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2009-008042

Klamath County, Oregon



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06/10/2009 11:33:34 AM

Fee: \$111.00

RECORDING COVER SHEET

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING. ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.

After Recording Return To:

Evanston Financial Corporation
112 S. David Lane
Knoxville, TN 37922

1. Name(s) of the Transaction(s):

Housing and Community Services Project Use Agreement

2. Direct Party (Grantor):

Shangri La Apartments of Klamath LLC

3. Indirect Party (Grantee):

Evanston Financial Corporation

4. True and Actual Consideration Paid:

N/A

5. Legal Description:

See attached

11/11/09

Regulatory Agreement for Multifamily Housing Projects

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

Under Sections 207, 220, 221 (d)(4), 231 and 232, Except Nonprofits

| | | | |
|---|--------------------------|---|---|
| Project Number 126-11057 | | Mortgagee Evanston Financial Corporation | |
| Amount of Mortgage Note \$1,050,700 | | Date Of even date herewith | |
| Mortgage Recorded State Oregon Book * | County Klamath Page * | Date * | Originally endorsed for insurance under Section 207 pursuant to Section 223(f) |

This Agreement entered into this _____ first _____ day of _____ June _____, 20 09, between
Shangri La Apartments of Klamath, L.L.C. a Wyoming limited liability company _____ whose ad-
dress is _____ 1415 Esplanade, Klamath Falls, OR 97601 _____

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development
and his successors (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the
above described note or in consideration of the consent of the Secretary to
the transfer of the mortgaged property or the sale and conveyance of the
mortgaged property by the Secretary, and in order to comply with the
requirements of the National Housing Act, as amended, and the Regulations
adopted by the Secretary pursuant thereto, Owners agree for themselves,
their successors, heirs and assigns, that in connection with the mortgaged
property and the project operated thereon and so long as the contract of
mortgage insurance continues in effect, and during such further period of
time as the Secretary shall be the owner, holder or reinsurer of the mortgage,
or during any time the Secretary is obligated to insure a mortgage on the
mortgage property:

1. Owners, except as limited by paragraph 17 hereof, assume and agree
to make promptly all payments due under the note and mortgage.
2. (a) Owners shall establish or continue to maintain a reserve fund for
replacements by the allocation to such reserve fund in a separate
account with the mortgagee or in a safe and responsible depository
designated by the mortgagee, concurrently with the begin-
ning of payments towards amortization of the principal of the
mortgage insured or held by the Secretary of an amount equal to
\$ 790 per month, unless a different date or
amount is approved in writing by the Secretary.

Such fund, whether in the form of a cash deposit or invested in
obligations of, or fully guaranteed as to principal by, the United
States of America shall at all times be under the control of the
mortgagee. Disbursements from such fund, whether for the pur-
pose of effecting replacement of structural elements and mechan-
ical equipment of the project or for any other purpose, may be
made only after receiving the consent in writing of the Secretary.
In the event that the owner is unable to make a mortgage note
payment on the due date and that payment cannot be made prior
to the due day of the next such installment or when the mortgagee
has agreed to forgo making an election to assign the mortgage to
the Secretary based on a monetary default, or to withdraw an
election already made, the Secretary is authorized to instruct the
mortgagee to withdraw funds from the reserve fund for replace-
ments to be applied to the mortgage payment in order to prevent
or cure the default. In addition, in the event of a default in the terms
of the mortgage, pursuant to which the loan has been accelerated,
the Secretary may apply or authorize the application of the
balance in such fund to the amount due on the mortgage debt as
accelerated.

- (b) Where Owners are acquiring a project already subject to an
insured mortgage, the reserve fund for replacements to be estab-
lished will be equal to the amount due to be in such fund under
existing agreements or charter provisions at the time Owners
acquire such project, and payments hereunder shall begin with the
first payment due on the mortgage after acquisition, unless some
other method of establishing and maintaining the fund is ap-
proved in writing by the Secretary.

3. Real property covered by the mortgage and this agreement is described
in Exhibit A attached hereto.

(This paragraph 4 is not applicable to cases insured under Section 232.)

4. (a) Owners shall make dwelling accommodation and services of the
project available to occupants at charges not exceeding those
established in accordance with a rental schedule approved in
writing by the Secretary, for any project subject to regulation of
rent by the Secretary. Accommodations shall not be rented for a
period of less than thirty (30) days, or, unless the mortgage is
insured under Section 231, for more than three years. Commercial
facilities shall be rented for such use and upon such terms as
approved by the Secretary. Subleasing of dwelling accommoda-
tions, except for subleases of single dwelling accommodations by
the tenant thereof, shall be prohibited without prior written
approval of Owners and the Secretary and any lease shall so
provide. Upon discovery of any unapproved sublease, Owners
shall immediately demand cancellation and notify the Secretary
thereof.
- (b) Upon prior written approval by the Secretary, Owners may charge
to and receive from any tenant such amounts as from time to time
may be mutually agreed upon between the tenant and the Owners
for any facilities and/or services which may be furnished by the
Owners or others to such tenant upon his request, in addition to the
facilities and services included in the approved rental schedule.
Approval of charges for facilities and services is not required for
any project not subject to regulation of rent by the Secretary.
- (c) For any project subject to regulation of rent by the Secretary, the
Secretary will at any time entertain a written request for a rent
increase properly supported by substantiating evidence and
within a reasonable time shall:

*Recorded concurrently herewith

- (i) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or;
 - (ii) Deny the increase stating the reasons therefor.
5. (a) If the mortgage is originally a Secretary-held purchase money mortgage, or is originally endorsed for insurance under any Section other than Sections 231 or 232 and is not designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.
 - (b) If the mortgage is originally endorsed for insurance under Section 221, Owners shall in selecting tenants give to displaced persons or families an absolute preference or priority of occupancy which shall be accomplished as follows:
 - (1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by the Secretary, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants;
 - (2) Thereafter, and on a continuing basis, such preferred applicants shall be given preference over nonpreferred applicants in their placement on a waiting list to be maintained by the Owners; and
 - (3) Through such further provisions agreed to in writing by the parties.
 - (c) Without the prior written approval of the Secretary not more than 25% of the number of units in a project insured under Section 231 shall be occupied by persons other than elderly persons.
 - (d) All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of the Owners to obtain occupancy by elderly persons.
6. Owners shall not without the prior written approval of the Secretary:
 - (a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property.
 - (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, nursing home revenues and healthcare receivables, and shall not disburse or pay out any funds except for usual operating expenses and necessary repairs;
 - (c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property.
 - (d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project.
 - (e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:
 - (1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;
 - (2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;
 - (3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and
 - (4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.
 - (f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.
 - (g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.
 - (h) Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.
7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.
 8. Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.
9. (a) Any management contract entered into by Owners or any of them involving the project shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.
 - (b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
 - (c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.

- (d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.
- (e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.
- (f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.
- (g) All rents and other receipts of the project shall be deposited in the name of the project in a financial institution, whose deposits are insured by an agency of the Federal Government. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash as permitted by paragraph 6(e) above. Any Owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall hold such funds in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.
- (h) If the mortgage is insured under Section 232:
- (1) The Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as a nursing home and shall not lease all or part of the project except on terms approved by the Secretary.
 - (2) The Owners shall suitably equip the project for nursing home operations.
 - (3) The Owners shall execute a Security Agreement and Financing Statement (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the insured mortgage. The Security Agreement and Financing Statement shall constitute a first lien upon such equipment and shall run in favor of the mortgagee as additional security for the insured mortgage.
 - (i) If the mortgage is insured under Section 231, Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as housing for the elderly.
10. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin, including Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 82 Stat. 73), as amended, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100, 107 and 110, and Subparts I and M of Part 200).
11. Upon a violation of any of the above provisions of this Agreement by Owners, the Secretary may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Secretary may:
- (a) (i) If the Secretary holds the note declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;
 - (ii) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;
 - (b) Collect all rents, charges, nursing home revenues and healthcare receivables in connection with operation of the project and use such collections to pay the mortgagor's obligations under this agreement and under the note and mortgage, and the necessary expenses of preserving the property and operating the project.
 - (c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.
 - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
12. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Secretary because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Secretary their rights to the rents, profits, income and charges of whatsoever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

13. As used in this Agreement the term:

- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;
- (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;
- (d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;
- (e) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto;
- (f) "Surplus Cash" means any cash remaining after:
 - (1) the payment of:
 - (i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;
 - (ii) All amounts required to be deposited in the reserve fund for replacements;
 - (iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
 - (2) the segregation of:
 - (i) An amount equal to the aggregate of all special funds required to be maintained by the project; and
 - (ii) All tenant security deposits held.
- (g) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project.

(h) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;

(i) "Section" refers to a Section of the National Housing Act, as amended.

j) "Displaced persons or families" shall mean a family or families, or a person, displaced from an urban renewal area, or as the result of government action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970.

(k) "Elderly person" means any person, married or single, who is sixty-two years of age or over.

14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Secretary and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

16. The invalidity of any clause, part or provisions of this Agreement shall not affect the validity or the remaining portions thereof.

17. The following Owners: **Shangri La Apartments of Klamath, LLC**, and all its managers, members, and officers, present and future

Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

(a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and

(b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

~~18. See the attached Rider for Project Replacement Reserve Needs.~~

(To be executed with formalities for recording a deed to real estate.)

18. In addition to the monthly deposit referred to in sec. 2(a) hereof, Owners have, on the date of recordation hereof, made the following deposits into the reserve fund for replacements: ~~(a) a \$65,000 initial deposit, and (b) a \$14,746~~ transfer the preexisting replacement reserve balance from FHA Project No. 126-44077.
19. See the attached Rider for Project Replacement Reserve Needs.
20. Owners agree that, until December 1, 2012, they shall operate the mortgaged property in strict accordance with – and as they were “Owner” under – the Use Agreement and Amendment of Regulatory Agreements effective November 1, 1993, between Craig E. Angelo, Larry Angelo, Al Angelo, Jr., and Gary Angelo, as tenants in common, and the Secretary of Housing and Urban Development (the “Use Agreement”), a photocopy of which Use Agreement is attached hereto as Exhibit B.
21. Owners certify that they are familiar with the terms of:
- (a) the Use Agreement, and
 - (b) a Housing Assistance Payments (HAP) Contract No. OR16-M000-079, as it may have been amended and/or renewed through the date hereof.
22. Owners or their management agent shall provide the Secretary Monthly Accounting Reports for each of the first six full months after the recordation hereof.
23. Owners immediately shall adopt and implement the Asbestos Operations and Maintenance Plan for Shangri La Apartments prepared by Surveys Inc. dated February 19, 2009.

IN WITNESS WHEREOF, Owners have caused these presents to be signed in its name by the president of its manager as of the day and year first above written, pursuant to authority given by resolution of its members and of the board of directors of its manager.

Shangri La Apartments of Klamath, LLC, a Wyoming
limited liability company

By:

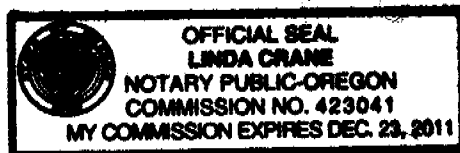
Mathew K. McVay
Mathew K. McVay, Manager

State of Oregon

County of Klamath

On June 16, 2009, personally appeared before me Mathew K. McVay, who, being duly sworn (or affirmed), did say that he is the manager of Shangri La Apartments of Klamath, LLC, a Wyoming limited liability company, and that the foregoing instrument was signed and sealed in behalf of said company by authority of the members of said a company, and he acknowledged said instrument to be the company's voluntary act and deed.

[NOTARIAL SEAL]



Linda Crane
Notary Public

My commission expires: 12/23/2011

[Additional signature page follows.]

IN WITNESS WHEREOF, the Secretary has these presents to be signed in his ~~or her~~ name by his ~~or her~~ authorized agent as of the day and year first above written, pursuant to authority given by delegation of authority duly promulgated by said Secretary.

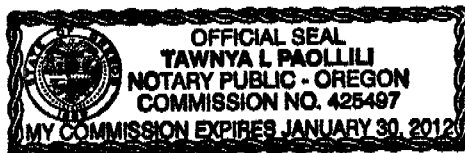
Secretary of Housing and Urban Development

By *Patrick J. Shea*
Authorized Agent

State of *Oregon*
County of *Multnomah*

On June *4th*, 2009, personally appeared before me *Patrick Shea*, who, being duly ~~sworn~~ (or affirmed), did say that he ~~or she~~ is the authorized agent of the aforesaid Secretary of Housing and Urban Development, and that the foregoing instrument was signed and sealed in behalf of said Secretary by authority of delegation of authority duly promulgated by said Secretary, and he ~~or she~~ acknowledged said instrument to be said Secretary's voluntary act and deed.

[NOTARIAL SEAL]



Tawnya L. Paollili
Notary Public

My commission expires: *January 30, 2012*

RIDER FOR REPLACEMENT RESERVE NEEDS

Attached to and made a part of the Regulatory Agreement Multifamily Projects for

Shangri La Apartments, FHA Project No. 126-11057

The U.S. Department of Housing and Urban Development ("HUD") will reevaluate the Project's Replacement Reserve needs every ten years and, if appropriate, adjust the Mortgagor's required deposits to the Replacement Reserve.

To assist in completing this evaluation, the Mortgagee shall obtain a new PCNA every ten years which covers the next ten years (or the remaining term of the Mortgage) plus two years.

Replacement Reserve funds may be used to pay for the additional PCNAs.

EXHIBIT "A"
LEGAL DESCRIPTION

A tract of land situated in the SE1/4 SW1/4 of Section 34, T38S, R9EWM, Klamath County, Oregon, being more particularly described as follows:

Commencing at the Northeast corner of Lot 37, ENTERPRISE TRACTS, Klamath County, Oregon; thence South 00°15'30" East along the centerline of Avalon Street, 242.83 feet; thence North 89°44'30" East, 30.00 feet to a point on the East boundary of said street for the True Point of Beginning; thence North 89°44'30" East, 395.00 feet; thence North 00°15'30" West 59.01 feet, to a point on the Southwesterly boundary of the U.S.R.S. "A" canal; thence along said canal boundary 204.24 feet along the arc of a curve right (which arc has a radius of 433.10 feet and a long chord of North 55°12'32" West 202.35 feet); thence North 41°42' West 183.35 feet to the Southeasterly boundary of Eberlein Avenue; thence along said boundary South 47°54'30" West, 144.93 feet to the East boundary of Avalon Street; thence along said boundary South 00°15'30" East 216.00 feet to the true point of beginning.

AND an easement for a sewer in and across the following described real estate, situate, lying and being in Klamath County, Oregon, and more particularly described as follows:

A strip of land 10 feet in width lying along the following described centerline:

Beginning at a point 240 feet Northerly from the North boundary of SUNNYLAND ADDITION to the City of Klamath Falls, and 310 feet Easterly from the East boundary of Avalon Street, at which point a manhole is constructed; thence Northerly to a point on the Southerly boundary line of a parcel of property owned by Shangri-La Apartments, a partnership, said point being North 89°44'30" East 298.00 feet from the East boundary of Avalon Street.

Filed at request of:

Dept. of HUD, 10.3HML
520 SW Sixth Avenue
Portland, OR 97204-1596

FHA No. 126-44077
Shangri-La Apartments
Klamath Falls, Klamath Co.,
OR

For Recorder's Use

EXHIBITS TO
REGULATORY AGREEMENT
BETWEEN SHANGRI LA
APARTMENTS OF KLAMATH, LLC
AND THE SECRETARY OF HOUSING
AND URBAN DEVELOPMENT

USE AGREEMENT AND AMENDMENT OF REGULATORY AGREEMENTS

FOR MULTIFAMILY PROJECTS INSURED OR ASSISTED
UNDER SECTION 236 OF THE NATIONAL HOUSING ACT
AND SUBJECT TO THE EMERGENCY LOW-INCOME
HOUSING PRESERVATION ACT OF 1987

This Agreement, entered into by the Secretary of Housing and Urban Development (the "Secretary" or "HUD"), and CRAIG E. ANGELO, LARRY ANGELO, AL ANGELO, JR. and GARY ANGELO, as tenants in common (collectively, the "Owner"), provides as follows:

WHEREAS, FHA Project No. 126-44077, Shangri-La Apartments (the "Project"), located in Klamath Falls, Oregon, was financed with the proceeds of a mortgage loan insured by the Secretary under Section 236 of the National Housing Act (12 U.S.C. 1715z-1), as evidenced by that certain Mortgage Note (the "Mortgage Note") and Mortgage (the "Mortgage") dated November 1, 1972, the Mortgage being recorded in Klamath County, Oregon, on November 13, 1972, in Vol. M72 at page 13089, et seq., together with an apparently unrecorded Modification Agreement between Federal National Mortgage Association and Shangri-La Apartments, an Oregon limited partnership, entered into as of February 1, 1977, together with an additional Modification Agreement entered into on October 21, 1981, between Federal National Mortgage Association and the Owner recorded July 7, 1982, in Vol. M82 at page 8499, et seq., as document No. 13306, covering real property more particularly described in Exhibit "A" attached hereto; and

WHEREAS, the Project is subject to that certain Regulatory Agreement dated November 1, 1972, and recorded in Klamath County, Oregon, on November 13, 1972, in Vol. M72 at page 13093, et seq., as document No. 70296, which said Regulatory Agreement has been amended by "Addendum to Regulatory Agreement" entered into on January 22, 1982, which document was apparently not recorded, and which has been additionally amended by "Addendum to Regulatory Agreement" entered into on February 1, 1982, and recorded in Klamath County, Oregon, on March 15, 1982, in Vol. M82 at page 3161, et seq., as document No. 9932 (collectively "Agreement No. 1"); and to that certain Regulatory Agreement entered into on January 1, 1977, which document was apparently not recorded, ("Agreement No. 2"); and to that certain Regulatory Agreement entered into on August 31, 1981, and recorded in Klamath County, Oregon, on July 7, 1982, in Vol. M82 at page 8492, et seq., as document No. 13305, ("Agreement No. 3"); and

WHEREAS, the Project is subject to the provisions of the Emergency Low Income Housing Preservation Act of 1987 (Title II of the Housing and Community Development Act of 1987, P.L. 100-242), as amended ("ELIHPA"), because it meets the definition of "eligible low income housing" in ELIHPA; and

WHEREAS, pursuant to ELIHPA and 24 C.F.R. Part 248, Subpart C, the Owner has requested, and HUD has agreed to provide, certain incentives, as set forth in this Agreement, in exchange for the Owner's agreement to continue low-income affordability restrictions on the Project for the remaining term of the Mortgage;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Secretary and the Owner hereby agree as follows:

1. Definitions

a. "Adjusted Income" has the meaning set forth in the definition of "adjusted income" in 24 C.F.R § 248.201 on the effective date of this Agreement.

b. "Lower Income Families" are persons or families whose incomes are more than 50%, but not in excess of 80%, of Median Income as determined by HUD, with adjustments for smaller or larger families.

c. "Median Income" is the median income for a four-person family as calculated by HUD, based on the median income for Klamath County (or 125% of the national median income, if less).

d. "Moderate Income Families" are persons or families whose incomes are more than 80% of Median Income, but not in excess of 95% of Median Income, as determined by HUD, with adjustments for smaller or larger families.

e. "Very Low Income Families" are persons or families whose incomes do not exceed 50% of Median Income, as determined by HUD, with adjustments for smaller or larger families.

2. Term. This Agreement shall remain in effect until December 1, 2012, the maturity date of the Mortgage Note.

3. Use Restriction. The Project shall be used solely as rental housing for Very Low, Lower, and Moderate Income Families, except that no tenant in occupancy as of the effective date of this Agreement ("Current Tenant[s]") shall be required to relocate on the basis of his or her income.

4. Maintenance of Affordability

a. Paragraph 4(c) of each of the Regulatory Agreements is deleted in its entirety. The Owner will, to the extent practicable, maintain the Project as affordable to the following number of Very Low, Lower, and Moderate Income Families:

- 17 units - Very Low (up to 50% of median income)
- 8 units - Lower (51-to-80% of median income)
- 11 units - Moderate (over 80% of median income)

The number of Lower Income units is subdivided as follows:

- 3 units (51-60% of median income)
- 4 units (61-70% of median income)
- 1 units (71-80% of median income)

b. Paragraph 4(d) of each of the Regulatory Agreements is amended to read as follows:

(d) preference for occupancy shall be given to those families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster;

5. Rents for Current Tenants

a. General. Any increase in rents paid by Current Tenants shall be phased in within the restrictions imposed by Section 225(b) of ELIHPA, as follows: If the total rent increase

is greater than 30% of the existing rent, it will be phased in equally over a period of not less than three (3) years, with each increase occurring at the beginning of a lease year, the first lease year beginning on the date of this Agreement. If the total increase is greater than 10% yet less than 30%, it will be phased in at no more than 10% per year. However, the rent level of any Current Tenant determined in accordance with this phase-in provision may be increased, if made necessary by reasonable increases in operating costs, during the phase-in period.

b. **Very Low Income Tenants.** Tenants receiving Section 8 project-based assistance shall pay for rent the lesser of 30% of Adjusted Income, or the Section 8 Existing Fair Market Rent for Klamath County (the "FMR"), subject to paragraph 5(a) of this Agreement. Current Very Low Income Tenants who are not elderly or handicapped will receive Section 8 assistance even though not otherwise eligible.

c. **Lower and Moderate Income Tenants.** Current Lower and Moderate Income Tenants and tenants with incomes exceeding the limit for Moderate Income Tenants shall pay the least of the FMR, 30% of Adjusted Income, or the prevailing market rent for the unit size for the area. Rent increases shall be phased in, in accordance with Paragraph 5(a).

In the event that the income of a current Lower or Moderate Income Tenant decreases below 50% of Median Income, and Section 8 assistance is not available, that tenant shall pay the Minimum/Floor Rent, to be calculated by applying the following factors to the Median Income:

| <u>Unit Size</u> | <u>Factors</u> |
|------------------|----------------|
| 1 Bedroom | 0.00937500 |
| 2 Bedroom | 0.01125000 |

6. Rents for Future Tenants

a. **Very Low Income Tenants.** Future Very Low Income Tenants who are not assisted by Section 8 shall pay the Minimum/Floor rent.

b. **Lower and Moderate Income Tenants.** Future Lower and Moderate Income Tenants who are not assisted by Section 8, and tenants with incomes exceeding the limit for Moderate Income Tenants, shall pay the least of the FMR, 30% of Adjusted Income, or the prevailing market rent for the unit size for the area. In the event that the income of a future Lower or Moderate Income Tenant decreases below 50% of Median Income, and Section 8 assistance is not available, that tenant shall pay the Minimum/Floor Rent.

7. Establishment of Rents - General. Paragraph 4(b) of each of the Regulatory Agreements is deleted in its entirety. Paragraph 4(a) of each of the Regulatory Agreements is revised by adding the following sentence to the end thereof:

Both the basic rental charge and the fair-market rental charge shall include debt service on any loan or return on equity approved by the Commissioner as part of a plan of action under Title II of the Housing and Community Development Act of 1987;

8. Utility Payments. Tenant-paid utility payments for current and future tenants must be deducted from the approved rent actually charged to the tenant. All rents as computed in accordance with this Agreement will include utilities or be reduced by the Personal Benefit Expense, which shall be based on an annual review by the Secretary, in accordance with current HUD procedures and subject to HUD approval.

9. Rent Adjustments

a. Any increase in rents for Current Tenants that results from implementation of this Agreement will be phased in, in accordance with paragraph 5(a) of this Agreement.

b. Tenants shall be recertified annually. Rent adjustments for all units assisted under a Housing Assistance Payments Contract ("HAP Contract") shall be determined by applying the appropriate Section 8 Annual Adjustment Factor (AAF) to the Section 8 rents. Rent adjustments for units subject to the Minimum/Floor Rents shall be determined by applying the appropriate Floor Rent factors to Median Income.

c. Paragraph 4(f) of each of the Regulatory Agreements is deleted in its entirety.

10. Displacement. No Current Tenant shall be displaced, except for good cause.

11. Section 8 Assistance. The Owner agrees to accept assistance under a HAP Contract executed pursuant to Section 8 of the United States Housing Act of 1937, as amended, with respect to 17 units in the Project. Initial Section 8 contract rents will not exceed the lesser of the FMR, or rents for comparable unassisted units. The Owner agrees to accept and utilize such assistance in accordance with the HAP Contract, and agrees to accept any renewal or extension of the HAP Contract, or any contract under a program designated by the Secretary as a successor to the Section 8 program. To the extent authorized by law and to the extent that appropriated funds are available, the

Secretary agrees to provide Section 8 assistance under Section 8 or any successor program with respect to 17 units in the Project. If assistance under Section 8 or any successor program ceases to be available during the term of this Agreement, this Agreement will be renegotiated by the parties in accordance with Section 225(c) of ELIHPA.

12. Reserve for Replacements and Amendment of Regulatory Agreement.

a. Paragraph 2(a) of each of the Regulatory Agreements is amended by adding the following language to the end thereof:

The Secretary will not approve the release of funds from the Reserve for Replacements account if doing so would reduce the balance below one month's maximum gross rent potential, except in emergencies such as natural disasters requiring immediate repairs, or to avoid a default on the mortgage insured by the Commissioner.

b. At any time within 60 days after the effective date of this Agreement, Owner may withdraw the entire balance in the Project's Reserve for Replacement Account. Immediately thereafter, Owner will deposit into the Reserve for Replacement Account the amount of \$39,850. Regular monthly deposits to the Reserve for Replacement Account in the prescribed amount shall continue without interruption.

13. Distributions and Amendment of Regulatory Agreement. Paragraph 6(e)(1) of each of the Regulatory Agreements is amended to read as follows:

"(1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction."

14. Residual Receipts Account. Upon the owner's written request, and HUD's determination that the project is in good physical condition, and escrow and trust accounts are properly funded, HUD agrees to a one-time release to the owner of all funds held in the Residual Receipts Account as of the effective date of this Agreement.

15. Civil Rights Requirements. The Owner will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the basis of race, color, creed, sex, national origin, handicap or familial status, including, but not limited to: Title VI of the Civil Rights Act of 1964 (42

U.S.C. 2000d-1), the Fair Housing Act (42 U.S.C. 3601), Executive Order 11063, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and all requirements of HUD regulations implementing these authorities, including, but not limited to, 24 C.F.R. Parts 1, 100, 107 and 110, and Subparts I and M of Part 200.

16. Agreement Binding Upon Successors and Assigns. Upon conveyance of the Project during the term of this Agreement, the Owner shall require its grantee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon the Owner's successors and assigns.

17. Reports. The Owner shall furnish the Secretary with such reports concerning the financial condition, operation and condition of the Project as the Secretary may prescribe.

18. Incorporation of Regulatory Agreement Provisions by Reference. Paragraphs 2; 4(e), (g), (h), (j) and (k); 5; 6 (a) through (h) and (k); 7; 9; 10; 13 and 17 of Agreement No. 1, Agreement No. 2 and Agreement No. 3 are adopted and incorporated by reference herein. In the event that the Owner prepays the Mortgage Note, or the FHA mortgage insurance is terminated, the provisions listed above shall remain in full force and effect, binding the Owner, its successors and assigns, as if the Mortgage Note were not prepaid or the mortgage insurance were not terminated, except that in the case of such prepayment or termination:

a. the phrase "the Secretary" shall be substituted for the term "Mortgagee" throughout the adopted language of the Regulatory Agreements; and

b. the phrase "mortgaged property" or "mortgaged premises", referred to in the Regulatory Agreements, shall mean the Project.

19. Enforcement. In the event of a breach or threatened breach of any provision of this Agreement, any eligible tenant or applicant for occupancy, or the Secretary or his successors or delegates, may institute proper legal action to enforce performance of such provision, to enjoin any conduct in violation of such provision, and to recover damages (including refunds, with interest, on rent overcharges), or to obtain whatever relief may be appropriate.

20. Severability. The invalidity, in whole or part, of any provision of this Agreement shall not affect or invalidate the remaining provisions.

21. Impairment of Regulatory Agreements. The terms and provisions of the Regulatory Agreements shall continue in full force except as expressly modified herein. Conflicts between this Agreement and any provision of any of the Regulatory Agreements shall be resolved in favor of this Agreement.

22. Execution of Other Agreements. The Owner agrees that it has not and will not execute any other agreement with provisions contradictory or in opposition to the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth herein, and supersede any other conflicting requirements.

23. Effective Date. The parties agree that this Agreement shall be effective as of:

November 1, 1993

IN WITNESS WHEREOF, the parties have executed this Agreement.

OWNER: CRAIG E. ANGELO, LARRY ANGELO,
AL ANGELO, JR. AND GARY ANGELO,
as tenants in common

By: Craig E. Angelo
Craig E. Angelo, tenant in common

By: Larry Angelo
Larry Angelo, tenant in common

By: Al Angelo, Jr.
Al Angelo, Jr., tenant in common

By: GARY ANGELO
Gary Angelo, tenant in common

SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

By: R. J. B.
Authorized Agent

State of Washington)
 County of Clark) ss.

On this day personally appeared before me Craig E. Angelo, Larry Angelo, Al Angelo, Jr. and Gary Angelo, as tenants in common, personally known to me to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

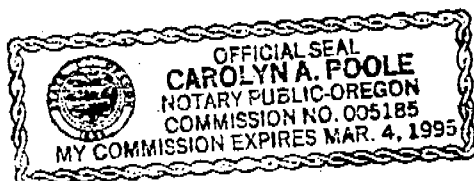
GIVEN under my hand and official seal this 11th day of Dec, 1993.

Lynette K. Proctor
 Notary Public in and for the
 State of Washington, residing at
Duon Prairie

State of Oregon)
 County of Multnomah) ss.

Personally appeared R. C. Brinck, who being duly sworn, did say that he is the Authorized Agent for the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner, and that he executed the foregoing instrument by authority of and in behalf of said principal; and that he acknowledged said instrument to be the act and deed of the principal.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 14th day of December, 1993.



Carolyn A. Poole
 Notary Public for Oregon

My Commission Expires:

3/4/95

EXHIBIT "A"

Commencing at the Northeast corner of Lot 37, ENTERPRISE TRACTS, Klamath County, Oregon; thence South $00^{\circ} 15' 30''$ East along the centerline of Avalon Street, 242.83 feet; thence North $89^{\circ} 44' 30''$ East, 30.00 feet to a point on the East boundary of said street for the true point of beginning; thence North $89^{\circ} 44' 30''$ East, 395.00 feet; thence North $00^{\circ} 15' 30''$ West 59.01 feet, to a point on the Southwesterly boundary of the U.S.R.S. "A" canal; thence along said canal boundary 204.24 feet along the ARC of a curve right (which arc has a radius of 433.10 feet and a long chord of North $55^{\circ} 12' 32''$ West 202.35 feet); thence North $41^{\circ} 42'$ West 183.35 feet to the Southeasterly boundary of Eberlein Avenue; thence along said boundary South $47^{\circ} 54' 30''$ West, 144.93 feet to the East boundary of Avalon Street; thence along said boundary South $00^{\circ} 15' 30''$ East 216.00 feet to the true point of beginning.

AND an easement for a sewer in and across the following described real estate, situate, lying and being in Klamath County, Oregon, and more particularly described as follows:

A strip of land 10 feet in width lying along the following described center line:

Beginning at a point 240 feet Northerly, from the North boundary of SUNNYLAND ADDITION to the City of Klamath Falls, and 310 feet Easterly from the East boundary of Avalon Street, at which point a manhole is constructed; thence Northerly to a point on the Southerly boundary line of a parcel of property owned by Shangri-La Apartments, a partnership, said point being North $89^{\circ} 44' 30''$ East 298.00 feet from the East boundary of Avalon Street.

STATE OF OREGON,
County of Klamath ss.

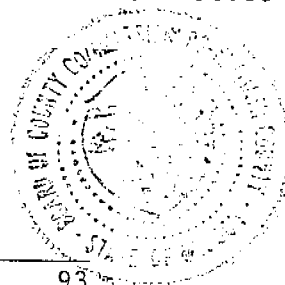
Filed for record at request of:

on this 17th day of Dec A.D., 19 93
at 3:36 o'clock P.M. and duly recorded
in Vol. M93 of Mortgages Page 33785.

Evelyn Biehn County Clerk

By Douglas M. Beckendorf

Fee, \$55.00



Page 10 of 10
of Exhibit B

Deposited