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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

**Recorder's Cover Sheet**

**Preparer Information:**

R. Ronald Pogge, Hopkins and Huebner, P.C., 2700 Grand Avenue, Suite 111, Des Moines, IA 50312

**Taxpayer Information:**

RD Preservation II, LLLP, 12289 Stratford Drive, Clive, IA 50325

**Return Address**

/ R. Ronald Pogge, Hopkins and Huebner, P.C., 2700 Grand Avenue, Suite 111, Des Moines, IA 50312

**Mortgagor:**

RD Preservation II, LLLP, 12289 Stratford Drive, Clive, IA 50325

**Mortgagees:**

Lancaster Pollard Mortgage Company, 65 East State Street, Suite 1600, Columbus, OH 43215

**Legal Description:**

**Document or instrument number if applicable:**

## REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (this "Agreement") is made and entered into as of the 12<sup>th</sup> day of November, 2009 (the "Closing Date"), by LANCASTER POLLARD MORTGAGE COMPANY, an Ohio corporation with offices at 65 East State Street, Suite 1600, Columbus, Ohio, 43215 ("Lender") and RD PRESERVATION II, LLLP, an Iowa limited liability limited partnership with offices at 12289 Stratford Drive, Clive, Iowa 50325 ("Borrower").

Borrower has requested that Lender make a loan to Borrower in the amount of \$1,498,000.00 (the "Loan") with respect to a multifamily rental housing development known as Carlisle Park II Apartments, Winterset Park I Apartments and Winterset Park III Apartments, located in Warren and Madison Counties, Iowa, on a site more particularly described in Exhibit A hereto (the "Property"). The Loan will be evidenced by a Multifamily Note dated the Closing Date, executed by Borrower and payable to Lender (the "Note") and will be secured by, among other things, a Multifamily Mortgage, Assignment of Rents and Security Agreement dated the Closing Date (the "Security Instrument"), to be recorded in the land records of Warren and Madison Counties, Iowa.

Lender is agreeable to making the Loan to Borrower if the Loan is the subject of a ninety percent (90%) guarantee from the United States Secretary of Agriculture, acting through the United States Department of Agriculture, Rural Housing Service ("RHS") under Section 538 of the Housing Act of 1949, 12 U.S.C., Section 1490p-2 (the "RHS Guarantee"). As a condition precedent to providing the RHS Guarantee, RHS requires that Borrower enter into this Agreement.

NOW, THEREFORE, in consideration of Lender making the Loan to Borrower, and of the mutual undertakings set forth below, Lender and Borrower agree as follows:

1. Definitions. As used in this Agreement, "Lender" means the entity identified as "Lender" in the first paragraph of this Agreement, or any subsequent holder of the Note. Any other capitalized terms that are used in this Agreement which are defined in the Security Instrument and not otherwise defined in this Agreement shall have the meanings given in the Security Instrument.

2. Covenants of Borrower. Borrower shall do all of the following:

- a. Make all payments due under the Note and all deposits to escrows required for Impositions as required by the Security Instrument.
- b. Maintain the Property in good physical and financial condition at all times.
- c. Maintain a complete set of books and financial records for the Property, as required by the Security Instrument.

- d. Provide Lender audited financial statements for each fiscal year of Borrower within 90 days of calendar year end as required by the Security Instrument, and simultaneously provide RHS a copy of such statements.
- e. Make the Property's books and financial records available for review by the United States Department of Agriculture Inspector General, RHS and the General Accounting Office or their representatives, upon appropriate notification.
- f. Comply with the Affirmative Fair Housing Marketing Plan provided to Lender in conjunction with the Loan and with all other applicable federal, state and local laws regarding fair housing, including but not limited to provisions of such laws that are applicable to federally assisted multifamily housing.
- g. Comply with all applicable requirements of RHS with regard to (i) fair housing and equal opportunities, (ii) lease and grievance procedures, (iii) tenant appeals of adverse actions, and (iv) informing tenants of such procedures.
- h. Comply with all other applicable federal, state and local laws, including but not limited to environmental laws, civil rights laws affecting Federally assisted multifamily housing programs and the Americans with Disabilities Act.
- i. Maintain the Property, including all personal property associated with it, as its sole asset.
- j. Manage the Property in a manner that complies with the Security Instrument and is satisfactory to RHS, including but not limited to compliance with the Management Plan submitted to Lender in conjunction with the Loan.
- k. Not (i) change the (a) Borrower, (b) any limited partner, member or shareholder having a ten percent (10%) or greater ownership interest therein except as provided in the Loan Agreement, or (c) any general partner, manager, managing member or officer thereof except as provided in the Loan Agreement, or (ii) pledge or convey any or all of the Property to a third party, without the prior written consent of the Lender and, if necessary, RHS, and the payment of all Lender and RHS applicable fees and expenses.
- l. Cooperate with and assist the Lender in any Loan workout or restructuring.

- m. Give written notice to Lender of any violation of Borrower's obligations under this Agreement within five days after first discovering any such violation.
- n. Not make, or receive and retain, any distribution of assets or any income of any kind of the Property except Surplus Cash (as hereinafter defined) and except on the following conditions:
  - (1) At the end of the Property's fiscal year, Borrower may request Lender's consent to the release of Surplus Cash; no Surplus Cash may be distributed by Borrower without such consent. As a prior condition for such release, Borrower must submit an annual audited financial statement (that meets USDA requirements) of the Property to Lender. That audit must not have any unresolved findings. Once Lender reviews such statement and certifies that (i) the Property is in good financial and physical condition and (ii) Borrower is in compliance with this Agreement, Lender shall permit Borrower to have access to any Surplus Cash;
  - (2) No distribution shall be made from borrowed funds when there is any default under this Agreement or under the Note or Mortgage;
  - (3) Any distribution of any funds of the Property, 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 Property.

For the purposes of this Section 2n:

"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 the Mortgage and Note guaranteed by the RHS;
  - (ii) All amounts required to be deposited in the reserve fund for replacements;
  - (iii) All obligations of the Property and Borrower (including the incentive management fee) other than the guaranteed mortgage unless funds for payments are set aside or deferment of payment has been approved by the RHS; and
- (2) the segregation of:

- (i) An amount equal to the aggregate of all special funds required to be maintained by the Property; and
- (ii) All tenant security deposits held.

“Distribution” means any withdrawal or taking of cash or any assets of the Property, including the segregation of cash or assets for subsequent withdrawal within the limitations of this Section 2n, and excluding payment for reasonable expenses incident to the operation and maintenance of the Property.

“Default” means a default declared by the Lender or RHS when a violation of this Agreement is not corrected to their respective satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Lender and/or RHS after written notice;

- o. Commencing with the RHS permanent loan guarantee, prepare annually Form RD 1980-24, Request Interest Assistance/Interest Rate Buydown/Subsidy Payment To Guaranteed Loan Lender, and submit it to Lender for Lender’s annual submission to RHS to obtain the interest rate subsidy.

3. Covenants of Borrower Regarding Occupancy. Borrower shall do all of the following until the Loan maturity date, even if the Loan is paid in full prior to such maturity date (unless RHS in its sole discretion waives in writing the further applicability of these covenants after the loan is paid in full):

- a. Maintain the Property in accordance with 7 C.F.R. Section 3565.352.
- b. Without limiting the generality of Subsection a, make the Property available for occupancy only by families or individuals whose incomes at the time of initial occupancy do not exceed 115% of the Property’s area median income. After initial occupancy, a tenant’s income may exceed these limits.
- c. Lease each dwelling unit in the Property for a rental amount that does not exceed 30% of 115% of the Property’s area median income, adjusted for family size.
- d. Establish rents for dwelling units in the Property so that, on an annual basis, the average rent for dwelling units in the Property does not exceed 30% of 100% of the Property’s area median income, adjusted for family size.
- e. Lease dwelling units only to tenants who are United States citizens or a non-citizens who are qualified aliens as defined in 7 C.F.R. Section 3565.3.

“Area median income” shall be determined and adjusted for family size in accordance with guidance on the subject issued by RHS. To the extent utilities are paid by the tenant, “rent” or “rental” shall consist of the rent for the dwelling unit payable under the lease plus an allowance for utilities determined in accordance with administrative guidance issued by RHS.

Notwithstanding any other provision in this Agreement to the contrary, Borrower, for itself and its successors in interest, agrees that until November 30, 2049, the Property shall only be utilized as rental housing (not homeownership) and can only be leased to low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed those set forth above in this Section 3 as determined by the United States Department of Agriculture in accordance with 42 U.S.C. Section 1490p-2. No eligible tenant occupying an apartment at the Property will be required to vacate, nor any eligible tenant denied occupancy, in violation of this provision. These restrictions are enforceable by eligible tenants or by the RHS.

4. Income Verification. Borrower will obtain, complete and maintain on file a certification by each prospective tenant of its income, using a form acceptable to Lender. Borrower shall make a good faith effort to verify that the income information provided by a prospective tenant is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit report or similar search, (4) obtain an income verification from the applicant’s current employer, (5) obtain an income verification from the Social Security Administration if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification.

5. Covenants to Run With the Land. Borrower hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. Lender and Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth in this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon Borrower’s successors in title to the Property, until the termination of this Agreement in accordance with Section 7 of this Agreement. Every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion of the Property shall be deemed to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in that contract, deed or other instrument.

6. Burden and Benefit. Borrower and Lender intend that the burdens of the covenants set forth in this Agreement touch and concern the land in that Borrower’s interest in the Property is rendered less valuable as a result of them. Borrower and Lender intend that the benefits of the covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by tenants whose incomes are below the levels set forth in Section 3 of this Agreement, who are the intended beneficiaries of the covenants.

7. Term of Agreement.

a. The provisions of this Agreement, except for those set forth in Section 3 above, which shall remain in effect until November 30, 2049, shall remain in effect until the earlier of: (i) the Loan and all related amounts owed to Lender by Borrower have been paid in full, or (ii) a foreclosure under the Security Instrument.

b. The provisions of Section 3 of this Agreement shall remain in effect until the earlier of: (i) November 30, 2049, or (ii) a foreclosure under the Security Instrument.

8. Event of Default. Any failure by Borrower to perform any of its obligations under this Agreement as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, shall constitute an Event of Default under this Agreement. However:

- a. If the Security Instrument imposes the same obligation and provides for a shorter cure period or no cure period for breach of that obligation, then Borrower, in lieu of the above-specified 30-day cure period, shall be allowed, respectively, the same cure period provided for in the Security Instrument or no cure period; and
- b. No such notice or cure period set forth in this Section 8 shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Agreement, result in harm to Lender or impairment of this Agreement or the RHS guarantee.

9. Remedies of Lender. If an Event of Default under this Agreement has occurred and is continuing, Lender may, at its option, take any one or more of the following steps, in addition to all other remedies provided at law or in equity:

- a. By mandamus or other proceeding at law or in equity, including but not limited to an action seeking injunctive relief or a declaratory judgment, require Borrower to perform its obligations under this Agreement or enjoin any acts which may be unlawful or in violation of this Agreement.
- b. Declare that an Event of Default has occurred and is continuing under the Security Instrument, as authorized by the Security Instrument, and exercise any and all remedies available to Lender under the Security Instrument and any of the other Loan Documents.
- c. Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations of Borrower under this Agreement.

10. Enforcement by RHS. RHS may assume the role of Lender under this Agreement if necessary to force compliance by Borrower with this Agreement.

11. Release. Upon termination of this Agreement, Lender shall execute such instruments as Borrower may reasonably request to evidence such termination, so long as such instruments are prepared, delivered and recorded at no expense to Lender.

12. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, two days after such notice is deposited in the United States mail, by registered or certified mail, or one day after such notice is deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Lender: Lancaster Pollard Mortgage Company  
65 East State Street, Suite 1600  
Columbus, OH 43215  
Fax: (614) 224-8805  
Attn: Servicing Department

With a copy to: Vorys, Sater, Seymour and Pease LLP  
221 East Fourth Street, Suite 2000  
Cincinnati, OH 45202  
Fax: (513) 852-7896  
Attn: Donald J. Shuller

Borrower: RD Preservation II, LLLP  
12289 Stratford Drive  
Clive, IA 50325  
Fax: \_\_\_\_\_  
Attn: William F. McCroy, Jr., President

With a copy to: Hopkins & Huebner, P.C.  
2700 Grand Avenue, Suite 111  
Des Moines, IA 50312-5215  
Fax: (515) 244-8935  
Attn: R. Ronald Pogge

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

14. Captions, Cross References and Exhibits. The captions assigned to provisions of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to an "Exhibit", a "Section", a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Agreement, a section of this Agreement, a subsection of the section of this



Agreement in which the reference appears and a paragraph of the subsection within this Agreement in which the reference appears. All Exhibits attached to or referred to in this Agreement are incorporated by reference into this Agreement.

15. Number and Gender. Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.

16. Statutes and Regulations. Any reference in this Agreement to a statute or regulation shall include all amendments to and successors to such statute or regulation, whether adopted before or after the date of this Agreement.

17. No Partnership. This Agreement is not intended to, and shall not, create a partnership or joint venture among the parties, and no party to this Agreement shall have the power or authority to bind any other party except as explicitly provided in this Agreement.

18. Successors and Assigns. Borrower may not assign its rights or delegate its obligations under this Agreement without the prior written consent of Lender. Lender, however, may freely assign its rights or delegate its obligations under this Agreement without the consent of Borrower. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, and permitted assigns.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

20. Integration. This Agreement represents the final agreement between the parties with respect to the matters addressed in this Agreement, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. There are no unwritten oral agreements between the parties. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement.

21. Waiver; No Remedy Exclusive. Any forbearance by a party to this Agreement in exercising any right or remedy given under this Agreement or existing at law or in equity shall not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Agreement is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity.

22. Third Party Beneficiaries. Except for RHS, which the parties intend to be a third party beneficiary, neither any creditor of any party to this Agreement, nor any other person, is intended to be a third party beneficiary of this Agreement.

23. Further Assurances and Corrective Instruments. To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments

as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement. Without limiting the generality of the foregoing, Borrower shall execute such amendments to this Agreement as may be required by RHS in order to ensure the validity of the RHS Guarantee.

24. Attorneys' Fees. If either party to this Agreement brings suit against the other as a result of any alleged breach of this Agreement by the other or failure by the other to perform its obligations under this Agreement or under any other instrument delivered pursuant to this Agreement, or to seek declaratory relief as to the rights or obligations of either party to this Agreement, then the prevailing party in such action, in addition to any other relief which may be granted in such action, shall be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of such action (including but not limited to reasonable fees of expert witnesses) and costs incurred in preparation of such action, at both trial and appellate levels.

25. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

26. Counterparts. This Agreement may be executed in multiple counterparts.

[EXECUTION ON FOLLOWING PAGE]

DATED: November 17<sup>th</sup>, 2009.

RD PRESERVATION II, LLLP

By: National Affordable Housing Foundation,  
General Partner

By: William F. McCroy, Jr.  
William F. McCroy, Jr., President

LANCASTER POLLARD MORTGAGE  
COMPANY

By: Nicholas Gesue  
~~F. Brian Pollard, CEO~~  
Nicholas Gesue, Senior Vice President

STATE OF IOWA  
COUNTY OF Polk, SS:

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of November, 2009, by William F. McCroy, Jr., President of National Affordable Housing Foundation, an Iowa nonprofit corporation, on behalf of the nonprofit corporation as general partner on behalf of RD Preservation II, LLLP, an Iowa limited liability limited partnership.



Linda S. Pirkle  
Notary Public

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2009, by Nicholas Gesue, Senior Vice President ~~F. Brian Pollard, CEO~~ of Lancaster Pollard Mortgage Company, an Ohio corporation, on behalf of the corporation.


S. M. Allison  
Notary Public



SARA M. ALLISON  
Notary Public, State of Ohio  
My Commission Expires June 28, 2014

Pursuant to Section 4.17 of the Section 538 Handbook HB-1-3565, I hereby certify that this Regulatory Agreement satisfies the requirements of Section 4.17.

VORYS, SATER, SEYMOUR AND  
PEASE LLP, Lender's Counsel

By:   
Donald J. Shuller

Dated: November 12, 2009

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

The land referred to in this Commitment is described as follows:

**Parcel 1:**

Lot 1 of Northwest Development-Plat 2 to the City of Winterset, Madison County, Iowa.

**Parcel 2:**

All that part of Lot 27 in Northwest Development-Plat 1 to the City of Winterset, Madison County, Iowa, which is East of a line described as commencing at the Northeast corner of Lot 26 in the said Northwest Development-Plat 1, thence South to the South line of said Lot 27.

Madison County, Iowa

**Parcel 3:**

Part of Lot "E" and the North 30.0 feet of Lot 36 and all of Lot 37, PARKVIEW SOUTH PHASE II, an Official Plat, City of Carlisle, Warren County, Iowa, said entire tract being more particularly described as follows: Beginning at the Southeast corner of the North 30.0 feet of said Lot 36, thence South 63 degrees 30 minutes 00 seconds West (bearing as shown on Final Plat and all subsequent bearings referenced thereto) along the South line of said North 30.00 feet and its extension, 184.93 feet to a point on the Westerly line of said Lot "E"; thence North 24 degrees 57 minutes 45 seconds West, 145.82 feet; thence North 01 degrees 25 minutes 50 seconds West, 88.41 feet; thence South 30 degrees 17 minutes 00 seconds East, 24.00 feet; thence North 59 degrees 43 minutes 00 seconds East, 222.55 feet; thence Southeasterly along the Easterly line of Lots "E", 37 and 36 and along a curve to the left, having a central angle of 32 degrees 42 minutes 46 seconds and a radius of 410.00 feet, an arc distance of 234.09 feet to the point of beginning.

AND

A part of Lot "E" and all of Lot 36 EXCEPT the North 30.0 feet thereof and all of Lot 35, PARKVIEW SOUTH PHASE II, an Official Plat, City of Carlisle, Warren County, Iowa, said entire tract being more particularly described as follows: Beginning at the Southeast corner of said Lot 35, thence South 88 degrees 27 minutes 10 seconds West (bearing as shown on Final Plat and all subsequent bearing referenced thereto) along the South line of said Lot 35 and its extension, 164.05 feet to a point on the Westerly line of said Lot "E"; thence North 11 degrees 49 minutes 15 seconds West, 71.40 feet; thence North 24 degrees 57 minutes 45 seconds West, 100.01 feet; thence North 63 degrees 30 minutes 00 seconds East along the South line of the North 30.0 feet of said Lot 36 and its extension, 184.93 feet to the East line of said Lot 36; thence Southeasterly along said East line of Lot 36 and along a curve to the left having a central angle of 05 degrees 11 minutes 20 seconds and a radius of 410.0 feet, an arc distance of 37.13 feet; thence Southeasterly along the East line of Lots 35 and 36 and along a curve to the right having a central angle of 26 degrees 12 minutes 12 seconds and a radius of 330.73 feet, an arc distance of 151.26 feet; thence South 01 degrees 32 minutes 50 seconds East, along the East line of Lot 35, 60.00 feet to the point of beginning.

Warren County, Iowa