 C.F.R. Section 92.214. The Project shall be acquired and constructed in accordance with the Construction Schedule, the Project Budget and any Change Orders hereafter approved by the City. All of the units in the Project shall be Tax Credit Eligible Units. 40% of the units in the Low-Income Project shall be occupied by Very-Low Income Families.

2.2 The census tract location of the Project is 6309. The Project shall be acquired and constructed for the purpose of providing residential rental property, and the Borrower shall own, manage and operate the Project as residential rental units and facilities functionally related and incidental thereto. The Project is not designed in part for uses other than residential use, as defined in 24 C.F.R. Section 92.256. [92.256; 92.508(a)(2)(ii)]

2.3 Each unit in the Project shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation (unless the 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 units in the Low-Income Project shall at any time be used on a transient basis, and neither the Low-Income 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 (a) The Project shall consist of the following unit configuration:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Studio	76
One-Bedroom	10

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) The Low-Income Project shall consist of the following unit configuration for Low-Income Family households:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Studio	76
One-bedroom	10

(c) The Tax Credit Eligible Units in the Project shall consist of the following:

<u>Number of Bedrooms</u>	<u>Number of Units</u>
Studio	76
One-bedroom	10

(d) The principal amount of the Loan (i.e., \$3,755,557) divided by the total number of units in the Low-Income Project (i.e., 86) equals \$43,669.27 per each such unit, which is greater than the minimum per-unit requirement of 24 C.F.R. Section 92.205 (i.e., \$1,000 per unit).

(e) The product of the total number of units in the Low-Income Project multiplied by the applicable maximum per-unit subsidy provided in 24 C.F.R. Section 92.250 (i.e., \$6,006,606), as shown below, is greater than the principal amount of the Loan (i.e., \$3,755,557):

<u>No. of Bedrooms</u>	<u>No. of Units</u>	<u>Maximum Subsidy</u>	<u>Product</u>
Studios	76	\$68,675	\$5,219,376
One Bedroom	10	78,723	787,230
Two Bedroom	-0-	95,727	
Three Bedroom	-0-	123,837	
Four + Bedroom	-0-	135,935	

TOTAL: \$6,006,606

(f) The Applicable Fraction for each building that is part of the Project shall be, for each taxable year in the Extended Use Period, not less than the following amount:

<u>Building Address</u>	<u>Applicable Fraction</u>
3244 West 59th Street Chicago, Illinois 60629	100%

2.6 (a) 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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) Subject to Sections 2.10(c) and 2.12 hereof, all of the units in the Low-Income Project shall be occupied by households who are Low-Income Families. [§92.252 (a) (3)]

2.7 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% 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 or the Search Period Expiration 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; if such Foreclosure Date or Search Period Expiration Date is the Termination Date, such rent increase restriction shall survive beyond the Termination Date for the duration of the Three-Year Period.

2.8 The rents for all the units in the Low-Income Project shall not exceed the lesser of (a) the fair market rent for comparable units in the area as established by HUD under 24 C.F.R. Section 888.111, less Utilities or (b) 30% of the adjusted income of a Family whose gross income equals 60% of the median income for the Chicago area, with adjustment for the number of bedrooms in the unit (as determined by HUD). As such adjusted income and Chicago-area median income are determined from time to time by HUD, less Utilities. Notwithstanding the foregoing, the City may establish an income ceiling higher or lower than 60% of the median income for the Chicago area (which shall not in any event exceed the maximum income ceiling permitted under the HOME Regulations), and thereafter such income ceiling shall apply. [§92.252(a)(1)]

2.9 A minimum of 20% of the units in the Low-Income Project shall be either (a) occupied by Very Low-Income Families who pay a maximum of 30% of the Family's monthly adjusted income, as determined by HUD, for rent (excluding any federal or state rental subsidy provided on behalf of the Family) less Utilities; or (b) occupied by Very Low-Income Families and bearing rents not greater than 30% of the gross income of a Family whose income equals 50% of the median income for the Chicago area, adjusted for Family size, and as such monthly adjusted income and Chicago-area median income are determined from time to time by HUD, less Utilities (provided, however, that HUD may establish an income ceiling higher or lower than 50% of the median income for the Chicago area in accordance with 24 C.F.R. Section 92.252, and thereafter such income ceiling shall apply). [§92.252(a)(2)]

2.10 (a) For purposes of satisfying the requirements set forth in Section 2.6(a) above, a Tax Credit Eligible Unit occupied by a Tax Credit Eligible Family whose income has exceeded the applicable Tax Credit Income Limit after initial occupancy of such Tax Credit Eligible Unit by such Tax Credit Eligible Family shall, subject to paragraph (b) of this Section, be deemed to comply with Section 2.6(a) hereof if the rent for such Tax Credit Eligible Unit complies with Section 2.7 hereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(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 2.6(a) hereof if the rent for the Increased-Income Unit complies with Section 2.7 hereof but only if the next available unit in the Project of a comparable size with or smaller than the Increased-Income Unit is occupied by a new tenant who is a Tax Credit Eligible Family.

(c) Sections 2.6(b) and 2.9 shall be deemed satisfied, despite a temporary noncompliance therewith, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this Regulatory Agreement until the noncompliance is corrected. [§92.252(c)]

2.11 The rents described in Sections 2.8 and 2.9 as prepared by the Borrower shall be subject to review and approval by DOH annually. The amount(s) proposed by the Borrower as Utilities shall also be subject to the annual review and approval of DOH. [§92.252(b)]

2.12 100% of the units in the Low-Income Project shall initially be occupied by Families whose adjusted annual incomes at initial occupancy do not exceed 60% of the median Family income for the Chicago area, as determined by HUD. Notwithstanding the foregoing, HUD may establish an income ceiling higher or lower than 60% of the median income for the Chicago area in accordance with 24 C.F.R. Section 92.216, and thereafter such income ceiling shall apply. [§92.216]

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

(b) The Borrower shall not refuse to lease any unit in the Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, or of a certificate of family participation under 24 C.F.R. Part 882, or of a rental voucher under 24 C.F.R. Part 887, or to a holder of a comparable document evidencing participation in a HOME Program tenant-based assistance program because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility, certificate of family participation, rental voucher, or comparable HOME Program tenant-based assistance document. [§92.252(a)(4)]

2.14 All tenant leases for Tax Credit Eligible Units and the Low-Income Project shall be written, shall be in conformity

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

with all applicable laws, including without limitation the City of Chicago Residential Landlord and Tenant Ordinance, as the same has been or may be amended, and the HOME Regulations and 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 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 Borrower, the City or HUD, 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.

2.15 All tenant leases for Tax Credit Eligible Units shall be for a period of not less than six months; provided, however, that notwithstanding the foregoing, 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.

2.16 All leases for the Low-Income Project shall be for a period of not less than one year, unless by mutual agreement of the tenant and the Borrower. Notwithstanding the foregoing, rents will not be set more than one year in advance. Leases for units in the Low-Income Project shall not contain any of the following provisions:

- (a) agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease;
- (b) agreement by the tenant that the Borrower may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties (this prohibition however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit; the Borrower may dispose of this personal property in accordance with applicable local and State law);
- (c) agreement by the tenant not to hold the Borrower or the Borrower's agents legally responsible for any action or failure to act, whether intentional or negligent;
- (d) agreement by the tenant that the Borrower may institute a lawsuit without notice to the tenant;
- (e) agreement by the tenant that the Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

opportunity to present a defense or before a court decision on the rights of the parties;

- (f) agreement by the tenant to waive any right to a trial by jury;
- (g) agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; or
- (h) agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Borrower against the tenant (provided, however, that the tenant may be obligated to pay costs if the tenant loses). [§92.253 (a) and (b)]

2.17 (a) The Borrower shall not terminate the tenancy or refuse to renew the lease of a tenant of the Low-Income Project except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal, State or local law, for completion of the transitional housing tenancy period or for other good cause. Any refusal to renew shall be preceded by not less than 30 days by the Borrower's service upon the tenant of a written notice specifying the grounds for the action. For each tenant of the Low-Income Project whose tenancy is to be terminated, the Borrower shall provide a written notice specifying the grounds for termination to such tenant and shall not cause any such tenant to be evicted less than 30 days after receipt by the tenant of such written notice. [§92.253(c)]

(b) The Borrower shall not evict or terminate the tenancy of any tenant of a Tax Credit Eligible Unit other than for good cause.

2.18 Any increase in rents on the Low-Income Project shall be subject to the provisions of outstanding leases. Where the leases allow an increase in rent, the Borrower shall provide tenants with not less than 30 days' prior written notice before implementing any increase in rents. [§92.252(b)]

2.19 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 Borrower which is unrelated to the Project, shall be maintained, as required by the City, in a reasonable condition for proper audit and shall be subject to examination during business hours by representatives of the City. If the Borrower employs a management agent for the Project, the Borrower 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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.20 The Borrower shall permit and shall cause any management agent for the Project to permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City or HUD to inspect any books and records of the Borrower or such agent regarding the Project with respect to the incomes of Low-Income Families residing as tenants in the Low-Income Project or which pertain to compliance with the provisions of this Regulatory Agreement or the HOME Regulations. The Borrower shall permit, and shall cause any management agent for the Project to permit, the City, HUD and/or their agents to inspect the Project at all reasonable times and access thereto shall be permitted for that purpose.

2.21 The Borrower 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 Termination Date.

2.22 The Borrower shall obtain and maintain on file during the Project Term a sworn and notarized Tenant Certification with respect to each and every individual, group of unrelated individuals or Family who is intended to be a tenant in the Low-Income Project, signed by the tenant or tenants (i.e., the individual or individuals whose name or names appear on the lease) and obtained by the Borrower (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 Low-Income Project. Each Tenant Certification shall be kept on file with the Borrower until three years after the end of the Project Term; this covenant shall survive beyond the Termination Date. The Borrower shall assist each of the tenants in the Low-Income Project in completing the Tenant Certification by referring to the instructions on Exhibit D to Schedule I hereto.
[§92.508(c)(3)]

2.23 The Borrower agrees that it will take any and all actions required by the City to substantiate the Borrower's compliance with the restrictions set forth herein, including, but not limited to, submitting to the City an Annual Report executed by the Borrower, 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.

2.24 The Borrower shall provide to the City a tenant profile (in the form provided to the Borrower by DOH) for each Low-Income Family for each unit in the Low-Income Project and for each Tax Credit Eligible Unit within 30 days after such unit is leased to such tenant(s). For each unit in the Low-Income Project, promptly after the first leasing of such unit after the Completion Date, the Borrower shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics (including head of household) of (a)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the tenants moving into such unit initially after completion of construction of the Project, and (b) the applicants for tenancy of such unit within 90 days following the Completion Date. For each subsequent leasing of the unit, the Borrower shall provide the City, unless prohibited by law, with data on the racial, ethnic, gender and income-level characteristics (including head of household) of each tenant moving into the unit.
[§92.508(a)(5)(A)]

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

2.26 At least 51% of the rentable floor space of the Project shall be used for residential rental purposes. Each building within the Project shall contain residential living space and one or more units which comply with the requirements of (i) Section 2.8 or 2.9, and (ii) Section 2.6 hereof.
[§92.256, 92.255]

2.27 For every unit in the Low-Income Project (other than a unit occupied by a Family receiving housing assistance provided by a public housing agency or tenant-based rental assistance provided with HOME Funds), the Borrower shall comply with affirmative marketing requirements established by DOH from time to time, including the following:

- (a) based on the Affirmative Marketing Plan, advertise in pre-identified commercial media, contact pre-identified churches, community groups and other agencies, and undertake other means to inform targeted groups of the availability of such units in the Low-Income Project;
- (b) display conspicuously HUD's fair housing poster wherever rentals and showings of such units take place;
- (c) provide DOH upon request with an annual report describing the Borrower's affirmative marketing activities with respect to the Low-Income Project, including a description of the Borrower's outreach efforts (including copies of all advertisements and brochures) and, unless prohibited by law, a record of the racial/ethnic/gender characteristics of all individuals who look at units in the Low-Income Project, those who apply for leases for such units, and those who actually sign such leases; and
- (d) maintain records of affirmative marketing efforts with respect to the leasing or re-leasing of each such unit to be made available for review by DOH for a period equal to the Project Term.

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.28 The Borrower has submitted to the City a tenant selection plan containing policies and criteria that: (a) are consistent with the purpose of providing housing for Very Low-Income Families and Low-Income Families, (b) are reasonably related to HOME Program eligibility and the applicants' ability to perform the obligations of the lease, (c) give reasonable consideration to the housing needs of Families that would have a preference under 24 C.F.R. Section 960.211, and (d) provide for (1) the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and (2) the prompt notification in writing to any rejected applicant of the grounds for any rejection. [§92.253(e)]

2.29 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 Project. In addition, the Borrower shall cause the Project to comply at all times with the Chicago Fair Housing Ordinance, Section 5-8-010 et seq. of the Municipal Code of Chicago.

2.30 The Borrower 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 requirements of the Fair Housing Act (42 U.S.C. §3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Executive Order 11063, as amended by Executive Order 12892 (3 C.F.R., 1958-1963 Comp., p. 652 and 55 F.R. 2939) (Equal Opportunity in Housing) and implementing regulations at 24 C.F.R. Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 C.F.R. Part 1. (b) the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and the implementing regulations at 24 C.F.R. Part 146; (c) the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and implementing regulations at 24 C.F.R. Part 8; (d) the requirements of Executive Order 11246 (3 C.F.R., 1964-65 Comp., p. 339) (Equal Employment Opportunity), and the implementing regulations issued at 41 C.F.R. Chapter 60; (e) the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) as described in Section 2.31 hereof; and (f) the requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and Executive Order 12138 (concerning Women's Business Enterprise). [§92.350]

2.31 During the Project Term, the Project shall comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u), that: (a) to the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of the Project be given to low-income individuals residing

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

within the City, and (b) to the greatest extent feasible, contracts for work to be performed in connection with the Project be awarded to business concerns, including but not limited to individuals or firms doing business in the fields of planning, consulting, design, architecture, building construction, rehabilitation, maintenance or repair, which are located in or owned in substantial part by individuals residing in the City.

2.32 The Borrower shall take all reasonable steps to minimize the displacement of Families, individuals, businesses, not-for-profit organizations and farms (herein for the purposes of this paragraph collectively called "People") as a result of the Project. If displacement of People does occur as a result of the Project, the Borrower shall comply with the requirements of 24 C.F.R. Section 92.353, with respect to, among other things, temporary and permanent relocation of displaced People. The Borrower shall provide or cause all "displaced persons" (as defined in 24 C.F.R. Section 92.353(c)(2)) to be provided with relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), 42 U.S.C. Section 4601 et seq., and 49 C.F.R. Part 24, and shall cause all such "displaced persons" to be advised of their rights under the Fair Housing Act, 40 U.S.C. Section 3601 et seq. [§92.353]

2.33 The acquisition of the real property on which the Project is located is subject to the requirements of the URA and the requirements of 49 C.F.R. Part 24, Subpart B. [§92.353(f)]

2.34 The Project shall constitute HUD-associated housing for purposes of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4821 et seq.), and comply with the requirements thereof and of 24 C.F.R. Part 35, including without limitation the requirements of notice to tenants, prohibition of the use of lead-based paint and for the elimination of the hazards of lead-based paint. Any lead-based paint and defective paint debris shall be disposed of in accordance with applicable federal, State or local requirements. [§92.355]

2.35 The Borrower has not executed and shall not 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.

2.36 Any contracts for the rehabilitation or construction of the Project shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, will be paid to all laborers and mechanics employed in the construction or rehabilitation of the Project. All such contracts shall also be subject to the Contract Work Hours and Safety Standards Act, 40 U.S.C. Sections 327-332, the regulations promulgated in connection therewith and with the Davis-Bacon Act, and with other

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Notwithstanding the foregoing, the requirement of this Section with respect to the payment of prevailing wages shall not apply to (a) an individual who receives no compensation or is paid expenses, reasonable benefits or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed in the construction or rehabilitation work on the Project and (b) members of an eligible Family who provide labor in lieu of, or as a supplement to, rent payments. [§92.354]

2.37 Following construction and throughout the Project Term, all of the units in the Project shall be suitable for occupancy and the Borrower shall keep the Project in compliance with the housing quality standards in 24 C.F.R. Section 882.109, the Multi-Unit Rehabilitation Construction Guidelines of DOH and all other applicable local codes, rehabilitation standards, ordinances and zoning ordinances. [§92.251]

2.38 Following construction and throughout the Project Term, the Project must comply with the requirements in the then current edition of the Model Energy Code published by the Council of American Building Officials. [§92.251]

2.39 The Borrower shall obtain and maintain flood insurance for the Project if the Project is located in an area which is identified by the Federal Emergency Management Agency as having special flood hazards. [§92.358]

2.40 The Borrower shall not request disbursement of HOME Funds until the HOME Funds are needed to pay for Eligible Costs of the Project. The amount of each such request shall not exceed the amount needed. [§92.504(c)(10)]

2.41 The Borrower is not a primarily religious organization nor is it controlled by a primarily religious organization and the Project will be used solely for secular purposes. [§92.257]

2.42 No individual who is an employee, agent, consultant, officer or elected or appointed official of the City (and no individual who was an employee, agent, consultant, officer or elected or appointed official within one year prior to the date hereof) and who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME Funds or who is or was in a position to participate in a decision-making process or gain inside information with regard to such activities, has obtained, is obtaining or will obtain a financial interest or benefit from the Project, or has or will have any interest in any contract, subcontract or agreement with respect to the Project, or the proceeds thereunder, either for himself or for those with whom he has family or business ties. [§92.356]

9477544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.43 Except as otherwise disclosed to the City in writing, all of the statements, representations and warranties of the Borrower contained in (i) the Borrower's application for the Loan, (ii) the Borrower's application for Tax Credits, and (iii) any other document submitted by the Borrower to the City in connection with the Project remain true and in effect as of the date hereof.

2.44 The Borrower has executed and delivered to the City as of the date of the closing of the Loan a Debarment Certification.

2.45 The Borrower 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 Project.

2.46 The 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.

2.47 The Project constitutes one or more buildings within a four-block area in the City.

SECTION 3. AGREEMENT TO PROVIDE LOAN, START CONSTRUCTION; COMPLETION DATE.

3.1 The City agrees to provide the Loan to the Borrower in accordance with the terms and conditions of the Loan Agreement, for the purposes described on Exhibit B hereto. The Borrower agrees to start construction on the Project within 12 months from the date hereof.

3.2 The City agrees to provide, upon the written request of the Borrower, a certification, in a form eligible for recordation in the conveyance and real property records of the county in which the Project is located, identifying the Completion Date promptly after such date. The Borrower shall pay all expenses of recordation of such certificate.

SECTION 4. RELIANCE.

The City and the Borrower hereby recognize and agree that the representations and covenants set forth herein made by the City and the Borrower, respectively, may be relied upon by the Borrower and the City, respectively. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Borrower, Tax Credit Eligible Families and Low-Income Families and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/2024

UNOFFICIAL COPY

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 Borrower agree that it is the Borrower's responsibility to determine that (i) each potential tenant in the Low-Income Project qualifies as a Low-Income Family, and (ii) 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 Borrower shall exercise due diligence.

SECTION 5. SALE OR TRANSFER OF THE PROJECT.

The Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof (including, without limitation, a transfer by assignment of any beneficial interest under a land trust), or to violate any provision of the Mortgage relating to prohibitions on sales or transfers of the Project or any interest therein (whether or not the Mortgage remains of record), at any time during the Project Term, except as expressly permitted by the City; provided, however, that after payment in full of the Loan and all other amounts due and payable to the City under the Loan Documents, such permission by the City shall not be unreasonably withheld. The Borrower hereby agrees and covenants that no portion of any building to which this Regulatory Agreement applies shall be transferred to any Person unless all of such building is transferred to such Person. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 5 shall be null, void and without effect, shall cause a reversion of title to the Borrower or any successor or assignee of the Borrower last permitted by the City, and shall be ineffective to relieve the Borrower or such successor or assignee, as applicable, of its obligations hereunder.

SECTION 6. TERM.

6.1 This Regulatory Agreement shall become effective as of the date hereof. Subject to Sections 2.7, 2.21, 2.22, 2.23, 6.2, 7.4, 7.7 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.

6.2 (a) Subject to the terms of Sections 2.7, 2.21, 2.22, 6.2(b) and (c), 7.4, 7.7 and 16 hereof and on or before the HUD Restrictions Termination Date, the terms and provisions of this Regulatory Agreement shall be suspended as of the Foreclosure Date subject to the following conditions:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) the Foreclosure Date shall be on or after the Tax Credit Termination Date; and

(ii) the Transfer on the Foreclosure Date shall:

- (1) recognize any contractual or legal rights of public agencies, nonprofit sponsors or others to take actions that would avoid termination of low-income affordability of the Project, and
- (2) not be for the purpose of avoiding low-income affordability restrictions pertaining to the Project, as determined by HUD.

(b) If at any time following the occurrence of a suspension of the terms and provisions of this Regulatory Agreement pursuant to Section 6.2(a) hereof, but not later than the HUD Restrictions Termination Date, the Borrower or any Associated Person obtains an ownership interest in the Project, the terms and provisions of this Regulatory Agreement shall no longer be suspended as of the date (the "Renewal Date") the Borrower or any Associated Person obtains such interest. If a Renewal Date shall occur on or after the Tax Credit Termination Date, the terms and provisions of Sections 2.5(c), 2.5(f), 2.6(a), 2.7, 2.10(a), 2.10(b), 2.13(a), 2.15, and 2.46 and the last sentence of Section 2.1 hereof shall, subject to Sections 2.7, 2.21, 2.22, 2.23, 6.2(c), 7.4, 7.7 and 16 cease and terminate as of such Renewal Date.

(c) Neither (1) the suspension of the terms and provisions of this Regulatory Agreement pursuant to Section 6.2(a) hereof, (2) the termination of the terms and provisions of this Regulatory Agreement pursuant to Section 6.2(d) hereof, nor (3) the occurrence of the Tax Credit Termination Date or of a Renewal Date, shall 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 Gross Rent with respect to any Tax Credit Eligible Unit not otherwise permitted under Section 42 of the Code.

(d) Subject to the provisions of Sections 2.7, 2.21, 2.22, 2.23, 6.2(c), 7.4, 7.7 and 16 hereof and prior to the Termination Date, the terms and provisions of this Regulatory Agreement shall cease and terminate upon a Transfer, subject to the following conditions:

- (i) if the Transfer shall occur prior to the HUD Restrictions Termination Date, the terms and conditions hereof shall cease and terminate as of the HUD Restrictions Termination Date, but only if the HUD Restrictions Termination Date shall occur

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

on or after the Tax Credit Termination Date,
(ii) if the Transfer shall occur on or after the HUD Restrictions Termination Date and after the Tax Credit Termination Date, the terms and conditions hereof shall cease and terminate on the date of such Transfer, and
(iii) if the Transfer shall occur on or after the HUD Restrictions Termination Date and on or prior to the Tax Credit Termination Date, the terms and provisions hereof shall cease and terminate as of the Tax Credit Termination Date.

SECTION 7. ENFORCEMENT.

7.1 Subject to Section 7.7 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 Borrower (provided, however, that if any such occurrence or attempt cannot reasonably be cured within said 30-day period and if the Borrower 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 Borrower to the City delivered during such 30-day period, and upon further written request from the Borrower 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 HUD or 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 HUD or 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 Borrower of its obligations hereunder, or may declare an event of default under the Loan Documents and exercise its rights thereunder, including without limitation foreclosure under the Mortgage. 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.

7.2 The Borrower shall repay, as a recourse obligation of the Borrower, to the City upon demand the amount described in Section 3.07(d) of the Loan Agreement, as a repayment of the Loan, pursuant to the terms and conditions of Section 8.06(c) of the Loan Agreement. (§92.205(d), §92.503, §92.504(2))

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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 Borrower.

7.4 The Borrower and the City each acknowledge that a primary purpose of requiring the Borrower to comply with the restrictions provided in this Regulatory Agreement is to assure compliance of the Project and the Borrower with Section 42 of the Code and for that reason and the Borrower, in consideration of receiving Tax Credits for the 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 Borrower 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 Project (whether as prospective, present or former tenants of the Project) (the "Permitted Tenants") shall have the right to enforce in any court of the State the requirement of Section 2.5(f) hereof and the terms of Section 6.2(c) hereof.

7.5 The Borrower further specifically acknowledges that the beneficiaries of the Borrower'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.

7.6 Upon any failure of the Borrower 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 Treasury, the Internal Revenue Service or the City from time to time pertaining to the obligations of the Borrower as set forth therein or herein, and upon compliance by the City with the procedures described in Section 7.7 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 Project for Tax Credit dollars and to immediately commence recapture of the Tax Credit dollars heretofore allocated to the Project.

7.7 The City shall provide prompt written notice (a "Noncompliance Notice") to the Borrower if the City (a) does not receive from the Borrower an Annual Owner's Certification when due, (b) is not permitted to inspect, as provided in Section 16 hereof, the records maintained by the Borrower pursuant to Section 2.21 hereof, or (c) discovers by inspection, review or in some other manner that the 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 Borrower 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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 7.7 shall survive beyond the Termination Date, if the Termination Date shall occur prior to October 1 of the second calendar year following the end of the Compliance Period, and shall not be suspended as of the Foreclosure Date pursuant to Section 6.2(a) hereof.

SECTION 8. RECORDING AND FILING.

The Borrower 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 Borrower shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Borrower shall immediately transmit to the City an executed original of this Regulatory Agreement showing the date and recording number of record. The Borrower agrees that the City may withhold the Internal Revenue Service Form 8609 with respect to the Project unless and until the City has received the recorded executed original of this Regulatory Agreement.

SECTION 9. COVENANTS TO RUN WITH THE LAND.

The Borrower hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The City and the Borrower 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 Borrower's successors in title to the Project throughout the Project Term. The Borrower hereby covenants to include the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another Person in order that such transferee has notice of, and is bound by, such restrictions, and to obtain from any transferee the agreement to be bound by and comply with the requirements set forth in this Regulatory Agreement; provided however, that each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (including, without limitation, any transfer of a beneficial interest in a land trust or a portion thereof) shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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. In the event of any conflict between this Regulatory Agreement and the National Affordable Housing Act, the HOME Regulations or Section 42 of the Code, the requirements of the National Affordable Housing Act, the HOME Regulations or Section 42 of the Code, as applicable, shall control.

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 Borrower hereby expressly agrees to enter into all amendments hereto which, in the opinion of the City, are reasonably necessary for maintaining compliance under the National Affordable Housing Act, the HOME Regulations and Section 42 of the Code.

SECTION 12. NOTICE.

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

IF TO CITY:

City of Chicago, Illinois
c/o Department of Housing
318 South Michigan Avenue
Chicago, Illinois 60604
Attention: Commissioner

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WITH COPIES TO:

Department of Finance
City of Chicago
121 North LaSalle Street, Room 501
Chicago, Illinois 60602
Attention: Comptroller

and

Office of the Corporation Counsel
City Hall, Room 511
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Finance and Economic
Development Division

IF TO BORROWER:

Senior Suites Chicago Gage Limited
Partnership
Suite 900
737 North Michigan Avenue
Chicago, Illinois 60611

WITH COPIES TO:

Katten, Muchin & Zavis
525 West Monroe Street
Chicago, Illinois 60606
Attention: Howard Richard

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 clauses (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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SECTION 15. 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 16. RIGHT TO INSPECT.

The Borrower agrees that the City shall have the right to perform an on-site inspection of the Project and to review the records maintained by the Borrower or its agent as described in Section 2.21 hereof, upon 30 days' prior notice by the City to the Borrower, at least annually during each year of the longer of the Project Term or the Compliance Period. If the Compliance Period shall be longer than the Project Term, the requirements of this Section shall survive beyond the Termination Date.

SECTION 17. NO THIRD PARTY BENEFITS.

Subject to Section 7.4 hereof, this Regulatory Agreement is made for the sole benefit of the City and the Borrower and their respective successors and assigns and, except as provided in Section 7.4 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 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.

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the City and the Borrower have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove although actually executed and delivered on September 4, 1994.

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

By: Marina Carrott

Name: MARINA CARROTT

Title: COMMISSIONER

SENIOR SUITES CHICAGO GAGE LIMITED
PARTNERSHIP, an Illinois limited
partnership

By: Senior Suites Chicago
Corporation, an Illinois
corporation and sole general
partner

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

Property of Cook County Clerk's Office

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the City and the Borrower have executed this Regulatory Agreement by their duly authorized representatives, all as of the date first written hereinabove although actually executed and delivered on September 1, 1994.

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

By: _____

Name: _____

Title: _____

SENIOR SUITES CHICAGO GAGE LIMITED
PARTNERSHIP, an Illinois limited
partnership

By: Senior Suites Chicago
Corporation, an Illinois
corporation and sole general
partner

By: [Signature]

Name: William B. Kaplan

Title: President

ATTEST:

By: [Signature]

Name: Jerrold N. Frumin

Title: SECRETARY

94777544

UNOFFICIAL COPY

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 Marcia Carratt, 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, (s)he signed and delivered the said instrument pursuant to authority, as his/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 1st day of September 1994.

Clarice Hall
Notary Public

(SEAL)



94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

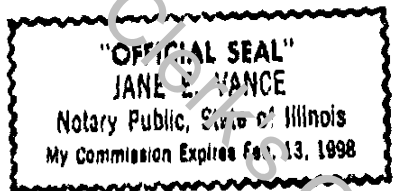
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that (Board of Directors) and (Secretary), personally known to me to be the (President) and (Secretary), respectively, of Senior Suites Chicago Corporation, an Illinois corporation and sole general partner (the "General Partner") of Senior Suites Chicago Grand Limited Partnership, an Illinois limited partnership (the "Borrower"), and known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such (President) and (Secretary), they signed and delivered the said instrument pursuant to authority given by the Board of Directors of the General Partner, and as their respective free and voluntary acts and deeds and as the free and voluntary act and deed of the Borrower for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 31st day of August, 1994.

Jane E. Vance
Notary Public

(SEAL)



94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LEGAL DESCRIPTION:

LOTS 20, EXCEPT THE NORTH 20.00 FEET THEREOF, ALL OF LOTS 21 THROUGH 30, BOTH INCLUSIVE, AND THAT PART OF THE 16.00 FOOT PUBLIC ALLEY LYING NORTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 24 TO THE SOUTHWEST CORNER OF LOT 25, AND LYING SOUTH OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE NORTH 20.00 FEET OF LOT 20, ALL IN BLOCK 7 IN WILSON P. CONOVERS SUBDIVISION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS COMMONLY KNOWN AS: 3244 West 59th Street
Chicago, Illinois 60629

PERMANENT INDEX NO.: 19-14-227-038
-039
-040
-041
-042
19-14-227-016
-017
-018
-019
-020
-021

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/11

Exhibit B

UNOFFICIAL COPY

Budget Item	Total Budget	Vendor	Total Contract	Previously Paid (Sponsor to be reimbursed)	Amount of This Payment (To Vendor)	Balance to Become Due	Balance of Total Budget Available
Survey	5,000.00	National Survey Service, Inc.	3,912.50	3,912.50	0.00	0.00	1,087.50
Phase I	1,200.00	T.E.A.M. Inc.	1,200.00	1,200.00	0.00	0.00	0.00
Market Study	6,800.00	BSA Marketing Resources	6,799.63	3,789.63	3,000.00	0.00	0.57
Site Test	6,200.00	STS Consultants	6,200.00	6,200.00	0.00	0.00	0.00
Marketing Study	1,310.00	Metro Transportation	1,306.00	1,306.00	0.00	0.00	0.00
Urban Use Study	3,350.00	Current	3,350.00	3,350.00	0.00	0.00	0.00
Financial Consultant	32,000.00	Paul D. Koehler, CPA, Ltd.	32,000.00	0.00	32,000.00	0.00	0.00
Accountant	6,500.00	Arcadia	6,500.00	5,000.00	1,500.00	0.00	0.00
Real Estate Acquisitions	305,000.00	Joseph D. Gatto	305,000.00	0.00	305,000.00	0.00	0.00
Legal & Recording	6,100.00	City of Chicago	6,100.00	6,100.00	0.00	0.00	0.00
Legal & Recording	14,000.00	Heur North Title	13,572.00	0.00	13,572.00	0.00	428.00
Legal & Recording	18,469.00	Heur North Insurance	18,469.00	18,469.00	0.00	0.00	0.00
Legal & Recording	4,788,883.00	Fried Tashbaum Conner, Co.	4,788,883.00	0.00	76,373.00	4,712,510.00	0.00
Legal & Recording	232,054.00	To Be Determined	0.00	0.00	0.00	0.00	232,054.00
Legal & Recording	86,500.00	To Be Determined	0.00	0.00	0.00	0.00	86,500.00
Legal & Recording	25,000.00	Cook County Auditor	9,000.00	0.00	9,000.00	0.00	16,000.00
Legal & Recording	9,685.00	Cook County Auditor	9,685.00	0.00	9,685.00	0.00	0.00
Legal & Recording	26,365.00	Accountable	21,896.15	0.00	4,468.85	0.00	26,365.00
Legal & Recording	64,500.00	Jack Levy & Assoc.	0.00	0.00	21,966.15	0.00	42,533.85
Legal & Recording	25,000.00	To Be Determined	0.00	0.00	0.00	0.00	25,000.00
Legal & Recording	170,000.00	Escrowed Funds	170,000.00	0.00	0.00	170,000.00	0.00
Legal & Recording	115,678.00	Sedley & Austin	62,070.99	24,759.29	37,311.70	0.00	5,532.41
Legal & Recording	25,000.00	Kabon Jackson & Zales	43,000.00	0.00	43,000.00	0.00	0.00
Legal & Recording	25,000.00	Secretary of State	5,000.00	0.00	5,000.00	0.00	0.00
Legal & Recording	17,000.00	Power, Goldstein	75.00	75.00	0.00	0.00	0.00
Legal & Recording	2,000.00	Nonographic, Fortmitch	2,000.00	0.00	2,000.00	0.00	0.00
Legal & Recording	15,361.00	City of Chicago - D.O.H.	8,000.00	15,100.12	0.00	0.00	260.88
Legal & Recording	250.00	City of Chicago	250.00	250.00	0.00	0.00	0.00
Legal & Recording	14,000.00	Arthur Andersen & Co.	10,000.00	0.00	10,000.00	0.00	15,000.00
Legal & Recording	14,000.00	Accountable	14,000.00	0.00	14,000.00	0.00	0.00
Legal & Recording	188,250.00	Martin G. Edal & Frazier	173,750.00	0.00	173,750.00	0.00	0.00
Legal & Recording	10,000.00	To Be Determined	0.00	0.00	0.00	0.00	10,000.00
Legal & Recording	586,368.00	Senior Lifestyle Corp.	586,368.00	0.00	252,500.00	333,868.00	0.00
Legal & Recording	18,837.00	Accountable	18,837.00	0.00	18,837.00	0.00	0.00
Legal & Recording	68,365.00	Accountable	18,837.00	0.00	18,837.00	0.00	68,365.00
Legal & Recording	246,532.00	Escrowed Funds	246,532.00	0.00	0.00	246,532.00	0.00
TOTAL:	7,146,557.00		8,194,174.00	88,524.00	1,000,489.46	5,504,160.00	652,392.54

Subject To Final Prorations

WBL

SENIOR SUITES CHICAGO GAGE LIMITED PARTNERSHIP
By: SENIOR SUITES CHICAGO CORPORATION, its General Partner
By: William B. Kaplan
William B. Kaplan, President
737 N. Michigan Avenue, Suite 900
Chicago, Illinois 60611

94777544

Subscribed and sworn to before me this 31st day of August, 1994
JANE E. VANCE
Notary Public, State of Illinois
My Commission Expires Feb. 13, 1998
Jane E. Vance Notary Public

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

DEBARMENT CERTIFICATION

This certification, dated _____, _____, is being delivered by [INSERT NAME OF BORROWER], a _____ (the "Borrower"), to the City of Chicago, Illinois (the "City") in connection with the Regulatory Agreement (the "Regulatory Agreement") dated _____ between the City and the Borrower.

1. The Borrower represents, warrants and certifies that neither the Borrower nor any officer, director or owner of the Borrower:

- (a) is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- (b) has within a three-year period preceding the date hereof been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction, including, without limitation, any violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- (c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in clause (b) above;
- (d) has within a three-year period preceding the date hereof had one or more public transactions (federal, state or local) terminated for cause or default;
- (e) has been barred from contracting with any unit of state or local government as a result of a violation of 720 ILCS 5/33E-3 or 720 ILCS 5/33E-4, as amended, supplemented and restated from time to time;
- (f) is in default on an educational loan as provided in 5 ILCS 385/1, as amended, supplemented and restated from time to time;
- (g) has within the last three years (i) been convicted of bribery or attempting to bribe a public officer or employee of the City, the State of Illinois or any agency of the federal government or of any state or local government in the United States, in that

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

officer's or employee's official capacity; or (ii) been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (iii) made an admission of guilt of such conduct described in (i) or (ii) above which is a matter of record, but has not been prosecuted for such conduct; or

(h) has made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Loan Agreement (as defined in the Regulatory Agreement) as an inducement for the City to enter into the Loan Agreement with the Borrower.

2. The Borrower shall comply with the applicable requirements of the Governmental Ethics Ordinance of the City, Title 2, Chapter 2-156 of the Municipal Code of Chicago, as amended, supplemented and restated from time to time.

3. The Borrower understands and will comply with all the applicable provisions of Chapter 2-56 of the Municipal Code of Chicago (Office of the Inspector General), as amended, supplemented and restated from time to time.

[INSERT NAME OF BORROWER]

By: _____

Title: _____

ATTEST: _____

Title: _____

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SCHEDULE I

ANNUAL OWNER'S CERTIFICATION FOR PROJECT RECEIVING HOME FUNDS AND LOW-INCOME HOUSING TAX CREDITS FROM THE CITY OF CHICAGO, DEPARTMENT OF HOUSING

Borrower: Senior Suites Chicago Gage Limited Partnership, an
Illinois limited partnership

Project Name: _____

Project Number: _____

Borrower Federal Employer Identification Number: _____

The City of Chicago, Illinois, acting by and through its Department of Housing (the "City"), has entered into a Housing Loan Agreement dated as of August 1, 1994 with the Borrower pursuant to which the City has loaned HOME Funds to the Borrower for the Project. The City has also allocated low-income housing tax credits (the "Tax Credits") to the Borrower for the Project. Pursuant to Section 42 of the Internal Revenue Code of 1986 (the "Code"), the Borrower is required to maintain certain records concerning the Project and the City is required to monitor the Project's compliance with the HOME Regulations and the Code and the agreements executed by the City and the Borrower in connection with the Project. The Borrower further agreed, in the Regulatory Agreement dated as of August 1, 1994 by and between the City and the Borrower (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 Borrower, 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 of the 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 Termination Date. In addition, a copy of Exhibit A must be completed for each building which comprises a part of the 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.

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4-11-2011

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

5. Provide the City with independently audited financial statements for the 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 Borrower 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 Project?

Yes _____ No _____

If Yes, provide the details.

7. If the date of this Annual Owner's Certification is not later than the first October 1 following the Termination Date, the following certifications apply:

- (a) The Borrower hereby certifies to the City that (1) the Project is in full compliance with all currently applicable provisions of the HOME Regulations, (2) the Project shall continue to comply with the HOME Regulations during the Project Term as required by the HOME Regulations, and (3) no change shall occur in the Borrower or the general partner of the Borrower without the prior written consent of the City, except as may be permitted pursuant to Section 2 of the Mortgage.
- (b) Provide to the City copies of each lease and each Tenant Certification executed in connection with the Low-Income Project since the later of the execution of the Regulatory Agreement or the last Annual Owner's Certification submitted to the City. For each such unit in the Low-Income Project, provide to the City the data with respect to tenant characteristics as required by Section 2.24 of the Regulatory Agreement.
- (c) Provide the City with evidence of compliance with Section 2.34 of the Regulatory Agreement since the later of the execution of the Regulatory Agreement or the last Annual Owner's Certification, including copies of any required notices given to prospective tenants regarding lead-based paint with the signature of each tenant in the Low-Income Project. [24 C.F.R. §35.5(b)(1)]
- (d) Did the Project cause the displacement of any People?

Yes _____ No _____

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

If Yes, provide evidence to the City of compliance with Section 2.32 of the Regulatory Agreement, including the information required under 24 C.F.R. Section 92.508(a)(5)(iv). (The information required by this question need only be supplied to the City once.)

- (e) If the Project is over 12 units, provide to the City payroll records of the General Contractor indicating compliance with Section 2.36 of the Regulatory Agreement.
- (f) Provide to the City evidence of compliance with the affirmative marketing requirements of Section 2.27 of the Regulatory Agreement.

B. REPRESENTATIONS, WARRANTIES AND COVENANTS

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

1. The Borrower 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 Borrower is [check as applicable] (a) the owner of fee simple title to, or (b) the owner of 100% of the beneficial interest in, the hereinafter described Project. The Borrower 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 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 unit(s) (the "Tax Credit Eligible Units") in the Project is/are occupied by Qualifying Tenants (as hereinafter defined).

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(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 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 is 50% or less of area median income, or (ii) _____ 40% or more of the residential units in the 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 is 60% or less of area median income, or (iii) _____ 40% or more of the residential units in each building in the Project were both rent-restricted (within the meaning of Section 42(g)(2) of the Code) and occupied by individuals whose income is 50% 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 Project, or if there were any such changes, attached hereto as Exhibit B is a true and complete description of all such changes;
3. the Borrower has received an annual income certification from each Qualifying Tenant in substantially the form attached hereto as Exhibit C or in such other form as shall have been approved by the City (a "Tenant Certification") and documentation to support that Tenant Certification (for a Qualifying Tenant receiving Section 8 housing assistance payments, such documentation may be a statement from the Chicago Housing Authority to the Borrower declaring that the Qualifying Tenant's income does not exceed the applicable income limit under Section 42(g) of the Code), and the Borrower assisted each of the Qualifying Tenants in completing the Tenant Certifications by referring to the instructions on Exhibit D attached hereto;
4. each Tax Credit Eligible Unit in the Project was rent-restricted (within the meaning of Section 42(g)(2) of the Code);
5. all of the units in the Project were for use by the general public and used on a nontransient 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);

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

6. each building in the 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(d) of the Code (the "Eligible Basis") of any building in the Project, or if there were any such changes, attached hereto as Exhibit E 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 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 Project of a comparable or smaller size to one or more Qualifying Tenants before any residential units in the Project were or will be rented to tenants who are not Qualifying Tenants;
 10. if 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 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 Project were either dedicated to the benefit of the Project through enhancement of the Project, or resulted in a decrease of the Project's Eligible Basis for purposes of calculating the Tax Credits for which the Project qualifies, and except as disclosed to and approved by the City, no amounts paid or payable to the Borrower as developer fees exceeded the amount set forth in the Borrower's original application for the Tax Credits and such fees will not be increased without the consent of the City.
- (d) The Project constitutes a "qualified low-income housing project" as defined in Section 42 of the Code and the Tax Credit Regulations.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (e) All of the Exhibit As attached hereto constitute a true, correct and complete schedule showing, for the Year, the rent charged for each Tax Credit Eligible Unit in the 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 Project is in compliance with all of the currently applicable requirements of the National Affordable Housing Act, the HOME Regulations, the Regulatory Agreement, Section 42 of the Code, the applicable Treasury regulations under Section 42 of the Code (the "Tax Credit Regulations"), the terms of the City's letter reserving Tax Credits for the Project (the "Reservation Letter"), and, if applicable, the City's Housing Tax Credit Plan for the year in which the Project received its allocation of Tax Credits (the "Plan"). The Borrower will take whatever action is required to ensure that the Project complies with all requirements imposed by the National Affordable Housing Act, the HOME Regulations, the Regulatory Agreement, Section 42 of the Code, the Tax Credit Regulations, the terms of the Reservation Letter and, if applicable, the Plan during the periods required thereby.

The Borrower shall retain all tenant selection documents, which include but are not limited to income verification, employment verification, credit reports, leases and low-income computation forms, to be available for periodic inspections by the City or its representative. The City, at its option, can periodically inspect the Project, and all tenancy-related documents to determine continued compliance of the Project with all applicable requirements.

- 6. No litigation or proceedings are pending or, to the Borrower's knowledge, threatened, which may affect the interest of the Borrower in the Project or the ability of the Borrower to perform its obligations with respect thereto.
- 7. The Borrower 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. 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.

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

9. The Borrower 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 Borrower 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.
10. The Borrower is in possession of all records which it is required to maintain pursuant to the terms of the National Affordable Housing Act, the HOME Regulations, 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 Project.
11. The Borrower 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 Borrower shall continue to cooperate with the City and furnish such documents, reports, exhibits or showings as are required by the National Affordable Housing Act, the HOME Regulations, the Regulatory Agreement, Section 42 of the Code, the Tax Credit Regulations, the Plan (if applicable) and the City or the City's counsel.

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

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

C. INDEMNIFICATION

The Borrower 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 Borrower's responses or documents provided pursuant to the terms of this Annual Owner's Certification, including breaches of the representations and

9477544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

warranties herein contained, other than those judgments, losses, liabilities, damages, costs and expenses arising out of the City's gross negligence or willful misconduct following the City's acquisition of title to or control of the Project, unless such act is taken in response to (1) any willful misconduct or negligent act or omission of the Borrower, the General Partner, if any, or the Owner, if any (as the last two terms are defined in the Loan Agreement), or (2) any breach (other than failure to repay the Loan) by the Borrower, the General Partner, if any, or the Owner, if any, of any provisions of the instruments executed by the Borrower, the General Partner, if any, or the Owner, if any, in connection with the Loan.

IN WITNESS WHEREOF, the Borrower has executed this Annual Owner's Certification this _____ day of _____, _____.

BORROWER:

By: _____

Its: _____

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

(SEAL)

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025-01-01

UNOFFICIAL COPY

EXHIBIT A

Borrower: _____

Mailing Address: _____

Date of Regulatory Agreement: _____

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 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 _____

(e) Total Eligible Basis of this Building: _____

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

(g) Total Qualified Basis of this Building: _____

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

OTHER UNITS:

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

5. Has the rent in any Low-Income Unit or Tax Credit Eligible Unit in this Building 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 this Building, has the rent been increased from the amounts projected during the construction period?

Yes _____ No _____

If Yes, please provide details.

6. 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 Owner's Certification filed for this Building?

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

8. Have any Low-Income Families or 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 Low-Income Family or Tax Credit Eligible Family against the Borrower?

Yes _____ No _____

If Yes, please provide details.

94777544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

CHANGES IN APPLICABLE FRACTION

Property of Cook County Clerk's Office

9477544

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025/01/10 10:00 AM