

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2005 052040

2005 JUN 23 10:00 AM

(For Recorder's Purposes Only)

MICHAEL J. ...
RECORDER

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NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the 23rd day of June, 2005, by and between the **UNITED STATES OF AMERICA**, acting by and through the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** ("HUD") and **HORACE MANN ASSOCIATES, L.P.**, a Missouri limited partnership (the "Partnership").

WITNESSETH:

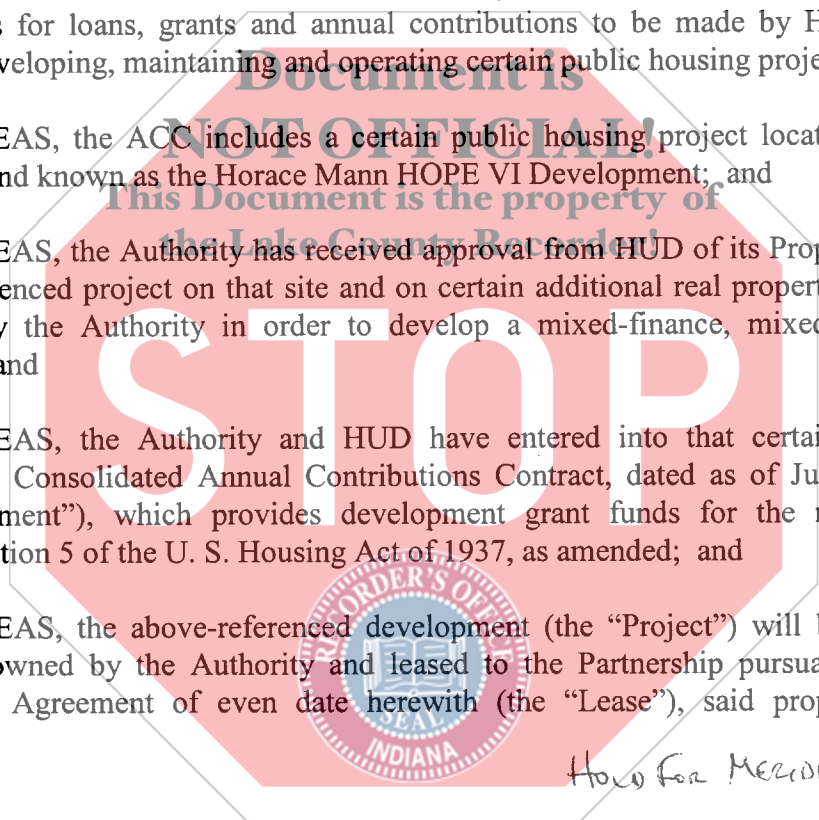
WHEREAS, the Gary Housing Authority (the "Authority") and HUD entered into that certain Consolidated Annual Contributions Contract, dated November 9, 1995 (the "ACC"), which provides for loans, grants and annual contributions to be made by HUD to assist the Authority in developing, maintaining and operating certain public housing projects; and

WHEREAS, the ACC includes a certain public housing project located in the City of Gary, Indiana and known as the Horace Mann HOPE VI Development; and

WHEREAS, the Authority has received approval from HUD of its Proposal to redevelop the above-referenced project on that site and on certain additional real property acquired and to be acquired by the Authority in order to develop a mixed-finance, mixed-income housing development; and

WHEREAS, the Authority and HUD have entered into that certain Mixed-Finance Amendment to Consolidated Annual Contributions Contract, dated as of June 23, 2005, (the "ACC Amendment"), which provides development grant funds for the new development pursuant to Section 5 of the U. S. Housing Act of 1937, as amended; and

WHEREAS, the above-referenced development (the "Project") will be constructed on real property owned by the Authority and leased to the Partnership pursuant to that certain Ground Lease Agreement of even date herewith (the "Lease"), said property being more



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particularly described in the Lease and referred to therein as the "Leased Premises" and as evidenced by that certain Memorandum of Lease of even date herewith and placed of record on or about this date in the Office of the Recorder of Deeds for the County of Lake, Indiana, and more particularly described on Exhibit A attached hereto; and

WHEREAS, HUD has certain rights with respect to the Leased Premises pursuant to the ACC and the ACC Amendment; and

WHEREAS, for the benefit of the Project, the parties hereto desire to enter into this Agreement on the terms set forth below.

NOW, THEREFORE, in consideration of the premises, Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Non-Disturbance. In the event that HUD or any transferee from or through HUD acquires title to, or possession of the Leased Premises pursuant to HUD's exercise of its remedies in the event of a default by the Authority under the ACC or the ACC Amendment or otherwise under applicable law, then so long as the Partnership is not in default under the Lease (subject to any applicable notice and cure periods set forth therein) and, through its actions, has not caused the Authority to be in substantial default under the ACC or the ACC Amendment, (i) the Lease shall not be terminated, nor shall the Partnership's use, possession or enjoyment of the Leased Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any manner except in accordance with the provisions of the Lease, (ii) neither HUD nor such transferee shall take any action that would interfere with or disturb the Partnership's possession or use of the Leased Premises or other rights under the Lease except in accordance with the provisions of the Lease, and (iii) the Leased Premises shall be subject to the Lease, and HUD and any such transferee shall recognize the Partnership as the lessee of the Leased Premises for the remainder of the term of the Lease in accordance with the provisions thereof.

2. Attornment. The Partnership hereby agrees with HUD that, in the event HUD or its transferee acquires title to or possession of the Leased Premises pursuant to HUD's exercise of its remedies in the event of a default by the Authority under the ACC or the ACC Amendment or otherwise under applicable law, then the Partnership shall attorn to and recognize HUD or its transferee as the lessor under the Lease for the remainder of the term thereof, and the Partnership shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. The Partnership further covenants and agrees to execute and deliver upon request of HUD, or its assigns, an appropriate agreement of attornment to HUD and any subsequent titleholder of the Leased Premises.

3. No Modification of Lease. Nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Lease.

A handwritten signature in black ink, appearing to be the initials 'JW' or similar, located in the bottom right corner of the page.

4. No Modification of HUD Regulatory Agreement. Nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the rights or obligations of HUD or the Partnership under the Regulatory Agreement being entered into by and between HUD and the Partnership, pursuant to HUD's endorsement of the Mortgage Note for Project 073-35656 under Section 221(d)(4) of the National Housing Act.

5. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

7. Provisions Binding. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of HUD and the Partnership.

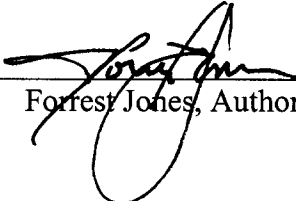


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HUD:

UNITED STATES OF AMERICA,
Secretary of Housing and Urban Development

By: 
Forrest Jones, Authorized Representative

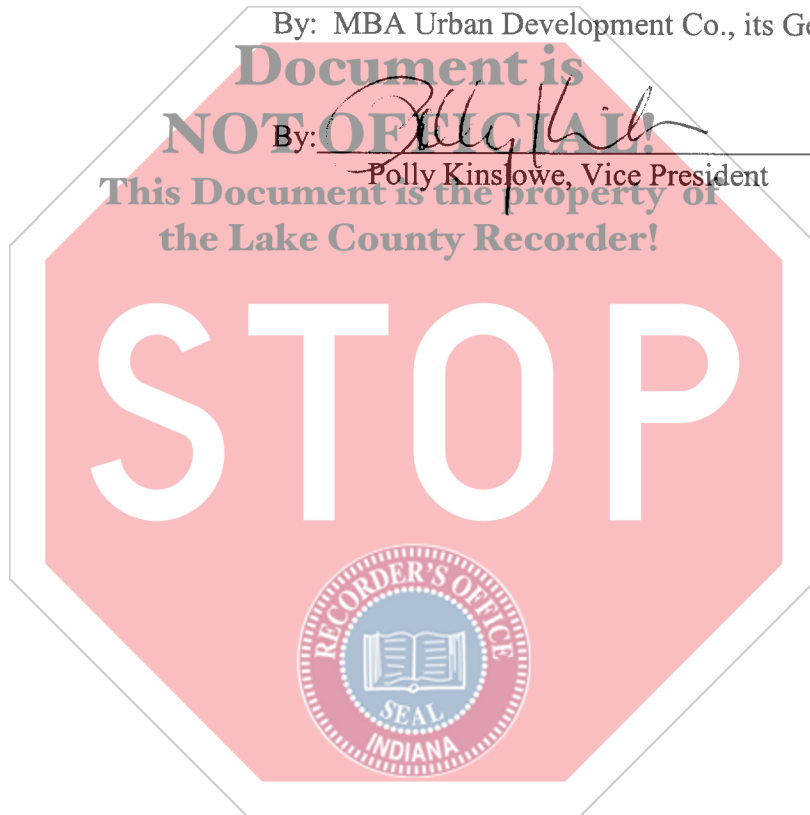
PARTNERSHIP:

HORACE MANN ASSOCIATES, L.P.

By: MBA Urban Development Co., its General Partner

By: 
Polly Kinslowe, Vice President

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the Lake County Recorder!**



STATE OF INDIANA)
) ss.
COUNTY OF Marion)

On this 22nd day of June, 2005, appeared before me Forrest Jones, known to me to be the duly appointed authorized agent and the person who executed the aforesaid instrument by virtue of the authority vested in him, and acknowledged that he executed the aforesaid instrument for and on behalf of the Secretary of Housing and Urban Development for the purpose therein expressed.

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

Marcia D. Yerman
Notary Public
Marcia D. Yerman, Marion Co. resident

My Commission expires:
October 11, 2008

STATE OF
) ss.
COUNTY OF

On this 23rd day of June, 2005, appeared Polly Kinslowe, who being by me duly sworn, did say that she is the Vice President of MBA Urban Development Co., a Missouri corporation and 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.

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

Terry Brown Collins
Notary Public

My Commission expires:



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.

