ILLINOIS HOUSING
DEVELOPMENT AUTHORITY

Owner & Agent Training

Regulatory Knowledge:

Decoding Regulatory Requirements: Agreements and Other Legal Documents

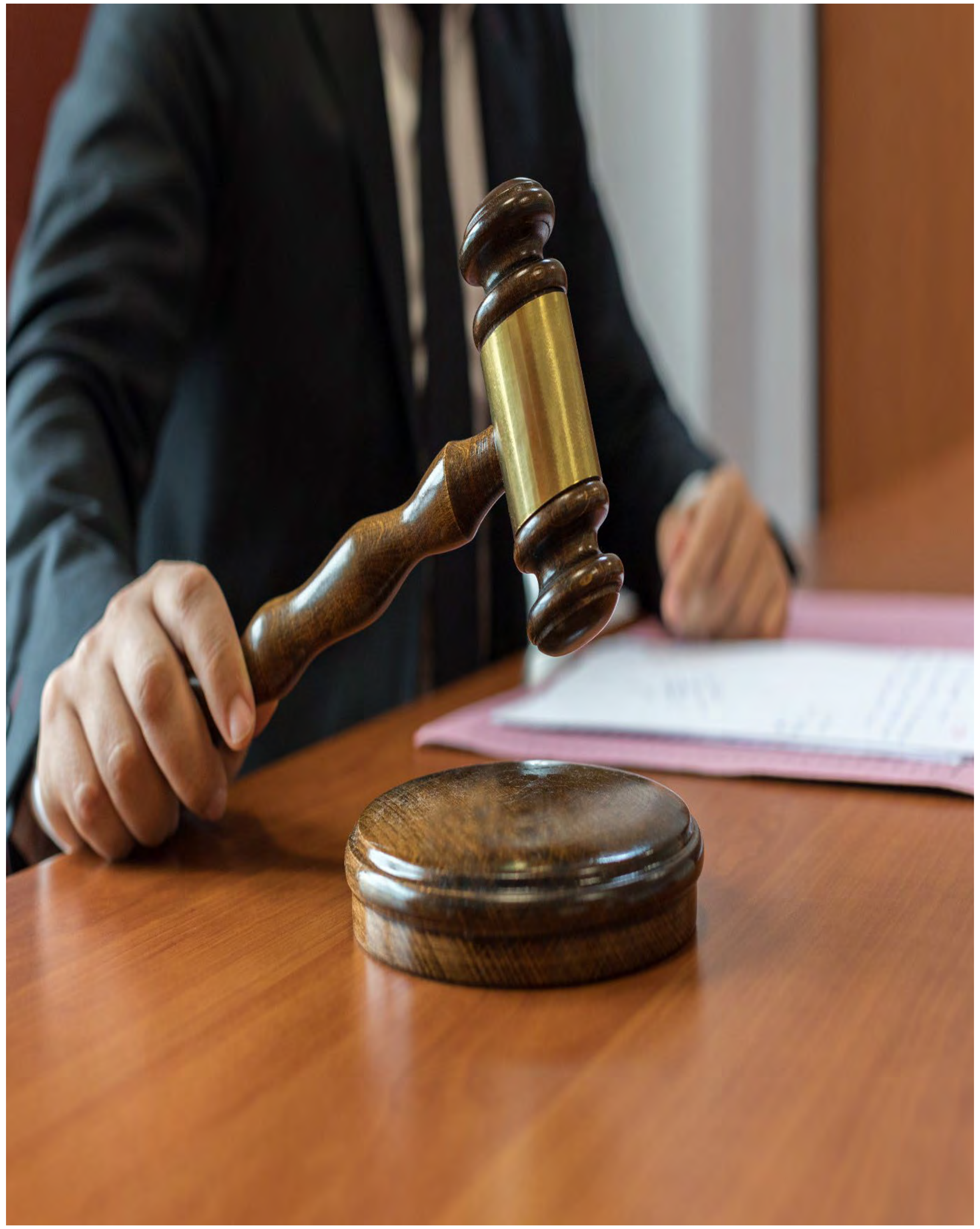
Presenter(s): Ana Cruz
Project Operations Compliance (POC) Asset Manager

Session Agenda

1. **Regulatory Agreements:**
   Contracts

2. **Understanding Agreements and other Legal Documents:**
   Protection and Confidence

3. **Non-Compliance:**
   Penalties and lost credits



Main Objectives

- Understand the legal side of Regulatory Agreements and other Legal documents .
- Regulatory agreements are promises, between the property owner and Illinois Housing Development Authority .
- In exchange, you get tax credits or financing .

Let's get into it!

Key Documents:

- Land Use Restriction Agreement (LURA)
- HOME Written Agreement
- Illinois Affordable Housing Tax Credit Regulatory Agreement (IAHTC)
- Extended Use Agreement (EUA) (for LIHTC)

Other Supporting Documents :

- Gross Rent Floor Election Form
- Building Identification Number Form (BIN)
- Certificate of Occupancy (COO)

Core Elements:

- What program does the agreement cover?
- How many program units and total units at the property?
- Applicable Fraction – 100% Tax Credit or Less (if applicable)
- Affordability Restrictions – Unit Set Aside (e.g., 20% @50% AMI)
- Compliance and Affordability Periods
- Consequences for Non-Compliance

LURA Agreements: Things to Look For

Land Use Restriction Agreement

- Page 1.
  - Identifies the program the agreements covers
  - The owner entity name
  - How many units are in the development
- Paragraph 3. Representations and Agreements.
  - Project units covered
  - AMI levels
  - The number of units allocated to each AMI
- Paragraph 9. Definitions.
  - AMI definitions (Check each Paragraph)
- Paragraph 10. Term of Agreements ; Covenants Run with Development.
  - Compliance Affordability Period
  - Prepayment: If the loan is prepaid, does the agreement stay in place and if certain paragraphs remain in effect.

LURA Agreements: Things to Look For

Land Use Restriction Agreement - Example

REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (this "Agreement"), made and entered into as of this 8th day of October, 2020, by and between [redacted] an Illinois limited partnership ("Borrower"), and the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** ("Authority"), a body politic and corporate established pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.*, as amended from time to time ("Act"), having its principal office at 111 E. Wacker Dr., Chicago, Illinois 60601;

WITNESSETH:

WHEREAS, the Authority is the program administrator of the Illinois Affordable Housing Program, as that program is authorized by the Illinois Affordable Housing Act, 310 ILCS 65/1 et seq., as amended from time to time ("Trust Fund Act"), and the rules promulgated under the Trust Fund Act ("Trust Fund Rules"); and

WHEREAS, Borrower is the fee owner of certain real property upon which a housing development consisting of sixty (60) units (the "Units") will be constructed, legally described in **Exhibit A** attached to and made a part of this Agreement (the "Real Estate"), located in Evanston, Illinois. The Real Estate and the improvements to be constructed on it are collectively referred to in this Agreement as the "Development"; and

3. Representations and Agreements. Borrower further represents and agrees that:

a. All of the Units shall be occupied by Affordable Tenants (as defined in **Paragraph 9** hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Low Income Tenants (as defined in **Paragraph 9** hereof), three (3) of the Units shall be occupied by Affordable Tenants whose income, at the time of initial occupancy, does not exceed the income limits for Very Low Income Tenants (as defined in **Paragraph 9** hereof), another twelve (12) of the Units shall be occupied by Affordable

Tenants whose income, at the time of initial occupancy, does not exceed the income limits for Extremely Low Income Tenants (as defined in **Paragraph 9** hereof);

LURA Agreements: Things to Look For

Land Use Restriction Agreement – Example Cont.

9. **Definitions.**

a. "Low Income Tenant", means a single person, family or unrelated persons living together whose adjusted income is less than or equal to eighty percent (80%) of the median income of the metropolitan statistical area of Cook County, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 ("Median Income").

b. "Very Low Income Tenant", means a single person, family or unrelated persons living together whose adjusted income is less than or equal to fifty percent (50%) of the Median Income.

REGULATORY AND LAND USE RESTRICTION AGREEMENT 7

Total Units – 60
Very low-income 50% AMI – 3 units
Extremely low-income 30% AMI – 12 units
Low-income units 80% - 45 units

c. "Extremely Low Income Tenant", means a single person, family or unrelated persons living together whose adjusted income is less than or equal to thirty percent (30%) of the Median Income.

d. "Affordable Tenant" means a Low Income Tenant or Very Low Income Tenant or Extremely Low Income Tenant.

10. **Term of Agreement; Covenants Run with Development.** The covenants and agreements set forth in this Agreement shall encumber the Development and be binding on the Borrower, New Borrower and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it until the Maturity Date (as defined in the Note). If the Note is prepaid prior to the Maturity Date (as defined in the Note) with the approval of the Authority, only the covenants and agreements set forth in **Paragraphs 2, 3, 4(a, b, d, and e), 5(a), 6, 7(d)-(e), 8-10 and 12-20** hereof (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing on the prepayment and ending on the Maturity, regardless of whether the Loan is prepaid voluntarily by Borrower or tendered by any party following an acceleration by the Authority of the Note or enforcement by the Authority of its remedies in connection with the Loan.

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

1.9 "Maturity Date" shall mean thirty (30) years from the Payment Date (as defined hereinbelow), which date is expected to be December 31, 2052 (or on the first (1st) business day thereafter if such day is not a business day), or such earlier date upon which the entire Outstanding Principal Balance and any other sums that are due and payable pursuant to the terms and provisions of this Note are due and payable by reason of the acceleration of the maturity of this Note.

HOME Agreements: Things to Look For

HOME Regulatory Agreement

- **Paragraph 10. Terms of Agreement; Covenants Run with Development.**
  - It will specify the Affordability Period, from the overall agreement’s compliance period.
  - Identifies what parts of the agreement *remain in place* after the HOME affordability period ends.
  - Other parts of the agreement are *modified* after the HOME affordability period ends.

HOME Agreements: Things to Look For

HOME Regulatory Agreement - Example

10. **Term of Agreement; Covenants Run with Development.**

a. The covenants and agreements set forth in this Agreement shall encumber the Development and be binding on the Borrower, any New Borrower and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it for a period equal to twenty (20) years from the date of "Project Completion" (as defined in the HOME Requirements) ("Affordability Period").

However, following the expiration of the Affordability Period, only Paragraphs 2, 3d, 3(h-k), 3(n), if applicable, 4(a-b), 4(d-f), 5 (a–f), and 6-20 hereof and Paragraphs 3 (a-c), 3 (e-f) and 4c as modified in 10(b) herein below (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing at the end of the Affordability Period, and ending on the Maturity Date (as defined in the Note). Notwithstanding the immediately preceding sentence, if the Note is paid in full prior to the Maturity Date, the following Paragraphs shall not be part of the Continuing Obligations: 4(a-b), 4f, 5(c and d), and 7(a–c).

b. Following the expiration of the Affordability Period, the following Paragraphs shall be modified as follows:

Paragraphs 3(a-c) shall be modified as follows:

Following the expiration of the Affordability Period, all HOME Program Units shall be occupied by Families that have rents and income limits at or below eighty percent (80%) of Median Income.

Paragraphs 3e shall be modified as follows:

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

IAHTC Agreements: Things to Look For

Illinois Affordable Housing Tax Credit Regulatory Agreement

- Page 1.
  - Identifies how many units and program units
  - Rent levels

- Paragraph 3. Representations and Agreements.
  - Occupancy restrictions
  - AMI levels
  - The number of units allocated to each AMI

- Paragraph 8. Definitions.
  - AMI definitions (Check each Paragraph)

- Paragraph 9. Term of Agreements ; Covenants Run with Project.
  - The affordability period is a 10 -year term from the date of issuance of the Certificate of Occupancy (COO)

IAHTC Agreements: Things to Look For

IAHTC Regulatory Agreement

ILLINOIS AFFORDABLE HOUSING TAX CREDIT REGULATORY AGREEMENT

Project Summary
Project Owner:
Project Owner's Address:
"Sponsor":
Project Name:
Project Address:
County/MSA:
SHTC No.:
[redacted]
Project Unit Count: 60/60 (number of Low Income Household units/total number of units in project)

3. Representations and Agreements. Owner further represents and agrees that:

a. At least the number of the units set forth above in the Project Summary shall be occupied by Households (as defined in **Paragraph 8** hereof) whose income, at the time of initial occupancy, does not exceed the income limits for Very Low Income Households (as defined in **Paragraph 8** hereof) and at least the number of the units set forth above in the Project Summary shall be occupied by Households whose income, at the time of initial occupancy, does not exceed the income limits for Low Income Households (as defined in **Paragraph 8** hereof);

8. Definitions.

a. "Very Low Income Household". As used in this Agreement, the phrase "Very Low Income Household" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to fifty percent (50%) of the median income of the County, or the metropolitan statistical area set forth above in the Project Summary (the "Median Income"), adjusted for family size, as such adjusted income and median income are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937.

4

b. "Low Income Household". As used in this Agreement, the phrase "Low Income Household" means a single person, family or unrelated persons living together whose adjusted income is less than or equal to sixty percent (60%) of the Median Income.

IAHTC Agreements: Things to Look For

IAHTC Regulatory Agreement

9. **Term of Agreement; Covenants Run with Project.**

a. The term of this Agreement shall be ten (10) years from the date the building is placed in service. Placed in service shall mean the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law.

"Compliance Period": The period during which a Project is obligated to comply with the Affordable Housing Restrictions, as set forth in the Application. The Compliance Period for an Affordable Housing Project shall be a minimum of 10 years from the date of the issuance of the certificate of occupancy from the municipality in which the Affordable Housing Project is located (or the like, as acceptable to the Agency in its discretion, for Affordable Housing Projects that are rehabilitated and when the municipality does not re-issue a certificate of occupancy). The Compliance Period for a Single Family Project or an Employer-

NOTE: Per the Joint Committee on Administrative Rules (JCAR) rules, the affordability period is 10 years from date of issuance of the certificate of occupancy .

EUA Agreements: Things to Look For

Extended Use Agreement (EUA)

- Page 1 .
  - Identifies how many program units and total units
  - Minimum Set -Asides Election
  - The Applicable Fraction (If it's a 100% or less than 100% Tax Credit Project)

- Paragraph C. Occupancy Restrictions.
  - Project units covered.
  - AMI levels
  - The number of units allocated to each AMI

- Paragraph D. Term of Restrictions.
  - Compliance Period

Paragraph D (4). Qualified Contract .

- As of 2020 Qualified Allocation Plan (QAP), owners are required to waive their right to request a qualified contract. *(LIHTC ONLY)*

  To Determine the QAP Year:
  - For 9% Tax Credits: Conditional Reservation Letter or Carryover Allocation Letter
  - For 4% Tax Credits: 42(m) Determination Letter

EUA Agreements: Things to Look For

Extended Use Agreement (EUA) – Page 1

LOW INCOME HOUSING TAX CREDIT EXTENDED USE AGREEMENT

Project Summary

Project Owner:
Project Owner's Address:

Project Name:
Project Address:
IHDA Project Application No.:

[redacted]

Project Unit Count: 60/60 (Number of Low Income Units/ Total Number of Units in the Project)

Minimum Low Income Set-Aside Election: At least 40% of the units in the Project must be occupied by Tenants at or below 60% of Area Median Gross Income and Rent-Restricted in accordance with such income level.

Minimum Applicable Fraction for Project: At least 100%

EUA Agreements: Things to Look For

EUA Paragraph C. Occupancy Restrictions - Example

(7) The Owner will reserve 100% of the Units in the Project for "Elderly Housing", meaning that the housing is (i) intended for, and solely occupied by, persons age 62 and older; or (ii) intended and operated for occupancy by at least one person age 55 and older per Unit, and at least 80% of the Units within the housing facility are so occupied, when such housing also provides "Elderly Services", as defined in the Authority's Qualified Allocation Plan; or (iii) provided for under any state or federal program that the United States Department of Housing and Urban Development has determined is specifically designed and operated to assist elderly persons (as defined in such state or federal program.

(8) The Project will be constructed and/or maintained consistent with Owner-selected and Authority-approved requirements contained in the applicable energy efficiency and green criteria and requirements contained in the Application and commit to NAHB National Green Building Standard Certification.

(8) An Illinois based entity is the general contractor and property manager and architect and sponsor.

(9) An entity certified under the Illinois Business Enterprise Program for Minorities, Females and Persons with Disabilities, is the general contractor or property manager or architect or sponsor.

(10) A "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall own at least twenty-five percent (25%) interest in the general partner or non-investor member of the Owner that includes a distribution of financial benefits equal to or greater than the ownership interest through the entire Extended Use Period.

(11) At least thirty (30) of the Units in the Project shall receive rental assistance through, but not limited to, Housing Authority of Cook County.

(12) At least twelve (12) of the Units in the Project must be Rent Restricted and occupied by Qualifying Tenants at or below thirty percent (30%) of Area Median Gross Income.

(13) As set forth in the Statewide Referral Network Agreement, which has been approved by the Authority, the Owner will reserve at least nine (9) of the Units in the Project for Extremely Low Income Qualifying Tenants.

(14) A minimum of 10% of the project based rental assisted units will target the veteran population as evidenced by a commitment of U.S. Department of Veteran's Affairs Supportive Housing (VASH) Vouchers, or other project based rental assistance targeting the veteran population.

The Project will be constructed to meet or exceed the minimum accessibility requirements of the Illinois Accessibility Code. At least six (6) of the Units in the Project will be constructed to exceed the most restrictive of the applicable minimum accessibility requirements among the Illinois Accessibility Code, Section 504 of the Rehabilitation Act of 1973, as amended, and the Uniform Federal Accessibility Standards, Federal Fair Housing Act and the American with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as applicable, for persons with mobility impairments (as defined in ICC/ANSI 117.1.2003 Section 1002). An additional six (6) of the Units in the Project will be constructed to meet or exceed minimum adaptable dwelling unit requirements of Section 400.360 of the Illinois Accessibility Code, in accordance with the Application and any supporting documentation submitted with the Application. An additional two (2) of the Units in the Project will be constructed to meet or exceed minimum accessibility requirements of the Illinois Accessibility Code, the Uniform Accessibility Code, Section 504 of the Rehabilitation Act of 1973, as amended, and the Uniform Federal Accessibility Standards, as applicable, for persons with sensory impairments in accordance with the Application (and as defined in ICC/ANSI 117.1.2003 Section 1002) and any supporting documentation submitted with the Application. Requirements of the Americans with Disabilities Act of 1990 must also be met.

EUA Agreements: Things to Look For

EUA Paragraph D. Term of Restrictions - Example

D. Term of Restrictions.

(1) Term. This Agreement shall become effective with respect to a building in the Project on the first day of the Compliance Period for such building and shall terminate on the last day of the Extended Use Period, unless this Agreement is earlier terminated pursuant to Sections D(2), D(3) or D(4) below, subject to Section (D)(5) (the "Term").

As of 2020 Qualified Allocation Plan (QAP), owners are required to waive their right to request a qualified contact. Verify this in Paragraph D (4).

(4) Qualified Contract. Owner acknowledges and agrees that the Owner has waived its right to request the Authority's assistance in procuring a "Qualified Contract", as defined in the Code, for the purpose of obtaining the possible cessation of the Agreement and the Occupancy Restrictions.

Other Supporting Documents

Determining Tax Credit Allocation Year - Examples

- For 9% Tax Credits – Check the Reservation Letter or Carryover Allocation Letter

2020 Low Income Housing Tax Credit Carryover Allocation Letter
(this "Letter")

November 6, 2020

[redacted]

Re:		
	Project Name:	[redacted]
	Project Location:	[redacted]
	IHDA Project ID #:	[redacted]
	Tax Credit Reservation Amount:	[redacted]
	Tax Credit Allocation Year:	2020
	Date of Conditional Reservation Letter:	May 27, 2020 (the "Reservation Letter")
	Type of Allocation:	[redacted]
	Ten Percent Expenditure Date:	[redacted]
	Deadline to return executed documents:	[redacted]

- For 4% Tax Credits – Use the Date of the 42(m) Letter

42(m) DETERMINATION LETTER

March 4, 2021

[redacted]

Re:		
	Development Name:	[redacted]
	Development Owner:	
	Development Type:	
	Development Location:	
	IHDA Development No.:	
	Tax Credit Allocator:	IHDA
	Tax Exempt Bond Issuer:	IHDA
	Estimated Bond Issuance Amount:	[redacted]
	Estimated Annual Tax Credit Amount*:	
	42(m) Determination Letter Fee:	

Other Supporting Documents

Gross Rent Floor Election Form

Establishes the rent floor for the project.

EXHIBIT D

Gross Rent Floor Election Form
for Low Income Housing Tax Credit Projects at Carryover Allocation

Project Name: [redacted]
Project ID Number: [redacted]
Project Address: [redacted]

Person Completing Form: [redacted]
Contact Fax Number: ____
Contact Phone Number [redacted]
Contact Email: [redacted]

IRS Revenue Procedure 94-57 allows owners of qualified housing projects to specify the date on which the gross rent floor described in Section 42(g)(2)(A) of the Code will take effect. According to the Code, the IRS will treat the gross rent floor as taking effect on the date that the Housing Credit Agency (the "Agency") initially allocates a housing credit dollar amount to the building under Section 42(h)(l) of the Code; however, the IRS will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed in service.

The election statement must be included with the Carryover Allocation. Once this election is made, it is irreversible.

I hereby elect that the effective date of the gross rent floor for this project to be:

☒ Date of Allocation

☐ Placed in Service Date

Other Supporting Documents

Certificate Of Occupancy

Owner/Agents must submit a copy to IHDA as soon as it is available. Date on Certificate determines beginning date of affordability period of 10 years. (Applicable for Illinois Affordable Housing Tax Credit Regulatory Agreements.)


PARTIAL

Certificate of Occupancy

CITY OF CHICAGO

Lori E Lightfoot, Mayor

DEPARTMENT OF BUILDINGS
OFFICE OF THE BUILDING COMMISSIONER

COPY

DATE: 11/23/2020

COMMON ADDRESS OF PREMISES:
[redacted]

DESCRIPTION OF WORK: ERECT NEW 6 STORY + BASEMENT BRICK AND METAL CLAD RAIN SCREEN TRANSITIONAL SHELTER BUILDING WITH 38 SRO APARTMENTS (50- BED OVERNIGHT FLOOR, SUPPORTING SPACES AND ADMINISTRATIVE OFFICES INCLUDING 1-PARKING SPACE OFF ALLEY) PER PLANS

NUMBER OF DWELLING UNITS: 38

NUMBER OF PAVED PARKING SPACES:

<u>NOTE:</u> The Municipality of City’s department of buildings issues the certificate of occupancy, after the property has been inspected and meets building codes. The developer usually applies for the certificate and must be present for all required inspections. In Chicago, for example, the reinspection fee must be paid to the City's Department of Finance before the certificate can be issued.

Other Supporting Documents

Building Identification Number Form

BIN Form ensures the property is made aware of the individual identification number per building.

NOTE: The correct BINs ***MUST*** be listed on the TIC.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

EXHIBIT A

Building Identification Number ("BIN") Form
For Carryover Allocation

Project Name:
Project ID Number:
Owner:
Taxpayer Identification Number
[redacted]
Date of Allocation: December 31, 2019

*Total Buildings: 1 — Total Units: 60

Total Qualified Low Income Units: 60

Total Units <30% AMI: 12 — Total Units <40% AMI: 0

Total Units <50% AMI: 24 — Total Units <60% AMI: 24

Total Units <80% AMI: 0 — Total Market Rate Units: 0

For multiple buildings, if addresses have not been assigned, a map showing the street locations of the buildings must be included.

Bldg.	Building Identification Number (BIN)	Building Address (Including zip code)	Expected Placed In Service Date
1	IL-19-[redacted]	[redacted]	May 2021
2			

Tools & Tips

- Attend Long -Term Monitoring Meetings hosted by Illinois Housing Development Authority (IHDA). This is for the Owner, The Managing Agent, and the Property Manager. Conducted for new developments transferred to IHDA's Asset Management, and a change of ownership (Transfer of Physical Asset, only). *Very important to attend this meeting!*

- If an owner is changing the management company, it is imperative the owner provide the new managing agent and the new property manager, all pertinent information for the development.

- Review the Agreements Carefully: Ensure you have all applicable agreements. Make your life easier – use highlighters, sticky notes, and even spreadsheets to summarize key components.

- Understand the Terminology: Keep a cheat sheet of the most common stipulations. Most are usually listed on Page one of the regulatory agreements, and if necessary, seek clarification.

- Review similar deals side-by-side to help you see similarities and differences.

Why Training & Development Matters…

1

These are long-term commitments. Regulatory Agreements, EUA, etc., are the backbone of your compliance requirements. Misunderstanding or misinterpreting a requirement could mean penalties or even having to repay credits. It’s the make-or-break for your projects.

2

Once you know what to look for, these start to look familiar - the key is spotting patterns. Training makes future reviews easier, and helps you catch expensive surprises and conflicts in time. The more deals you read, the sharper your instincts get.

Case Study - Example

An owner/agent missed a clause that limited gross rent increases to a local standard, not HUD’s. They raised rents based on the wrong index and lost their credits for the year. All because of one line in the agreement. This resulted in an 8823.

This is why it is important to *Read, Read, Read* your agreements thoroughly!

That's why I say: Read. The. Fine. Print.

To Conclude

Here is what I want you to take away:

These Agreements are the backbone of your compliance. You will run into them repeatedly and understanding them is the key for the success of your projects.

Focus on what affects Compliance: Income levels, rent caps, terms, reports, and penalties.

Our Contact Information

871-271-8225

acruz@ihda.org

www.ihda.org

We Appreciate Your Feedback

Owner & Agent Training - Decoding Regulatory Requirements: Agreements &