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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1132618048

Doc#: 1132618048 Fee: \$70.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/22/2011 01:09 PM Pg: 1 of 18

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN: 25-22-309-001-0000**

Address:

Street: 11701 S. STATE STREET

BOX 15

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60628

Lender: HINSDALE BANK & TRUST COMPANY

Borrower: ALL SAINTS SENIOR HOUSING, NFP

FIDELITY NATIONAL TITLE _____

Loan / Mortgage Amount: \$273,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

Certificate number: 527988FC-5E7C-4777-B8C8-81C127A58F97

Execution date: 11/22/2011

17 03 18

999010 875 NL

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This Document has been
prepared by:

Law Offices of William G. Skalitzky, P.C.
626 W. Jackson Boulevard, Suite 400
Chicago, IL 60661

After recording return to:

Hinsdale Bank & Trust Company
25 East First Street
Hinsdale, IL 60521
Attn: Michael Waldron

This space reserved for Recorder's use only.

JUNIOR MORTGAGE

THIS INSTRUMENT ("Mortgage") WITNESSES: that All Saints Senior Housing, NFP, an Illinois not for profit corporation ("Mortgagor"), is the owner of a parcel of real property and improvements thereon located on 11701 S. State Street and 21 East 117th Street, Chicago, Illinois, and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby CONVEYS, GRANTS, MORTGAGES and WARRANTS to Hinsdale Bank & Trust Company (the "Mortgagee"), Mortgagor's fee interest in the real property and improvements, situated in Cook County, Illinois, and legally described on **Exhibit A** attached hereto and incorporated herein (the "Mortgaged Property"), together with all rights, title and interests of Mortgagor in and to: (i) All rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Mortgaged Property ("Easements"); (ii) All buildings and other improvements of every kind and description now or hereafter placed on the Mortgaged Property, together with all fixtures, attached to or regularly used in connection with the Mortgaged Property, and all replacements thereof ("Improvements"); and (iii) All extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the basements or improvements ("Additions") (the Mortgagor's interest in the fee estate of the Mortgaged Property, the Easements, Improvements and Additions are referred to together as the "Mortgaged Property").

This Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure (i) payments that may be due and payable pursuant to that certain Recapture Agreement by and between the Mortgagor, and Mortgagee dated of even date herewith (the "AHP Covenants"), which agreement relates to a subsidy in the principal sum of Two Hundred Seventy-Three Thousand and No/100 Dollars (\$273,000.00) with the repayment due pursuant to the terms and provisions thereof ("Primary Debt"); (ii) all sums advanced and costs and expenses incurred by Mortgagee which are made or incurred pursuant to, or allowed by, the terms of this Mortgage ("Advancements"); and (iii) all costs of repossession, collection, disposition and reasonable attorneys' fees incurred by Mortgagee ("Costs")

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(hereinafter, the Primary Debt, Advancements, and Costs are referred together as the "Indebtedness"). This Mortgage and the AHP Covenants constitute the "Loan Documents."

This Mortgage shall be subject and subordinate in all respects to the terms and provisions of a first lien mortgage in favor of the United States of America acting by and through the Secretary of the Department of Housing and Urban Development ("HUD"), evidenced by that certain Capital Advance Mortgage dated as of November 1, 2011 by Mortgagor in favor of HUD and recorded concurrently herewith in the Cook County Recorder's Office (the "HUD Mortgage"), the Capital Advance Program Regulatory Agreement dated as of November 1, 2011, by and between the Mortgagor and HUD and recorded concurrently herewith in the Cook County Recorder's Office, and the Capital Advance Program Use Agreement dated as of November 1, 2011, by and between the Mortgagor and HUD and recorded concurrently herewith in Cook County Recorder's Office, and other collateral loan documents in favor of HUD.

This Mortgage shall be subject and subordinate in all respects to the terms and provisions of a second lien mortgage in favor of the City of Chicago ("City") relating to a loan of up to \$892,678 by the City to Mortgagor, evidenced by that certain Junior Mortgage dated as of November 1, 2011 by Mortgagor in favor of City and recorded concurrently herewith in the Cook County Recorder's Office (the "City Mortgage"), the Regulatory Agreement dated as of November 1, 2011, by and between the Mortgagor and City and recorded concurrently herewith in the Cook County Recorder's Office (the "City Regulatory Agreement"), and other collateral loan documents in favor of the City relating to such loan.

In addition, the Mortgage shall be subject and subordinate in all respects to the terms and provisions of the Donation Tax Credit Regulatory Agreement dated as of November 1, 2011, by and between the Mortgagor and City and recorded concurrently herewith in Cook County Recorder's Office (the "Donation Regulatory Agreement") and the Amended and Restated Easement Agreement and Declaration of Covenants between Mortgagor and Roseland Senior Housing Corporation dated as of November 1, 2011 and recorded concurrently herewith in the Cook County Recorder's Office (the "Easement Agreement").

Collectively, the HUD Mortgage, HUD Regulatory Agreement, HUD Use Agreement, City Mortgage, City Regulatory Agreement, Donation Regulatory Agreement and Easement Agreement constitute the "Other Mortgage Liens."

Mortgagor hereby further covenants with the Mortgagee as follows:

1. **Payment of Sums Due.** Mortgagor covenants and agrees to promptly pay the Primary Debt and the other indebtedness, as and when the payment(s) thereof become due, all without relief from valuation and appraisal laws and with reasonable attorneys' fees.
2. **Care and Condition of Mortgaged Property.** Mortgagor shall (a) promptly repair, restore or rebuild the Mortgaged Property, or any portion thereof, which is damaged or destroyed, subject to the prior written consent of HUD; (b) keep the Mortgaged Property in good condition and repair, without waste, and free from encroachments and from mechanic's or materialman's lien or claims for lien not expressly subordinated to this Mortgage provided,

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however, that Mortgagor shall have the right to insure or bond over any such lien; (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, whether or not superior to this Mortgage; (d) comply with all requirements of law and covenants and restrictions of record applicable to the Mortgaged Property or its use; (e) permit no change in or alteration of the design, structural character or general nature of the Mortgaged Property and the improvements without HUD and Mortgagee's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed); and (f) permit Mortgagee to enter upon and inspect the Mortgaged Property at all reasonable times upon prior reasonable notice sent by Mortgagee to Mortgagor.

3. **Warranties.** Mortgagor covenants and warrants that: (a) Mortgagor is lawfully seized and possessed of the Mortgaged Property in fee estate, has valid and indefeasible fee simple title to the Mortgaged Property and has a good and legal right to convey and mortgage the Mortgaged Property; and (b) the Mortgaged Property is and will remain free from all liens and encumbrances except only the Other Mortgage Liens, liens for real estate taxes (prior to delinquency), mechanic's and other liens contested in good faith by Mortgagor (provided a bond or title insurance in the amount of such lien is provided to Mortgagee upon initiating a contest of the lien) the AHP Covenants, tenant leases and laundry room equipment leases entered into by Mortgagor in the ordinary course of business, UCC Financing Statements relating to the HUD Mortgage and the City Mortgage. Mortgagor will warrant and defend title to the Mortgaged Property against all claims made thereon.

4. **Insurance.** Mortgagor will keep the Mortgaged Property insured against loss by fire, extended casualty, vandalism, malicious mischief and such other hazards as reasonably may be required from time to time by Mortgagee for the benefit and protection of Mortgagee, including comprehensive property and general liability insurance (together, the "Required Insurance"). The Required Insurance shall be written in forms, amounts but not in amounts exceeding that required for the Section 202 Program and the Capital Advance Agreement by and between HUD and Mortgagor of even date herewith, and by companies reasonably satisfactory to Mortgagee, and losses thereunder shall be payable to Mortgagee pursuant to standard noncontributing mortgage endorsements in favor of Mortgagee. Unless otherwise agreed by Mortgagee, copies of all policies of Required Insurance, including additional and renewal policies, shall be deposited with and held by Mortgagee. Subject to the rights of HUD, any monies received as payments for any loss under any of the Required Insurance shall be paid over to Mortgagee and shall be made available to reimburse Mortgagor for expenses incurred by Mortgagor in the restoration or repair of the Mortgaged Property provided that Mortgagor is not in default hereunder beyond any applicable cure period, in which event Mortgagee may apply such monies to repayment of the Indebtedness. Proceeds paid or payable to Mortgagor of the Required Insurance shall be applied to restoration of the Mortgaged Property in such fashion as Mortgagee reasonably may require, subject to the prior written consent of HUD.

Notwithstanding the foregoing, so long as HUD holds a mortgage on the Project, including the HUD Mortgage, Mortgagor's compliance with HUD's Property Insurance Requirements (HUD 90164-CA), if and as modified, shall satisfy Mortgagor's obligations under this paragraph.

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5. **Taxes.** Mortgagor will pay and discharge or cause to be paid and discharge when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof.

6. **Protection of Security by Mortgagee.** Mortgagee may, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All expenses so incurred, including reasonable attorneys' fees, and any other reasonable expenses incurred by Mortgagee to protect the Mortgaged Property shall constitute Advancements and shall be immediately due and payable by Mortgagor.

7. **Transfer of Mortgaged Property.** Mortgagor shall not, without the prior written consent of Mortgagee, lease (other than (i) residential tenant leases in the ordinary course of business and in accordance with the affordability requirements of the AHP Covenants and the HUD Section 202 Program, City Regulatory Agreement and the Donation Regulatory Agreement, and (ii) laundry room equipment leases approved by HUD), transfer, sell, or contract to sell or in any way further encumber all or any part of the Mortgaged Property, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed; provided that Mortgagee's consent will not be required for utility and access easements.

8. **Condemnation.** Subject to the rights of HUD under the HUD Mortgage, if all or any part of the Mortgaged Property is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award or compensation payable in respect of the part so taken or damaged shall be applied first to restore the Mortgaged Property if so approved by HUD, and if not, to satisfy all existing mortgage liens against the Mortgaged Property in accordance with their priority, then to satisfy any judgment liens against the Mortgaged Property, with the residual, if any, being then provided to Mortgagor.

9. **Default and Acceleration.** Time is of the essence of this Mortgage. Upon the occurrence of any Event of Default (as hereinafter defined), and at any time thereafter, then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without any notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee shall have the right immediately to foreclose the mortgage lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage and to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests. The following shall each constitute an "Event of Default" for purposes of this Mortgage:

(a) Default in the performance of any covenant or term of this Mortgage and the continuation of such default for a period of sixty (60) days after written notice thereof, provided

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that if such default cannot be cured within sixty (60) days and Mortgagor is diligently pursuing appropriate action to cure the default, no Event of Default shall be deemed to have occurred.

(b) Default in the performance of any covenant or agreement in the AHP Covenants and the expiration of any applicable cure period provided therein.

10. **Foreclosure and Application of Proceeds.** All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with the foreclosure of this Mortgage for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and cost of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee reasonably may deem necessary to prosecute such suit shall constitute Advancements, shall be immediately due and payable by Mortgagor, and shall be allowed and included as Indebtedness in the judgment for sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order or priority, first, on account of all Advancements incident to the foreclosure proceedings and all Costs; second, to the satisfaction of all superior lien interests, including the HUD Mortgage and City Mortgage; third all other items which under the terms of this Mortgage constitute Indebtedness additional to the Primary Debt; fourth, all amounts remaining unpaid on the Primary Debt; and fifth, any remainder to the person or persons entitled thereto as determined by the court in the foreclosure proceedings. Notwithstanding the foregoing, if HUD forecloses on the HUD Mortgage, then without regard to whether the Mortgagee also forecloses on this Mortgage, the proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied first to the satisfaction of the HUD Mortgage and Other Mortgage Liens.

11. **Foreclosure Proceedings and Receiver.** Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith to the appointment of a receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage.

12. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein.

13. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Mortgage.

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14. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified United States mail, addressed to Mortgagor at the following address: c/o Catholic Charities Housing Development Corporation, 721 N. LaSalle Street, 5th Floor, Chicago, Illinois 60654 Attention: Gracia M. Shiffrin, with a copy to Law Offices of William G. Skalitzky, P.C., 626 W. Jackson Boulevard, Suite 400, Chicago, Illinois 60661, Attention Bill Skalitzky, and addressed to the Mortgagee at the following address: Hinsdale Bank & Trust Company, 25 East First Street, Hinsdale, IL 60521 Attention: Michael Waldron, and with a courtesy copy to U.S. Department of Housing and Urban Development, 77 W. Jackson Blvd., 23rd Floor, Chicago, IL 60604, Project No. 071 EE247, or at such other place as either party may, by notice in writing, designate as a place for service of notice.

15. **Successors and Assigns.** This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's heirs, administrators, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Loan Documents and any other Indebtedness.

16. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by the Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

17. **Subordination.** The Mortgagee has agreed to subordinate this Mortgage upon the terms set forth herein to the Other Mortgage Liens.

18. **HUD Provisions.** All of the terms and provisions of this Junior Mortgage are subject to the terms and provisions set forth in the Rider attached hereto and incorporated herein by this reference. The Liabilities set forth herein shall be repaid by the Mortgagor only to the extent of available Residual Receipts as defined in the Regulatory Agreement, with HUD approval.

19. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois.

20. **Release.** Mortgagee shall prepare, execute and record a release of this Mortgage and the lien thereof upon expiration of the Retention Period, as defined in the Recapture Agreement, without charge to Mortgagor. Mortgagor shall pay all recordation charges.

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IN WITNESS WHEREOF, Mortgagor has executed this Junior Mortgage as of the 1st day of November, 2011.

MORTGAGOR

ALL SAINTS SENIOR HOUSING, NFP,
an Illinois not for profit corporation

By: *Mr. Michael M. Boland*
Rev. Msgr. Michael M. Boland, President

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Rev. Msgr. Michael M. Boland, personally known to me and known by me to be the President of All Saints Senior Housing, NFP, and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of November, 2011.

William G. Skalitzky
Notary Public

My Commission Expires:

5-18-13

113261.3



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HUD Project No. 071-EE247/IL06-S091-006

All Saints Residence

Chicago, Illinois

EXHIBIT A

Legal Description

PARCEL A:

LOTS 1 TO 5, BOTH INCLUSIVE, LOT 6 (EXCEPT THE SOUTH 7.37 FEET THEREOF), THE WEST 17.5 FEET OF LOT 37, ALL OF LOT 38 AND THE VACATED NORTH-SOUTH ALLEY (AS VACATED PURSUANT TO THE ORDINANCE RECORDED MARCH 31, 1959 AS DOCUMENT NO. 17494788) ADJOINING SAID LOTS 1, 2, 3, 4, 5 AND 38 IN BLOCK 2 IN SAWYER'S SUBDIVISION OF BLOCK 3 IN FIRST ADDITION TO KENSINGTON, A SUBDIVISION OF THE SOUTH 20 ACRES OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE NORTHEAST 4 ACRES) ALSO, THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE RAILROAD) NORTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL B:

LOT 36 AND THE EAST 1/2 OF LOT 37 IN BLOCK 2 IN SAWYER'S SUBDIVISION OF BLOCK 3 IN FIRST ADDITION TO KENSINGTON, A SUBDIVISION OF THE SOUTH 20 ACRES OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE NORTHEAST 4 ACRES) ALSO, THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 22 (EXCEPT THE RAILROAD) NORTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL C:

ALL THAT PART OF THE SOUTH 7.37 FEET OF LOT 6 IN BLOCK 2 IN SAWYER'S SUBDIVISION OF BLOCK 3 IN FIRST ADDITION TO KENSINGTON, A SUBDIVISION OF THE SOUTH 20 ACRES OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 22, EXCEPT THE NORTHEAST 4 ACRES, ALSO THE SOUTH HALF OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 22, EXCEPT THE RAILROAD, NORTH OF THE INDIAN BOUNDARY LINE, ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 6; THENCE NORTH ALONG THE WEST LINE OF SAID LOT TO AN INTERSECTION WITH THE NORTH LINE OF THE SOUTH 7.37 FEET THEREOF; THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, BEING AN ASSUMED

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BEARING FOR THE PURPOSE OF THIS LEGAL DESCRIPTION, ALONG SAID LAST DESCRIBED NORTH LINE, 56.17 FEET TO THE POINT OF BEGINNING OF THIS LEGAL DESCRIPTION; THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, CONTINUING ALONG SAID LAST DESCRIBED NORTH LINE, 20.83 FEET; THENCE SOUTH, PARALLEL WITH THE WEST LINE OF SAID LOT 6, 3.79 FEET TO AN INTERSECTION WITH THE NORTH WALL OF AN EXISTING BUILDING; THENCE NORTH 89 DEGREES 58 MINUTES 41 SECONDS WEST, ALONG SAID LAST DESCRIBED NORTH WALL AND THE WESTERLY EXTENSION THEREOF, 20.83 FEET; THENCE NORTH, PARALLEL WITH THE WEST LINE OF SAID LOT 6, 3.93 FEET TO AN INTERSECTION WITH THE NORTH LINE OF THE SOUTH 7.37 FEET OF LOT 6 AND THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 11701 S. STATE STREET AND 21 E. 117TH STREET, CHICAGO, IL
PINS: 25-22-309-001-0000 (part of); 25-22-309-002; 25-22-309-003

Property of Cook County Clerk's Office

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HUD Project No. 071 EE247
AHP Award No. 2010A0725

RIDER TO LENDER'S JUNIOR MORTGAGE

For value received, the undersigned all agree that the following provisions shall be incorporated into that certain Junior Mortgage (hereinafter the "AHP Mortgage") of even date executed by All Saints Senior Housing, NFP, an Illinois not for profit corporation ("Borrower" or "Mortgagor"), in favor of Hinsdale Bank & Trust Company (the "AHP Lender" or "Mortgagee"), as AHP Lender, to which AHP Mortgage this Rider is attached. In addition, and to the extent that this Rider, and, consequently the AHP Mortgage, affect the rights and responsibilities of the United States Department of Housing and Urban Development ("HUD") under the HUD Section 202 Supportive Housing for the Elderly program (12 U.S.C. §1701q *et seq.*) ("HUD Section 202 Program"), HUD agrees to have a duly authorized official approve this document by execution on the signature line set forth below. To the extent that the provisions of this Rider are inconsistent with the provisions of the AHP Mortgage, or any other HUD capital advance documentation, including but not limited to Paragraph 21 of the HUD Capital Advance Program Regulatory Agreement ("HUD Regulatory Agreement"), required to be executed pursuant to the HUD Section 202 Program, the provisions of this Rider shall prevail and supersede any such inconsistent provisions of the AHP Mortgage or HUD Capital Advance documentation. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the AHP Mortgage.

1. Transfer of the Property or a Beneficial Interest in Borrower. With respect to Paragraphs Number 7, 9 and 10 of the AHP Mortgage pertaining to the acceleration of payment in the event of sale or transfer of all or any part of the Mortgaged Property, or any interest therein of this Mortgage, such Paragraphs are amended as follows:
 - a. Excluded from the provisions of these Paragraphs Number 7, 9 and 10 shall be a transfer to HUD or to a transferee of HUD, provided that in the event of such transfer by Borrower (other than in the event of foreclosure), HUD or such transferee notifies AHP Lender of its intent to acquire Borrower's interest in the subject Property, and HUD or such transferee expressly agrees to assume Borrower's obligations under the Loan Documents, including compliance with the AHP Covenants.
 - b. This AHP Mortgage is subordinate to (a) a first Capital Advance Program Mortgage made by Mortgagor in favor of the Secretary of HUD ("Secretary") to be recorded concurrently herewith securing a Capital Advance made by the Secretary pursuant to the HUD Section 202 Program (the "HUD Mortgage") creating a lien on the property legally described therein, which property is included in the Mortgaged Property legally described on Exhibit A to the Junior Mortgage and this Rider; (b) the HUD Regulatory Agreement and HUD Use Agreement between Mortgagor and the Secretary to be recorded concurrently herewith relating to the Capital Advance, each of which HUD Regulatory Agreement and HUD Use Agreement create an encumbrance on the property

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legally described therein, which property is included in the Mortgaged Property legally described on Exhibit A to the Junior Mortgage and this Rider; and (c) the City Mortgage, City Regulatory Agreement and Donation Regulatory Agreement, each of which creates a lien or encumbrance on the property legally described therein, which property is included in the Mortgaged Property legally described on Exhibit A to the Junior Mortgage and this Rider.

- c. During the period the HUD Mortgage, HUD Regulatory Agreement, and HUD Use Agreement are in effect, except as otherwise provided in this Rider, no default under this AHP Mortgage may be declared without prior or written approval of the Secretary, as applicable including, but not limited to, AHP Lender's rights in the event of Borrower's default set forth in Paragraph Number 9 in this AHP Mortgage pertaining to acceleration of payment in the event of Borrower's default of this AHP Mortgage (which approval shall not be unreasonably withheld).
- d. In the event that during the period the HUD Mortgage, HUD Regulatory Agreement and HUD Use Agreement are in effect, the Secretary acquires title to the Property by foreclosure, the lien of this AHP Mortgage shall automatically terminate.
- e. In the event Borrower defaults under the HUD Mortgage, HUD Regulatory Agreement, or HUD Use Agreement, HUD shall give written notice thereof to AHP Lender at the following address: Hinsdale Bank & Trust Company, 25 East First Street, Hinsdale, IL 60521 Attention: Michael Waldron. The notice shall specify the nature of the violation and the agreement violated.
- f. This AHP Mortgage shall not be modified during the period the HUD Mortgage, HUD Regulatory Agreement, HUD Use Agreement, City Mortgage, City Regulatory Agreement or Donation Regulatory Agreement are in effect without the prior written approval of the Secretary, and the City or the Federal Home Loan Bank of Chicago, as applicable.
- g. During the period the HUD Mortgage, HUD Regulatory Agreement and HUD Use Agreement are in effect, in the event of any conflict between any provisions of this AHP Mortgage and 12 U.S.C §1701q, HUD regulations, or the HUD Regulatory Agreement, this AHP Mortgage shall be deemed amended to comply with said statute, HUD regulations and the HUD Regulatory Agreement, except as follows:
 - (i) Notwithstanding any term or condition to the contrary in this Rider, neither Mortgagee nor Mortgagor shall declare a default hereunder, or foreclose this AHP Mortgage, either by judicial action or under the power of sale herein granted, if any, without the prior written approval of the Secretary (which approval shall not be unreasonably withheld) for so long as the HUD Capital Advance evidenced by the first and superior HUD

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Mortgage remains outstanding; **provided, however**, that in the event the Primary Debt secured hereby is not used in compliance with the Mortgagor's AHP Application dated September 1, 2010 if and as amended (the "AHP Application") or the AHP Covenants, due to an action or omission of Borrower, which Borrower has failed to cure, then AHP Lender may, after ten (10) days prior written notice to HUD and Borrower, declare all amounts due hereunder due and payable. In such event, and pursuant to Paragraph 5(c) of the HUD Regulatory Agreement recorded concurrently herewith, HUD shall approve payments to be made by Borrower to AHP Lender from Residual Receipts (as such term is defined in Paragraph 17(g) of the HUD Regulatory Agreement) of the Project, if and to the extent Residual Receipts are available as determined by the HUD Multifamily Hub or Multifamily Program Center Director. As used in Paragraph 17(g)(1)(ii) of the HUD Regulatory Agreement, the term "obligations" shall not include any non-HUD sources of financing.

- (ii) Borrower shall comply with the AHP Covenants and all other requirements of the Federal Home Loan Bank of Chicago and the Federal Housing Finance Board relating to the Affordable Housing Program, and shall also comply with the requirements of HUD with respect to the development and operation of the Project. Notwithstanding Borrower's compliance with the requirements of HUD, in the event that Borrower's acts or omissions result in noncompliance with the AHP Application or the AHP Covenants, then Borrower shall, to the extent possible, eliminate the circumstances of noncompliance by requesting a modification of the terms of the AHP Application pursuant to 12 C.F.R. §§ 1291.5(f) or 1291.8(c)(2), as applicable. If the circumstances of any noncompliance by Borrower with the AHP Application or the AHP Covenants cannot be, or are not, eliminated by a modification or cured within a reasonable period of time, then the provisions hereof, including notice of noncompliance and repayment of the Primary Debt secured by this AHP Mortgage, shall apply. All capitalized terms used in this Paragraph (ii) and not defined in this Rider shall be as defined in the Federal Home Loan Bank of Chicago Affordable Housing Program Agreement for Rental Project by and among the Federal Home Loan Bank of Chicago, AHP Lender and Mortgagor effective as of November 15, 2010.

- h. Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Project referred to in the HUD Regulatory Agreement shall constitute approval of the TPA by AHP Lender, provided that prior written notice of the TPA is given to AHP Lender and the transferee expressly assumes all of Borrower's obligations under the Loan Documents.

2. Retention Agreement. Borrower agrees as follows:

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- (i) The Property's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP Application for the duration of the Retention Period (as defined in the AHP Covenants).
- (ii) AHP Lender will be given notice of any transfer or refinancing of the Property occurring prior to the end of the Retention Period.
- (iii) In the case of a transfer or refinancing of the Mortgaged Property prior to the end of the Retention Period, an amount equal to the Primary Debt shall be repaid to the Federal Home Loan Bank of Chicago, unless the Mortgaged Property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP Application for the duration of the Retention Period.
- (iv) The income-eligibility and affordability restrictions applicable to the Mortgaged Property pursuant to the AHP Covenants terminate after any foreclosure

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UNOFFICIAL COPY

IN WITNESS WHEREOF, All Saints Senior Housing, NFP, and Hinsdale Bank & Trust Company (and HUD by indicating its approval) have executed this Rider as of this 1st day of November, 2011, as follows:

MORTGAGOR

All Saints Senior Housing, NFP, an Illinois not for profit corporation

By: *Rev. Michael M. Boland*
Rev. Msgr. Michael Boland, President

MORTGAGEE

Hinsdale Bank & Trust Company

By: _____
Its: _____

Approved:

UNITED STATES DEPARTMENT OF HOUSING

By: *Edward J. Hinsberger*

Its: Director, Chicago Multifamily HUB

Date: November 22, 2011

113265.3

UNOFFICIAL COPY

IN WITNESS WHEREOF, All Saints Senior Housing, NFP, and Hinsdale Bank & Trust Company (and HUD by indicating its approval) have executed this Rider as of this 1st day of November, 2011, as follows:

MORTGAGOR

All Saints Senior Housing, NFP, an Illinois not for profit corporation

By: _____
Rev. Msgr. Michael Boland, President

MORTGAGEE

Hinsdale Bank & Trust Company

By: *Michael J. Waldron*
Its: *Michael J. Waldron, AKP*

Approved:

UNITED STATES DEPARTMENT OF HOUSING

By: _____
Its: _____
Date: November __, 2011

113265.3

Property of COOK County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

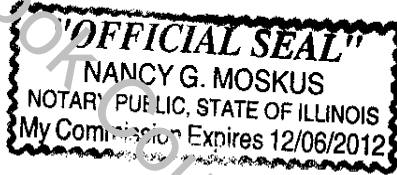
The undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Michael Waldman personally known to me and known by me to be the AVP of Hinsdale Bank & Trust Company ("Bank") and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of November, 2011.

Nancy G. Moskus
Notary Public

My Commission Expires:

12-6-2012



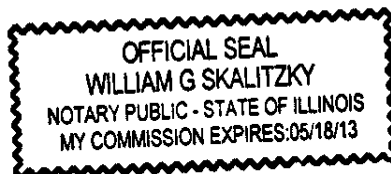
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Rev. Msgr. Michael Boland, personally known to me and known by me to be the President of All Saints Senior Housing, NFP, and the same person in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of November, 2011.

William G. Skalitzky
Notary Public

My Commission Expires:



UNOFFICIAL COPY

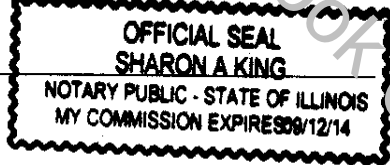
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Sharon A. King, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Edward Nussberger of HUD, and the person who executed the foregoing instrument by virtue of the authority vested in him by Section 202 of the Housing Act of 1959 or section 811 of the National Affordable Housing Act, and I having first made known to him the contents thereof, he/she did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and Urban Development for the uses, purposes and considerations therein set forth.

GIVEN under my hand and Notarial Seal this 22 day of November, 2011.

Sharon A. King
Notary Public

My Commission Expires:



Property of Cook County Clerk's Office