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2011 025037

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2011 MAY -4 PM 1:13

MICHELLE TRUJMAN
RECORDER

Regulatory Agreement for Multifamily Housing Projects



Return to:
Title Services, Inc.
610 E Roosevelt Rd #100
Wheaton Il
60187

#30
CK#
35177
Cw
1REF

502361
**Regulatory Agreement for
 Multifamily Housing Projects**

U.S. Department of Housing
 and Urban Development
 Office of Housing
 Federal Housing Commissioner

Upon recording return to:
 HUD Counsel
 U.S. Department of Housing and Urban
 Development
 151 N. Delaware Street, Suite 1200
 Indianapolis, Indiana 46204-2526

Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits

Project Number 073-11462		Mortgagee WELLS FARGO BANK, NATIONAL ASSOCIATION	
Amount of Mortgage Note \$4,080,000.00		Date as of even date herewith	
Mortgage Recorded State Indiana	County Lake	Date contemporaneously herewith	Originally endorsed for insurance under Section 207 pursuant to Section 223(f)

Doc # 2011 025036 as of 5th day of May, 2011 between
WILLOWS ON CLARK ROAD LIMITED PARTNERSHIP, an Indiana limited partnership whose ad-
 dress is 561 Broadway, Gary, Indiana 46402

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described note or in consideration of the consent of the Secretary to the transfer of the mortgaged property or the sale and conveyance of the mortgaged property by the Secretary, and in order to comply with the requirements of the National Housing Act, as amended, and the Regulations adopted by the Secretary pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage, or during any time the Secretary is obligated to insure a mortgage on the mortgage property:

1. Owners, except as limited by paragraph 17 hereof, assume and agree to make promptly all payments due under the note and mortgage.
2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Secretary of an amount equal to \$ 8,416.67 per month unless a different date or amount is approved in writing by the Secretary. *

Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event that the owner is unable to make a mortgage note payment on the due date and that payment cannot be made prior to the due day of the next such installment or when the mortgagee has agreed to forgo making an election to assign the mortgage to the Secretary based on a monetary default, or to withdraw an election already made, the Secretary is authorized to instruct the mortgagee to withdraw funds from the reserve fund for replacements to be applied to the mortgage payment in order to prevent or cure the default. In addition, in the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

- (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.

3. Real property covered by the mortgage and this agreement is described in Schedule A attached hereto.

(This paragraph 4 is not applicable to cases insured under Section 232.)

4. (a) Owners shall make dwelling accommodation and services of the project available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing by the Secretary, for any project subject to regulation of rent by the Secretary. Accommodations shall not be rented for a period of less than thirty (30) days, or, unless the mortgage is insured under Section 231, for more than three years. Commercial facilities shall be rented for such use and upon such terms as approved by the Secretary. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of Owners and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Secretary thereof.

- (b) Upon prior written approval by the Secretary, Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule. Approval of charges for facilities and services is not required for any project not subject to regulation of rent by the Secretary.

- (c) For any project subject to regulation of rent by the Secretary, the Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

*In addition, the Owners shall make an initial deposit to said Fund in the amount of \$50,000.00.

- (i) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or;
- (ii) Deny the increase stating the reasons therefor.
5. (a) If the mortgage is originally a Secretary-held purchase money mortgage, or is originally endorsed for insurance under any Section other than Sections 231 or 232 and is not designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.
- (b) If the mortgage is originally endorsed for insurance under Section 221, Owners shall in selecting tenants give to displaced persons or families an absolute preference or priority of occupancy which shall be accomplished as follows:
- (1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by the Secretary, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants;
- (2) Thereafter, and on a continuing basis, such preferred applicants shall be given preference over nonpreferred applicants in their placement on a waiting list to be maintained by the Owners; and
- (3) Through such further provisions agreed to in writing by the parties.
- (c) Without the prior written approval of the Secretary not more than 25% of the number of units in a project insured under Section 231 shall be occupied by persons other than elderly persons.
- (d) All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of the Owners to obtain occupancy by elderly persons.
6. Owners shall not without the prior written approval of the Secretary:
- (a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property.
- (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from surplus cash, except for reasonable operating expenses and necessary repairs.
- (c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property.
- (d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project.
- (e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:
- (1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;
- (2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;
- (3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and
- (4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.
- (f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.
- (g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.
- (h) Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.
7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.
8. Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.
9. (a) Any management contract entered into by Owners or any of them involving the project shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.
- (b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
- (c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.

- (d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.
- (e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.
- (f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.
- (g) All rents and other receipts of the project shall be deposited in the name of the project in a financial institution, whose deposits are insured by an agency of the Federal Government. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash as permitted by paragraph 6(e) above. Any Owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall hold such funds in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.
- (h) If the mortgage is insured under Section 232:
- (1) The Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as a nursing home and shall not lease all or part of the project except on terms approved by the Secretary.
 - (2) The Owners shall suitably equip the project for nursing home operations.
 - (3) The Owners shall execute a Security Agreement and Financing Statement (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the insured mortgage. The Security Agreement and Financing Statement shall constitute a first lien upon such equipment and shall run in favor of the mortgagee as additional security for the insured mortgage.
 - (i) If the mortgage is insured under Section 231, Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as housing for the elderly.
10. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin, including Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 82 Stat. 73), as amended, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100, 107 and 110, and Subparts I and M of Part 200).
11. Upon a violation of any of the above provisions of this Agreement by Owners, the Secretary may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Secretary may:
- (a) (i) If the Secretary holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;
 - (ii) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;
 - (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Owners' obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project.
 - (c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.
 - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
12. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Secretary because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Secretary their rights to the rents, profits, income and charges of whatsoever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

13. As used in this Agreement the term:

- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;
- (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;
- (d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;
- (e) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto;
- (f) "Surplus Cash" means any cash remaining after:
 - (1) the payment of:
 - (i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;
 - (ii) All amounts required to be deposited in the reserve fund for replacements;
 - (iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
 - (2) the segregation of:
 - (i) An amount equal to the aggregate of all special funds required to be maintained by the project; and
 - (ii) All tenant security deposits held.
- (g) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project.

- (h) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;
- (i) "Section" refers to a Section of the National Housing Act, as amended.
- (j) "Displaced persons or families" shall mean a family or families, or a person, displaced from an urban renewal area, or as the result of government action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970.
- (k) "Elderly person" means any person, married or single, who is sixty-two years of age or over.

14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Secretary and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

16. The invalidity of any clause, part or provisions of this Agreement shall not affect the validity or the remaining portions thereof.

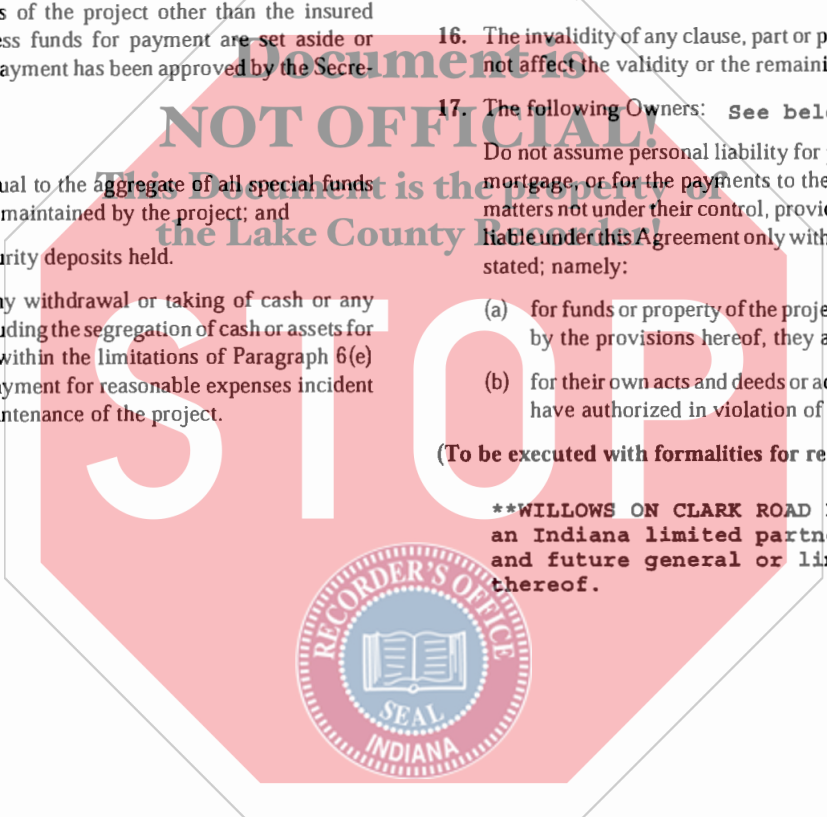
17. The following Owners: **See below.****

Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

- (a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and
- (b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

(To be executed with formalities for recording a deed to real estate.)

****WILLOWS ON CLARK ROAD LIMITED PARTNERSHIP, an Indiana limited partnership and all present and future general or limited partners thereof.**



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

WILLOWS ON CLARK ROAD LIMITED PARTNERSHIP
an Indiana limited partnership

By: Ronald M. Gatton
Ronald M. Gatton
General Partner

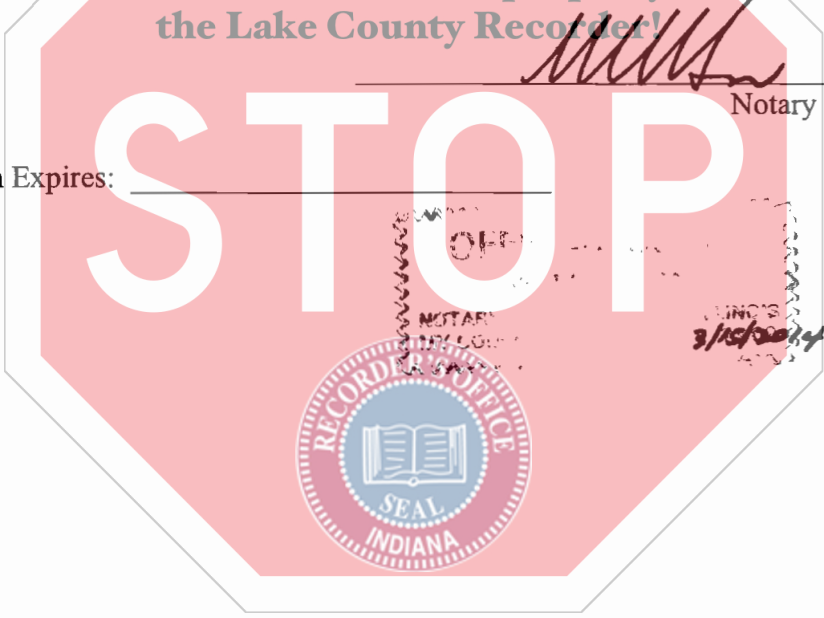
STATE OF ~~INDIANA~~ ILLINOIS]
COUNTY OF COOK] ss:

I hereby certify that on this day, before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared Ronald M. Gatton, to me known to be the person described in and who executed the foregoing instrument as General Partner of WILLOWS CLARK ROAD LIMITED PARTNERSHIP, an Indiana limited partnership named therein, and acknowledged before me that he/she executed the same as such officer in the name and on behalf of said limited partnership.

Witness my hand and official seal in the county and state last aforesaid, this 3rd day of May, 2011.

[SEAL]

My Commission Expires: _____



073-11462

SECRETARY OF HOUSING AND URBAN
DEVELOPMENT ACTING BY AND
THROUGH THE FEDERAL HOUSING
COMMISSIONER

By: Eileen R. Mitchell
Authorized Agent

STATE OF INDIANA]
] :ss
COUNTY OF MARION]

I, MARIANNE CHRZANOWSKI, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that on the 3RD day of May, 2011, personally appeared before me Eileen R. Mitchell, who, being duly sworn, did say that he/she is the duly appointed Authorized Agent and the person who executed the foregoing instrument by virtue of the authority vested in him/her by 24 C.F.R. 200.118/119 and acknowledged the same to be his/her free and voluntary act and deed as Authorized Agent for and on behalf of the SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

Witness my hand and official seal.

Marianne Chrzanowski
Notary Public

[SEAL]

My Commission Expires: OCT. 30, 2013

Prepared by:

Harrison C. Smith, Esq.
Krooth & Altman LLP
1850 M Street, NW, Suite 400
Washington, DC 20036

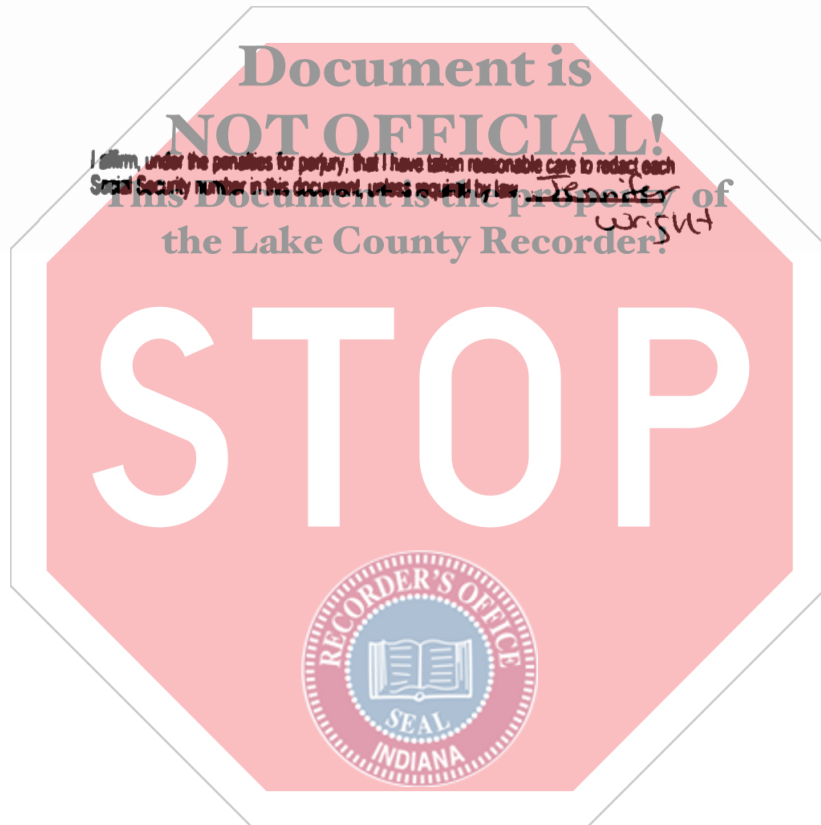


EXHIBIT "A"

Legal Description

Part of the Northwest Quarter of Section 6, Township 36 North, Range 8 West of the Second Principal Meridian, in the City of Gary, Lake County, Indiana, more particularly described as follows: Beginning at a point 33 feet East of the West line of said Northwest Quarter of Section 6 and 220 feet North of the center line of Fifth Avenue; thence East and parallel with the center line of Fifth Avenue, 200 feet; thence South and parallel with the West line of said Section 6, a distance of 15 feet; thence East and parallel with the center line of Fifth Avenue, 280 feet to a point on a line which is 513 feet East of the West line of said Northwest Quarter of Section 6; thence due North to a point on the South line of U.S. Highway No. 12; thence Northwesterly along the Southwesterly line of U.S. Highway No. 12 to the South line of property conveyed by the Gary Land Company to Chicago, South Shore and South Bend Railroad by Warranty Deed dated July 21, 1927, and recorded in Deed Record 405, page 184, in the Office of the

Recorder of Lake County, Indiana; thence West along the South line of said property conveyed to Chicago, South Shore and South Bend Railroad to a line 33 feet East of the West line of said Northwest Quarter of Section 6; thence South and parallel with said West line of the Northwest Quarter of Section 6, a distance of 993.29 feet to the point of beginning.



RIDER I TO REGULATORY AGREEMENT

Willows on Clark Road
Gary, Lake County, Indiana
FHA Project No. 073-11462

RIDER I FOR PROJECT REPLACEMENT RESERVE NEEDS

ATTACHED TO REGULATORY AGREEMENT FOR
MULTIFAMILY HOUSING PROJECTS

WILLOWS ON CLARK ROAD LIMITED PARTNERSHIP, an Indiana limited partnership (the "Owner"); the Secretary of Housing and Urban Development (the "Secretary"); and Developers Mortgage Corporation (the "Mortgagee") do hereby agree to the following terms and provisions of this Rider which are incorporated in and shall constitute a part of (a) that certain Regulatory Agreement for Multifamily Housing Projects by and between the Owner and the Secretary (the "Regulatory Agreement"), to which this Rider is attached, and (b) that certain Request For Endorsement of Credit Instrument delivered to the Secretary by the Owner and Mortgagee in connection with the Project (the "Request for Endorsement").

Pursuant to paragraph 2 (a) of the Regulatory Agreement, the Owner has agreed to establish and maintain a reserve fund for replacements as required therein (the "Reserve Fund For Replacements") which is subject to all applicable requirements of the Secretary. Pursuant to the Secretary's requirements for insured mortgages, as of the current date, the Secretary has the right, commencing in the tenth (10th) year of the term of the Mortgage referenced on Page 1 of the Regulatory Agreement (the "Mortgage"), and every ten (10) years thereafter, to reevaluate the Project's Reserve Fund For Replacements needs, and, if appropriate in the sole determination of the Secretary, adjust the Owner's required deposits to the Reserve Fund For Replacements at each 10-year period. To assist HUD in the reevaluation of the Reserve Fund For Replacements, the Mortgagee must obtain a Project Capital Needs Assessment ("PCNA") every ten (10) years which covers the next ten years of the Project, or the balance of the term of the Mortgage, whichever is less, plus two (2) additional years. To carry out the obligations of the Mortgagee hereunder, the Mortgagee shall order a PCNA at least 90 days prior to the 10th anniversary date of the Mortgage, and thereafter 90 days prior to each subsequent 10th anniversary date. Each PCNA shall be ordered by the Mortgagee under instructions to the contracting party to deliver the PCNA to the Mortgagee within 60 days of the date of the order. Upon receipt of the PCNA, the Mortgagee shall forward the original to the Secretary, and shall concurrently send a copy to the Owner. The Mortgagee shall in no event be liable or held responsible for any delays in the receipt of the PCNA from the contracting party, nor shall be held liable or responsible to the Owner for any failure in the timely delivery of the copy of the PCNA to the Owner. Upon the Secretary's receipt of the PCNA, the Secretary and or the Mortgagee may, but shall not be obligated to, consult with the Owner on the results of the PCNA and the intended



action, or inaction, of the Secretary with respect to the adjustment of the Reserve Fund For Replacements. Owner shall have the right to object to the findings of the PCNA, but acknowledges that it shall be bound by the final determinations of the Secretary with respect to the PCNA and the required Replacement Reserves deposits. At such time as the Secretary makes a determination of the adjustment, if any, in the deposits to the Reserve Fund For Replacements required of the Owner, it shall so inform the Owner and the Mortgagee not less than thirty (30) days prior to the effective date of the adjustment under the Regulatory Agreement. Upon receipt of such notice from the Secretary, the Owner shall commence payments of the adjusted Reserve Fund For Replacements on the effective date stated in the HUD notice. Failure by the Owner to timely make the payment of the adjusted Reserve Fund For Replacements commencing as of the effective date specified by the Secretary in its notice to the Owner shall constitute a default by the Owner under the Regulatory Agreement, and, at the option of the Mortgagee, a default in the Mortgage.

Owner agrees to cooperate with the Secretary and the Mortgagee in carrying out their responsibilities hereunder, including Owner's agreement to permit, and cooperate with, the ordering and carrying out of the PCNA, including, but not limited to, making the Project available for inspection, testing and evaluation, and making all books and records of the Project and the Owner relevant thereto, available for inspection, and copying, in each case by the Secretary and the Mortgagee, their employees, agents and contractors, at all times during customary business hours of the Project. Further, Owner agrees to pay all costs and expenses of the Mortgagee, its employees, agents and contractors in the preparation, production, and distribution of the PCNA within ten (10) days of being invoiced by the Mortgagee for such costs and expenses. Under current regulations and guidelines of the Secretary, the Owner shall be permitted to pay such costs and expenses out of the Reserve Fund For Replacements, and hereby authorizes the Mortgagee to charge the costs and expenses associated with each PCNA against the Reserve Fund For Replacements. Failure to pay any such costs and expenses as invoiced by the Mortgagee within thirty (30) days of such invoice, shall, at the option of the Mortgagee, constitute a payment default under the Mortgage.

All notices herein required shall be given in the manner as provided in the Regulatory Agreement and the Mortgage.

Nothing contained in this Rider shall restrict, limit or abrogate the rights and remedies of the Secretary under the Regulatory Agreement (including the right to require different dates and amounts for the Reserve Fund For Replacements), or the Mortgagee under the Mortgage, but the provisions contained herein shall be in addition to all such rights and remedies.

The provisions of this Rider are entered into to carry out the requirements of the Secretary, and shall be subject to such modifications, amendments, revisions or other changes as the Secretary may determine are required to be in compliance with the rules, regulations, and guidelines governing the Secretary's endorsement of the Mortgage Note secured by the Mortgage.

