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HONORABLE ROBERT H. WHALEY

John R. Nelson, WSBA # 16393
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Attorneys for Washington State Housing Finance Commission

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

FERMIN MENDOZA; FRENCHMAN
HILL APARTMENTS RESIDENT
ASSOCIATION,

Plaintiffs,

v.

FRENCHMAN HILL APARTMENTS
LIMITED PARTNERSHIP, et al,

Defendants.

No. CS-03-0494-RHW

DECLARATION OF MARK
FLYNN

Mark A. Flynn does hereby declare under penalty of perjury according to the laws of the United States:

1. I am over the age of eighteen years, a resident of Bremerton, Washington, and am competent to make the statements herein on personal knowledge:

2. For the past nine years I have served as Director of the Compliance and Preservation Division for the Washington State Housing Finance Commission. In this capacity I have been responsible for the monitoring and compliance of more than 700

DECLARATION OF MARK
FLYNN - 1

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1 multifamily residential communities financed by taxable and tax-exempt bonds, Low-
2 Income Housing Tax Credits or combinations of these Commission programs. The
3 Compliance and Preservation Division is the largest operating entity within the
4 Commission. Altogether, I have more than twenty-five years of responsible
5 experience in the housing industry, single and multifamily, as well as banking,
6 administration and community development.

7
8 3. It is fair to say that I have long been an advocate and crusader for low-
9 income housing. In my capacity as Director of the Compliance and Preservation
10 Division, I developed training programs to ensure compliance with project
11 requirements, including professional manuals, curricula and audio visual materials,
12 that have been nationally recognized in the industry. I was a member of National
13 Council of State Housing Agencies Task Force Workgroup, which was organized to
14 develop national "best standards" for the Low-Income Housing Tax Credit Program. I
15 serve as the Commission's primary agency contact with the Council for Affordable
16 and Rural Housing, the Affordable Housing Management Association, and various
17 fair housing groups active in the state. I have also directed the Commission's efforts
18 to preserve low-income multifamily properties with expiring use restrictions over the
19 past decade, and led a Commission team that restructured the debt and operations on
20 more than 20 expiring Section 8 projects in order to allow them to continue to serve
21 low income tenants.

22
23 4. It is also fair to say that the Commission is not, and never has been, hostile
24 or adverse to a "good cause" eviction requirement in tax credit projects or public
25 housing generally. To the contrary, the Commission has lobbied the state legislature
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DECLARATION OF MARK
FLYNN - 2

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1 in favor of a good cause requirement, alongside low-income tenant interest groups, on
2 several occasions over the past decade. Each time, our call for a good cause
3 requirement has been rejected by the state legislature.
4

5 5. In my capacity as Director of the Compliance and Preservation Division I
6 have also considered and watched the issue of whether Section 42(h)(6) requires
7 "good cause" for eviction during the entire tax credit period, or only following early
8 termination. Certainly, the former was not the understanding in the industry when I
9 began my work with the Commission. Thus, while the Commission was generally in
10 favor of a good cause requirement in the programs it administered, and while good
11 cause was required in the public housing programs, the Commission never previously
12 felt that it had a state or federal mandate to impose the good cause requirement on the
13 private investors who participated in the Low Income Housing Tax Credit program.
14

15 6. Following the issuance of the two state court cases on the issue in 2003
16 (from Maryland and Minnesota), the "good cause" question was addressed by the IRS
17 at two meetings of the National Council of State Housing Authorities. As indicated in
18 the Commission's response to Plaintiffs' Interrogatory 13 in this action, our
19 Compliance Manager Tim Sovold returned from a NCSHA meeting in January 2004,
20 and reported to me that an IRS representative (believed to be Paul Handleman) had
21 told him that he felt the section could be interpreted either way, but that he favored the
22 "good cause" interpretation. Tim also advised me that the following day a panel of
23 Tax Credit Legal and Accounting experts had expressed the opposite view, stating that
24 they believed "good cause" only applied to the three-year period and that the person
25 from the IRS had incorrectly interpreted the Section 42 Code section. Then, on June
26

DECLARATION OF MARK
FLYNN - 3

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1 22, 2004, the issue was addressed again at the NCSHA conference in Los Angeles,
2 California. During an informal presentation by Gregg Doran and Susan Reaman from
3 the IRS which I attended, both indicated that the IRS would be coming out with
4 official guidance in the near future on good cause evictions. They stated that
5 "informal opinion" was that the good cause protection applied throughout the
6 extended use period. The speakers indicated that, since the statutory language is not
7 clear in this regard, they were unsure whether the IRS's clarification would be applied
8 retroactively to existing projects or prospectively to new projects with tax credits. If
9 applied retroactively, they said states would be given one year to amend regulatory
10 agreements after publication of an official notice by the IRS. The Commission's
11 discovery response containing this information was served on July 2, 2004 – the IRS
12 issued Revenue Ruling 2004-82 on July 30, 2004.

13
14 7. Since the issuance of Revenue Ruling 2004-82 the Washington State
15 Housing Finance Commission has moved as expeditiously as possible to comply with
16 the IRS directive and implement the "good cause" requirement in tax credit properties.
17 The Commission has already begun the review of existing Regulatory Agreements,
18 and I immediately began developing materials to insure notice of the good cause
19 requirement among project owners and tenants. True and correct copies of materials
20 the Commission sent out on October 29, 2004, are attached hereto as Exhibit A.
21 Additionally, I have already revised the Commission's compliance manuals and
22 training materials to include information about the good cause requirement, and the
23 Commission's counsel has already revised the form of its Regulatory Agreement to
24 expressly address the good cause requirement and has used the new form for several
25 new tax credit properties. The Commission provided copies of these materials to
26

DECLARATION OF MARK
FLYNN - 4

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1 plaintiffs' counsel during their preparation and considered their input regarding the
2 materials during settlement negotiations. Ultimately, however, the Commission
3 issued these materials and will act to enforce the Revenue Ruling and the "good
4 cause" requirement in tax credit properties on its own accord, without any agreement
5 or concession from plaintiffs or any other party in return.

6 EXECUTED this 10th day of November, 2004 at Seattle, Washington.

7
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9 _____
10 MARK FLYNN

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DECLARATION OF MARK
FLYNN - 5

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2004, I electronically filed the foregoing **DECLARATION OF MARK FLYNN** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Judith Lurie, and I hereby certify that I have mailed by United States Postal Service First Class Mail the document to the following non-CM/ECF participants:

Mr. Thomas F. Ahearne
Mr. Jeffrey S. Miller
Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101

s/ John R. Nelson
John R. Nelson WSBA # 16393
Attorney for Defendant,
Washington State Housing Finance
Commission, Kim Herman
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DECLARATION OF MARK
FLYNN - 6

October 29, 2004

Re:

Dear :

Recently the Internal Revenue Service issued Revenue Ruling 2004-82, a copy of which is attached for your files. The issuance of this Revenue Ruling clarifies the Internal Revenue Service's position regarding certain requirements of Section 42 of the Internal Revenue Code, the Low-Income Housing Tax Credit (LIHTC) Program. Of particular interest to operators of LIHTC projects is the Service's recent interpretation of the timeframe during which "no cause" eviction is prohibited. The Ruling makes clear that the IRS interprets Section 42 such that this protection extends for the entire extended use period.

Your Regulatory Agreement for the Aki Kurose II requires your compliance with all conditions to tax credit eligibility under Section 42 of the Code. This letter serves as official notice that, in accordance with Revenue Ruling 2004-82, effective no later than July 30, 2004, no low-income resident of any LIHTC project may be evicted or otherwise have their lease terminated other than for good cause. This prohibition includes non-renewal of a lease or rental agreement other than for good cause. Low-income occupants have the right to specifically enforce this prohibition (and the project's income and rent restrictions) in State court. Generally, "good cause" is defined as "the serious or repeated violations of a material term of the lease," as that definition is applied with respect to federal public housing. Please indicate your agreement to comply with the Revenue Ruling by signing this Notification where indicated below and returning it to the undersigned within 30 days.

Regardless of when you sign and return this Notification, the "good cause" eviction/termination requirement is effective no later than July 30, 2004. Accordingly, any pending termination or non-renewal of tenancy notifications that have been served upon a tenant occupying a low-income unit that do not recite a serious or repeated violation of a material term of the lease with sufficient factual specificity to enable the tenant to prepare a defense, must be immediately rescinded. Similarly, any pending unlawful detainer actions filed against a tenant occupying a low-income unit that were not based on a termination or non-renewal notice that recites a serious or repeated violation of a material term of the lease with sufficient factual specificity to enable the tenant to prepare a defense, must be dismissed with prejudice.

As previously indicated, your Regulatory Agreement for Aki Kurose II requires compliance with all provisions of Section 42 of the Tax Code. Thus, while your Regulatory Agreement as it exists requires compliance with Revenue Ruling 2004-82, the Commission may determine that an amendment of certain Agreements is also required. We are in the process of making this determination with respect to all of the regulatory agreements we have issued under the Tax Credit Program. If we determine your Regulatory Agreement needs to be amended, the form of amendment will be submitted to you within 180 days. In that event, you must sign one of the

copies and return it to us, unaltered and in its entirety. Failure to execute and return this document shall be treated as a reportable instance of non-compliance (Form 8823). In the interim, this letter shall serve as notice that effective immediately, the Washington State Housing Finance Commission shall report any eviction determined by state court to have been initiated other than for "good cause" as a material issue of non-compliance with the Code and the Regulatory Agreement. Such occurrences will be reported to the IRS on Form 8823.

Attached you will find a copy of a new Lease Rider that must be utilized for all new resident households upon initial leasing to a new household, and for all existing households upon annual recertification and for any executed lease renewal. A copy is also posted to our website. A draft letter (in both English and Spanish) for notifying resident households of their rights is also attached. You must sign and deliver an executed original Lease Rider to each household along with the Resident Notification Letter within 45 days of receipt of this Letter. Upon mailing or personal delivery of this required package of materials to each resident, you must sign the attached Affidavit of Delivery and return it to the Washington State Housing Finance Commission. Finally, appropriate modifications and amendments have been made to the Compliance Procedures Manual for Low-Income Housing Tax Credit Projects. The manual as well as a copy of this notice can be accessed on the Washington State Housing Finance Commission (WSHFC) website at www.wshfc.org/managers.

As stated above, the property Owner must sign a copy of this letter, and return it to WSHFC within 30 days. Please retain a 2nd copy of the signed letter with the Regulatory Agreement for the property.

If you have any questions concerning this matter, please contact your assigned compliance officer Michael Soper, Tim Sovold at (206) 287-4419 or the undersigned at (206) 287-4444.

Sincerely,
Mark A. Flynn

Mark A. Flynn
Director, Compliance and Preservation Division

cc: Cassandra Cress

Receipt Acknowledged:

Project Name	Location

Signature	Title

Print Name	Date

Resident Notification Letter

Dear Resident:

As a Resident of _____ you have certain rights that are outlined in your lease and a rider to your lease agreement. _____ is a housing development offering affordable rents through the Low Income Housing Tax Credit program. Recently, the government issued Revenue Ruling 2004-82 concerning the protection you have against an eviction without good cause.

Effective immediately, you may not be evicted or otherwise have your lease agreement not renewed without "good cause." You have the right to enforce this "good cause" requirement in state court as a defense to any eviction action brought against you. Generally, "good cause" is defined as "the serious or repeated violation of material terms of the lease." Enclosed is a "Lease Rider" that outlines these protections provided for you and the other members of your household. Your landlord has signed the form. It does not require your signature at this time, but upon your recertification or lease renewal, each member of your household 18 years or older will be required to execute a new Lease Rider in the same format as this one, subject to any amendments that may be required by the Washington State Housing Finance Commission, the Internal Revenue Service or act of law.

If you have any questions concerning this matter, please feel free to contact your Resident Manager, _____, at _____, or the property manager _____ at _____.

Sincerely,

Translated Resident Notification Letter

Estimado Residente:

Como Residente de _____, usted tiene ciertos derechos que estan resumidos en su contrato de alquiler y en una cláusula de alquiler añadida a su contrato de alquiler. _____ es una vivienda que ofrece alquileres bajos a traves de el Programa de Creditos Contributivos para Viviendas de Bajos Recursos. Recientemente, el gobierno federal ha promulgado la Decisión de Ingreso 2004-82 referente a la protección que usted tiene contra desahucio sin "buena causa".

Efectivo inmediatamente, usted no puede ser desahuciado o, de lo contrario, negado una renovación de su contrato de alquiler sin "buena causa". Usted tiene el derecho de hacer cumplir este requisito de "buena causa" en la corte estatal como defensa ante cualquier acción de desahucio traida en contra de usted. "Buena causa" es definida como "la seria or repetida violacion de condiciones materiales de su contrato de alquiler." Encotrará sujeta una "Cláusula de Alquiler" que resume estas protecciones proveidas a usted y a otros miembros de su residencia. El propietario ha firmado la cláusula. Ésta no requiere su firma en este momento, pero ante su re-certificación o la renovación de su contrato de alquiler, cada miembro de su residencia con 18 años de edad o más estará requerido a ejecutar una nueva "Cláusula de Alquiler" en el mismo formato que la cláusula incluida aquí, sujeto a cualquier enmienda que pueda ser requerida por la Comisión de Finanza de Vivienda de el Estado de Washington, el Servicio de Rentas Internas ("IRS"), o un acto de ley.

Si usted tiene alguna pregunta sobre este asunto, siéntase libre de ponerse en contacto con su Gerente de la Residencia, _____, en el _____, or el gerente de la propiedad _____ en el _____.

Sincéramente,

NOTICE

As a tenant in a “Low Income Housing Tax Credit Program” rental unit, you have a right to continue living in your rental unit unless you do something that gives your landlord “good cause” to evict you.

What would give your landlord “good cause” to terminate your tenancy, or fail to renew your lease, and evict you?

Your landlord would have “good cause” to evict you or terminate your lease or fail to renew your lease if you commit a *serious or repeated violation of a material term of your lease*.

There is no specific list of “good causes” to evict a tenant. Rather, this matter has been left to the courts to decide and define. But, not paying your rent or intentionally causing serious damage to your rental unit are the types of things that judges will likely consider to be “good cause” to evict a tenant.

What if your lease currently does not include this protection against being evicted without “good cause?”

Whether this protection is written into your lease or not, you have the right to continue living in your rental unit unless you give your landlord “good cause” to evict you, and you have the right to present this protection in court as a defense to an eviction action.

Nevertheless, having this protection written into your lease offers you more protection and is to your benefit. That is why your landlord is being required to amend your lease to include this “good cause” eviction protection by having you sign a “lease rider” that will incorporate this important tenant protection into your lease. The “lease rider” has already been signed by your landlord, and is attached to this notification.

What if your landlord tries to evict you even though you did not give him or her “good cause” to do so?

In order to evict you, your landlord must first provide you with written notice of the reasons -- the “good cause” – why he or she is entitled to terminate your tenancy or not renew your tenancy. If after you receive this notice and you don’t move out, your landlord may file an eviction lawsuit (“complaint for unlawful detainer”) against you. This eviction lawsuit must be based on the “good cause” stated in the written notice of termination that should have been provided to you by the landlord. After the eviction lawsuit is filed, the law provides you with an opportunity to present your defenses before a judge, including the reasons there is not “good cause” to evict you, plus whatever other defenses you may have.

Why are you being notified now of this right against being evicted without “good cause?”

This right is provided for in a federal law that created the Low Income Housing Tax Credit Program that your landlord participates in. The Washington State Housing Finance Commission administers this program in the state of Washington.

What if you still have questions?

For more information, you may contact your resident manager,
_____.

AVISO

Como inquilino en una unidad de renta de el “Programa de Creditos Contributivos para Viviendas de Bajos Recursos,” usted tiene el derecho de seguir viviendo en su unidad rentada a menos que usted haga algo que le de al propietario “buena causa” para desahuciarlo.

¿Que le daria al propietario “buena causa” para terminar su tenencia legal, or negar la renovación de su contrato de alquiler, y desahuciarlo?

El propietario tendría “buena causa” para desahuciarlo, o terminar su contrato de alquiler, o negar la renovación de su contrato de alquiler si usted comete una *violación seria or repetida de uno de los terminos materiales de su contrato de alquiler*.

No hay una lista específica de “buenas causas” para desahuciar a un inquilino. En cambio, este asunto ha sido dejado a las cortes para decidir y definir. Sin embargo, el no pagar su alquiler or intencionalmente causar serios daños a su unidad rentada son los tipos de cosas que jueces probablemente considerarían son “buena causas” para desahuciar a un inquilino.

¿Y si su contrato de alquiler actualmente no contiene esta protección contra desahucio sin “buena causa?”

Si esta protección está incluida en su contrato de alquiler o no, usted tiene el derecho de seguir viviendo en su unidad de renta a menos que le de una “buena causa” al propietario para desahuciarlo, y tiene el derecho de presentar esta protección en corte como defensa ante una acción de desahucio. No obstante, teniendo esta protección escrita en su contrato de alquiler le ofrece mas protección y es beneficioso para usted. Por eso su propietario está obligado a enmendar su contrato de alquiler para ofrecerle esta protección de “buena causa” al firmar una cláusula de alquiler que incorporará esta protección importante para el inquilino en su contrato de alquiler. Esta “cláusula de alquiler” ya ha sido firmada por el propietario, y está sujeta a este aviso.

¿Y si el propietario trata de desahuciarlo aunque usted no le haya dado “buena causa” para hacerlo?

Para desahuciarlo, el propietario primero le debe proveer con una notificación escrita -- la “buena causa” -- por la cual el o ella tiene derecho de terminar su alquiler, o de negarle una renovación de su contrato de alquiler. Si después de recibir este aviso usted no se muda, su propietario podrá iniciar una demanda de desahucio (“complaint for unlawful detainer”) contra usted. Esta demanda de desahucio debe estar basada en la “buena causa” declarada en la notificación escrita de desahucio que el propietario debió de haberle proveído. Después que se entable la demanda de desahucio, la ley le provee con una oportunidad para presentar sus defensas ante un juez, incluyendo las razones por las cuales no hay “buena causa” para desahuciarlo, además de cualquier otra defensa que usted tenga.

¿Por que le estamos notificando sobre este derecho contra desahucio sin “buena causa?”

Este derecho esta proveído en una ley federal que creó el Programa de Creditos Contributivos para Viviendas de Bajos Recursos en la cual participa el propietario. La Comisión de Finanza de Vivienda de el Estado de Washington administra este programa en el estado de Washington.

¿Y si todavia tiene preguntas?

Para más información, puede comunicarse con el gerente de la residencia, _____.

**Lease Rider for Tax Credit Property
(to be attached to resident leases)**

Property Name _____

OAR/OID # _____

Household Name _____

Unit # _____

Dear Applicant or Existing Resident:

Summary

The owner(s) of this property rents residential units under the federal Low-Income Housing Tax Credit Program (the "program") as administered by the Washington State Housing Finance Commission (the "Commission"). Under the program, the owner(s) can qualify for federal IRS tax credits by renting some or all of the units in the property to low-income households and restricting the rents for those units. In addition the owner **may** have agreed to reserve some of the units in the property for households or persons with special needs. (See the special-needs section below.) This rider was prepared to help residents understand the program.

Income and Rent Limits

The Commission gives the owner(s) new income and rent limit tables each year. This property has agreed to reserve some or all of the units for households at or below the 30, 35, 40, 45, 50 or 60% income limits found on these tables. The rent tables show the maximum rent a property can charge for a unit based on a household's income, number of bedrooms in the unit or the number of people in the household. Some properties have more than one income limit. Ask the property representative for specific information.

Annual Recertification

To be eligible for a rent- and income-restricted unit, all income and assets of any household members 18 years and older must be documented and verified. The owner(s) or manager of this property will give you the required forms to declare and verify income and assets from all sources. They **may** also ask you for supporting documentation. The program requires each existing household to **recertify** or complete a new set of the required forms at least once every 12 months.

Since this program involves IRS tax credits, the Commission and everyone involved with this program is under growing pressure to prevent fraud. Your forms must be prepared carefully, with every question answered. Annually, you will be signing a document under penalty of perjury, saying that the information and verifications submitted are correct. Households who do not properly complete their paperwork **may not** qualify for residency or **may** be required to vacate their income- and rent-restricted unit.

A property that has more than one income/rent limit **can** switch a household to a higher or lower income/rent limit, based on the household's income at recertification. Ask the property representative for specific information.

15

Special Needs

The owner(s) of this property **may** have chosen to reserve some of the program units for households that have special needs. Units **could** be reserved for households that meet the program definition for large household, disabled, elderly, homeless housing or farmworker. Households or individuals applying for one of these special needs units will be required to verify their eligibility. Ask your property representative for specific information.

Full-time Student Households

A household where each member is a full-time student **may not** qualify for an income- and rent-restricted unit. A household where everyone becomes a full-time student after move-in **may no longer** qualify for an income- and rent-restricted unit. Ask your property representative for specific information.

Property Standards

The property must comply with federal housing policy governing nondiscrimination and accessibility. In making an apartment available, the owner(s) **cannot** discriminate against you because of your race, creed, color, sex, national origin, marital status, age, disability or familial status. Furthermore, the owner(s) **cannot** discriminate against you based on the sources of your income (including Section 8 subsidy), provided the sources of income do not violate any federal, state or local law. Additional state, local laws or ordinances may also apply. When selecting residents, the owner(s) **cannot** apply standards to a potential resident that are more burdensome than standards applied to any other potential or existing resident.

Good Cause Evictions/Nonrenewals

The owner is prohibited from evicting you, and is prohibited from refusing to renew your lease or rental agreement, other than for "good cause". Generally, good cause shall mean the (1) serious or repeated violation of material terms of the lease as that phrase is applied with respect to federal public housing at 24 C.F.R. §966.4(l)(2); or (2) the failure or refusal to vacate the premises when they are destroyed or made uninhabitable by fire, flood, or other casualty. Under federal law, you have the right to enforce this requirement in state court as a defense to any eviction action brought against you.

By signing below, I indicated I have read and discussed information included in this lease rider. I have been given a copy of this lease rider along with my lease.

_____	_____	____/____/____
Property Representative Name (<i>print</i>)	(<i>signature</i>)	Date

_____	_____	____/____/____
Resident or Applicant Name (<i>print</i>)	(<i>signature</i>)	Date
_____	_____	____/____/____
Resident or Applicant Name (<i>print</i>)	(<i>signature</i>)	Date
_____	_____	____/____/____
Resident or Applicant Name (<i>print</i>)	(<i>signature</i>)	Date

Further questions should be addressed to:

Property Manager _____

Telephone #: (_____) _____

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Ex. D -- DRAFT

AFFIDAVIT

I, _____, hereby swear that I have, this date, personally delivered or otherwise caused to be posted via United States Postal Service, the Resident Notification Letter (attached) as well as an executed original of the Lease Rider (also attached) to all current residents of the _____ apartments, _____, Washington.

Signature

Date

Print Name

Title