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2002-12-20 16:22:08
Cook County Recorder 44.00



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210390

After Recording Return

To: Carol Turner
Senior Staff Counsel
Office of the General Counsel
Chicago Housing Authority
200 W. Adams, Suite 2100
Chicago, IL 60606

DECLARATION OF TRUST AND RESTRICTIVE COVENANTS

THIS DECLARATION OF TRUST AND RESTRICTIVE COVENANTS (the "**Declaration**") is made and entered into as of this 1st day of December, 2002, by West Maypole, LP., an Illinois limited partnership, (the "**Owner**") and its successors and assigns, is given to the Chicago Housing Authority (the "**Authority**"), a public body corporate and politic, organized and existing under the laws of the State of Illinois, for the benefit of the UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT ("**HUD**").

WHEREAS, pursuant to the U.S. Housing Act of 1937, as amended, and any successor legislation (the "**Act**") the Authority and HUD have entered into Consolidated Annual Contributions Contract ("**ACC**") number: C-1150, dated December 11, 1995, as the same may be amended from time to time, which provides for grants and annual contributions be made by

Box 430

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HUD to assist the Authority in developing, maintaining, and operating its Project in accordance with All Applicable Public Housing Requirements ("**Requirements**"), as defined herein.

WHEREAS, as of the date of execution of this Declaration, HUD and the Authority have entered into a certain Mixed Finance Amendment, Amendment No. 70, 2002 to the ACC ("**Mixed Finance ACC Amendment**"), adding the 87 public housing units and any associated appurtenances to the ACC under Project Number IL 06 URD002I696, in the City of Chicago, County of Cook, in the State of Illinois (which, together with any fixtures and personalty related to such units and appurtenances shall hereafter collectively be referred to as the "**Project**"). The Project is part of a larger development known as Henry Horner Homes Phase IIa1 ("**the Development**").

WHEREAS, the Authority and the Owner have entered into a Regulatory and Operating Agreement dated as of December 1, 2002, (the "**Regulatory and Operating Agreement**"), and other Agreements, whereby the Authority has agreed to provide the Owner with assistance obtained under the Mixed Finance ACC Amendment to pay a portion of the development costs of the Project, and with Operating Funds, as set forth in the Mixed Finance ACC Amendment, and as defined in the Act, to assist in operating and maintaining the low income character of the public housing units in the Project;

WHEREAS, the parties intend that the Project shall be eligible to receive the benefit of operating subsidies provided to the Authority by HUD pursuant to Section 9 of the Act and the Regulatory Agreement;

WHEREAS, in return for the receipt of such assistance, the Owner has agreed to develop, construct, operate and maintain the Project in accordance with all applicable public housing requirements (including the Act, HUD regulations thereunder (except to the extent that HUD has granted waivers of regulatory requirements for good cause), the ACC (including any successor ACC's), the HOPE VI Grant Agreement dated August 29, 1997, as amended between HUD and the Authority, the Henry Horner Homes Phase II HOPE VI Revitalization Plan dated December 2001, the Mixed Finance Proposal to HUD dated July 3 2002, as amended, the Declaration of Trust and Restrictive Covenants, Gautreaux Court Orders, Horner Court Orders, the Moving to Work Demonstration Agreement, and all other pertinent Federal statutory, executive orders, and regulatory requirements, as such requirements may be amended from time to time (hereafter collectively referred to as the "**Requirements**"), for the period of the low income use restrictions, as set forth herein required by law and as further set forth below;

WHEREAS, as of the date of execution of this Declaration, Authority holds the title to the land in the Development and is conveying a leasehold interest under a ground lease from the Authority to the Owner;

NOW, THEREFORE, to assure HUD of the performance of the Requirements by the Authority and the Owner, and any successors in interest to the Authority and Owner, in connection with the development, construction, operation and maintenance of the Project for the

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Term (as hereafter defined), as set forth in the Requirements, the parties hereby acknowledge and agree:

1. The Authority does hereby acknowledge and declare that it is possessed of and holds title to the real property situated in the City of Chicago, County of Cook in the State of Illinois, as more fully described in Exhibit A to this Declaration, and which is made a part hereof.
2. The Owner does hereby acknowledge and declare that it is possessed of and holds title to that portion of the Development comprising the Project in trust for the benefit of HUD, for the purposes hereinafter stated;
3. The Authority has entered into a ground lease (the "Ground Lease") with the Owner for the site on which the Development is to be developed, and on which the Owner will construct and operate the Project;
4. The Owner and the Authority hereby declare and acknowledge that during the existence of the trust hereby created, the restrictive covenants set forth in this Declaration shall be, and are, covenants running with the Development for the Term, and are binding upon the Owner and the Authority, and their successors and assigns, for such Term. As used herein, "Term" shall mean the period that expires upon the later to occur of (i) forty (40) years from the date of first occupancy of the last PHA-Assisted Unit to be initially occupied, or (ii) expiration of the period during which the PHA-Assisted Units are required to be operated as "public housing" under the Act. Such 40-year period may be extended for 10 years after the end of the last Authority fiscal year for which Operating Fund assistance is provided by the Authority on behalf of the Project, or as may be otherwise required by law;
5. The Authority shall cause the Owner to, and the Owner shall, develop the Project in compliance with the Requirements, and shall thereafter operate and maintain the Project in compliance with the Requirements for the Term.
6. The Owner shall remain seized of title to the Development and shall refrain from transferring, conveying, assigning, leasing, mortgaging, pledging or otherwise encumbering or permitting or suffering any transfer of any kind of the Project, or any part thereof, or any rent, revenues, income or receipts of the Project in connection therewith, or any of the benefits of contributions granted to it by or pursuant to the ACC, as amended, or any interest in any of the same, except to the extent approved in writing by HUD, as otherwise authorized by the ACC, as amended, or as authorized below:

A. Deeds of trust and financing arrangements approved in writing by HUD under the terms of the Mixed Finance ACC Amendment, and transfer of the

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Development to the beneficiary under any such approved loans, by foreclosure or deed-in-lieu of foreclosure, or to a third-party purchaser at a foreclosure sale, provided that any such transfer shall be subject to the terms of this Declaration,

B. Dwelling leases with eligible families in the Project;

C. Conveyance or dedication of land for use as streets, alleys, or other public rights-of-way, and grants and easements for the establishment, operation, and maintenance of public utilities;

D. Normal uses associated with the operation of the Project, to the extent authorized by the ACC.

7. (A) No transfer, conveyance, or assignment shall be made, without the prior written approval of HUD of: (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") in the Owner; (ii) a Controlling Interest in any entity which has a Controlling Interest in the Owner; or (iii) prior to the payment in full of all equity contributions described in the approved evidentiary documents listed in the Mixed Finance ACC Amendment, any other interest (any such interest being referred to as a "Non-Controlling Interest") in the Owner.

(B) Notwithstanding the foregoing, HUD consent is not required for the transfer of any Non-Controlling Interest in the Owner, or in any partner, member or stockholder thereof, provided that HUD is provided with (A) written notice of such transfer; and (B) a certification that the partner, member or stockholder, as appropriate, remains obligated to fund its equity contribution in accordance with the approved organizational documents of the Owner.

(C) HUD will not unreasonably withhold, delay, or condition a request for HUD's consent to any of the foregoing transfers of the Owner or any of the partners, members or stockholders of the Owner.

(D) Authority consent to transfers of interests in the Owner shall be required to the extent provided by the applicable provisions of the Ground Lease.

(E) HUD hereby consents to the transfer of Non-Controlling, non-managing limited partnership interests to and from the Bank of America, N.A. (the "Bank"), pursuant to foreclosure or other enforcement of the security agreements approved as evidentiary documents by HUD and the Authority at closing, provided (i) the Bank provides HUD and the Authority with prior written notice of the foreclosure or other enforcement action and notice of the transfer, and (ii) the transferee certifies to HUD and the Authority that the new owner of the limited partnership interest is obligated to fund the portion of the remaining equity contributions, if any, provided for in the HUD-approved limited partnership agreement, to be used

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for construction and (iii) if the Bank, or its affiliate, becomes the new owner of the limited partnership interest pursuant to such enforcement, the Bank or such affiliate also certifies that any proceeds it receives upon a further transfer of its limited partnership interest that is in excess of the indebtedness secured by the Bank's leasehold mortgage shall be applied to fund the portion of any remaining equity contributions provided for in the HUD-approved limited partnership agreement to be used to fund reserves, and (iv) if the Bank, or its affiliate, becomes the new owner of the limited partnership interest pursuant to such enforcement, the Bank or such affiliate also certifies that any surplus cash flow shall also be applied to fund the portion of any remaining equity contributions provided for in the HUD-approved limited partnership agreement to be used to fund reserves.

8. This Declaration shall not be amended, modified or released without the prior written consent of HUD.
9. Upon expiration of the Term, HUD will release this Declaration by an instrument to be recorded in the appropriate land records (the "Release"). The Release shall be prepared by Owner and recorded at Owner's expense.

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IN WITNESS WHEREOF, the Owner by its duly authorized partner and the Authority by its Chief Executive Office have caused this Declaration to be executed as of the day and year first above written for proper recording in the public records.

WEST MAYPOLE, L.P.,
an Illinois limited partnership

By: West Maypole Partners, LLC,
an Illinois limited liability company,
its sole general partner

By: The Michaels Development
Company, Inc.,
a New Jersey corporation,
its member

By: 
Name: John O. Donnell
Its: Vice President

By: Brinshore Inc., an Illinois
corporation, its member

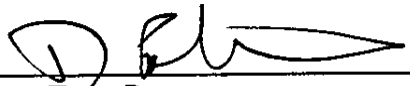
By: 
Name: Richard Scortino
Its: Vice-President

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CHICAGO HOUSING AUTHORITY

By: 
Terry Peterson
Its: Chief Executive Officer

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that John O'Donnell is personally known to me to be the Vice President of The Michaels Development Company, Inc., a managing member of West Maypole Partners, LLC, an Illinois limited liability company, and the general partner ("General Partner") of West Maypole, L.P., an Illinois limited partnership (the "Owner"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President of The Michaels Development Company, Inc., he/she signed and delivered the said instrument pursuant to authority given by the Partnership Agreement and as his/her free and voluntary act, and as the free and voluntary act and deed of the Owner for the uses and purposes therein set forth

GIVEN under my hand and official seal this 20th day of December, 2002.

Paul W. Shadle
Notary Public

My Commission Expires:

"OFFICIAL SEAL"
PAUL W. SHADLE
Notary Public, State of Illinois
My Commission Expires 9/18/05

Notary Public, Cook County Clerk's Office

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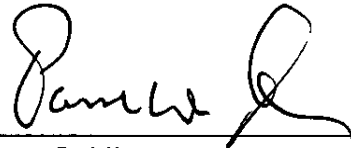
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Richard Sciortino is personally known to me to be the Vice-President of Brinshore, Inc. a managing member of West Maypole Partners, LLC, an Illinois limited liability company, the general partner ("General Partner") of West Maypole, L.P., an Illinois limited partnership (the "Owner"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice-President of Brinshore, Inc., he/she signed and delivered the said instrument pursuant to authority given by the Partnership Agreement and as his/her free and voluntary act, and as the free and voluntary act and deed of the Owner for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 20th day of December, 2002.



Notary Public

My Commission Expires
"OFFICIAL SEAL"
PAUL W. SHADLE
Notary Public, State of Illinois
My Commission Expires 8/18/05

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Terry Peterson, personally known to me to be the Chief Executive Officer of Chicago Housing Authority (the "Authority"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Terry Peterson, he signed and delivered the said instrument pursuant to authority given by the Authority Board of Commissioners and as his free and voluntary act, and as the free and voluntary act and deed of the Authority for the uses and purposes therein set forth.

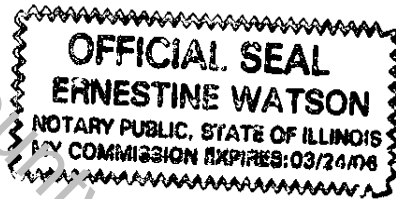
GIVEN under my hand and official seal this 19 day of December, 2002.



Notary Public

My Commission Expires:

3/24/06



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Exhibit A

Legal Description of Development

WEST PARCEL:

LOTS 2, 3, 4, 5, 8, 9, AND 11 IN BELL RESUBDIVISION, BEING A RESUBDIVISION AND CONSOLIDATION OF PART OF CAMPBELL'S SUBDIVISION OF BLOCK 55, AND OF WILSON AND BATES' SUBDIVISION IN CAMPBELL'S SUBDIVISION OF BLOCK 55, INCLUDING EAST-WEST VACATED ALLEY AND VACATED WEST MAYPOLE AVENUE IN SAID BLOCK 55 IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 7, 2002 AS DOCUMENT NUMBER 0021230667, IN COOK COUNTY, ILLINOIS.

PINs: 17-07-317-044
17-07-321-034
17-07-321-035

EAST PARCEL:

LOTS 1, 3, 4, AND 5 IN MAYPOLE RESUBDIVISION BEING A RESUBDIVISION AND CONSOLIDATION IN BLOCKS 2 AND 3 IN PAGE AND WOOD'S SUBDIVISION OF BLOCKS 50, 63 AND 64, IN THE SUBDIVISION OF LOTS 5 AND 6 IN SAID BLOCK 3 IN PAGE AND WOOD'S SUBDIVISION, INCLUDING EAST-WEST VACATED ALLEYS AND VACATED WEST MAYPOLE AVENUE, IN THE CANAL TRUSTEES' SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 7, 2002 AS DOCUMENT NUMBER 0021230668, IN COOK COUNTY, ILLINOIS.

PINs: 17-07-418-022
17-07-418-023
17-07-423-012
17-07-423-013
17-07-423-001

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