

THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING RETURN

TO: Arthur Murphy, Esq.
Illinois Housing Development
Authority
401 N. Michigan Ave., Ste. 900
Chicago, Illinois 60611
Permanent Tax Index
Identification No.:
28-09-404-015, 28-09-404-078 ✓
Property Address:
14900 South Cicero Avenue
Oak Forest, Illinois

0021206093

2890/0123 49 001 Page 1 of 14
2002-10-31 15:35:37
Cook County Recorder 50.00



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HTF-1621 210191

REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (this "Agreement"), made and entered into as of this 1st day of October, 2002, by and between **OAK FOREST HORIZON LIMITED PARTNERSHIP**, an Illinois limited partnership ("Borrower"), and the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** (the "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 (the "Act"), having its principal office at 401 N. Michigan Ave., Suite 900, Chicago, Illinois 60611;

WITNESSETH:

WHEREAS, Borrower is the fee owner of certain real property upon which a housing development consisting of eight-five (85) units (the "Units") will be constructed, legally described in **Exhibit A** attached to and made a part of this Agreement (the "Real Estate"), located at 14900 South Cicero Avenue, in Oak Forest, Illinois. The Real Estate and the improvements to be constructed on it are collectively referred to in this Agreement as the "Development"; and

WHEREAS, Oak Forest Horizon, Inc., an Illinois corporation, is the general partner of the Borrower (the "General Partner"); and

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 (the "Trust Fund Act"), and the rules promulgated thereunder (the "Rules"). All capitalized terms used in this Agreement and not otherwise defined shall have the meanings established in the Trust Fund Act or, if not so established, in the Rules; and

WHEREAS, the Authority has agreed to make a loan to Borrower in the amount of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) (the "Loan"), to be used with other monies, if any, for the acquisition, construction and permanent financing of the Development; and

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WHEREAS, contemporaneously with the execution and delivery of this Agreement, Borrower has executed and delivered to the Authority its mortgage note (together with any renewals, modifications, extensions, amendments and replacements, the "Note") of even date herewith, as evidence of its indebtedness to the Authority in the principal sum of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00); and

WHEREAS, the Loan is evidenced, secured and governed by, among other things: (a) the Conditional Commitment Letter from the Authority to or for the benefit of Borrower dated September 26, 2002 (the "Commitment"), (b) the Note, (c) that certain Junior Mortgage and Assignment of Rents and Leases (the "Mortgage"), dated as of the date hereof, executed by Borrower, as mortgagor, and delivered to the Authority, as mortgagee, (d) that certain Environmental Indemnity (the "Environmental Indemnity"), dated as of the date hereof, executed by Borrower and the General Partner, as indemnitors, and delivered to Authority, as indemnitee, and (e) this Agreement. This Agreement, the Commitment, the Note, the Mortgage, the Environmental Indemnity and all other documents executed by Borrower that evidence, secure or govern the Loan are sometimes collectively referred to in this Agreement as the "Loan Documents"; and

WHEREAS, as an inducement to the Authority to make the Loan, Borrower has agreed to enter into this Agreement and consents to be regulated and restricted by the Authority as provided in it, and as provided for in the Trust Fund Act, the Rules, the Act and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time, as applicable.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation**. The foregoing recitals are incorporated in this Agreement by this reference.
2. **Act and Rules**. Borrower agrees that at all times its acts regarding the Development shall be in conformance with the applicable provisions of the Trust Fund Act, the Rules, the Act and the rules, regulations, policies and procedures of the Authority promulgated under the Act, all as they may be amended and supplemented from time to time.
3. **Representations and Agreements**. Borrower further represents and agrees that:
 - a. At least thirty-four (34) of the Units shall be occupied by Tenants (as defined in **Paragraph 9** hereof) 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), and at least fifty (50) of the Units shall be occupied by Tenants whose income, at the time of initial occupancy, does not exceed the income limits for Low Income Tenants (as defined in **Paragraph 9** hereof);

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b. In the advertising, marketing, and rental of Units and the selection of Tenants, Borrower agrees to abide by the terms and conditions of the Tenant Selection Plan executed by Borrower, approved by the Authority, and dated August 8, 2002, as it may be amended from time to time with the prior written consent of the Authority;

c. 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 applicable provisions of the Trust Fund Act, the Rules and all applicable ordinances, regulations and statutes and the rules, procedures and requirements of the Authority;

d. On forms approved by the Authority, Borrower shall obtain from each prospective Very Low Income Tenant and Low Income Tenant prior to his or her admission to the Development, a certification of income (the "Certification"). Borrower shall submit such Certifications to the Authority in the manner prescribed by the Authority;

e. In the manner prescribed by the Authority, Borrower shall obtain written evidence substantiating the information given on such Certifications and shall retain such evidence in its files at the Development for three (3) years after the year to which such evidence pertains. Within thirty (30) days after the end of each calendar year, Borrower shall certify to the Authority that, at the time of such certification and during the preceding calendar year, Borrower was in compliance with the requirements of this **Paragraph 3**, or, if Borrower is not or has not been in compliance with such requirements, Borrower shall give notice to the Authority of its failure to comply and the corrective action Borrower is taking or has taken;

f. Borrower shall comply with the rent limitations contained in Section 360.904(c) of the Rules; Borrower shall annually submit a schedule of rents for the Development for the Authority's approval, and shall not change the rent schedule for the Development without the Authority's approval.

g. Borrower shall require all Tenants to execute a lease (the "Lease") in a form approved by the Authority;

h. Borrower shall obtain all federal, state and local governmental approvals required by law for its acquisition, construction, ownership and operation of the Development;

i. Borrower shall not evict any Tenant from the Development without good cause; and

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j. Borrower shall design and construct the Development in conformity (i) with applicable federal, state and local statutes, regulations, ordinances, standards and codes (except as otherwise approved by the Authority) and (ii) with all applicable rules, contracts, agreements, procedures, guides and other requirements of the Authority provided to Borrower in writing.

4. **Acts Requiring Authority Approval.** Except as permitted pursuant to the other Loan Documents, and subject to the provisions of the Senior Loan Documents (as defined in the Mortgage), Borrower shall not, without the prior written approval of the Authority, which may be given or withheld in the Authority's sole discretion:

a. Convey, transfer or encumber the Development or any part of it, or permit the conveyance, transfer or encumbrance of the Development or any part of it;

b. Convey, assign or transfer any right to manage, or receive the rents and profits from, the Development;

c. Initially rent any Unit for a period other than one (1) year, and after such initial one (1) year period, rent any Unit for less than six (6) months or more than one (1) year;

d. Lease or sublease any non-residential facility in the Development or amend or modify any such lease or sublease, which, to the best of Borrower's knowledge, would result in a conflict of interest between any of the parties to such contracts and the Authority, its board members, officers, employees, agents or members of their respective immediate families; or

e. Require, as a condition of the occupancy or leasing of any Unit in the Development, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not to exceed one (1) month's rent to guarantee the performance by the Tenant of the covenants of the Lease. Any funds collected by Borrower as security deposits shall be kept separate and apart from all other funds of the Development.

5. **Borrower Duties.** In addition to, but not by way of limitation of, the other duties of Borrower set forth in this Agreement, Borrower shall comply with the following:

a. **Maintenance.** Upon completion of the construction of the Development, Borrower shall maintain the Development and the grounds and equipment appurtenant to it in a decent, safe and sanitary condition, and in a rentable and tenantable state of repair, and in compliance with all applicable federal, state and local statutes, regulations, ordinances, standards and codes.

b. **Management.** Borrower shall provide for the management of the Development in a manner satisfactory to the Authority.

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c. Audit. The Development and the equipment, buildings, plans, specifications, offices, apparatus, devices, books, contracts, records, documents and other papers relating to it, and the books and records relating to Borrower, shall at all times be maintained in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority or its agent or representative upon reasonable prior notice during normal business hours, as the Authority reasonably requires.

d. Financial and Expense Reports. Within one hundred twenty (120) days following the end of the Borrower's fiscal year, in a manner prescribed by the Authority in writing, Borrower shall furnish the Authority with a complete annual financial report for the Development based upon an examination of the books and records of the Development, prepared at Borrower's expense in accordance with the written requirements of the Authority, and certified to Borrower by an Illinois licensed certified public accountant.

e. Furnishing Information. At the request of the Authority, Borrower shall furnish such reports, projections, certifications, budgets, operating reports, tax returns and analyses as required pursuant to the statutes, rules and regulations of the Authority and the Trust Fund Act, as amended from time to time, or by other applicable federal or state statutes or requirements, and from time to time shall give specific answers to written questions in connection with Borrower's income, assets, liabilities, contracts and operation, all relating to the Development, and the administration, operation, maintenance, occupancy, financial soundness and physical condition of the Development.

f. Compliance with Certain Laws. Borrower shall comply with the provisions of the Environmental Barriers Act (410 ILCS 25/1 *et seq.*, as amended from time to time), the Illinois Accessibility Code, 47 Ill. Adm. Code 400, Subpart I, as amended from time to time, except as otherwise approved by the Authority, and the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, as amended from time to time, if applicable.

6. Non-Discrimination in Housing.

a. Borrower shall not, in the selection of Tenants, in the provision of services, or in any other manner unlawfully discriminate against any person on the grounds of race, color, creed, religion, sex, age, unfavorable military discharge, ancestry, handicap, national origin, marital status, familial status or because the prospective Tenant is receiving governmental rental assistance.

b. Borrower shall comply with all of the provisions of Paragraph 3805/13 of the Act, Paragraph 65/10(a) of the Trust Fund Act and all other provisions of federal, state and local law relating to non-discrimination.

7. Violation of Agreement by Borrower. Upon violation of any of the provisions of this Agreement by Borrower, the Authority may give notice of such violation to Borrower as

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provided in **Paragraph 18** hereof. If such violation is not corrected to the satisfaction of the Authority within thirty (30) days after such notice, or within such further time as the Authority in its sole discretion permits, the Authority may declare a default under this Agreement, effective on the date of notice of such declaration of default to Borrower, and upon such default, and so long as such default is continuing, the Authority may do the following:

- a. Declare the whole of the indebtedness under the Note immediately due and payable and then proceed to exercise the rights and remedies set forth in any Loan Document;
- b. Subject to the rights of Senior Lenders (as defined in the Mortgage), take possession of the Development, bring any action necessary to enforce any rights of Borrower growing out of the operation of the Development and operate the Development in accordance with the terms of this Agreement until such time as the Authority, in its sole discretion, determines that Borrower is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Note;
- c. Subject to the rights of the Senior Lenders, collect all rents and charges in connection with the operation of the Development and use such collections to pay Borrower's obligations under this Agreement, the Note, the Mortgage or any other Loan Document and such other obligations of Borrower in connection with the Development and the necessary expenses of preserving and operating it;
- d. Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate. Because the injury to the Authority arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, Borrower acknowledges and agrees that the Authority's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the Authority's public purpose under the Trust Fund Act; or
- e. Exercise such other rights or remedies as may be available to the Authority under this Agreement, at law or in equity.

The Authority's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of the Authority's other remedies. No waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure or delay of the Authority in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of its rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights.

8. **Termination of Liabilities.** In the event of a sale or other transfer of the

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Development, all of the duties, obligations, undertakings and liabilities of Borrower or other transferor (the "Transferor") under the terms of this Agreement shall thereafter cease and terminate as to the Transferor, except as to any acts or omissions or obligations to be paid or performed by the Transferor that occurred or arose prior to such sale or transfer. As a condition precedent to the termination of the liability of the Transferor under this Agreement, the transferee of the Development (a "New Borrower"), as a condition precedent to its admission as a New Borrower, shall assume in writing, on the same terms and conditions as apply to the Transferor, all of the duties and obligations of the Transferor arising under this Agreement from and after the date of such sale or transfer. Such assumption shall be in form and substance acceptable to the Authority. Any such New Borrower shall not be obligated with respect to matters or events that occur or arise before its admission as a New Borrower.

9. **Definitions.**

a. "Very Low Income Tenant". As used in this Agreement, the phrase "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 of the metropolitan statistical area of Chicago, 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.

b. "Low Income Tenant". As used in this Agreement, the phrase "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 Chicago, 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.

c. "Tenant". As used in this Agreement, the word "Tenant" means a person, family or unrelated persons leasing a Unit in the Development.

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 any New Borrower and any other future owners of the Development and the holder of any legal, equitable or beneficial interest in it for so long as the Note is outstanding and in effect. However, if the date of the cancellation of the Note (the "Cancellation Date") is prior to the date that the Note was originally scheduled to mature (the "Maturity Date"), the covenants and agreements set forth in **Paragraphs 2, 3(a)-(f), 3(j), 5(a), 6, 7(d)-(e), and 8-20** hereof (collectively, the "Continuing Obligations") shall remain in effect for the period of time commencing on the Cancellation Date and ending on the Maturity Date, irrespective 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.

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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 has been repaid prior to 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.

11. **Amendment of Agreement.** This Agreement shall not be altered or amended without the prior written approval of all of the parties hereto.

12. **Execution of Conflicting Documents.** Borrower warrants that it has not executed, and it agrees that it shall not execute, any other agreement with provisions contradictory, or in opposition, to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are and shall be paramount and controlling as to the rights and obligations set forth in such other agreement and supersede any other requirements in conflict with this Agreement. To the extent this Agreement conflicts with any provisions or requirements set forth in the Mortgage or the Note, the provisions of the Mortgage or the Note, as the case may be, shall prevail and control. The provisions of this **Paragraph 12** shall not be deemed to be violated by, or violate, the Senior Loan Documents.

13. **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement, or its application to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. **Successors.** Subject to the provisions of **Paragraph 8** hereof, this Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, successors in office or interest and assigns; however, Borrower may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of the Authority.

15. **Indemnification of the Authority.** Borrower agrees to defend and indemnify and hold harmless the Authority from and against any and all damages, including, but not limited to, any past, present or future claims, actions, causes of action, suits, demands, liens, debts, judgments, losses, costs, liabilities and other expenses, including, but not limited to, reasonable attorneys' fees, costs, disbursements, and other expenses, that the Authority may incur or suffer by reason of or in connection with the Real Estate or the Development or the Project. Borrower further agrees that the Authority, if it so chooses, shall have the right to select its own counsel with respect to any such claims.

16. **Gender.** The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

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17. **Captions.** The captions used in this Agreement are used only as a matter of convenience and for reference and in no way define, limit or describe its scope or intent.

18. **Notices.** Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to Borrower: Oak Forest Horizon Limited Partnership
c/o The Alden Foundation
4200 West Peterson Avenue, Suite 140
Chicago, Illinois 60646
Attention: Ms. Beth Demes

With courtesy copies to:

Applegate & Thorne-Thomsen, P.C.
322 South Green Street, Suite 412
Chicago, Illinois 60607
Attention: Mr. Warren Wenzloff

and

The Richman Group
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Mr. David Brint

and

TRGHT, Inc.
599 West Putnam Avenue
Greenwich, CT 06830
Attention: David A. Salzman

and

Cook County Department of Planning and Development
69 W. Washington, Suite 2900
Chicago, Illinois 60602
Attention: Mr. Ted Sucharski and Director of Planning and Development

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If to Authority:

Illinois Housing Development Authority
401 N. Michigan Avenue, Suite 900
Chicago, Illinois 60611
Attention: Legal Department

Such addresses may be changed by notice to the other party given in the same manner as provided in this Agreement. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service. In connection with the courtesy copies to Applegate & Thorne-Thomsen, P.C., The Richman Group, TRGHT, Inc. and Cook County Department of Planning and Development, the Authority will exercise reasonable efforts to provide copies of any notices given to Borrower; however, the Authority's failure to furnish copies of such notices shall not limit the Authority's exercise of any of its rights and remedies under the Loan Documents.

19. **Subordination.** This Agreement shall be subject and subordinate in all respects to the Senior Loan Documents (as defined in the Mortgage).

20. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

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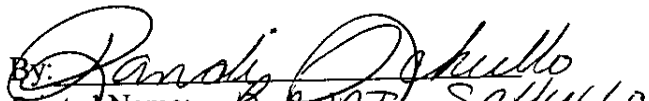
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IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their authorized officers.

BORROWER:

OAK FOREST HORIZON LIMITED PARTNERSHIP,
an Illinois limited partnership


By: **OAK FOREST HORIZON, INC.,**
an Illinois corporation
Its general partner

By: 
Printed Name: RANDI SCHULLO
Its Vice pres

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AUTHORITY:

**ILLINOIS HOUSING DEVELOPMENT
AUTHORITY**

By:  A.M.
Printed Name: Peter K. Lennon
Its Assistant Executive Director

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EXHIBIT A

LEGAL DESCRIPTION ALDEN HORIZON OF OAK FOREST (HTF-1621)

LOTS 1, 2 AND THE NORTH ½ OF LOT 3 (EXCEPT THE EAST 17 FEET THEREFROM OF SAID LOTS) IN BLOCK 24 OF ARTHUR T. MCINTOSH'S ADDITION TO MIDLOTHIAN FARMS BEING A SUBDIVISION OF SOUTH WEST ¼ OF THE SOUTH EAST ¼ AND THE EAST ½ OF THE SOUTH EAST ¼ OF SECTION 9 AND THE WEST ½ OF THE SOUTH WEST ¼ AND THE WEST 33/80THS OF THE EAST ½ OF THE SOUTH WEST ¼ OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

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