

Shaw J. Bowring
REGISTER OF DEEDS

Counter 30
Verify NK
D.E. Two
Proof D
Fee \$ 44.50
Ck ☐ Cash ☐ Chg ☐

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

USE AGREEMENT

Brentwood Townhouses

THIS USE AGREEMENT (the "Use Agreement") entered into by and between Charles G. Smith and the Nellie Smith Trust., (the "Housing Owner"), and the SECRETARY OF HOUSING AND URBAN DEVELOPMENT, acting by and through the Assistant Secretary for Housing - Federal Housing Commissioner (the "Commissioner"), provides as follows:

WHEREAS, Brentwood Townhouses, 103-44004-LD, Legal Description schedule "A", attached, consisting of 60 apartment units, was financed by means a mortgage which is insured, and the interest on the mortgage subsidized, by the Secretary under Section 236 of the National Housing Act, 12 U.S.C. 1715Z-1;

WHEREAS, the Mortgage Note is secured by a Mortgage, recorded with the Register of Deeds of Sarpy County, Papillion, Nebraska;

WHEREAS, the property is subject to a Regulatory Agreement, recorded with the Register of Deeds of Sarpy County, Papillion, Nebraska;

WHEREAS, the Housing Owner has requested the approval of the Secretary to prepay the Mortgage Note and Mortgage on the Project, to accordingly discharge the Regulatory Agreement, and, as a condition and HUD's approval of the prepayment, the Housing Owner has agreed to continue the low income affordability restrictions on the Project until April 1, 2003, (as defined below),

WHEREAS, it is the intention of the parties that this Agreement shall run with the land.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. **Definitions.** As used herein, the following terms shall have

REV 11/18

the meanings set forth below.

- a. "Adjusted Area Median Income" is Area Median Income adjusted for the family size (greater or less than four persons) of a tenant or prospective tenant, by application of the formula by which Area Median Income is adjusted for family size in determining eligibility for tenant-based assistance under the Section 8 Housing Assistant Payments Program, as such formula may be changed from time to time. If the Section 8 Housing Assistance Payments Program is terminated, or changed so as to eliminate the adjustment of area median income for family size, the formula in effect immediately prior to such termination or change shall continue to apply in determining Adjusted Area Median Income.
- b. "Area Median Income" shall mean the most recent calculation of the median income for a four-person family, as from time to time calculated and released by the Commissioner, based on the median income for the Metropolitan Statistical Area (hereinafter called the "MSA" If the Area Median Income for the Omaha MSA, is no longer released at least annually by the Commissioner, then the median income calculation which most closely approximates the aforesaid calculation, based on available data, as if it had been recalculated annually, shall be substituted as the "Area Median Income" for all purposes under this Use Agreement, and in such event, the parties hereto shall acknowledge in writing the utilization of such substitute median income calculation.
- c. "Current Tenants" shall mean those tenants who are lawfully in residence at the Project on the date of this Use Agreement. Current Tenants shall not include any persons defined below as "New Tenants."
- e. "New Tenants" shall mean those tenants who lawfully begin residence at the Project after the date of this Use Agreement. New Tenants never become Current Tenants.
- f. "Adjusted Income" has the meaning set forth in the definition of adjusted income in 24 CFR Part 813.
- g. "Very Low Income Families" are persons or families whose incomes do not exceed 50% of the Median Income as determined by HUD with adjustments for smaller and larger families.

- h. "Lower Income Families" are persons or families whose incomes do not exceed 80% of Area Median Income as determined by HUD with adjustments for smaller and larger families.
2. **Term.** This Agreement shall remain in effect until April, 2003.
3. **Use Restriction.** The owner agrees to accept Section 8 Vouchers, to be administered by Bellevue Housing Authority, for all Existing Very Low and Lower Income Families. No Current Tenant shall be required to relocate on the basis of his or her income.
- a. The Housing Owner may charge rent, for the unit type occupied by a Current Tenant, in amount as determined to be reasonable by the Housing Authority.
- b. Future rent increases shall not be in excess of an amount determined by Bellevue Housing Authority as reasonable.
- c. The Housing Owner will comply with the provisions of any or all Federal, state or local laws applicable to the Project which prohibit discrimination in housing on the grounds of race, color, religion, creed, sex, handicap, familial status or national origin, including the Fair Housing Act of 1968, as amended (42 USC 3601 et seq.; 24 CFR 100 et seq.), Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the U.S. Department of Housing and Urban Development implementing said authorities (including 24 CFR parts 100 and 110, and Subparts I and M of part 200).
- d. In selecting tenants, the Housing Owner shall not discriminate against any person or persons by reason of the fact that there are children in the family.
- e. The Housing Owner shall maintain the premises, accommodations and the grounds and equipment appurtenant thereto, in a condition that is decent, safe, sanitary and in good repair..
4. The Housing Owner further covenants and agrees that if the Housing Owner conveys beneficial ownership of the Project prior to the termination date, the Housing Owner will require the succeeding beneficial owner to assume the obligations of the Housing Owner under this Use Agreement. The Commissioner further covenants and agrees that in the event of such conveyance, the succeeding beneficial owner

shall be entitled to all of the benefits and rights of the Housing Owner under this Use Agreement.

5. In the event of a breach or a threatened breach of any of the covenants and agreements of this Use Agreement, the Housing Owner (or its successors and assigns), or the Commissioner (or his/her successors in office), or any eligible tenant or applicant for occupancy shall be entitled to institute legal action (i) to enforce performance and observance of such covenants and agreements, (ii) to enjoin any acts which are violative of such covenants and agreements, (iii) to obtain an order of the court commanding specific performance of any of these covenants and agreements, (iv) to obtain an award of whatever damages can be proven, and/or (v) to obtain such other relief as may be appropriate. All commitments made as to occupancy and eligibility have been made solely by the Housing Owner, and accordingly, HUD shall have no responsibility or obligations whatsoever in regard to such commitments.
6. Should any of the provisions of this Use Agreement be held invalid in whole or in part, it shall not affect or invalidate the balance of such provision or any other provisions.
7. The parties hereto acknowledge and agree that effective immediately upon the prepayment of the Mortgage Note, the Regulatory Agreement and any and all other documents applying to the Project, granted in favor of the Commissioner or the Department of Housing and Urban Development, or to which the Commissioner or the Department of Housing and Urban Development is a party (hereinafter collectively called the "Existing Project Documents"), shall be terminated and of no further force or effect.
8. The Housing Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Use Agreement and any amendments thereto shall immediately be recorded by Owner, at no expense to HUD, in the appropriate land records office and returned to HUD as soon as possible following recordation and prior to prepayment.
9. This Use Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors in office or assigns.
10. This Use Agreement may not be amended; modified or changed nor shall any waiver of any provision hereof be effective,

except by an instrument in writing and signed by the Housing Owner and the Commissioner.

12. After the termination date as defined in this Agreement, the Housing Owner shall promptly request and the Commissioner provide a form of Memorandum of Termination (in form acceptable for recordation in the official real estate records). The Housing Owner shall record the Memorandum of Termination.
15. **Displacement.** No Current Tenant shall be displaced, except for good cause.
16. **Agreement Binding Upon Successors and Assigns.** Upon conveyance of the Project during the term of this Agreement, the Housing Owner shall require its grantee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon the Housing Owner's successors and assigns.
18. **Execution of Other Agreements.** The Housing Owner agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

2000-003307F

IN WITNESS WHEREOF, the parties hereto have executed this Use Agreement and have agreed that it shall be effective as of the first day of February, 2000.

HOUSING OWNER: Charles G. Smith and the Nellie Smith Trust

By: _____

duly authorized

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By: _____

2000-003307 G

SCHEDULE "A"

PROJECT NO. 103-44004-LD
BRENTWOOD TOWNHOUSES
LAVISTA, NEBRASKA

LEGAL DESCRIPTION

Lots 1284, 1285, 1286, 1242, the North 95.0
Feet of Lot 1243, the South 81.9 Feet of Lot
1245, and Lots 1246, 1247, and 1248 all in
LaVista, a City in Sarpy County, Nebraska,
as surveyed, platted and recorded.