

**LIEN AND RESTRICTIVE COVENANT AGREEMENT**  
**CDBG-D Program Award DR2H-012-007**

A Lien and Restrictive Covenant Agreement ("Agreement") is made by **NWI Veterans Village, LP, an Indiana limited partnership** ("Owner"), the Owner of certain real estate located at **839 Massachusetts Street, Gary, IN 46402** in **Lake County, State of Indiana**, more particularly described on "Exhibit A" ("Real Estate"), and **Broadway Area Community Development Corporation, an Indiana not-for-profit corporation** ("Developer"), as recipient of an award of funds from **Indiana Housing and Community Development Authority, a public body corporate and politic of the State of Indiana** ("IHCDA").

Owner and Developer enter this Agreement for the benefit of IHCDA. IHCDA has the exclusive right to enforce the terms of and protect the interests created by, this instrument.

**I. PURPOSE**

- A. IHCDA administers the state's Community Development Block Grant - Disaster Relief II Program (the "Program"), which funds are awarded to Owner subject to certain rules, regulations, guidance and notices relating to the Program issued by IHCDA from time to time.
- B. Developer and/or Owner received a **recoverable grant** from IHCDA in the amount of **Five Hundred Thousand Dollars and 00/100 (\$500,000.00)** for repair, rehabilitation, construction, acquisition, or reconstruction (including demolition, site clearance and remediation) of affordable rental properties located on the Real Estate ("Project") which assistance is subject to all of the requirements of the Program.
- C. Developer and/or Owner have represented that the Project shall be used in compliance with applicable construction, occupancy, leasing and affordability requirements of the Program and the CDBG-D assisted rental units shall be leased to and occupied by individuals or families whose income is at eighty percent (80%) of the area median income ("Qualifying Tenants").
- D. The Program requires that certain use restrictions be imposed upon any real estate assisted by funds awarded by IHCDA to ensure that the benefits of such funds remain with the intended beneficiaries under the program.
- E. Specifically, IHCDA requires restrictive covenants be placed on the Real Estate as of the date of this Agreement, to remain in effect for the period required by IHCDA's Program Manual ("Affordability Period") which period is indicated below by an "X":

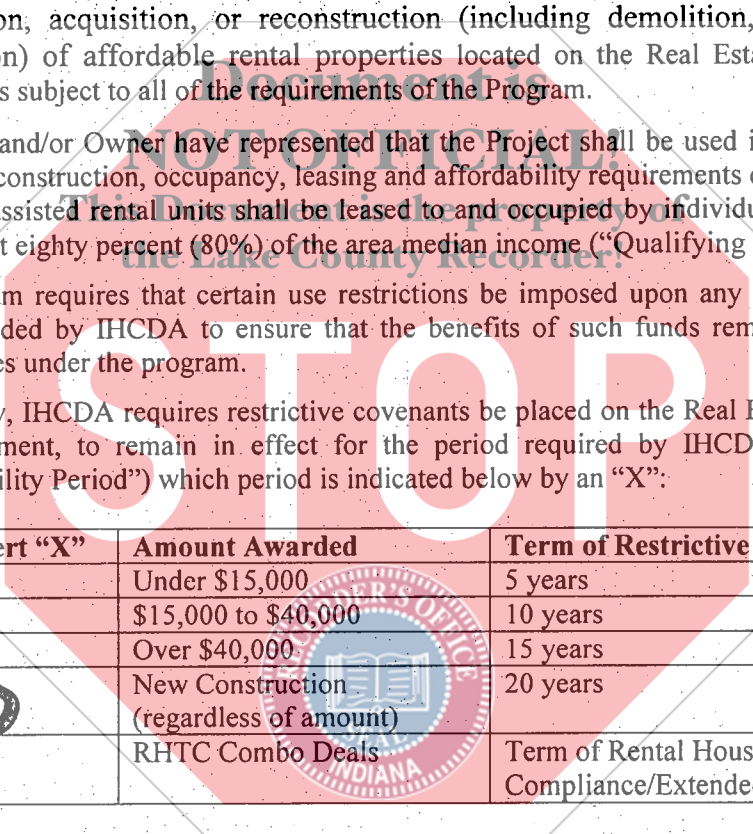
| Insert "X" | Amount Awarded                          | Term of Restrictive Covenants                                    |
|------------|---|--|
|            | Under \$15,000                          | 5 years  |
|            | \$15,000 to \$40,000                    | 10 years   |
|            | Over \$40,000                           | 15 years   |
|            | New Construction (regardless of amount) | 20 years   |
| X          | RHTC Combo Deals                        | Term of Rental Housing Tax Credit Compliance/Extended Use Period |

**II. AGREEMENT**

Owner hereby imposes the following restrictive covenants upon the Real Estate, which shall be enforceable by IHCDA, and Owner hereby warrants, grants and conveys to IHCDA a lien upon the Real

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STATE OF INDIANA  
LAKE COUNTY  
RECORDS  
FEB 23 10:03 AM '14



**FILED**  
**FEB 21 2014**  
**PEGGY HOLINGA KATONA**  
**LAKE COUNTY AUDITOR**

**010841**

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Estate for the period specified above (the "Lien"). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

1. Throughout the Affordability Period the CDBG-D assisted rental units located on the Real Estate shall: (1) be owned by a Qualifying Tenant; (2) be occupied by that individual or family as its primary residence for the remainder of the Affordability Period; and (3) the rent must not exceed **thirty percent (30%)** of the Qualifying Tenant's gross income or the CDBG Supplemental Disaster Recovery Program Rent Limits, as published annually by IHCDA, ("Affordable Rents"). Subsections 1, 2, and 3 of this paragraph shall be collectively defined as "the Affordability Requirements". Throughout the Affordability Period, the maximum rent limits for the rental units in the Project shall remain as follows:

**TABLE A**

| <b>Rent Limits</b> | <b>80%<br/>CDBG<br/>Units</b> |
|--------------------|-------------------------------|
| 0 BR               | 471.00                        |
| 1 BR               | 636.00                        |
| 2 BR               | 792.00                        |
| 3 BR               | 992.00                        |
| 4 BR               | 1,052.00                      |

2. Upon the occurrence of any of the following events during the Affordability Period, the entire sum secured by the Lien, without interest, shall be due and payable by Developer and/or Owner upon demand. Repayment may be demanded upon:
  1. Transfer or conveyance of the Real Estate by deed, land contract, lease, or otherwise, within the applicable Affordability Period;
  2. Commencement of foreclosure proceedings by any mortgagee (or deed in lieu of foreclosure), within 20 years from the effective date of this Agreement; or
  3. If the CDBG-D assisted rental units in the Project are not being used as a residence by a Qualifying Tenant; or
  4. CDBG-D assisted units are not being used or leased in compliance with the Affordability Requirements.

PROVIDED, HOWEVER, the amount specified above shall not be due and payable if the Project is transferred to a new owner, who will use it as rental housing for Qualifying Tenants, or for such other use as specifically approved in writing by IHCDA. If such a transfer occurs, then the transferee owner must agree to take and the Real Estate must remain and continue to be subject to the terms and provisions of this Agreement for the Affordability Period approved by IHCDA.

3. The Lien may be foreclosed in accordance with the laws of the State of Indiana on the date the Real Estate is acquired by foreclosure or deed in lieu of foreclosure, provided IHCDA has received prior written notice of such foreclosure.
4. Developer hereby states, and Owner hereby acknowledges, that the financial assistance received through the CDBG-D Program represents good and valuable consideration for this Agreement and Lien and that use of the Real Estate is subject to the statutes, regulations, terms, conditions, and requirements of the CDBG-D Program as administered by IHCDA.

5. Notwithstanding anything to the contrary in this Agreement, Developer and Owner agree that the Lien is subject and subordinate to any Senior Debt, as defined below, in priority. As used in this Agreement, "Senior Debt" means any indebtedness of Owner to any lender that provides financing to Owner exclusively for the purchase, construction, rehabilitation, or refinancing of the Real Estate. This Agreement will not be subordinate to any debt incurred by Owner after the effective date of this Agreement, unless the new lender consents to the terms of this Agreement. If the Real Estate is transferred to the Senior Debt holder in lieu of foreclosure, or the mortgage securing the Senior Debt is foreclosed, the Lien shall be terminated and released without further action. The foregoing shall not apply to the Project if the Authority determines that such acquisition is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the Affordability Period. IHEDA agrees that the mortgage in favor of BMO Harris Bank N.A. shall be included in the definition of "Senior Debt."
6. This Agreement shall be binding upon the Real Estate and shall constitute covenants running with the land. Developer and Owner agree that any and all requirements of the laws of the State of Indiana which must be satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate shall be satisfied in full. Except as otherwise provided herein, the covenants and restrictions contained herein shall survive and be effective throughout the Affordability Period, regardless of whether any contract, deed or other instrument hereafter executed conveying the Real Estate or a portion thereof provides that such conveyance is subject to this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.
7. In the event there is a breach or violation of the restrictions and covenants set forth herein during the Affordability Period, IHEDA may bring an action at law or in equity in a court of competent jurisdiction to enforce the Lien and restrictions and covenants set forth herein against any or all of the following: the Owner; the Developer; or any subsequent owner in possession at the time of the breach or violation. In addition, IHEDA may recover reasonable attorney's fees and court costs incurred enforcing the Lien.

This Lien and Restrictive Covenant Agreement is effective as of the 20<sup>th</sup> day of December, 2013.









**EXHIBIT A**

LOTS 1 THROUGH 30 (INCLUSIVE) AND ALSO THE 20-FOOT WIDE ALLEY BEING VACATED PER DOCUMENT 2013074816, ALL IN BLOCK 13 IN GARY LAND COMPANY'S FIRST ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 15, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, ALL IN THE CITY OF GARY, LAKE COUNTY, INDIANA.

