



MISC 2010109264



NOV 18 2010 13:00 P 9

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FB: 53-30460  
COMP: MB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/18/2010 13:00:06.00



2010109264

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**AMENDMENT TO  
TELECOMMUNICATIONS AGREEMENTS  
AND AMENDMENT TO  
SERVICES AND ACCESS AGREEMENT**

This Amendment to Telecommunications Agreements and Amendment to Services and Access Agreement is made by and between 1001 Apartments, LLC ("Owner") and Cox Communications ("Provider") on this 12<sup>th</sup> day of November, 2010 ("Amendment"), and this Amendment hereby amends the following Agreements:

1. The Telecommunications Agreement referenced in the Memorandum of Agreement by and between Keystone Properties III, L.L.C., and CoxComm, Inc., d/b/a Cox Communications Omaha, Inc, a Nebraska corporation, which Memorandum of Agreement was filed of record on April 3, 2001, in Book 1376 at Page 243 in the office of the Register of Deeds for Douglas County, Nebraska, and the Marketing Agreement executed concurrently therewith
2. The Telecommunications Agreement referenced in the Memorandum of Agreement by and between 1001 Associates, LLC, and CoxComm, Inc., d/b/a Cox Communications Omaha, Inc, a Nebraska corporation, which Memorandum of Agreement was filed of record on January 25, 2006, as Instrument No. 2006008742 in the office of the Register of Deeds for Douglas County, Nebraska, and any Marketing Agreement executed concurrently therewith; and
3. The Services and Access Agreement by and between CoxCom, Inc. d/b/a Cox Communications Omaha ("Cox") and 1001 Associates, LLC, dated March 27, 2009 ("Access Agreement") and any Marketing Agreement executed concurrently therewith.

The aforementioned Agreements shall be referred to herein as the "Telecommunications and Access Agreements," and, together with the Amendment, are referred hereafter as the "Agreement."

**RECITALS**

**WHEREAS**, either before or contemporaneously with the execution of this Amendment, 1001 Apartments, L.L.C, (hereafter "Owner") will have executed and recorded in Douglas County,

Nebraska, a Mortgage for the benefit of Gershman Investment Corp., an Arkansas corporation ("Lender") to secure a loan in the approximate amount of \$4,505,000.00 ("Loan") to be secured by a first mortgage ("Mortgage") on a certain apartment complex known as 1001 Apartments, which is legally described on the attached Exhibit A and incorporated herein by this reference (hereafter "the Property").

**WHEREAS**, the Mortgage is insured by the Federal Housing Administration, an organizational unit of the U.S. Department of Housing and Urban Development ("HUD"), and, either before or contemporaneously with the execution of this Amendment, Owner and HUD will have entered into a Regulatory Agreement for Multifamily Housing Projects ("HUD Regulatory Agreement"), which has been or will be recorded in Douglas County, Nebraska, as well as numerous other Loan Documents, all of which pertain to the Property.

**WHEREAS**, Owner (and its predecessors in title) and Provider entered into the Telecommunications and Access Agreements to provide certain exclusive and non-exclusive services in exchange for certain payments or other value as described on page 1 of this Agreement.

**WHEREAS**, the Access Agreement is subject to the approval of HUD and Lender; and

**WHEREAS**, HUD and Lender have conditioned their approval on the revisions and clarifications to the Access Agreement as set forth in this Amendment.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby accepted and acknowledged, the parties agree as follows:

1. Owner hereby confirms that before, or as of, the date of recordation of this Amendment, it is the owner of the property that is referenced in the Telecommunications and Access Agreements ("Property"), which Property is identified in the legal description attached to this Amendment as Exhibit A.

2. The Telecommunications and Access Agreements are hereby, and shall continue to be, subordinate to the Mortgage and the Regulatory Agreement and any conflict among them shall be controlled by the provisions of the Mortgage and the Regulatory Agreement for so long as the Mortgage and Regulatory Agreement remain in effect. Provider further agrees that the subordination of the Telecommunications and Access Agreements shall extend to any new mortgage loan which is made for the purpose of refinancing all or any part of the Mortgage Loan, and that all of the terms and conditions of the Telecommunications and Access Agreements shall inure to the benefit of any holder of any such refinanced debt. Notwithstanding the foregoing, HUD's release from indemnification or payment obligations set forth in section 10 below are for HUD's sole benefit and do not inure to any other possible successor to Owner.

3. Any payments to be paid by Provider to Owner under the Telecommunications and Access Agreements shall be Property income, except to the extent that the payments are used to pay or reimburse Owner for any capital improvements made by Owner and with funds not attributable to the Property. In the event of a forfeiture, foreclosure or deed in lieu thereof, under the Mortgage ("Foreclosure"), or if a default is declared by Lender, and Lender provides notice to

Provider in accordance with this Amendment, then Provider will make any remaining payments that are required to be paid under the Telecommunications and Access Agreements to Lender or as otherwise directed by Lender.

4. In the event of a Foreclosure, so long as Provider is not in default under the Telecommunications and Access Agreements beyond any applicable cure period, the Telecommunications and Access Agreements shall remain in full force and effect, subject to the Provider performing under the Telecommunications and Access Agreements, and subject to the Owner's right to terminate the Telecommunications Agreements that are referenced herein and this Amendment in accordance with the terms of the Telecommunications Agreements.

5. So long as HUD shall be (i) the Lender, holder, coinsurer, or reinsurer of the Mortgage, (ii) obligated to reinsure the Mortgage, or (iii) the owner of the Property (collectively, the "Amendment Term"), Provider shall receive the consent of the Owner prior to installing any equipment on the Property that materially changes any common or structural element (such as re-wiring) of the Property.

6. Provider represents and warrants to Owner and HUD that any equipment it installs will not endanger tenants or cause frequency interference with normal, non-cable television. However, Provider is not giving any representations or warranties that normal, non-cable television is of any particular quality or is even normally viewable.

7. The tenants on the Property will have an option to refuse Provider's services. Any provision that limits the installation of other systems on the Property shall not apply to or interfere with the rights of the tenants as viewers to install other systems. Neither Owner nor Provider may interfere with any tenant using portable antennas (rabbit ears) on a television set, an antenna on a stereo system, or any other telecommunication service such as Web T.V.

8. During the Amendment Term, the Access Agreement and this Amendment shall not be modified, amended, supplemented or revised, except by written approval by Owner, Provider and HUD. However, notwithstanding the foregoing sentence, Owner hereby reserves Owner's right to terminate the Telecommunications and Access Agreements that are referenced herein and this Amendment in accordance with the terms of the Telecommunications and Access Agreements.

9. Intentionally deleted.

10. To the extent that the Telecommunications and Access Agreements or this Amendment may be interpreted to include an indemnification (i) from HUD to Provider; or (ii) from Provider or its successors or assigns to HUD, such term(s) is/are hereby deleted.

11. For purposes of this Amendment, notices between Owner, Provider and HUD shall be deemed given when (i) personally delivered, or (ii) transmitted by facsimile to the facsimile number set forth in this Amendment with a copy mailed on the same day by regular first class mail, postage prepaid, or (iii) two days after mailing by certified mail, return receipt requested, postage prepaid, to the addresses set forth below:

For Owner: 1001 Apartments, LLC  
CornerStone Commercial Real Estate  
10840 Old Mill Road, #100  
Omaha, NE 68154  
Facsimile Number: 402-345-1593

With a copy to: Robert Green  
13107 Frances St.  
Omaha NE 68144

For Provider: Cox Communications Omaha,  
Attention: Business Services  
11505 West Dodge Rd.  
Omaha, NE 68154  
Facsimile Number: 402-934-0015

For HUD: Director, Multifamily Program Center  
U.S. Department of Housing and Urban  
Development  
Omaha Field Office  
1616 Capitol Av, #329  
Omaha, NE 68102-4908  
Facsimile Number: 402-492-3125

With a copy to: Legal Department  
U.S. Department of Housing and Urban Development  
Omaha Field Office  
1616 Capitol Av, #329  
Omaha, NE 68102-4908  
Facsimile Number: 402-492-3125

Unless otherwise provided in this Amendment, all time periods shall be in calendar days, but in all instances the first day a notice or communication shall be deemed given and the last day for compliance shall be the next business day if a calendar day is not a business day.

12. This Amendment shall automatically terminate following the expiration of the Amendment Term and Owner shall thereafter promptly provide written notice to Provider of such termination..

13. This Amendment represents the entire agreement between HUD and the other parties to this Amendment with respect to the Telecommunications and Access Agreements, and this Amendment shall control over the Telecommunications and Access Agreements and any other

written or oral understanding or agreement between the other parties that relate to the subject matter of this Amendment.

14. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original.

15. To the extent that the Telecommunications and Access Agreements or this Amendment may be interpreted to allow Provider with exclusive access to the Property for the provision of telecommunication or other services pursuant to the Telecommunications and Access Agreements, such term(s) is/are hereby deleted. Nothing in this Paragraph 15 will entitle any competitor to use any of the Provider's equipment. The terms of this Paragraph 15 shall survive the termination or expiration of the Amendment.


16. Intentionally deleted.

17. Any equipment that may be installed by Provider on the Property shall not materially change any common or structural element (such as re-wiring), without Provider first giving notice to Owner, and then giving notice to HUD and the affected tenants, of such change before such changes are made. Such installation shall not unreasonably interfere with the tenants' use and quiet enjoyment of their units. In the event that any equipment or service installed or provided by Provider constitutes a material threat to resident health or safety, then HUD or Owner, subject to HUD's approval, if Provider refuses to remedy such situation in a timely manner, may terminate the Telecommunications Agreements and this Amendment and require Provider, at its own expense, to terminate service from, and remove, such equipment. Upon written notice to Provider, HUD or Owner, subject to HUD's approval, has the right to cause Provider to relocate any equipment installed by Provider, if necessary for the operation of the Property. Upon notice to Provider of the exercise of this right, Provider shall relocate said equipment and Provider may offset the cost of such relocation against the payment Provider is required to make to Owner under the Telecommunications and Access Agreements. If any such relocation results in an interruption of service and a loss of revenue to Provider, then Provider may offset any such lost revenues from the payment Provider is required to make to Owner under the Telecommunications and Access Agreements. Notwithstanding the foregoing, in the event that there are no such payments under the Telecommunications and Access Agreements or if such payments are insufficient during the remaining term of the Telecommunications and Access Agreements to cover such relocation expense and/or revenue loss, Owner shall promptly reimburse Provider for such amounts

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed by their duly authorized representatives as of the date first written above.

**PROVIDER:**

COX COMMUNICATIONS, OMAHA, L.L.C.

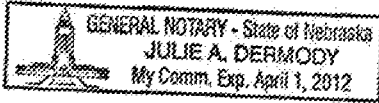
  
By: Jett Butler  
Its: V.P. of Sales

STATE OF Nebraska )

County of Douglas ) ss.  
 )

The foregoing instrument was acknowledged before me on November 15, 2010  
by Jeff Butler, as the Vp of Sales of COX COMMUNICATIONS OMAHA,  
L.L.C., a Delaware limited liability company, on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on  
11-15, 2010.



Julie A. Dermody  
Notary Public

**OWNER:**

**1001 APARTMENTS, LLC,**  
a Nebraska limited liability company

By 1130 Delmar, L.L.C.

By: [Signature]  
Michael Kucera, Manager

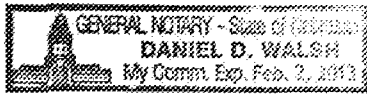
By 1001 Associates, LLC:

By: [Signature]  
Robert Green, Manager

STATE OF Nebraska )  
County of Douglas ) ss.

The foregoing instrument was acknowledged before me on November 12<sup>th</sup>, 2010, by Michael Kucera, Manager of 1130 Delmar, L.L.C., as member of 1001 Apartments, LLC, a Nebraska limited liability company, on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on November 12, 2010

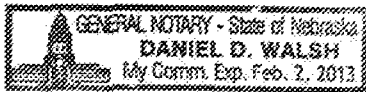


[Signature]  
Notary Public

STATE OF Nebraska )  
County of Douglas ) ss.

The foregoing instrument was acknowledged before me on November 12, 2010, by Robert Green, Manager and sole member of 1001 Associates, LLC, as member of 1001 Apartments, LLC, a Nebraska limited liability company, on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on November 12, 2010



[Signature]  
Notary Public

**READ AND APPROVED:**

**LENDER:**

**GERSHMAN INVESTMENT CORP**

By: [Signature]  
Name: Bruce Sandweiss  
Its: Executive Vice President

**HUD:**

**U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

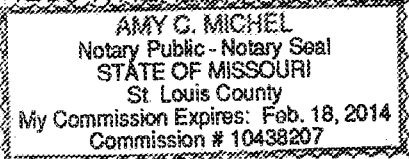
By and through the Federal Housing  
Administration

By: [Signature]

STATE OF MISSOURI )  
County of St. Louis ) ss.

The foregoing instrument was acknowledged before me on November 12, 2010, by Bruce Sandweiss, Executive Vice President of Gershman Investment Corp, an Arkansas corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on November 12m 2010

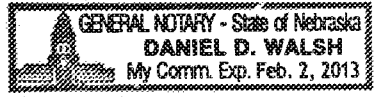


[Signature]  
Notary Public

STATE OF NEBRASKA )  
County of Douglas ) ss.

The foregoing instrument was acknowledged before me on November 16, 2010, by Donald D Johnson, Director - Omaha Multi-family Proj. of the U.S. Department of Housing and Urban Development, by and through the Federal Housing Administration, on behalf of the Administration.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on November 16, 2010



[Signature]  
Notary Public



EXHIBIT "A"

Part of the South Half of Lot 2, Pierson's Subdivision of the Southwest Quarter and the West Half of the Southeast Quarter of Section 15, Township 15 North, Range 12 East of the 6<sup>th</sup> P.M., in the City of Omaha, Douglas County, Nebraska, more particularly described as follow:

Beginning at a point on the North line of the South Half of said Lot 2, said point being 50 feet East of the centerline of 90<sup>th</sup> Street; thence East along the North line of the South Half of said Lot 2 a distance of 607.0 feet; thence South along the East line of said lot 2 a distance of 95.0 feet; thence West parallel to the South line of said Lot 2 a distance of 55.0 feet; thence North making an interior angle of 90° a distance of 18.0 feet; thence West parallel to the South line of said Lot 2 a distance of 75.0 feet; thence South making an interior angle of 270°, a distance of 83.0 feet; thence West parallel to the South line of said Lot 2 a distance of 477.0 feet to the East right-of-way line of 90<sup>th</sup> Street; thence North along the East right-of-way line of 90<sup>th</sup> Street a distance of 160.0 feet to the Point of Beginning;

AND

Part of the South Half of Lot 2, Pierson's Subdivision of the South Half of the Southwest Quarter and West Half of the Southeast Quarter of Section 15, Township 15 North, Range 12 East of the 6<sup>th</sup> P.M., in the City of Omaha, Douglas County, Nebraska, more particularly described as follows:

Beginning at a point on the South line of said Lot 2, said point being 50 feet East of the centerline of 90<sup>th</sup> Street; thence North along the East right-of-way line of 90<sup>th</sup> Street, a distance of 157.5 feet; thence East parallel to the South line of said Lot 2, a distance of 477.00 feet; thence North making an interior angle of 270° a distance of 83.0 feet; thence East parallel to the South line of said Lot 2, a distance of 75.0 feet; thence South making an interior angle of 90°, a distance of 18.0 feet; thence East parallel to the South line of said Lot 2, a distance of 55.0 feet to the East line of said Lot 2; thence South along the East line of said Lot 2 a distance of 222.5 feet; thence West along the South line of said Lot 2 a distance of 607.0 feet to the Point of Beginning;

EXCEPT FOR

That portion deeded to the State of Nebraska in Warranty Deed filed August 19, 1981 in Book 1674 at Page 442 of the Deed Records of Douglas County, Nebraska; described as follows:

A tract of land located in the South Half of Lot 2, Pierson's Subdivision of the South Half of the Southwest Quarter and the West Half of the Southeast Quarter of Section 15, Township 15 North, Range 12 East of the 6<sup>th</sup> P.M., Douglas County, Nebraska, described as follows:

Beginning at a point on the North line of said South Half of Lot 2, said point being 50.0 feet East of the centerline of 90<sup>th</sup> Street; thence Southerly a distance of 317.60 feet along the Easterly 90<sup>th</sup> Street right-of-way line to the Southwest corner of the property owned by the Grantor; thence Easterly deflecting 90°00' left, a distance of 8.00 feet along the South line of said Lot 2; thence Northerly deflecting 90°00' left, a distance of 317.60 feet to a point on the North line of said South Half of Lot 2; thence Westerly deflecting 90°00' left, a distance of 8.00 feet along said line to the Point of Beginning.