

UNOFFICIAL COPY

96876030

**EXCULPATORY PROVISIONS ATTACHED TO
AGREEMENT AND CERTIFICATION FOR
CLARK AND ELM APARTMENTS
FEDERAL HOUSING ADMINISTRATION
PROJECT NO. 071-35578**

This document is executed by Amalgamated Bank of Chicago, not personally, but solely as Trustee under a Trust Agreement dated April 22, 1987, and known as Trust No. 5250, in the exercise of the power and authority conferred upon and vested in said Trustee as such, and it is expressly understood and agreed that nothing in this document contained shall be construed as creating any monetary liability on said Trustee personally, to pay any indebtedness occurring thereunder, or any personal monetary liability on said Trustee with respect to the performance of any warranty or covenant, either expressed or implied, in said document (all such personal liability, if any, being expressly waived by the parties hereto and by every person now or hereafter claiming any right or security thereunder) except that the said Trustee shall be liable for funds or property of the project coming into its hand, which by the Regulatory Agreement Housing for Multifamily Housing Projects, it is not entitled to retain.

THIS INSTRUMENT WAS PREPARED BY AND AFTER RECORDING, MAIL TO:

Jeffrey C. Rappin, Esq.
350 W. Hubbard Street, Suite 500
Chicago, IL 60610-4011

96876030

F	3550
D	32.00 P
I	16720 V
I	1720

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Clark Elm
Provisional Workout Arrangement
Page 2 Cont.

- c. Any funds over \$134,334.55 (approximately one month's principal, interest and replacement reserve) remaining in the operating account each month after payment of project operating expenses will be remitted in addition to the minimum monthly payment.
 - d. A two percent late charge may be assessed against payments not received by the fifteenth of the month.
 - e. At no time will the owner permit any delinquency to accrue in either the service charge due HUD or tax escrow as billed by HUD each month.
4. **Lump Sum Payments.** The mortgagor agrees to make the following lump sum payments, to be applied to mortgage delinquencies, on the dates indicated:
- \$ N/A (*) on or before _____
\$ N/A on or before _____
- (*) OR payment in an amount to bring the mortgage current through (interest) (principal) (approximately \$ N/A).
5. **Repairs.** The mortgagor agrees to escrow \$ N/A for repairs upon (TPA approval) (execution of this Workout Agreement). The monies will be placed in escrow in a separate repair fund. All disbursements from this fund may be made only with the prior written approval of HUD. (The attached MIO plan or schedule of repair is incorporated as made a part of the terms of this workout arrangement).
6. **Mortgage Modification.**
- a. If the mortgagor has fully complied with the terms of this Arrangement and HUD has determined that it is financially feasible, as of January 1, 2005 HUD agrees to recast any delinquent principal at 8.25% interest amortized over the remaining term of the mortgage.
 - b. The mortgagor agrees to modify the note and mortgage to insert a call provision. The call provision gives the mortgagee the option to declare the entire indebtedness due and payable at or after (ten years) (the longer

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Clark Elm
Provisional Workout Arrangement
Page 3 Cont.

of ten years or the remaining term of the Section 8 contract) from the date of modification.

7. **Equity Kicker.** Mortgagor agrees to pay to HUD twenty five percent (25%) of the gross sales proceeds for a sale or conversion less the mortgage amount; or twenty five percent (25%) of the amount of refinancing (the amount needed to payoff or refinance the mortgages securing the real estate plus any equity "pulled"), less the mortgage amount.
8. **Accounting Reports.** During the term of this Arrangement, that mortgagor shall submit Monthly Reports for Establishing Net Income (Forms HUD-98479, 98480, and 98481). The first report shall be for the month of July, 1994. The original reports are to be mailed to the HUD Office in Chicago, Illinois.
9. **Distributions.** The mortgagor agrees not to take any distributions while the mortgage is being held in default under the terms of this arrangement and of the original Note, Mortgage and Regulatory Agreement.
10. **Cancellation Clause.** This Arrangement is on a month to month basis, and thus, the Secretary agrees to take no action because of the existing monetary default, provided that the mortgagor remits the required minimum monthly payment and satisfactorily performs the other requirements of this Arrangement. Failure of the mortgagor to meet the terms of this Arrangement will be sufficient cause for the Secretary to immediately terminate this Arrangement and to commence foreclosure action. Failure of the mortgagor to meet the terms of this Arrangement is also grounds for the Department to consider taking administrative sanctions against the mortgagor including, but not limited to, suspension or debarment from participation in HUD programs.
11. **Criminal Sanctions for Misuse of Project Funds.** The mortgagor acknowledges that the use of project funds derived from the project covered by this Arrangement for any purpose other than to meet actual and necessary project expenses may be a criminal offense punishable by a fine of not more than \$5,000 and imprisonment of not more than three (3) years or both.
12. **Inclusion Clause.** The terms of this written Arrangement represent the complete agreement between the parties hereto and there are no oral or written side

00332333

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Clark Elm
Provisional Workout Arrangement
Page 4 Cont.

agreements or understandings which affect this workout arrangement now or at any future date.

13. 12-Month Approval Increments. HUD will approve this workout in 12-month increments, providing that prior to approving each 12-month increment, project conditions will be reevaluated based upon review of the annual certified financial statement and a current physical inspection.

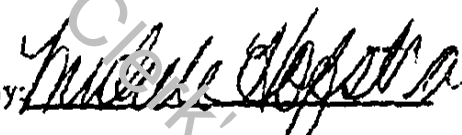
See Explanatory Rider attached and made a part hereof.

The undersigned hereby consents to this Workout Arrangement this 3rd day of January 1995.

Clark Elm Associates

Amalgamated Bank of Chicago,
not personally but solely as
Trustee under Trust Agreement
dated April 22, 1987, and known
as Trust No. 5250


Eugene Heytow, General Partner

By: 
ASSISTANT VICE PRESIDENT


Michael Segal, General Partner

Assistant Secretary for Housing - Federal Housing Commissioner

By: 

Date: 2/17/95

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Project No. 071-35578 Effective Date January 1, 1995
Project No. Clark Elm Apartments Expiration Date December 31, 2005⁹⁸
Location: Chicago, Illinois

PROVISIONAL WORKOUT ARRANGEMENT

The Undersigned mortgagor hereby expressly acknowledges that the mortgage and note secured by the above project is in default. To afford an opportunity to effect reinstatement, the mortgagor request the Secretary, Department of Housing and Urban Development, to hold the defaulted note and mortgage on the subject project under the terms and conditions stated herein.

1. **Possession.** The mortgagor acknowledges that the default entitles HUD to assume possession of the encumbered premises, but that possession has not been demanded. As an inducement for HUD approval of this Arrangement, the mortgagor agrees that it will not oppose or interfere in any way should HUD demand possession by reason of subsequent default under the terms of this Arrangement.
2. **Junior Obligations.** The mortgagor agrees that the project revenues will not be used to repay either interest or principal for any project obligation (other than reasonable and necessary operating expenses) that is junior to the Secretary's lien.
3. **Payment Provision.**
 - a. Beginning January 1, 1995 and continuing through December 31, 2005⁹⁸, the mortgagor will remit by the first of the month a minimum payment sufficient to pay through sixty percent (60%) of interest. This payment is currently \$125,834.55 per month, and commencing on January 1 of each year through January 1, 2005⁹⁸, this monthly amount shall be increased by 10% each year, so long as the Project's gross income for each is at least 10% higher than the Project's gross income for the previous year.
 - b. Past delinquency, if any, in the Reserve for Replacement is hereby forgiven. The mortgagor shall deposit \$8,500 per month into a reserve for replacement from the funds remaining after the minimum monthly payment.

02/28/95

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

DECLARATION FOR RECORDING

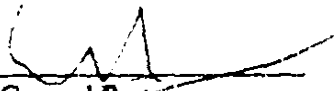
The undersigned, Clark Elm Associates, an Illinois limited partnership ("Declarant") hereby declares as follows:

1. Declarant and the United States Department of Housing and Urban Development are the parties to a certain Provisional Workout Arrangement ("the Arrangement") bearing an effective date of January 1, 1995 with respect to certain improved real property beneficially owned by Declarant and legally described on Exhibit B attached hereto.

2. Declarant desires a copy of the Arrangement be recorded and accordingly, Declarant executes this Declaration for the purpose of attaching the same to a true and correct copy of the Arrangement as Exhibit A hereto and thereafter recording said instrument with the Cook County, Illinois, Recorder of Deeds.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the 14th day of November, 1996.

Clark Elm Associates, an Illinois limited partnership

By: 
Eugene E. Heytow, General Partner

UNOFFICIAL COPY

EXHIBIT B

PARCEL 1

LOTS 8 TO 14, BOTH INCLUSIVE, IN SUBDIVISION OF BLOCK 19 IN BUSHNELL'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2

LOTS 1 TO 3, BOTH INCLUSIVE, AND LOT 8 IN SUBDIVISION OF LOTS 15 TO 17, BOTH INCLUSIVE, IN BLOCK 19 OF BUSHNELL'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN No. 17-04-412-018

UNOFFICIAL COPY

Property of Cook County Clerk's Office

06/28/2025