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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2008 APR 15 10:39:09 AM
BK:5301 PG:2447-2452 FEE:\$26.00

INSTRUMENT # 2008016087

RETURN TO
City of Wilm-Finance
NORTH CAROLINA

NEW HANOVER COUNTY

DECLARATION OF DEED RESTRICTIONS
Rental Housing
Portion of Tax Parcel No.

THIS DECLARATION OF DEED RESTRICTIONS ("Declaration"), made and entered into as of December 17, 2007, by and between Housing Authority of the City of Wilmington, North Carolina, a North Carolina municipal corporation (the "Owner") and Robert R. Taylor Senior Homes, LLC, a North Carolina limited liability company (the "Lessee"), for the benefit of and enforceable by the City of Wilmington, a North Carolina municipal corporation (the "Lender");

WHEREAS, the Owner is the owner of a certain tract of real property, more particularly described as Lot 1, 4.86 acres, on that map entitled "ROW Dedication & Subdivision Plat of Robert R. Taylor Estates" recorded in Map Book 51 at Page 88 of the New Hanover County Registry, being the leasehold estate created and devised by that certain Ground Lease Agreement by and between the Housing Authority of the City of Wilmington, North Carolina, as Lessor, and Grantor, as Lessee, as evidenced by that Memorandum recorded in Deed Book 5227 at Page 149 of the New Hanover County Registry ("Lease"). The above referenced plat and Memorandum are incorporated herein by reference of the New Hanover County Registry ("Property"); and

WHEREAS, the Owner has entered into a Ground Lease of the Property to the Lessee for the purpose of constructing and operating ninety-six (96) multi-family dwelling units for low income seniors; and

WHEREAS, Lender has made a loan to Lessee in the original principal amount of \$200,000 (the "Loan"), evidenced by a promissory note dated December 17, 2007 and secured by a deed of trust of even date with the promissory note and recorded in Book 5301 Page 1241, New Hanover County Registry; and

WHEREAS, the Loan was made to provide assistance to a multi-family rental project for seniors with 96 unit(s) to be constructed with the proceeds of the Loan, and located on the Property which has a street address of 1308 North 5th Street, Wilmington, North Carolina ("Project") pursuant to the HOME Investment Partnership Act ("Program") and subject to the regulations promulgated as part of the HOME Investment Partnership Program (24 CFR Part 92) ("Program Regulations"), which Program Regulations, among other things, restrict the use of Program assistance to property which will provide affordable housing for at least a minimum period of time as prescribed therein; and

WHEREAS, the Project constructed with these funds will be used for multi-family rental housing for low-income households; and

WHEREAS, the Owner of the Property will benefit from the construction of the Project; and

WHEREAS, as a condition of making the Loan, Lender has required and Owner and Lessee have agreed to restrict the Property as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby represents, covenants, warrants and agrees:

1. Minimum Program Restrictions. At all times during the Term of this Declaration the Lessee and the Project shall comply with all the regulations affecting a recipient owner and a qualifying project pursuant to the Program Regulations, as the same may be amended from time to time, including, but not limited to the following:
 - a. The Project shall qualify as and shall be maintained as “affordable housing” as prescribed in the applicable Program Regulations (24 CFR Part 92.254, 92.255) based on the Lessee’s application for Program assistance and shall be suitable for occupancy.
 - b. Rent Limitations: The maximum gross rent for all units (including applicable utility allowances) shall be computed in accordance with 24 CFR 92.252.
 - c. Rent Increases: To the extent specifically required by applicable regulations under the HOME Investments Partnership program, if an existing tenant’s adjusted income increases to the extent that it exceeds eighty (80%) percent of the median income for the Wilmington Area, as defined annually by the United States Department of Housing and Urban Development (HUD) said tenant’s rent shall be increased to an amount equal to (30%) percent of the family’s adjusted monthly income.
2. Lease Provisions. All leases between the Lessee and its tenants shall be for not less than one (1) year in duration, unless by mutual agreement between the tenant and the Lessee, and shall comply with all the provisions of 24 CFR 92.253.
3. Nuisances. The property shall not be used in such manner as to cause the property to appear unclean or unkept; no substance shall be kept upon the property which will permit foul or obnoxious odors; the property shall not be used in any manner that will or might disturb the peace, quiet, comfort, and serenity of adjacent properties.
4. Term. This Declaration shall remain in full force and effect until the later of (i) December 31, 2028 or (ii) the expiration of the loan term of the HOME Program Loan to the Recipient that closed on or before the date of this Declaration; however, this Declaration period shall in no event be less than the required minimum period of affordability under the applicable Program Regulations (“Period of Affordability”). This Declaration shall automatically terminate in the event of transfer of title by foreclosure or by deed in lieu of foreclosure, or if pursuant to 24 CFR Part 92.254(a)(5)(i)(A) assignment of an FHA insured mortgage to HUD, subject to automatic revival if, at any time during the remainder of the original Period of Affordability, the owner of record immediately prior to the termination event, or any entity that includes such former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or the Property.
5. Covenants to Run With the Land. The covenants, reservations and restrictions set forth herein (i) shall be deemed covenants running with the land and shall pass to and be binding upon Owner and Lessee, their heirs, successors and assigns in title to the Property and all subsequent owners or operators of the Project and (ii) are not merely personal covenants of the Owner and Lessee. The benefits shall inure to the Lender and any present or prospective Owner or Lessee of the Project during the term of this Agreement. The Owner and Lessee hereby agree that any and all requirement of the laws of the State of North Carolina to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the Property and which touch and concern the Property, shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the land. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such

contract, deed or other instruments. If a portion or portions of the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Project.

6. Compliance Monitoring. The Lessee agrees to permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Lender to inspect any books and records of the Lessee regarding the Project which pertain to compliance with this Agreement. The Lessee shall submit any other information, documents or certifications requested by Lender which the Lender shall deem reasonably necessary to substantiate the Lessee's continuing compliance with the Program, Program Regulations and this Agreement.
7. Remedies; Enforceability. The Owner, Lessee and Lender acknowledge that the primary purpose for requiring compliance by the Owner and Lessee with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner and Lessee with the Program, Program Regulations and additional Lender restrictions. BY REASON THEREOF, THE OWNER AND LESSEE IN CONSIDERATION FOR RECEIVING THE BENEFITS FOR THE LOAN FOR THIS PROJECT HEREBY AGREE AND CONSENT THAT THE LENDER AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER THE PROGRAM (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO OBTAIN SPECIFIC PERFORMANCE BY THE OWNER OR LESSEE OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT OF COMPETENT JURISDICTION. The Owner and Lessee hereby further specifically acknowledge that the beneficiaries of the Owner's and Lessee's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. The provisions hereof are imposed upon and made applicable to the Property and shall run with the land and shall be enforceable against Owner, Lessee or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach of violation hereof at any later time or times.
8. Amendment. This declaration shall not be amended or, except as otherwise provided herein, terminated except by written instrument, executed by the Lender, Lessee and the Owner, or their successors or assigns, which amendment shall be duly recorded in the Office of the Register of Deeds for the county in which the Property is located.
9. Severability. If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.
10. Construction. Unless the context clearly requires otherwise, as used in this Declaration words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Declaration and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.
11. Headings. The titles and headings of the sections of this Declaration have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof, nor be considered or given any effect in construing this Declaration or any provisions hereof, or in ascertaining intent if any question of intent shall arise.
12. Governing Law. This Declaration shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Lender, the Owner and the Lessee have executed this Declaration through their duly authorized representatives, all on the date first written above.

OWNER:

Housing Authority of the City of Wilmington,
North Carolina

By: [Signature]
Interim Executive Director

LESSEE:

Robert R. Taylor Senior Homes, LLC, a North Carolina limited liability company

By: HEO Partners II\, LLC,
a North Carolina limited liability company,
it Manager-Member

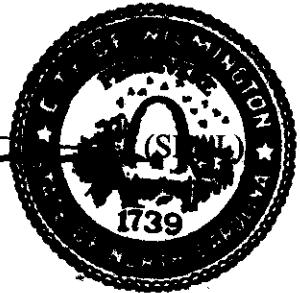
By: Housing and Economic Opportunities, Inc.,
a North Carolina nonprofit corporation,
its Manager-Member

By: [Signature]
Glenn Floyd, Vice President

LENDER:

City of Wilmington

By: [Signature]
City Manager



STATE OF NORTH CAROLINA

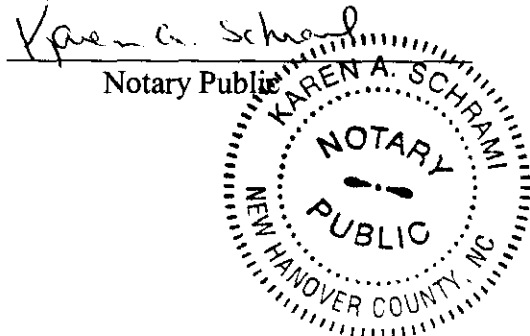
COUNTY OF NEW HANOVER

I, Karen A. Schraml, a Notary Public for said County and State, do hereby certify that Glenn Floyd, Interim Executive Director of Housing Authority of the City of Wilmington, North Carolina personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 17th day of December, 2007.

My Commission Expires:

02/04/2009

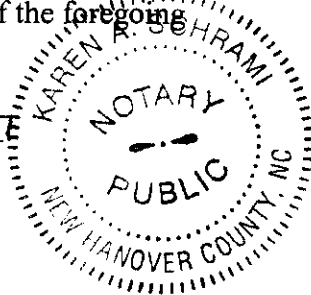


STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Karen A. Schraml, a Notary Public, for said County and State do hereby certify that, Glenn Floyd, Vice President of Housing and Economic Opportunities, Inc., a North Carolina nonprofit corporation, Manager-Member of HEO Partners I, LLC, a North Carolina limited liability company, Manager-Member of Robert R. Taylor Senior Homes, LLC, a North Carolina limited liability company personally came before me this day and acknowledged that the due execution of the foregoing instrument.

Witness my hand and official seal, this the 17th day of December, 2007.



Karen A. Schmal
Notary Public

My Commission Expires:

02/04/2009

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

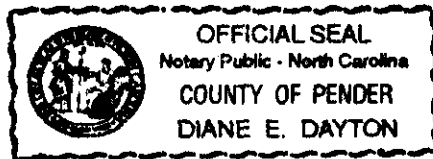
I, Diane E. Dayton a Notary Public for said County and State, do hereby certify that Sterling Cheatham, City Manager of the City of Wilmington, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 29th day of January, 2008.

My Commission Expires:

10-19-09

Diane E. Dayton
Notary Public





REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 04/15/2008 10:39:09 AM
Book: RE 5301 Page: 2447-2452
Document No.: 2008016087
DECL 6 PGS \$26.00
Recorder: CRESWELL, ANDREA

State of North Carolina, County of New Hanover

DOCUMENT OF
POOR QUALITY

**YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.**

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