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COMPARED

*James D. Smith*

BLACK HAWK COUNTY RECORDER

REC BRIANNETTA WILLIS 1218 W PARKER ST WATERLOO IA 50703  
RET TAX COMPLIANCE DIVISION IOWA FINANCE AUTHORITY 100 E GRAND STE 250 DES MOINES IA 50309

**Preparer Information: James Smith, 100 E. Grand, Suite 250, Des Moines, Iowa 50309 (515) 242-4990**

**Attention: County Recorder - After recording, return original recorded document to: Tax Credit Compliance Division, Iowa Finance Authority, 100 E. Grand, Suite 250, Des Moines, IA 50309 (515) 242-4990**

Legal Description is set forth on Exhibit A hereto.

Project: 04-12

**LAND USE RESTRICTIVE COVENANTS AGREEMENT FOR  
LOW-INCOME HOUSING TAX CREDIT PROGRAM**

ALLOCATION OF CREDITS TO THIS PROJECT IS BASED ON THE FOLLOWING:

- (1)  Credits from Set-Aside for Projects involving Qualified Non-Profit Organizations
- (2)  Credits from Hard to House Set-Aside
- (3)  Credits from Affordable Assisted Living Set-Aside
- (4) X Credits from Preservation Set-Aside
- (5) X Additional Low-Income Targeting
- (6) X Extended term of Occupancy Restriction
- (7) X Housing Supportive Services
- (8)  Use of HOME Funds Requiring 40/50 Set-Asides

THIS AGREEMENT, dated as of December 5, 2005 by and between Roosevelt Housing Partners LP, a limited partnership, and its successors and assigns (the "Owner"), and the Iowa Finance Authority, a public instrumentality and agency of the State of Iowa ("IFA").

WITNESSETH:

WHEREAS, the Owner is the owner of a twenty-one (21) unit rental housing development located at 200 E. Arlington in the City of Waterloo, County of Black Haw, State of Iowa, on the real property described in Exhibit A attached hereto, known as Roosevelt Senior Residences (the "Project"); and

WHEREAS, IFA has been designated by Iowa Code Section 16.52 as the housing credit agency for the State of Iowa for the allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder (the "Code"); and

WHEREAS, the Owner has applied to IFA for an allocation of low-income housing tax credits for the Project and has made certain representations to IFA in its Low-Income Housing Tax Credit Application, the Carryover Allocation Application and the IRS Form 8609 Request Package (collectively, the "Application"), concerning, among other things, the number of Low-Income Units (as hereinafter defined) and the term of occupancy restrictions; and

WHEREAS, the Code requires in connection with the allocation of low-income housing tax credits that the Owner execute and deliver this Land Use Restrictive Covenants Agreement (the "Agreement") and that this Agreement be recorded in the official land records of the county in which the Project is located in order to create covenants running with the land for the purpose of enforcing certain requirements of Section 42 of the Code and certain additional undertakings of the Owner in connection with its Application by regulating and restricting the use and occupancy of the Project as set forth herein: and

WHEREAS, based upon such representations, IFA is willing to make an allocation of low-income housing tax credits to the Project provided that the Owner, by entering into this Agreement, agrees to be regulated by IFA in order that IFA may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use and occupancy of the Project shall be and are covenants running with the Project land for the term stated herein and shall be binding upon all subsequent owners of the Project for such term.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and IFA agree as follows:

Section 1. Recording and Filing; Covenants to Run with the Land.

(a) This Agreement shall be placed of record in the real property records of the county in which the Project is located and, except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind the Owner and its successors and assigns, and all subsequent owners of the Project or any interest therein, and the benefits shall inure to IFA and its successors and assigns, for the period prescribed in Section 3 hereof.

(b) The Owner hereby agrees that any and all requirements of the laws of Iowa to be satisfied in order for the provisions of this Agreement to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privacy of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. During the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective as to

successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

Section 2. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:

- (a) The Owner is duly organized under the laws of the State of Iowa and is qualified to transact business under the laws of Iowa.
- (b) The Owner has good and marketable title to the premises constituting the Project.
- (c) Each building which is the subject of an allocation of low-income housing tax credits is, or, by not later than the last day of the first year of the "credit period," as defined in Section 42(f) of the Code ("Credit Period"), will be, a "qualified low-income building" as defined in Section 42(c)(2) of the Code ("Qualified Low-Income Building"), and the Project constitutes or will constitute a "qualified low-income housing project" as defined in Section 42(g) of the Code ("Qualified Low-Income Housing Project").
- (d) The Owner shall not discriminate on the basis of race, creed, color, sex, age, marital status, national origin, disability or familial status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, and shall neither refuse to lease a unit in the Project, nor give preference to the holder of a certificate of eligibility under Section 8 of the U.S. Housing Act of 1937 on account of the status of the prospective tenant as such holder.
- (e) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing.
- (f) The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.
- (g) If the Owner becomes aware of any situation, event or condition which would result in noncompliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to IFA.
- (h) The Owner shall insure that the Low-Income Units (as hereinafter defined) are of comparable quality to other units, if any, in the Project.
- (i) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms hereof.
- (j) The Owner has obtained or will obtain the consent of any prior recorded lienholder(s) to the recording of this agreement and to the subordination of the lien(s) of such lienholder(s) to this Agreement.

Section 3. Term of Restrictions.

(a) Except as otherwise provided herein, this Agreement, including the occupancy restrictions set forth in Section 5 hereof, shall be in effect for each building which is part of the Project for a period of fifteen (15) taxable years (the "Compliance Period") beginning with the taxable year in which each such building is placed in service or, in connection with the election of the taxpayer under Section 42(f)(1)(B) of the Code, the succeeding taxable year.

(b) In addition to the period described in subsection (a) above, the Owner shall comply with the occupancy requirements set forth in Section 5 hereof for an additional twenty (20) years, such additional twenty (20) years constituting the "extended use period," as defined in Section 42(h)(6)(D) of the Code ("Extended Use Period"). Accordingly, the occupancy requirements set forth in Section 5 hereof shall remain in place for a period of fifty (50) years, except as described in paragraph (c) below.

(c) This Agreement and the Extended Use Period for any building which is part of the Project shall terminate:

(i) on the date the Project or the building is acquired by foreclosure or deed in lieu of foreclosure unless the Secretary (hereinafter defined) determines that such acquisition is part of an arrangement with the Owner a purpose of which is such termination; or

(ii) on the last day of the one-year period beginning on the date (after the date which is one (1) year prior to the end of the period described in subsection (a) above) the Owner submits a written request to IFA to find a person to acquire the Owner's interest in the low-income portion of the building and IFA is unable to present during such period a "qualified contract" as such term is defined in Section 42(h)(6)(F) of the Code.

(d) Notwithstanding any termination pursuant to subsection (c) above, during the period of three (3) years following such termination, the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit.

Section 4. Qualified Low-Income Housing Project. The Owner shall maintain the Project as a Qualified Low-Income Housing Project at all times, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement. To this end, and without limitation, the Owner shall assure that all of the residential units in the Project are available for use by the general public, suitable for occupancy and used on other than a transient basis.

Section 5. Occupancy Restrictions. The Owner covenants and agrees that:

(a) For the purpose of Section 42(g)(1) of the Code, the Owner elects

X At least **twenty percent (20%)** of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is **fifty percent (50%)** or less of area median gross income.

At least **forty percent (40%)** of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is **sixty percent (60%)** or less of area median gross income.

In addition to the Minimum Set-Aside requirement checked above, the Project will also meet the deep rent skewing option as defined in Section 142(d)(4) of the Code (**fifteen percent (15%)** of the units occupied by individuals whose income is **forty percent (40%)** or less of area median gross income and other requirements).

(b) Notwithstanding the election described in subsection (a) of Section 5 above, the Owner covenants and agrees that at least five (5) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is forty percent (40%) or less of area median gross income and at least sixteen (16) of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is sixty percent (60%) or less of area median gross income.

(c) All of the foregoing residential rental units are collectively referred to herein as the "Low-Income Units", and, with respect to all of such Low Income Units, "median gross income" shall be determined in accordance with the Code. The Owner further agrees that additional units in the Project shall be both rent-restricted and occupied by low-income individuals or families whose incomes meet the requirements of Section 5(b) to the extent necessary to maintain the "applicable fraction," as defined in Section 42(c)(1)(B) of the Code, at not less than one hundred percent (100%) for each taxable year of the Extended Use Period. A unit is "rent-restricted" if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit, all as determined in accordance with Section 42(g) of the Code.

(i) The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section 5) shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section 5, provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

(ii) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall be required to sign and deliver to the Owner a fully completed Tenant Income Certification in the form provided from time to time by IFA, and the income and assets of such individual or family must be verified in the manner prescribed by IFA.

(iii) The form of lease to be utilized by the Owner in renting any unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification or the failure by such tenant to execute a Tenant Income Certification annually.

(d) The Owner further covenants and agrees that not later than the last day of the first year of the Credit Period, as defined in Section 42(f) of the Code:

(i) At least twenty-one (21) of the residential rental units in Project shall be constructed, equipped, set aside and made available for occupancy on a priority basis to Older Persons at all times during the term of this Agreement hereinafter defined, and the Owner shall provide evidence to IFA of all licenses, permits or other governmental approvals required for such occupancy.

(ii) Of the residential rental units which are to be subject to the restrictions of Section 5 hereof, at least ten (10) shall be one-bedroom units and at least eleven (11) shall be two-bedroom units.

(e) The Owner further covenants and agrees that the following amenities shall be constructed, equipped, set aside and made available at the Project, as described below:

Range, Dishwasher, Refrigerator, Kitchen Exhaust Fan, Window Coverings, Garbage Disposal, Air Conditioning, Ceiling Fans, Laundry Facilities, Community Room and Computer Learning Center.

(f) The Owner further covenants and agrees that it will comply with the supportive Services plan agreed to and set forth in the Carryover Agreement dated December 31, 2004.

Section 6. Qualified Non-Profit Participation. If box (1) or (2) on page 1 of this Agreement is checked, the Project is one involving a "qualified nonprofit organization" as defined in Section 42(h)(5)(C) of the Code which will both own an interest in the Project and "materially participate," within the meaning of Section 469(h) of the Code, in the development and operation of the Project and will remain a material participant throughout the compliance period.

Section 7. Owner Certifications and Reports.

(a) Within ninety (90) days of the end of the first year of the Credit Period, the Owner shall provide to IFA a copy of the First Year Certification Part II of IRS Form 8609, as filed or prepared for filing with the Internal Revenue Service and executed by or on behalf of the Owner.

(b) The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Section 42 of the Code. A copy of such annual certification shall be provided to IFA.

(c) The Owner shall provide to IFA, annually, on March 1 or the next business day, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided, from time to time, by IFA, together with a copy, for each building, of the most recently filed IRS Form 8609 Schedule A: Annual Statement.

(d) The Owner shall maintain in its records and provide to IFA copies of any and all notices and correspondence from or with the Internal Revenue Service concerning the Project or the Owner.

(e) In addition to the information provided for in Section 5 and in this Section 7, the Owner shall provide any other information, documents or certifications requested, from time to time, by IFA with respect to the Project's physical, operational and financial condition and residents which IFA reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code.

Section 8. Transfer Restrictions.

(a) The Owner shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of IFA. Such consent shall be given provided that: (i) the Owner is in compliance with the requirements of this Agreement and of Section 42(j)(6) of the Code; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of IFA, by its performance with respect to other low-income housing tax credit or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Agreement; and (iii) in no event shall the Owner dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. For the purposes of this subsection, transfer of fifty percent (50%) or more of the ownership interests in Owner shall be deemed a transfer of the Project.

(b) The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee.

Section 9. Physical Maintenance/Management/Books/Records/Inspections.

(a) The Owner shall maintain each building in the Project such that all units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to IFA.

(b) The Owner shall provide for the management of the Project in a manner reasonably determined by IFA to assure compliance with this Agreement. Any management contract entered into by the Owner involving the Project shall provide that it shall be subject to termination, without penalty and with or without cause, upon written request by IFA addressed to the Owner. Upon such request the Owner shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements reasonably satisfactory to IFA for continuing proper management of the Project.

(c) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with Section 42 of the Code and with this Agreement and to the eligibility of the Owner to claim credits with respect to the Project shall at all times be maintained at the Project, or at the Owner's principal place of business in the State of Iowa in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by IFA or its authorized agents. IFA shall also have the right to enter and inspect the Project at any reasonable time.

(d) Owners shall keep records for each Qualified Low-Income Building in the Project showing the following:

- (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
- (ii) the percentage of residential rental units in the building that are Low-Income Units;
- (iii) the rent charged on each residential rental unit in the building (including any utility allowance);
- (iv) the number of occupants in each Low-Income Unit;
- (v) the Low-Income Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- (vi) the annual income certification of each Qualifying Tenant;
- (vii) documentation to support each Qualifying Tenant's income certification;
- (viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- (ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project).

(e) Owners shall keep all records for each building for a minimum of six years after the due date (with extensions) for filing the Owner's federal income tax return for any year; provided, that the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

Section 10. Prohibition Against Actions Described in Section 42(h)(6)(E)(ii)(I) and (II). The Owner covenants and agrees that during the Extended use Period it (a) will not evict or Terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and (b) will not increase the gross rent above the maximum allowed under the Code with respect to such Low-Income Unit.

Section 11. Enforcement.

(a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code or of this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of IFA, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service



from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Owner shall promptly advise IFA as to the date each building in the Project is a Qualified Low-Income Building.

(c) In the event of any failure of the Owner to comply with the provisions of Section 42 of the Code or of this Agreement, IFA shall inform the Owner by written notice of such failure and provide the Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of IFA within the period of time specified by IFA, which shall be at least thirty (30) days after the date any notice to the Owner is mailed, or within such further time as IFA determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice IFA may declare a default under this Agreement effective on the date of such declaration of default, and IFA may (i) apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement; (ii) secure the appointment of a receiver to operate the Project in compliance with this Agreement; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Agreement.

(d) The Owner and IFA each acknowledges that the primary purpose of requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the Treasury Regulations thereunder, **AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF LOW-INCOME HOUSING TAX CREDITS FOR THE PROJECT HEREBY AGREES AND CONSENTS THAT IFA, ANY QUALIFYING TENANT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE BUILDING UNDER THE CODE (WHETHER PRESENT, PROSPECTIVE OR FORMER OCCUPANTS OF THE BUILDING) (ANY OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION,** the Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(e) In the event of the Owner's or Project's failure to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or IFA from time to time pertaining to the obligations of the Owner as set forth therein or herein, IFA, in addition to all of the remedies provided by law or in equity, shall notify the Internal Revenue Service of such noncompliance.

Section 12. Return of Unused Credit. Pursuant to Section 42(h)(3)(C) of the Code and Treasury Regulation §1.42-14(d) thereunder, the housing tax credit dollar amount allocated to the Owner with respect to the Project shall be canceled and returned to IFA, in whole or in part, if (i) any building in the Project is not a Qualified Low-Income Building within the time period required by Section 42 of the Code, or (ii) the "Qualified Basis" of any building in the Project is less than the qualified basis on which the credit amount was allocated by IFA, (iii) IFA and the Owner cancel an allocation of an amount of credit by mutual consent, or (iv) IFA

determines under Section 42(m)(2) of the Code that an amount of credit allocated to the Project is not necessary for the financial feasibility of the Project and its viability as a Qualified Low-Income Housing Project throughout the Credit Period.

Section 13. No Reliance. In issuing the Allocation, IFA has relied upon information provided and representations made by the Owner or the Owner's designee, and the Allocation does not in any way constitute a representation, warranty, guaranty, advice or suggestion by IFA as to the qualification of the Project for the tax credits, or the feasibility or viability of the Project, and may not be relied on as such by any owner, developer, investor, tenant, lender, or other person, for any reason. In addition, IFA's acceptance of the certifications and representations required in connection with Owner's request for the Allocation does not constitute a representation as to the satisfaction of the requirements under Section 42(h)(1)(E) as binding on the part of the Internal Revenue Service.

Section 14. Release and Indemnification. The Owner acknowledges that, in issuing Internal Revenue Service Form(s) 8609 with respect to the Project, IFA is relying or will rely upon information and representations given by or on behalf of the Owner and has made or will make no independent investigation and does not and will not have independent knowledge of the basis for such information and representations. Accordingly, to induce IFA to issue the Form(s) 8609, the Owner agrees as follows:

(a) The Owner agrees to release and forever discharge IFA, its members, employees, agents, officers, successors and assigns of and from any and all claims, demands, causes of actions, judgments and executions which the Owner has or may hereafter have against IFA, whether in law or in equity, arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the issuance of a Form 8609 with respect to the Project by IFA.

(b) The Owner hereby agrees to indemnify, save harmless and defend IFA, and its members, officers, agents, employees, successors and assigns (an "indemnified party") from any obligation, claim, loss, demand, cost, expense (including the costs of the investigation and settlement of any claim, and including reasonable attorney's fees) or judgment against IFA arising or resulting from, or on account of or pertaining to, whether directly or indirectly, IFA's issuance of a Form 8609 with respect to the Project. If any such claim is asserted, any indemnified party hereunder will give prompt notice to the Owner and will cooperate in the investigation and defense of any such claim. The Owner will assume the defense of any such asserted claim by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld), it being understood and agreed that the indemnified party shall have the right to employ its own separate counsel and participate in such proceedings at the Owner's cost and expense if such indemnified party is advised in an opinion of counsel rendered in good faith that there may be legal defenses available to such indemnified party which are adverse to or in conflict with those available to the Owner.

(c) If the indemnification provided in subsection (b) is, for any reason, either unavailable to IFA or any of the other persons intended to be indemnified thereby or insufficient to hold it or any of them harmless, then the Owner hereby agrees to contribute to all amounts paid or payable by IFA and such other persons as a result of any such obligation, claim, loss, demand, cost, expense, or judgment. The amount to be contributed by the Owner shall be the amount that is appropriate to reflect both the relative benefits received by the Owner, on the one hand, and by IFA and such other persons, on the other hand, and the relative degrees of fault of the Owner, on the one hand, and of IFA and such other persons, on the other hand.

Section 15. Miscellaneous.

(a) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

To IFA:

Iowa Finance Authority  
100 East Grand Avenue, Suite 250  
Des Moines, Iowa 50309  
Attention: Tax Credit Program Manager

To the Owner:

Roosevelt Housing Partners LP  
10642 W 115th Street  
Overland Park, KS 66210  
Attention: Jay Trevor

(i) Each such notice shall be deemed to have been provided: At the time it is actually received; or, within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day of delivery; or, Within five days after deposited in the U.S. Mail in the case of registered U.S. Mail. Copies of such notice to each party shall be provided separately. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein. IFA and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) Compliance with the Law and Regulations.

(i) The Owner shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement.

(ii) The Owner declares that it has complied with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement.

(iii) IFA may consider the failure of the Owner to comply with any law or regulation as a material breach of this Agreement subjecting the Agreement to be immediate cancellation.

- (d) Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by both parties.
- (e) Choice of Law and Forum.
- (i) The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.
- (ii) In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. If however, jurisdiction is not proper in the Iowa District Court, Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.
- (iii) This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to IFA or the State of Iowa.
- (f) Assignment and Delegation. The Owner shall not assign, transfer, convey, or otherwise dispose of this Agreement, its duties under this Agreement, or any rights, title, or interest in this Agreement to any other person, corporation, or other entity without the prior written approval of IFA which may be given or withheld in IFA's good faith business judgment.
- (g) Integration. This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement.
- (h) Headings or Captions. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.
- (i) Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. Each party shall be deemed an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.
- (j) Waiver. Any breach or default by either party shall not be waived or released other than by a writing signed by the other party. Failure by either party at any time to require performance by the other party or to claim a breach provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.
- (k) Each party to this Agreement represents and warrants to the other that:
- (i) It has the right, power and authority to enter into and perform its obligations under this Agreement.

(ii) It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

(l) Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

(m) Counterparts. The parties agree that this Agreement has been or may be executed in several counterparts including facsimile copies, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

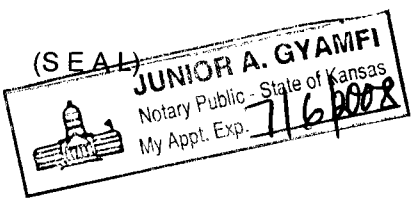
**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

OWNER: Roosevelt Housing Partners, CP

By: Jay Trevor, its General Partner  
Its: Managing Member, Roosevelt Housing Development, LLC

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }S  
  ;  ;

On this 12<sup>th</sup> day of December 2005, before me, the undersigned, a Notary Public in and for the state of Kansas, personally appeared JAY TREVOR to me personally known, who, being by me duly sworn did say that the person is the Managing of Roosevelt Housing Development LLC General Partner of Roosevelt Housing Partners an(a) limited partnership executing the foregoing instrument, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation as General Partner of Roosevelt Housing Partners by authority of the \_\_\_\_\_; and that \_\_\_\_\_ as that officer acknowledge execution of the instrument to be the voluntary act and deed of the Partnership by it and by the officer voluntarily executed.



Junior A. Gyamfi  
Notary Public in and for said State

IOWA FINANCE AUTHORITY

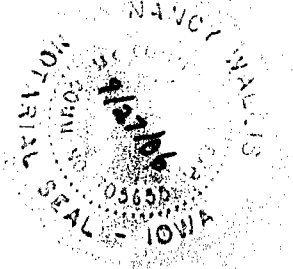
By:

Bret L. Mills  
Name: Bret L. Mills  
Title: Executive Director

STATE OF IOWA }  
  }§  
COUNTY OF POLK }

On this 5<sup>th</sup> day of December, 2005, before me, a Notary Public in and for said State, personally appeared Bret L. Mills, to me personally known, who being by me duly sworn did say that he is Executive Director of the Iowa Finance Authority and that said instrument was signed on behalf of the Iowa Finance Authority by authority of its board and said Executive Director acknowledged the execution of said instrument to be the voluntary act and deed of the Iowa Finance Authority by it and by him voluntarily executed.

(SEAL)



Nancy Wallis  
Notary Public in and for said State



Project Name: Roosevelt Senior Residences  
Land Use Restrictive Covenant  
Low-Income Housing Tax Credit Program  
Page 3

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 6-17, Gates Park Place, Block 2, and that part of the vacated north-south alley in said Block 2 lying east of Lots 6-11 and west of Lots 12-17, all in the City of Waterloo, Black Hawk County, Iowa.



**EXHIBIT B**

**MINIMUM APPLICABLE FRACTION BY BUILDING**

Building Identification Number: <u>IA</u>	<u>04-12001</u>	Minimum Applicable Fraction	<u>100</u>	%
Building Identification Number: <u>IA</u>	_____	Minimum Applicable Fraction	_____	%
Building Identification Number: <u>IA</u>	_____	Minimum Applicable Fraction	_____	%
Building Identification Number: <u>IA</u>	_____	Minimum Applicable Fraction	_____	%
Building Identification Number: <u>IA</u>	_____	Minimum Applicable Fraction	_____	%
Building Identification Number: <u>IA</u>	_____	Minimum Applicable Fraction	_____	%