

JUL - 8 2002

9:45 AM  
Time Fee \$ 36.00  
PATRICK F. GILL, Auditor & Recorder  
By *[Signature]* Designee

Document prepared by Terry Vestal, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, IA 50309

**AGREEMENT FOR COVENANTS AND RESTRICTIONS  
(RENTAL PROPERTY)**

THIS AGREEMENT FOR COVENANTS AND RESTRICTIONS, dated as of the Effective Date of the below-described Funding Agreement, is between the Iowa Department of Economic Development, a public agency of the State of Iowa, (the "IDED"), and Castle on the Hill Limited Liability Company (the "Recipient").

WITNESSETH:

WHEREAS, the IDED is a public agency of the State of Iowa authorized and empowered by the provisions of Chapter 15 of the Code of Iowa, as amended (the "Act") to assist in the development and maintenance of decent, safe, and affordable housing; and

WHEREAS, the IDED has been designated as the Administrative Entity of the HOME Investment Partnership Program (the "Program") by the Governor of the State of Iowa; and

WHEREAS, the Recipient has applied for and received approval for funding from the Program, and has entered into Master Contract Number 01-HM-410 and Funding Agreement Number 01-HM-410-28 by and between the Recipient and the IDED (the "Contract"), and

WHEREAS, pursuant to the Contract, the IDED will make an award in the amount of \$700,000 (the "Award") to the Recipient for the purpose of financing a portion of the costs of the Project described in Exhibit A to the Funding Agreement (the "Project") to be located on the real estate described in Attachment A hereto; and

WHEREAS, the Project will be economically feasible for the Recipient because of the Award funds received through the Program; and

WHEREAS, in accordance with the Contract, the Recipient is required to provide certain Housing Benefits for Very-Low, Low-and-Moderate-Income Families as set forth in the Master Contract and Funding Agreement, and is further required to comply throughout the term of Exhibit A of the Funding Agreement with the requirements and covenants set forth in the Master Contract and Funding Agreement; and

WHEREAS, as a condition to receipt of Award proceeds, and in order to help ensure compliance by the Recipient and any future owner of the Project with the requirements and covenants set forth in the Master Contract and Funding Agreement throughout the required period of time as set forth on Exhibit A of the Funding Agreement, so as to maintain the housing benefits for which assistance has been provided through the Program and therefore protect the investment of the IDED and the Program in the Project, and in order to give the IDED the ability to fulfill its obligations under the Program to ensure such compliance, certain covenants and restrictions enforceable by the IDED must be placed on the real estate described in Attachment A hereto governing the use of the Project, which covenants and restrictions shall run with the land and be binding on the Recipient and its successors or assigns,

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Recipient, for itself and for its successors or assigns, makes the following covenants as to the use of the Project:
  - (a) The Project shall constitute an eligible project in compliance with the Program as described in the Contract, and the Recipient shall comply with all of the requirements of the Program and shall own, operate and manage the Project as set forth as an eligible project for at least 10 years beyond the Work Completion Date;

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- (b) All of the proceeds of the Award shall be spent on eligible costs of the Project, in accordance with the Iowa HOME Program Schedule attached as Exhibit A to the Funding Agreement;
- (c) The Project shall be completed so as to provide the Project Benefits as required by and specified in 24 CFR Part 92 and as referenced in the Contract;
- (d) Throughout at least the Term of Affordability, the Recipient will maintain income targeting as specified in Section 92.216 of 24 CFR Part 92;
- (e) Throughout at least the Term of Affordability, the Recipient will maintain rent limitations as specified in Section 92.252 of 24 CFR Part 92, the Master Contract and the Funding Agreement;
- (f) Throughout at least the Term of Affordability, the Recipient shall: conduct inspections of Program-assisted units to ensure compliance with the property standards as specified in sections 92.251 and 92.504 (d) (1) of 24 CFR Part 92;
- (g) In order to ensure compliance with the covenants in subparagraphs (d), (e) and (f) above, Recipient shall submit to the IDED, as required by the Contract, its certification of compliance with such covenant, together with documentation in form and substance satisfactory to the IDED evidencing compliance with such covenant;
- (h) Recipient/Contractor shall comply with all of the covenants set forth in the Contract.

2. All of the covenants herein shall run with the real estate described in Attachment A hereto and the Project thereon, and be binding upon the Recipient and its successors or assigns, for the Term of Affordability. Notwithstanding any other provisions of this Agreement, this entire Agreement, or any of the provisions or paragraphs hereof, may be terminated upon written agreement by the IDED and the Recipient.

3. Notwithstanding the provisions of Paragraph 2 above, such covenants shall cease to apply to the real estate described in Attachment A and the Project thereon prior to the end of the Term of Affordability, in the event of involuntary noncompliance therewith caused by a fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or action of a federal agency after the date of making of the Award which prevents the IDED or its successors or assigns from enforcing the covenants, or condemnation or similar event, but only if, within a reasonable period, amounts received as a consequence of such event are used to provide a project which meets the requirements of the Program.

4. Notwithstanding the provisions of Paragraph 3 above, if once the Project has been subject to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, and at any time during the part of the Term of Affordability subsequent to such event, the Recipient or a related person to the Recipient obtains an ownership interest in the Project for tax purposes, the covenants herein shall once again run with the real estate described in Attachment A hereto and the Project thereon and be binding on the Recipient or such related person and their respective successors or assigns for the remainder of the Term of Affordability.

5. This Agreement may be amended only by an amendment in writing executed by the parties hereto.

6. Except for the rental of units in the Project to tenants, the Recipient hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any interest therein without obtaining the prior written consent of the IDED, which shall be conditioned solely upon receipt of evidence satisfactory to the IDED that the Recipient's purchaser or transferee (i) has assumed in writing and in full the Recipient's duties and obligations under this Agreement and the Master Contract and Funding Agreement; (ii) has the financial capability

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to carry out such obligations; and (iii) is knowledgeable in the operation and management of facilities similar to the Project facilities. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section may be ineffective to relieve the Recipient of its obligations under this Agreement and the Master Contract and Funding Agreement.

7. If the Recipient defaults in the performance or observance of any covenant, agreement or obligation of the Recipient set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the IDED to the Recipient (or for a period of sixty (60) days after such notice if such default is curable but requires acts to be done or conditions to be remedied which, by their nature, cannot be done or remedied within such 30-day period, and if the Recipient commences same within such 30-day period and thereafter diligently and continuously pursues the same to completion within such 60-day period), then the IDED may declare that the Recipient is in default hereunder and may take any one or more of the following steps, at its option:

- (a) by mandamus or other suit, action or proceeding at law or in equity, require the Recipient to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the IDED hereunder, or obtain damages caused to the IDED by any such default;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Recipient pertaining to the Project;
- (c) declare a default under the Master Contract and Funding Agreement and make no further disbursements of Award proceeds, and demand immediate repayment from Recipient of some or all of the Award proceeds previously disbursed to Recipient; and
- (d) take whatever other action at law or in equity may appear necessary or desirable to enforce the obligations, covenants and agreements of the Recipient hereunder and under the Master Contract and Funding Agreement, including the recovery of Award proceeds.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the IDED to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

8. The Recipient shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in such manner and in such places and the IDED may reasonably request, and shall pay all fees and charges incurred in connection therewith.

9. This Agreement shall be governed by the laws of the State of Iowa.

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10. Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

IDED: Iowa Department of Economic Development  
Community Development Division  
200 East Grand Avenue  
Des Moines, IA 50309  
Attention: HOME Program

Recipient/Contractor: Castle on the Hill Limited Liability Company  
Castle on the Hill, L.L.C.  
1025 Leavenworth Street  
Omaha, NE 68102

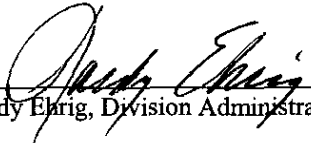
11. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

12. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

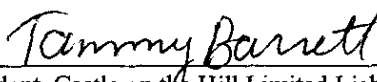
13. All of the rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Covenants and Restrictions to be executed by their duly authorized officers, all as of the date first above written.

DEPARTMENT OF ECONOMIC DEVELOPMENT

By   
Sandy Ehrig, Division Administrator

Castle on the Hill Limited Liability Company

By   
President, Castle on the Hill Limited Liability Company

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CONTRACTOR ACKNOWLEDGMENT  
(CORPORATION)

STATE OF IOWA NE )  
COUNTY OF Woodbury ) Douglas

On this 20<sup>th</sup> day of June, 2002 before me, the undersigned Notary Public in and for the State of <sup>Nebraska</sup> ~~Iowa~~, personally appeared Tammy Barrett, to me personally known, who being by me duly sworn, did say that (he/she) is the President of the corporation executing the within and forgoing instrument; that (no seal has been procured by the said) (the seal affixed thereto is the seal of said) corporation; that said instrument was signed (and sealed) on behalf of said corporation by the authority of its Board of Directors; and that the said President, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by (him/her) voluntary executed.

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

Cynthia Koster  
Notary Public in and for the State of Iowa

(SEAL)



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**IDED ACKNOWLEDGMENT**

STATE OF IOWA     )  
                                  )  
COUNTY OF POLK    )

On this July 1 day of July, 2002 before me, the undersigned Notary Public in and for the State of Iowa, personally appeared Sandy Ehrig, to me personally known, who being by me duly sworn, did say that she is the Division Administrator for the Community Development Division, Iowa Department of Economic Development, the public agency of the State of Iowa executing the within and foregoing instrument; and that said Sandy Ehrig, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said agency by it and by her voluntary executed.

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

Anita Lemons  
Notary Public in and for the State of Iowa

(SEAL)



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**Attachment A**

**LEGAL DESCRIPTION**

All of Block sixty-nine (69), and the vacated alleys therein, together with the North one (1) foot of that part of vacated Twelfth St. which abuts thereon, Sioux City East Addition, in the county of Woodbury and State of Iowa.

Parking lot parcel 027180 1208 Jackson St., Sioux City, IA Lot 4, North one-half of Lot 5, Block 68, Sioux City East Addition.