DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING CREDITS

#91-0019

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (the "Agreement"), dated as of November 18, 1991, by Manchester Park, L.P. and its successors and assigns (the "Owner") is given as a condition precedent to the allocation of low-income housing credits by the Iowa Finance Authority, a public instrumentality and agency of the State of Iowa (together with any successor to its rights, duties and obligations) (the "Authority").

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of a 8-unit rental housing development (the "Project") located on the land described in Exhibit A hereto (the "Project Land") in the City of Manchester, County of Delaware, State of Iowa; and

WHEREAS, pursuant to Chapter 220 of the Code of Iowa, 1989, as amended (the "Act") the Authority has been designated as the housing credit for the State of Iowa for the allocation of low-income housing credit dollars the (the "Credit"); and

WHEREAS, the Owner has applied to the Authority for an allocation of Credit to the Project in an amount not to exceed $5,450 low-income housing credit dollars; and

WHEREAS, the Owner has represented to the Authority in the Owner's Low-Income Housing Tax Credit Application (the "Application") that the Owner shall lease 100% of the units in the Project to individuals or families whose income is 60% less of the area median gross income (including adjustments for family size) ("Low-Income Tenants") as determined in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Authority has determined that the Project would support a Credit allocation in the amount of $5,450; and

WHEREAS, the Owner has represented to the Authority in the Application that it will covenant to maintain the Section 42 rent and income restrictions for an additional period of time; and

WHEREAS, the Code requires as a condition precedent to the allocation of the Credit that the Owner execute, deliver and record, in the official land deed records of the county in which the Project is located, this Agreement in order to create certain covenants running with the Project Land and the Project thereon for the purpose of enforcing the requirements of Section 42 of the Code and the Authority Occupancy Restrictions found in Section 5 hereof by regulating and restricting the use and occupancy and transfer of the Project and the Project Land as set forth herein; and

FILE No. 143-1491
RECORDING FEE $ 50.00
TRANSFER FEE $

FILED FOR RECORD THE 9 DAY OF December 19 91 AT 10:30
O'CLOCK A M. BOOK 3 PAGE 1

STATE OF IOWA, DELAWARE COUNTY
Jane A Lloyd, Recorder
Misc.

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project and the Project Land shall be and are covenants running with the Project Land and the Project thereon for the term stated herein and binding upon all subsequent owners of the Project and the Project Land for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

Section 1. Definitions.

All words and phrases defined in Section 42 of the Code and by Treasury or HUD regulations pertaining thereto shall have the same meanings in this Agreement.

Section 2. Recording and Filing; Covenants to Run With the Land.

(a) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Authority an executed original of the recorded Agreement showing the date, deed book and page numbers of record. The Owner agrees that the Authority will not issue the Internal Revenue Service Form 8609 constituting final allocation of the Credit unless and until the Authority has received the recorded executed original of the Agreement.

(b) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project and the Project Land during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project and the Project Land (i) shall be and are covenants running with the Project Land and the Project thereon, encumbering the Project Land and the Project for the term of this Agreement, binding upon the Owner's successors in title and all subsequent Owners and operators of the Project and the Project Land; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner (and the benefits shall inure to the Authority and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Iowa to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the Project Land and the Project thereon shall be deemed to be satisfied in full, and that any requirements of privileges 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 Project Land and the Project thereon. For the longer of the period the Credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or the Project Land or any portions thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract deed or other instrument hereafter executed

conveying the Project or the Project Land or portions thereof provides that such conveyance is subject to this Agreement.

(c) The Owner covenants to obtain the consent of any prior recorded lien holder on the Project or the Project Land to this Agreement and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

Section 3. Representations, Covenants and Warranties of the Owner.

The Owner hereby represents, covenants and warrants as follows:

(a) The Owner (i) is a Limited Partnership duly organized under the laws of the State of Iowa, and is qualified to transact business under the laws of the State of Iowa; (ii) has the power and authority to own its properties and assets and to carry on its business now being conducted; and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body; (ii) will not violate or, as applicable, have not violated any provisions of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project or the Project Land is bound; and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the Project Land, and has, or upon completion of construction thereof shall have, good and marketable title to the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project, or other permitted encumbrances).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

(e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations.

(f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.

(g) During the term of this Agreement, all units subject to the Credit shall be leased

and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the Code.

(h) The Owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.

(i) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy.

(j) Subject to the requirements of Section 42 of the Code and this Agreement, the Owner may sell, transfer or exchange the entire Project and the Project Land at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project and the Project Land or any interest therein that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project. The Owner agrees that the Authority may void any sale, transfer or exchange of the Project or the Project Land if the buyer or successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

(k) The Owner agrees to notify the Authority in writing of any sale, transfer or exchange of the entire Project or any low-income portion of the Project or the Project Land.

(l) The Owner shall not demolish any part of the Project substantially subtract from any real or personal property of the Project or permit the use or any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.

(m) The Owner represents, warrants and agrees that 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 of this Agreement.

(n) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, 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 herein set forth and supersede any other requirements in conflict herewith.

Section 4. Income Restrictions; Rental Restrictions.

The Owner represents and warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code (the "Section 42 Occupancy Restrictions") that:

(a) (1) ____ *At least 20% or more of the residential units in the Project are both rent-restricted occupied by individuals whose income is 50% or less of area median income.

(2) XX *At least 40% or more of the residential units in the Project are both rent-restricted occupied by individuals whose income is 60% or less of area median income.

(b) The determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant.

Section 5. Authority Occupancy Restrictions (Optional).

This Section 5 is intended to make enforceable those extended use covenants which the Owner represented to the Authority in its Application.

The Owner represents, warrants and covenants through the term of this Agreement that:

(a) XX **The Owner will extend the Section 42 income and rental restrictions for 35 years after the close of the compliance period.

(b) XX **Regardless of any provision in Section 6 of this Agreement to the contrary, the Authority Occupancy Restrictions provided by this Section 5 shall remain in place for a period of 50 years except in the case of foreclosure or deed in lieu of foreclosure.

Section 6. Term of Agreement.

(a) Except as hereinafter provided, this Agreement and the Section 42 Occupancy Restrictions specified herein shall commence with the first day in the Project period on which any building which is part of the Project is placed in service and shall end on the date which is fifteen years after the close of the compliance period.

(b) Notwithstanding subsection (a) above, the Owner shall comply with the regulations of Section 42 during the fifteen years after the close of the compliance period (the "Extended Use Period"); provided, however, the Extended Use Period for any building which is part of this Project shall terminate:

(1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or

* (Check applicable percentage election)
** (Check if Applicable)

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(2) On the last day of the compliance period if the Owner has properly requested that the Authority assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project and the Authority is unable to present a qualified contract.

(c) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of three years following the termination of the Extended Use Period pursuant to the procedures specified in subsection (b) above. During such three year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit 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 7. Enforcement of Authority Occupancy Restrictions.

(a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the Authority Occupancy-Restrictions specified in this Agreement.

(b) The Owner shall submit any other information, documents or certifications requested by the Authority which the Authority shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Authority Occupancy Restrictions specified in this Agreement.

Section 8. Enforcement of Section 42 Occupancy Restrictions.

(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 and applicable regulations or this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the Authority) to comply fully with the Code and 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 the Department of Housing and Urban Development from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Owner acknowledges that the primary purpose for 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 applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE AUTHORITY AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT 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.

(c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Authority and all persons interested in the Project compliance under Section 42 of the Code and the applicable regulations.

(d) The Owner agrees that if at any point following execution of this Agreement, Section 42 of the Code or regulations implementing said Section require the Authority to monitor the Section 42 Occupancy Restrictions, or, alternatively, the Authority chooses to monitor Section 42 Occupancy Restrictions or Authority Occupancy Restrictions, the Owner will take any and all actions reasonably necessary and required by the Authority to substantiate the Owner's compliance with the Section 42 Occupancy Restrictions or Authority Occupancy Restrictions and will pay a reasonable fee to the Authority for such monitoring activities performed by the Authority.

Section 9. Miscellaneous.

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

(b) Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Authority:
Iowa Finance Authority
100 E. Grand, Suite 250
Des Moines, Iowa 50309

Attention: Low-Income Housing Tax Credit
Program Administrator

To the Owner:
Manchester Park, L.P.
1415 Grand Avenue
West Des Moines, IA 50265

Attention: Voorhees Development Group
General Partner

The Authority 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) Amendment. The Owner agrees that it will take all actions necessary to affect amendment of this Agreement as may be necessary to comply with the Code and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.

(d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar as Section 42 requires otherwise (relating to the three-year vacancy control during the extended use period).

(e) Governing Law. This Agreement shall be governed by the laws of the State of Iowa and, where applicable, the laws of the United States of America.

(f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

IN WITNESS WHEREOF, the Owner has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first written above.

OWNER

MANCHESTER PARK, LIMITED PARTNERSHIP

Voorhees Development Group, Inc., General Partner

By: _____

Name: Jeffrey W. Voorhees

Title: President

ATTEST:

_____

Name: _____

Title: _____

(Seal)

Acknowledgement - Partnership

STATE OF IOWA)
)§
COUNTY OF POLK)

On this 18th day of November, 1991, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jeffrey W. Voorhees, President of Voorhees Development Group, Inc. to me personally known, who being by me duly sworn did say that (he/~~she~~) is a general partner of Manchester Park, L.P., the partnership executing the within and foregoing Mortgage and to which this is attached; that said instrument was signed on behalf of said partnership and that the said Jeffrey W. Voorhees, as President of Voorhees Development Group as such general partner, acknowledged the execution of said instrument to be the voluntary act and deed of said partnership by it and by (him/~~her~~) voluntarily executed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(Seal)

Joyce L. Opfer
Notary Public Joyce L. Opfer

DCLRTNLI.DOC

Exhibit A

Legal Description

Manchester Park Apartments (II)

Lots Ten (10) and Eleven (11) and the West 6.0 Feet of Lot Nine (9) of Ludley's First Addition to a part of Henry Acer's Addition and to part of the Southwest Quarter of the Southeast Quarter of Section Twenty (20), Township Eighty-Nine (89) North, Range Five (5) West of the Fifth P.M., City of Manchester, Delaware County, Iowa, according to a plat recorded in Book 3 Plats, Page 152