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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

MICHAEL J. ...  
RECORDER

Applegate & Thorne-Thomsen  
322 South Green Street  
Suite 412  
Chicago, Illinois 60607  
Attention: Bennett P. Applegate, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

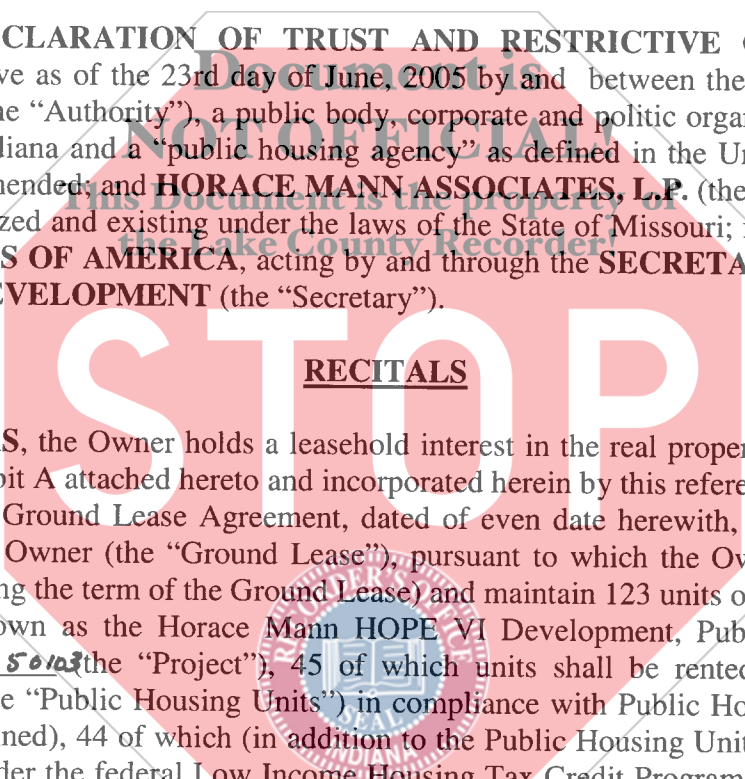
**DECLARATION OF TRUST AND RESTRICTIVE COVENANTS FOR  
HORACE MANN HOPE VI DEVELOPMENT**

**THIS DECLARATION OF TRUST AND RESTRICTIVE COVENANTS** (the "Trust") is effective as of the 23rd day of June, 2005 by and between the **GARY HOUSING AUTHORITY** (the "Authority"), a public body, corporate and politic organized under the laws of the State of Indiana and a "public housing agency" as defined in the United States Housing Act of 1937, as amended; and **HORACE MANN ASSOCIATES, L.P.** (the "Owner"), a limited partnership organized and existing under the laws of the State of Missouri; for the benefit of the **UNITED STATES OF AMERICA**, acting by and through the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** (the "Secretary").

**RECITALS**

**WHEREAS**, the Owner holds a leasehold interest in the real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property") under that certain Ground Lease Agreement, dated of even date herewith, by and between the Authority and the Owner (the "Ground Lease"), pursuant to which the Owner shall construct, operate, own (during the term of the Ground Lease) and maintain 123 units of multi-family rental housing to be known as the Horace Mann HOPE VI Development, Public Housing Project number: ~~1N36R01150103~~ the "Project"), 45 of which units shall be rented to public housing eligible tenants (the "Public Housing Units") in compliance with Public Housing Requirements (as hereinafter defined), 44 of which (in addition to the Public Housing Units) shall be rented to eligible tenants under the federal Low Income Housing Tax Credit Program as established at 26 U.S.C. Section 42 ("Section 42"), and 34 of which shall be rented to market rent tenants;

**WHEREAS**, the Authority and the Secretary have entered into a certain HOPE VI Grant Agreement providing for, among other things, a grant of HOPE VI funds and other public housing funds (the "Authority Funds") to be made to the Authority by the U.S. Department of



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Housing and Urban Development. Pursuant to a certain subgrant agreement, the Authority shall give \$500,000 of Authority Funds to Gary Housing Development Corporation, an Indiana not-for-profit corporation ("GHDC"), to be lent to the Owner by GHDC, to assist in the financing of certain Project development costs; such loan shall be evidenced by a second leasehold deed of trust. Further, pursuant to a certain grant agreement, Urban Strategies, Inc., a Missouri not-for-profit corporation ("Urban"), shall give \$76,500 to the Authority, from proceeds obtained by Urban from a grant from the John S. and James L. Knight Foundation (the "Knight Foundation Grant"). The Authority shall combine the Knight Foundation Grant funds with \$5,144,560 in Authority Funds to loan \$5,221,060 to the Owner, as evidenced by a third leasehold deed of trust, to assist in the construction of the Public Housing Units and related improvements;

**WHEREAS**, the Authority and the Secretary have also entered into an Annual Contributions Contract, dated as of November 9, 1995, which has been amended as of the date hereof by a Mixed-Finance Amendment (collectively, the "ACC") providing for, among other things, grants and annual contributions to be made by the Secretary to assist the Authority in developing, maintaining and operating the Public Housing Units pursuant to the Public Housing Requirements;

**WHEREAS**, the parties intend that the Public Housing Units shall be eligible to receive the benefit of the ACC pursuant to a Regulatory and Operating Agreement by and between the Authority and the Owner and approved by the Secretary;

**WHEREAS**, the Authority, as recipient of the HOPE VI funds and annual contributions of operating subsidies pursuant to the ACC, and the Owner, as borrower of such HOPE VI funds and recipient of a portion of the Authority's public housing operating subsidies under the Regulatory and Operating Agreement, acknowledge the continuing interest of the Secretary in the Public Housing Units for the period required by law; and

**WHEREAS**, the Secretary, in return for the grant of the HOPE VI funds, the public housing development funds and the annual contributions on behalf of the Project, desires to maintain an interest in the Project and Property as described below by means of this Trust.

**NOW, THEREFORE**, to assure the Secretary of the performance by the Authority and the Owner, and any successors in interest to any of such parties, of the covenants contained in the ACC, the Regulatory and Operating Agreement and the Ground Lease, the parties hereby acknowledge and agree that:

1. The Authority is possessed of and holds in trust for the benefit of the Secretary, for the purposes hereinafter stated, fee simple interest in the Property. The Owner pursuant to the Ground Lease is possessed of and holds a 57-year leasehold estate in the Property and title to all buildings and fixtures developed or to be developed thereon, including all personalty related to the Public Housing Units, for the purposes hereinafter stated, the Public Housing Units and the Owner's leasehold interest pursuant to the Ground Lease in the Property related thereto, together with all fixtures developed or to be developed appurtenant to the Public Housing Units (collectively, the "Project").

2. During the existence of the trust created hereby, the Secretary has been granted and is possessed of an interest in the fee simple estate held by the Authority and the leasehold estate held by the Owner, to wit:

- (a) The Project shall be developed, operated and maintained in compliance with the Public Housing Requirements for not less than a forty (40) year period (beginning on the date hereof) or such other period of time as may be required by applicable law. Such period shall be extended for 10 years after the end of the last Authority fiscal year for which operating subsidy is provided by the Authority for the Project, or as may be otherwise required by law. As used in this Trust, Public Housing Requirements shall mean (i) the United States Housing Act of 1937, as amended, and all regulations issued pursuant there (the "Act"), (ii) the Quality Housing and Work Responsibility Act of 1998, Public Law 105-276, and regulations thereunder, (iii) any other Federal laws and regulations thereunder pertaining to public housing, (iv) Executive Orders (v) the ACC, (vi) the Regulatory and Operating Agreement, and (vii) this Trust, as all of the foregoing may be amended from time to time, all to the extent applicable to the Project.
- (b) The Public Housing Units shall be made available only to persons eligible for admission to, and continued occupancy in, public housing under the Public Housing Requirements.

3. The Authority shall remain seized of its ownership and other rights it possesses with respect to the Property, and the Owner of its leasehold and possessory rights with respect to the Property and the Project (as such interests exist at the time of the execution of this Trust), and neither shall dispose of or encumber their interests in the same, nor demolish the Project without the prior written approval of the Secretary, except that:

- (a) Not in any derogation of the interest of the Secretary hereunder in assuring that the Public Housing Units are developed, operated and maintained as public housing in accordance with the Public Housing Requirements, the Owner may enter into agreements, including the Ground Lease, the Regulatory and Operating Agreement and any mortgages, deeds of trust or other instruments encumbering the Owner's leasehold interest in the Property and the Project, to the extent such agreements are otherwise approved by the Secretary in accordance with the requirements of 24 C.F.R. Part 941, Subpart F relating to the mixed-finance development and operation of the Public Housing Units, and thereafter transfer pursuant to those agreements such interests to a mortgagee or beneficiary by foreclosure or deed-in-lieu of foreclosure, or to a third party purchaser pursuant to a foreclosure sale, provided that any such transfer shall be subject to the terms of this Trust; and

- (b) The Owner may (i) lease the units in the Project for their intended uses, which with respect to the Public Housing Units shall be pursuant to the Public Housing Requirements, (ii) make normal uses and encumbrances associated with the operation of the Property, including entering into subordinate liens approved by the Authority and other senior lien holders created in connection with the purchase or financing of replacements or repairs necessary for the normal use and operation of the Property, (iii) convey or otherwise dispose of any personal property owned by the Owner, (iv) request that the Authority convey or dedicate portions of the Property that may be required for the construction of streets and other public rights-of-way required to serve the Project, and (v) request that the Authority grant easements or rights-of-way for the purpose of obtaining utility services for the benefit of the Project; and
- (c) With the approval of the Secretary, if applicable, the Owner and the Authority may release any property from the trust hereby created; provided, nothing herein shall be construed as prohibiting the conveyance of title to, or the delivery of possession of the Project to, the Secretary pursuant to the ACC, or prohibiting the conveyance by the Owner of its interest in the Property and/or the Project to the Authority or its designate as provided for in Section 42.

4. This Trust runs with title to the Property and shall encumber the Property for the period set forth in Section 2(a) above.

5. No transfer, conveyance, or assignment shall be made, without the approval of the Authority and HUD, of (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to herein as a "Controlling Interest") in the Owner, or (ii) a Controlling Interest in any entity which has a controlling Interest in the Owner, or (iii) prior to payment in full of all equity contributions described in the evidentiary documents required to be approved by HUD under the Mixed-Finance ACC Amendment, any other interest in the Owner, or in any partner or member thereof. The Authority and HUD agree that they will not unreasonably withhold, delay, or condition a request by the Owner for consent to an internal reorganization of the corporate or partnership structure of the Owner or any of the partners, members, or stockholders of the Owner. A limited partnership interest in the Owner, pursuant to the partnership agreement of the Owner, shall not be deemed to be a controlling interest.

Notwithstanding the foregoing:

i. The Authority and HUD have approved the admission of SunAmerica Housing Fund 1293, (the "Investor Limited Partner"), a Nevada limited partnership, as a limited partner of the Owner, and the grant by the general partner of a security interest in the general partner's interest in the Owner pursuant to a Pledge and Security Agreement between the general partner and the Investor Limited Partner.

ii. The consent of HUD and the Authority shall not be required for the transfer of any limited partnership interests in the Investor Limited Partner, or the



admission of any new limited partner into the Investor Limited Partner, so long as AIG Retirement Services, Inc. remains the general partner of the Investor Limited Partner; and

ii. HUD and the Authority agree that they shall not unreasonably withhold their respective approval of the exercise by the Investor Limited Partner of its right under the partnership agreement of the Owner to remove the general partner and to designate a substitute general partner of Owner in accordance with the terms of the partnership agreement of the Owner, or pursuant to the Pledge and Security Agreement between the general partner and the Investor Limited Partner.

6. The restrictive covenants set forth in this Trust shall be, and are, covenants running with the Property for the term set forth in Section 2(a) above and this Trust is binding upon the Authority and the Owner and each of their successors and assigns and all subsequent owners of the Public Housing Units and is not merely a personal covenant of the Owner and/or the Authority and shall bind the Owner and the Authority and each of their respective successors and assigns during the period set forth in Section 2(a) above.

7. This Trust survives regardless of whether any subsequent instrument hereafter executed conveying the Public Housing Units or any portion thereof provides that such conveyance is made subject to this Trust.

8. Upon the expiration of the term of this Trust as set forth in Section 2(a) above, this Trust and the trust hereby created shall automatically terminate and be of no further force and effect without the necessity of any further action by the parties hereto.

9. All applicable requirements of the State of Indiana have been satisfied.



IN WITNESS WHEREOF, the parties hereto, by their duly authorized officers, have caused this Trust to be executed as of the date and year first above written.

AUTHORITY:

**GARY HOUSING AUTHORITY**

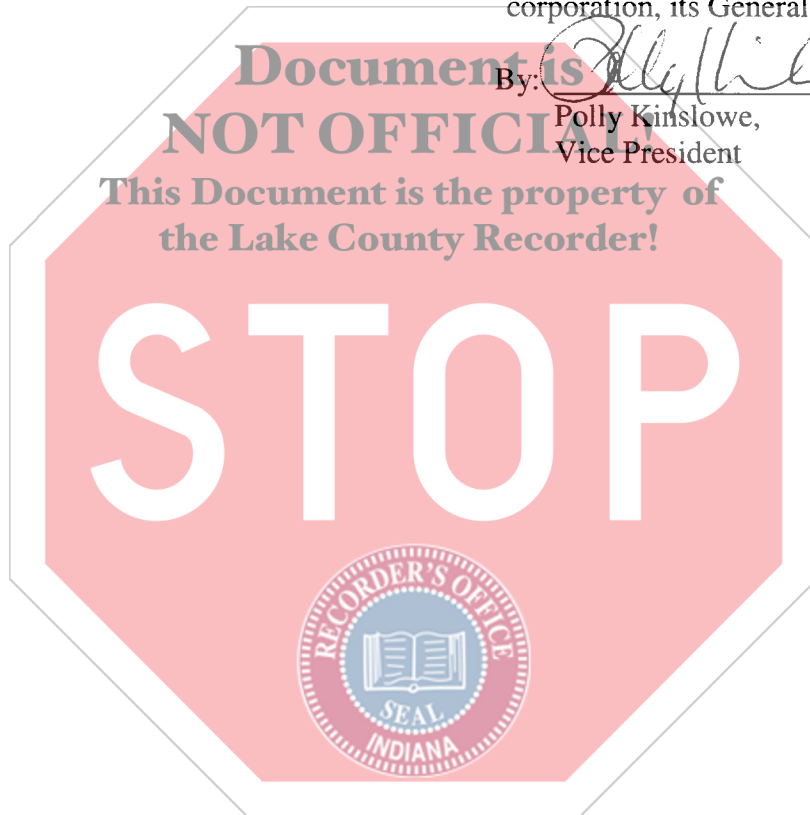
By: Estelle W Brooks  
Estelle W. Brooks,  
Executive Director

OWNER:

**HORACE MANN ASSOCIATES, L.P., a**  
Missouri limited partnership

By: MBA Urban Development Co., a Missouri  
corporation, its General Partner

Document is Polly Kinslow  
By: Polly Kinslow  
Polly Kinslow,  
Vice President



STATE OF INDIANA )  
 )  
COUNTY OF LAKE )

On this 23rd day of June, 2005, appeared Estelle Brooks, who being by me duly sworn, did say that she is the Executive Director of the Gary Housing Authority, and that the foregoing instrument was signed on behalf of said Authority by authority of its Board of Commissioners on behalf of the Authority, and acknowledged that she executed the same as the free act and deed of said Authority.

WITNESS my hand and official seal.

*Terry Brown Collins*



STATE OF INDIANA )  
COUNTY OF LAKE )

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On this 23rd day of June, 2005, appeared Polly Kinslow, who being by me duly sworn, did say that she is the Vice President of MBA Urban Development Co., a Missouri corporation and the general partner of Horace Mann Associates, L.P., a Missouri limited partnership, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors on behalf of the limited partnership and on behalf of its general partner, and acknowledged that she executed the same as the free act and deed of said corporation.

WITNESS my hand and official seal.

*Terry Brown Collins*



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Blocks 1, 2, 3, 4, 5, and 6 in Horace Mann Subdivision, recorded in Plat Book 96 page 54, in the Office of the Recorder of Lake County, Indiana.

