

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (the "Agreement") is entered into as of December 24, 1984 among the NEBRASKA INVESTMENT FINANCE AUTHORITY (the "Issuer"), a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions under the constitution and laws of the State of Nebraska, OMAHA NATIONAL BANK, Omaha, Nebraska, as Trustee (the "Trustee") under an Indenture of Trust dated as of November 1, 1984 (the "Indenture"), 37th STREET APARTMENTS LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Nebraska (the "Developer"), and HOWARD M. KOOPER, an individual, and THOMAS H. FELLMAN, an individual, the general partners of the Developer (collectively, the "General Partners"),

## W I T N E S S E T H :

WHEREAS, the Issuer is issuing its Multifamily Loan Revenue Bonds (Jackson Street Apartments Project) Series 1984 dated December 1, 1984 (the "Bonds") for the purpose of making a loan (the "Project Loan") to the Developer pursuant to the terms and conditions under the Loan Agreement dated as of December 1, 1984 (the "Loan Agreement") for the purpose of acquiring, constructing and equipping a multifamily housing project at 3623 Jackson Street, Omaha, Nebraska, on land legally described in Exhibit A hereto (such land, with all buildings, fixtures, equipment and improvements now or hereafter constructed or installed thereon, is herein referred to as the "Project");

WHEREAS, all parties to this Agreement have joined in this Agreement to restrict the use of the Project as provided herein to preserve the exemption from federal income taxation of interest on the Bonds;

NOW, THEREFORE, the Developer and General Partners do hereby impose upon the Project the following covenants, restrictions, charges and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein, for the length of time that this Agreement shall be in full force and effect.

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof:

"Bond Counsel" means Kutak Rock & Campbell or any other nationally recognized bond counsel as approved by the Issuer and Trustee.

"Bonds" means the Issuer's Multifamily Loan Revenue Bonds (Jackson Street Apartments Project), Series 1984.

"Code" means the Internal Revenue Code of 1954, as amended.

"Delivery Date" means December , 1984, the date of delivery of the Bonds to the initial purchaser or purchasers thereof.

"Developer Note" means the promissory note, with the Developer as payor and the Issuer as payee thereunder, reflecting the Project Loan to the Developer pursuant to the Loan Agreement.

"Dwelling Units" means the units of multifamily residential rental housing comprising the Project.

"Eligible Tenants" means and includes individuals and families whose adjusted gross income (when the incomes of all tenants which are parties to the rental agreement for the Dwelling Unit are aggregated) does not exceed 150% (as such percentage may be adjusted upward by the Issuer from time to time) of the HUD-determined median area income. No owner of any interest in the Project shall be deemed an Eligible Tenant.

"Functionally related and subordinate" shall mean and include facilities for use by tenants, for example, laundry facilities, parking areas and other recreational facilities provided that the same is of a character and size commensurate with the character and size of the Project.

"General Partners" means Howard M. Kooper and Thomas H. Fellman.

"Indenture" means the Indenture of Trust dated as of December 1, 1984 pursuant to which the Bonds are issued and secured.

"Low- and Moderate-Income Tenants" means and includes individuals and families of low or moderate income determined in a manner consistent with determinations of lower-income families under Section 8 of the United States Housing Act of 1937, as amended, except that the percentage of median gross income which qualifies as low or moderate income shall not exceed 80%. Occupants of a unit are considered individuals or families of low or moderate income only if their adjusted income (computed in the manner prescribed with section 1.167(k)-3(b)(3) of the Income Tax Regulations) does not exceed 80% of the median gross income for the area. Notwithstanding the foregoing, the occupants of a unit shall not be considered to be of low or moderate income if all the occupants are students (as defined in section 151(e)(4) of the Code), no one of whom is entitled to file a joint return under section 6013 of the Code. The method of determining low or moderate income in effect on the date of issue will be determinative for the Bonds, even if such method is subsequently changed.

"Mortgage" means that certain deed of trust executed and delivered by the Developer to secure the repayment of the Project Loan, granting a first lien on and security interest in the land and the buildings and equipment comprising the Project.

"Occupancy Date" means the later of the Delivery Date or first date on which at least 10% of the units in the Project are first occupied.

"Project" means the Project Site and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the Project Site.

"Project Site" means the real property described in Exhibit A attached hereto.

"Qualified Project Period" means a period beginning on the Occupancy Date and ending on the latest of the date (i) which is 10 years after the date on which at least 50% of the units in the Project are first occupied, (ii) which is 50% of the total number of days comprising the term of the obligation of the Bonds (including any obligations issued to refund the Bonds) with the longest maturity after the date on which any of the units in the Project is first occupied or (iii) on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

"Treasury Regulations" means the regulations of the Department of the Treasury, Internal Revenue Service under Section 103(b)(4)(A) of the Code.

Section 2. Residential Rental Property. The Issuer and the Developer hereby agree that the Project is to be developed, owned, managed and operated as a project for "residential rental property" as such phrase is utilized in Section 103(b)(4)(A) of the Code on a continuous basis during the longer of the period during which the remaining Bonds are outstanding or the Qualified Project Period. To that end, the Developer and the General Partners hereby represent, covenant and agree as follows:

(a) that the Project is being constructed and equipped for the purpose of providing multifamily residential rental property, and the Developer shall develop, own, manage and operate the Project as multifamily residential rental property comprised of Dwelling Units and facilities functionally related and subordinate to such Dwelling Units, in accordance with Section 103(b)(4)(A) of the Code and Treasury Regulations §1.103-8(b), as the same may be amended from time to time;

(b) that all of the Dwelling Units will be similarly constructed and that each Dwelling Unit in the Project shall contain complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family;

(c) that none of the Dwelling Units in the Project shall at any time be utilized on a transient basis; that none of the Dwelling Units in the Project shall be leased or rented for a period of less than 30 days; and that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium or nursing home, trailer court or park or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that once available for occupancy each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public for the longer of the period during which the remaining Bonds are outstanding or the Qualified Project Period;

(e) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with the Treasury Regulations and this Agreement, except for any units rented under the Section 8 Program, which will be leased to eligible tenants in accordance with Section 8 Program constraints and regulations;

(f) that substantially all (i.e., not less than 95%) of the Project shall consist of proximate buildings or structures located on a single tract of land which have similarly constructed units financed pursuant to a common plan together with functionally related and subordinate facilities which shall be owned by the same "person" (as such term is used in the Treasury Regulations) for federal tax purposes; and

(g) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

Section 3. Low- and Moderate-Income Tenants and Eligible Tenants. For the purpose of satisfying the requirements of Section 103(b)(4)(A) of the Code, the Developer and the General Partners hereby represent, covenant and agree as follows:

(a) at all times during the Qualified Project Period, to maintain at least 20% of the Dwelling Units in the Project for occupancy by Low- and Moderate-Income Tenants (unless in the opinion of Bond Counsel designation of a lower percentage of units for occupancy by Low- and Moderate-Income Tenants will not adversely affect the exemption from federal income taxation of interest on any of the Bonds) and to advise the Issuer and the Trustee in writing which units are to be so maintained and of any revision thereof; provided, however, that if the Project is, or subsequently becomes a "targeted area project" (as defined in 26 CFR §1.103-8(b)(8)(iii)), the minimum percentage of units that must be maintained for occupancy by Low- and Moderate-Income Tenants shall be 15%; and further provided that the units so designated shall have substantially the same equipment and amenities (not including luxury amenities such as fireplaces) as the other Dwelling Units in the Project (such units under this paragraph are hereinafter referred to as "Low and Moderate Income Units");

(b) if at any time during the Qualified Project Period, the Developer is unable to rent or lease the Dwelling Units so designated to Low- and Moderate-Income Tenants (other than for a temporary period not to exceed 31 days), to hold the unrented Dwelling Units so designated vacant and to offer the unrented Dwelling Units so designated for occupancy by Low- and Moderate-Income Tenants; provided that, for the purposes of this Agreement, a unit occupied by an individual or family which at the commencement of that occupancy is a Low- and Moderate-Income Tenant shall be treated as occupied by a Low- and Moderate-Income Tenant during such individual's or family's tenancy in such unit regardless of the future income levels of such individual or family. Moreover, a unit shall be treated as occupied by a Low- and Moderate-Income Tenant until occupied, other than for a temporary period (in no event exceeding 31 days), by another occupant, at which time the character of the unit shall be redetermined;

(c) to obtain and maintain on file income certifications from each Low- and Moderate-Income Tenant residing in the Project in the form and manner required by Treasury Regulation 1.167(k)-3(b) or in such other form and manner as may be required by applicable rules, regulations or policies now or hereafter promulgated by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 103(b)(4)(A) of the Code, including (without limitation) Income Verifications and Certifications of Tenant Eligibility (attached to the Loan Agreement as Exhibit D), which are subject to independent investigation and verification by the Issuer and the Trustee and which shall be submitted to the Issuer (i) at the time of initial occupancy by Low- and Moderate-Income Tenants; (ii) upon the vacancy and reoccupancy of any unit held available for Low- and Moderate-Income Tenants; and (iii) as often as necessary to comply with the requirements of said Section 103(b)(4)(A) of the Code;

(d) to obtain and maintain on file, with respect to each Low- and Moderate-Income Tenant residing in the Project, evidence reasonably satisfactory to the Issuer and the Trustee as to such Low- and Moderate-Income Tenant's income for the taxable year immediately preceding such Low- and Moderate-Income Tenant's initial occupancy in the Project, which may include OMB Form No. 2502-0204 "Certification and Re-Certification of Tenant Eligibility";

(e) to permit any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Developer pertaining to the incomes of the Low- and Moderate-Income Tenants residing in the Project; and

(f) not to convert the Project, in whole or in part, to condominium or cooperative ownership during the Qualified Project Period.

For the purpose of satisfying the tenant income requirements of the Issuer, the Developer and the General Partners hereby represent, covenant and agree as follows:

(a) at all times during the Qualified Project Period, to maintain the Dwelling Units in the Project not required to be occupied by Low- and Moderate-Income Tenants, for occupancy by Eligible Tenants;

(b) to obtain and maintain on file income certifications from each Eligible Tenant residing in the Project, including, without limitation, income verifications and certifications of Tenant Eligibility (attached to the Loan Agreement as Exhibit D), which are subject to independent investigation and verification by the Issuer and the Trustee and which shall be submitted to the Issuer and the Trustee (i) at the time of initial occupancy by Eligible Tenants and (ii) upon the vacancy and reoccupancy of any unit held available for Eligible Tenants;

(c) to obtain and maintain on file, with respect to each Eligible Tenant residing in the Project, evidence reasonably satisfactory to the Issuer and the Trustee as to such Eligible Tenant's income for the taxable year immediately preceding such Eligible Tenant's initial occupancy in the Project; and

(d) to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Developer pertaining to the incomes of the Eligible Tenants residing in the Project.

Section 4. Annual Reports. The Developer and the General Partners jointly and severally covenant and agree to prepare and submit to the Issuer (and to the Trustee for as long as the Indenture is in force and effect) within thirty (30) days after each anniversary of the Occupancy Date, a

report certified to be accurate by the Developer (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Dwelling Units in the Project including the percentage of the Dwelling Units of the Project which were occupied by Low- and Moderate-Income Tenants (or held vacant and available for occupancy by Low- and Moderate-Income Tenants as provided in subparagraph (b) of Section 3 above) at all times during the year preceding the date of such certificate, (b) describing all transfers or other changes in ownership of the Project or any interest therein and (c) stating that, to the best knowledge of the person executing such certificate after due inquiry, all Dwelling Units were rented or available for rental on a continuous basis during such year to members of the general public and that the Developer was not otherwise in default under this Agreement during such year.

Section 5. Covenants Run With the Land; Term. The Developer hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land and shall, except as provided in Section 13 of this Agreement, pass to and be binding upon the Developer's successors in title including any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein. Except as provided in Section 13 of this Agreement, each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument. Unless sooner modified or terminated in accordance with Section 8 hereof upon receipt by the Issuer or the Trustee of an opinion of Bond Counsel that the exemption from federal income taxation of interest on the Bonds will not be adversely affected by such a modification hereof (whether or not the Bonds are outstanding), and in such case only with the written and recorded consent of the Issuer the covenants contained herein shall continue in full force and effect until the later of (i) the term of the Bonds or (ii) the end of the Qualified Project Period.



Section 6. Uniformity; Common Plan. The provisions hereof shall apply uniformly to the entire Project to establish and carry out a common plan for the use, development and improvement of the Project Site.

Section 7. Remedies; Enforceability. In the event of a violation or attempted violation of any of the provisions hereof, the Issuer or any governmental entity succeeding to the Issuer's functions, the Trustee and the persons who shall be or have been holders of the Bonds at any time while the Bonds were outstanding under the Indenture may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to recover monetary damages caused by such violation or attempted violation. The provisions hereof are imposed upon and made applicable to the Project and shall run with the land and shall be enforceable against the Developer and the General Partners and each purchaser, grantee, owner or lessee of the Project or any portion thereof of interest therein, at any time and from time to time, and the respective heirs, legal representatives, successors and assigns of the Developer and each such purchaser, grantee, owner or lessee. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or 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. The Developer and the General Partners hereby jointly and severally agree to pay, indemnify and hold the Issuer and the Trustee harmless from any and all costs, expenses and fees, including all reasonable attorneys' fees which may be incurred by the Issuer or the Trustee in enforcing or attempting to enforce this Agreement following any default on the part of the Developer hereunder or their successors, whether the same shall be enforced by suit or otherwise; together with all costs, fees and expenses which may be incurred in connection with any amendment to this Agreement (or to the Loan Agreement) or otherwise by the Issuer at the request of the Developer (including the reasonable fees and expenses of Bond Counsel in connection with any opinion to be rendered hereunder).

Section 8. Amendment; Termination. The Developer or the General Partners shall cause this Agreement to be duly recorded (or the terms hereof to be incorporated into a deed to be duly recorded) in the office of public records in the County where the Project is located as an encumbrance upon the Project Site and the Developer shall deliver to the Issuer and the Trustee a copy of a title insurance policy evidencing such recording and an opinion of counsel in form

and substance satisfactory to the Issuer and the Trustee to the effect that this Agreement is a legal, valid and binding agreement enforceable in accordance with its terms against the Developer and any person subsequently acquiring any right, title or interest in or to the Project or any part thereof.

The provisions hereof shall not be amended, revised or terminated (except as provided in Section 13 of this Agreement) prior to the stated term hereof except by an instrument in writing duly executed by the Issuer, the Trustee (so long as any Bonds are outstanding) and the Developer (or its successors in title) and duly recorded. The Issuer's consent to any such amendment, revision or termination, other than a termination pursuant to Section 13 of this Agreement (whether or not the Bonds shall then be outstanding) shall be given only if (a) there shall be attached to the document evidencing such amendment, revision or termination an opinion of Bond Counsel that such amendment, revision or termination will not adversely affect the exemption from federal income taxation of interest on any of the Bonds or (b) evidence satisfactory to the Issuer and the Trustee has been filed with the Issuer and Trustee demonstrating that after the date of issue there has occurred an involuntary noncompliance caused by fire, seizure, requisition, change in federal law, action of a federal agency which prevents the Issuer or the Trustee from enforcing this Agreement or condemnation or similar event, provided that the Bonds used to construct the Project are retired within a reasonable period. Such opinion of Bond Counsel must by its terms be effective upon the delivery of such opinion to the Issuer and the Trustee and the recording of the amendment, revision or termination to which it is attached in the office of public records in the county where the Project is located.

Section 9. No Conflict With Other Documents. The Developer and the General Partners warrant that none of them have executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

Section 10. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 11. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

Developer and  
 General Partners: 37th Street Apartments Limited Partnership  
 1345 South 75th Street  
 Omaha, Nebraska 68124  
 Attention: Howard M. Kooper

Trustee: Omaha National Bank  
 17th and Farnam Streets  
 Omaha, Nebraska 68102  
 Attention: Trust Department

Issuer: Nebraska Investment Finance Authority  
 1033 "O" Street  
 Suite 304  
 Lincoln, Nebraska 68508

General Partners: Howard M. Kooper  
 1345 South 75th Street  
 Omaha, Nebraska 68124

Section 12. Governing Law. This Agreement shall be governed by the laws of the State of Nebraska.

Section 13. Subordination to Mortgage. Notwithstanding any other provision hereof, this Agreement and the restrictions and other provisions hereunder are subordinate to the Mortgage. In the event of foreclosure or transfer of title by deed in lieu of foreclosure, this Agreement shall automatically terminate.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective duly

authorized representatives as of the day and year first written above.

37TH STREET APARTMENTS LIMITED PARTNERSHIP, as Developer

By Howard M. Kooper  
Howard M. Kooper,  
General Partner

By Thomas H. Fellman  
Thomas H. Fellman,  
General Partner

NEBRASKA INVESTMENT FINANCE AUTHORITY, the Issuer

By [Signature]  
Authorized Officer

OMAHA NATIONAL BANK, as Trustee

By [Signature]  
Title V.P.

STATE OF NEBRASKA     ]  
                                  ] ss.  
COUNTY OF DOUGLAS    ]

*THH* The foregoing instrument was acknowledged before me this day of December, 1984 by Howard M. Kooper and Thomas H. Fellman, as General Partners, on behalf of 37th Street Apartments Limited Partnership, a limited partnership under Nebraska law.

GENERAL NOTARY - State of Nebraska  
CHERYL L. PETERSON  
My Comm. Exp. July 24, 1987

Cheryl L. Peterson  
Notary Public

My Commission expires: July 24, 1987



EXHIBIT A

(to Regulatory Agreement)

Description of Project Site

JACKSON STREET APARTMENTS PROJECT

LEGAL DESCRIPTION:

The West 145 feet of Lot 2, in Block 10, WEST OMAHA, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska

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COURT HOUSE  
DOUGLAS COUNTY, NEBRASKA

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