

58-818

REGISTRY OF DEEDS

85 MAY - 8 PM 3 36

FILE 818

259044-7602
SUN-58 OF
MAY-85

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (the "Agreement") is entered into as of April 1, 1985 among the NEBRASKA INVESTMENT FINANCE AUTHORITY (the "Authority"), a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions organized and existing under the laws of the State of Nebraska, First National Bank and Trust Company of Lincoln, Lincoln, Nebraska, as trustee (the "Trustee") under a Bond Trust Indenture dated as of April 1, 1985 (the "Indenture"), and KENDEL CORPORATION, a Nebraska Corporation (the "Owner").

W I T N E S S E T H :

WHEREAS, the Authority is issuing its Multifamily Housing Revenue Bonds, Series 1985 (Fannie Mae Pass-Through Certificate Program--Gold Coast Apartments Project Phase II) dated April 15, 1985 (the "Bonds") for the purpose of funding a permanent Mortgage Loan to the Owner for the purpose of acquiring, constructing and equipping a multifamily housing project on land legally described at Appendix I hereto (such land, with all buildings, fixtures, equipment and improvements now or hereafter constructed or installed thereon, is herein referred to as the "Project"); and

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 Owner does 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:

Rec # 05031

58-818A

"Bond Counsel" means any attorney or firm of attorneys with nationally recognized expertise in the area of taxexempt multifamily financing, as approved by the Trustee.

"Bonds" means the Authority's Multifamily Housing Revenue Bonds, Series 1985 (Fannie Mae Pass-Through Certificate Program--Gold Coast Apartments Project Phase II).

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

"Delivery Date" means May 1, 1985, the date of delivery of the Bonds to the initial purchaser or purchasers thereof.

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

"Financing Agreement" means the Financing Agreement dated as of April 1, 1985 among the Authority, the Trustee, the Owner and the Mortgage Servicer.

"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.

"Indenture" means the Bond Trust Indenture dated as of April 1, 1985 pursuant to which the Bonds are issued and secured.

"Low-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 income shall not exceed 80%. Occupants of a unit are considered individuals or families of low income only if their adjusted income (computed in the manner prescribed with section 1.167(k)-3(b)(3) of the Revenue 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 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 income in effect on the date of issue will be determinative for the Bonds, even if such method is subsequently changed.

58-818B

"Moderate-Income 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% of the HUD-determined median area income. No owner of any interest in the Project shall be deemed a Moderate-Income Tenant.

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

"Mortgage Loan" means the permanent loan funded from the proceeds of the Bonds pursuant to the Financing Agreement and Indenture.

"Mortgage Note" means that certain Note executed and delivered by the Owner to the Trustee evidencing the Owner's obligation to repay the Mortgage Loan.

"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 later 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 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.

58-818C

Section 2. Residential Rental Property. The Authority and the Owner 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 Owner hereby represents, covenants and agrees as follows:

(a) that the Project is being constructed and equipped for the purpose of providing multifamily residential rental property, and the Owner shall develop, own, manage and operate the Project as residential rental property containing residential 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 Section 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 rest home 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-Income Tenants and Moderate-Income Tenants. For the purpose of satisfying the requirements of Section 103(b)(4)(A) of the Code, the Owner hereby represents, covenants and agrees 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-Income Tenants (unless in the opinion of Bond Counsel designation of a lower percentage of units for occupancy by Low-Income Tenants will not adversely affect the exemption from federal income taxation of interest on any of the Bonds) and to advise the Authority 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-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-Income Units");

(b) if at any time during the Qualified Project Period the Owner is unable to rent or lease the dwelling units so designated to Low-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-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-Income Tenant shall be treated as occupied by a Low-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-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-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) Certifications of Tenant Eligibility (attached to the Financing Agreement as Exhibit B), which are subject to independent investigation and verification by the Authority or the Trustee and which shall be submitted to the Authority as set forth in (d) below;

(d) to immediately notify the Authority and the Trustee if at any time the dwelling units in the Project are not occupied or available for occupancy as provided above, and to prepare and submit to the Authority, not later than the fifteenth (15th) day of each month following the first day on which 10% of the units in the Project are occupied, a Certificate of Continuing Program Compliance (including the Monthly Tenant Report) (the form of which is attached to the Financing Agreement as Exhibit B) executed by the Owner stating the number of dwelling units of the Project which, as of the first day of such month, were occupied by Low-Income Tenants (or were deemed to be occupied by Low-Income Tenants as provided in subparagraph (a) above for all or part of such period), together with copies of Certifications of Tenant Eligibility collected by the Owner and not previously submitted;

(e) to obtain and maintain on file, with respect to each Low-Income Tenant residing in the Project, evidence reasonably satisfactory to the Authority or the Trustee as to such Low-Income Tenant's income for the taxable year immediately preceding such Low-Income Tenant's initial occupancy in the Project, which may

58-818F

include OMB Form No. 2502-0204 "Certification and Re-Certification of Tenant Eligibility";

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

(g) 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 Authority, the Owner hereby represents, covenants and agrees 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-Income Tenants for occupancy by Moderate-Income Tenants;

(b) to obtain, at the time of initial occupancy by Moderate-Income Tenants and upon the vacancy and reoccupancy of any unit held available for Moderate-Income Tenants, and maintain on file income certifications from each Moderate-Income Tenant residing in the Project, including, without limitation, Certifications of Tenant Eligibility (attached to the Financing Agreement as Exhibit B), which are subject to independent investigation and verification by the Authority and the Trustee and which shall be submitted to the Authority not later than the fifteenth day of each month following the first day on which 10% of the units in the Project are occupied, together with a Certificate of Continuing Program Compliance (including the Monthly Tenant Report);

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

(d) to permit any duly authorized representative of the Authority or the Trustee to inspect the books and records of the Owner pertaining to the incomes of the Moderate-Income Tenants residing in the Project.

58-818G

Section 4. No Discrimination. The Owner will accept as tenants, on the same basis as all other tenants, low-income tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937 or its successor ("Section 8"). The Owner will not apply selection criteria to Section 8 certificateholders that are more burdensome than the criteria applied to all other prospective tenants.

Owner will make available to Low-Income Tenants rental units of a quality comparable to units offered other tenants and will offer to Low-Income Tenants rental units which range in size and number of bedrooms.

Section 5. Annual Reports. The Owner covenants and agrees to prepare and submit to the Authority (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 Owner (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-Income Tenants (or held vacant and available for occupancy by Qualified 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 Owner was not otherwise in default under this Agreement during such year.

Section 6. Covenants Run With the Land; Term. The Owner 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 Owner'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 Authority 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 Authority, or in accordance with Section 13 hereof, the covenants contained herein shall continue in full force and effect until the later of (i) the term of the Bonds or (ii) the Qualified Project Period.

Section 7. 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 8. Remedies; Enforceability. In the event of a violation or attempted violation of any of the provisions hereof, the Authority or any governmental entity succeeding to the Authority's functions, the Trustee and the persons who shall 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 Owner 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 Owner 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 Owner hereby agrees to pay, indemnify and hold the Authority and the Trustee harmless from any and all

58-818 I

costs, expenses and fees, including all reasonable attorneys' fees which may be incurred by the Authority or the Trustee in enforcing or attempting to enforce this Regulatory Agreement following any default on the part of the Owner 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 Regulatory Agreement (or to the Financing Agreement) or otherwise by the Authority at the request of the Owner (including the reasonable fees and expenses of Bond Counsel in connection with any opinion to be rendered hereunder).

In the event the Owner shall fail to submit to the Authority the Certifications of Tenant Eligibility or the Certificates of Continuing Program Compliance at the times set forth in Section 3 hereof and the Authority shall then find it necessary to inspect the books and records of the Owner to determine whether the Owner is in compliance with the terms of this Agreement, the Owner shall, upon demand by the Authority, pay all expenses and costs of the Authority in determining whether or not the Owner is complying with the terms of this Agreement.

Section 9. Amendment; Termination. The Owner 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 Owner shall deliver to the Authority and the Trustee a copy of a title insurance policy or other evidence of such recording and an opinion of counsel in form and substance satisfactory to the Authority or the Trustee to the effect that this Agreement is a legal, valid and binding agreement enforceable in accordance with its terms against the Owner 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 Authority, the Trustee (so long as any Bonds are outstanding) and the Owner and the Federal National Mortgage Association (or its successors in title) and duly recorded; provided, however, the provisions hereof shall be terminated upon an instrument in writing duly executed by the Trustee (so long as any of the Bonds are outstanding) and duly recorded and rendered by the Trustee if, and only if, the Trustee determines that none of the Bond proceeds of the Acquisition Fund will ever be used (after

58-818 J

taking into consideration the extension provisions contained in the Indenture) to acquire the FNMA Certificate (as defined in the Indenture). The Authority'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 upon receipt of (a) 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 Authority or the Trustee that there has occurred an involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in federal law or action of a federal agency after the date of issue which prevents the Authority from enforcing this Agreement or condemnation or similar event, provided that the Bonds used to construct the Project are retired within a reasonable period. An opinion of Bond Counsel modifying any of the terms of this Agreement as herein provided shall become applicable upon the delivery of such opinion to the Authority or the Trustee and the recording of the modification and the opinion in the office of public records in the County where the Project is located.

Notwithstanding any other provisions hereof, this Agreement shall be amended to conform to the requirements of any amended Treasury Regulations (proposed or final), or any legislative enactment or final decision by a court of competent jurisdiction affecting the tax-exempt status of the interest on the Bonds when the same becomes applicable, but only if less restrictive than the Treasury Regulations as of the date hereof.

Section 10. No Conflict With Other Documents. The Owner warrants that it has not 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 11. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 12. 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

58-818K

forth below, or to such other place as a party may from time to time designate in writing:

Owner: Kendel Corporation
c/o Ken Stahl
1308 Gold Coast Road
Papillion, Nebraska 68046

Trustee: First National Bank and Trust Company
of Lincoln
13th & M Streets
Post Office Box 81008
Lincoln, Nebraska 68501
Attention: Corporate Trust Department

Authority: Nebraska Investment Finance Authority
Suite 304
1033 O Street
Lincoln, Nebraska 68508
Attention: Executive Director

Section 13. Governing Law. This Agreement shall be governed by the laws of the State of Nebraska.

Section 14. 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.

KENDEL CORPORATION

By 
Kenneth L. Stahl

By 
Eleanor R. Stahl

58-818 L

NEBRASKA INVESTMENT FINANCE
AUTHORITY

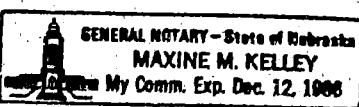
By *[Signature]*

FIRST NATIONAL BANK AND TRUST
COMPANY OF LINCOLN

By *James A. McSide*

STATE OF NEBRASKA]
] SS.
COUNTY OF DOUGLAS]

The foregoing instrument was acknowledged before me this 1st day of May, 1985, by Kenneth L. Stahl and Eleanor R. Stahl, the President and Secretary, respectively, on behalf of Kendel Corporation, a Nebraska Corporation.

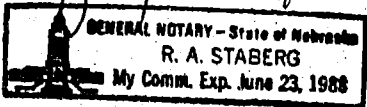
 GENERAL NOTARY - State of Nebraska
MAXINE M. KELLEY
My Comm. Exp. Dec. 12, 1988

By *Maxine M. Kelley*
Title *Secretary*

STATE OF NEBRASKA]
] SS.
COUNTY OF DOUGLAS]

The foregoing instrument was acknowledged before me this 1st day of May, 1985, by the Executive Director of the Nebraska Investment Finance Authority, a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions organized and existing under the laws of the State of Nebraska.

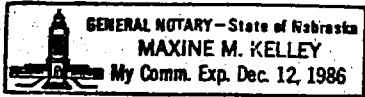
By *[Signature]*
Title *Executive Director*

 GENERAL NOTARY - State of Nebraska
R. A. STABERG
My Comm. Exp. June 23, 1988

54-818 M

STATE OF NEBRASKA]
] SS.
COUNTY OF DOUGLAS]

The foregoing instrument was acknowledged before me this 1st day of May, 1985, by David McBride of First National Bank and Trust Company of Lincoln, a national banking corporation, on behalf of the said bank.



By Maxine M. Kelley
Title Notary Public

58-818N

APPENDIX I

(to Regulatory Agreement)

Description of Project Site

GOLD COAST APARTMENTS PROJECT PHASE II

LEGAL DESCRIPTION:

Lots 3 and 4, in Gold Coast Addition, an Addition to the City of Papillion, in Sarpy County, Nebraska, except that part of Lot 4, conveyed to the State of Nebraska in Book 145, Page 907, Deed Records, Sarpy County, Nebraska.