

Instrument No. 025324
State of Iowa, Boone County, SS
Filed for Record at 2:55 P.M.
This 15 day of Aug, 2002
Sheryl J. Thul, Recorder, Fees \$ 26.00 due
Number of Pages 5

USE AGREEMENT (3/00)

Project Name: Midtown Apartments
Project Location: Boone, Iowa
Former Project Number: 074-44039
Project Number: 074-11023

236(e)(2) USE AGREEMENT

This Agreement, entered into by the Secretary of Housing and Urban Development (the "Secretary" or "HUD"), and 203 Harrison Street Limited Partnership (Owner), provides as follows:

WHEREAS, Midtown Apartments (the "Project"), a 72 unit project located in Boone, Iowa, was financed with a Secured Note (the "Mortgage Note") and Mortgage (the "Mortgage"), recorded on October 9, 1970, and insured and assisted by the Secretary under Section 236 of the National Housing Act (NHA), as amended, and covering real property as described in Exhibit "A" attached hereto, which Mortgage was recorded in the Boone County Registry of Deeds in Book 423 at Page 291, and which was modified by Modification Agreement filed October 23, 1970, in Book 424 at Page 629; and modified again in Modification Agreement filed December 1, 1971, in Book 431 at Page 223; and assigned to Federal National Mortgage Association, by virtue of an Assignment filed December 14, 1971, in Book 431 at Page 305, in the official land records of Boone County, Iowa;

WHEREAS, the Owner has refinanced the Project with the Secretary's approval, that such refinancing involved a prepayment of the Mortgage Note and the creation of a successor Mortgage and Note with interest reduction payments ("IRP") to continue under the authority of section 236(e)(2) of the NHA, and pursuant to the terms of the Agreement for Interest Reduction Payments of even date herewith (collectively, the "Transaction");

WHEREAS, in exchange for the Secretary's approval of the Transaction, the Owner has agreed to subject the Project to certain use restrictions, as set forth herein, which shall run with the land;

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

1. **Continuation of Section 8 Assistance.** The Project currently receives the benefit of Section 8 assistance for 14 units pursuant to the terms of the HAP Contract. The Owner agrees to accept and utilize project-based Section 8 assistance in accordance with the HAP Contract, and agrees to accept on the same terms and conditions of the existing HAP Contract, any renewal or extension of the HAP Contract or any contract under a program designated by the Secretary as a successor to the Section 8 program for as long as the IRP payments remain in effect, plus an additional five years.

split
First Nebraska Title and Escrow Company 2425 S 120th St Omaha NE 68144

2. Termination of Section 8 Assistance. In the event that the HAP Contract is terminated or not renewed, for any reason, the Owner shall continue to rent the Project under the terms of the Section 236 Interest Reduction Payments Agreement.

3. Continuation of All Affordability Restrictions. As a condition for receiving continued IRP under section 236(e)(2), the owner agrees, pursuant to that provision, “to operate the project in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration not less than the term for which such interest reduction payments are to be made as a result of the section 236(e)(2) refinancing, plus an additional 5 years. By “all” low-income affordability restrictions” and the word “Federal” before “assistance,” the statutory provision requires the continuation of any low-income affordability restrictions in effect at the project on the date of the prepayment of the section 236 mortgage, if such restrictions have resulted from Federal, as opposed to, for example, state or local assistance, whether such assistance is presently being provided, or was provided at some point in the past. Examples of affordability restrictions linked to Federal assistance can include, but not be limited to, the section 236 restrictions governing the use of IRP, use restrictions on projects that were preservation eligible and received preservation incentives pursuant to an approved plan of action, use restrictions deriving from tax credits, etc.

At the subject project, the following affordability restrictions shall continue for the period referred to in the preceding paragraph: (1) The affordability restriction inherent, through the operation of the section 236 statute, and in the section 236 program, which is to provide affordable housing for low-income tenants, and, which as implemented by HUD, makes the housing affordable for tenants whose income is at 80 percent of median income or lower. Thus, all section 236 statutory and regulatory requirements governing rents and occupancy operate, including the establishment of basic and fair market rents, pursuant to 24 CFR 236(f) of the NHA.

4. Physical Condition of the Property. The owner shall, for the term of this use agreement, maintain the property in a condition that is decent, safe and sanitary, and in good repair. It shall do so in conformity with HUD requirements at 24 CFR Part 5, Subpart G, or any successor regulation.

5. Financial Reporting Requirements. The owner shall, for the term of this use agreement comply with HUD financial reporting requirements at 24 CFR Part 5, Subpart G, or any successor regulation.

6. Tenant-based Assistance. The owner shall not unreasonably refuse to lease a dwelling unit to, or discriminate against, a prospective tenant because the tenant is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC Section 1437f).

7. **Runs With the Land.** This Agreement shall run with the land and be binding upon the Owner, as well as any successors and assigns. Notwithstanding the above sentence, upon conveyance of the Project during the term of this Agreement, the Owner shall by contract, require its successors or assignees to assume its obligations under this Agreement.

8. **Term.** This Agreement shall continue in full force and effect until December 1, 2016.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and have agreed that it shall be effective as of the 16 day of August, 2002

OWNER: 203 Harrison Street Limited Partnership,
a Nebraska limited partnership

Witness

Michael Steiner
Michael Steiner

By: Central States Development, LLC

By: John C. Foley
John C. Foley, Member

SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

Witness

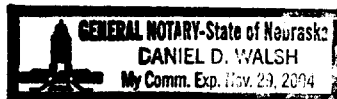
[Signature]

By: Audrey A. Rivas
Director
Multifamily Housing Division
HUD

NEBRASKA)
STATE OF IOWA)
COUNTY OF DOUGLAS)
SS

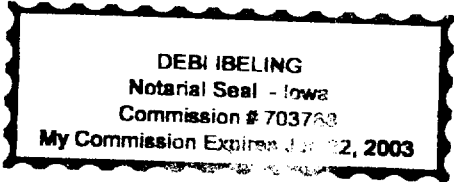
On this 14 day of August, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared John C. Foley to me personally known, who being by me duly sworn did say he is the managing member of Central States Development, LLC, which is the sole general partner of 203 Harrison Street Limited Partnership, and that said instrument was signed on behalf of the said Limited Partnership by authority of its general partner, and John C. Foley as managing member of the general partner for the Limited Partnership, acknowledged the execution of said instrument to be the voluntary act and deed of said Limited Partnership, by it voluntarily executed.

Daniel Walsh
(Notary Public)



STATE OF IOWA)
) ss
COUNTY OF Adair)

On this 13 day of August, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Audrey RWA to me personally known to me to be Supervisor Boyd Mack, of HUD, and the person who executed the foregoing instrument by virtue of the authority vested in him, and he acknowledged the execution of said instrument to be a free and voluntary act and done on behalf of the Secretary of Housing and Urban Development for the uses, purposes and considerations therein set forth.



Debi Ibeling
(Notary Public)

EXHIBIT A

LEGAL DESCRIPTION FOR MIDTOWN APARTMENTS

SOUTH 32 FEET OF LOT 4, AND ALL OF LOTS 5 AND 6 IN BLOCK 161, IN FOURTH ADDITION TO BOONE, IOWA; ALSO WEST 77 FEET OF BLOCK 186 IN SEVENTH ADDITION TO BOONE, IOWA; AND THAT PART OF LOT 4, LYING EASTERLY OF THE RAILROAD RIGHT-OF-WAY AND LOT 5 IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 84 NORTH, RANGE 26 WEST OF THE 5TH P.M., IN THE CITY OF BOONE, BOONE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF FIRST STREET AND THE EAST LINE OF THE FORMER RIGHT-OF-WAY OF THE C&NW RAILWAY COMPANY, WHICH POINT IS 35.00 FEET NORTH OF THE SOUTH LINE OF SAID NW ¼ AND 523.50 FEET EAST OF THE WEST LINE OF SAID NW ¼; THENCE NORTHERLY ALONG A 1,859.88 FOOT RADIUS CURVE WHICH IS CONCAVE EASTERLY FOR 461.80 FEET, THE LONG CHORD OF WHICH BEARS N02°37'30"E FOR 460.62 FEET; THENCE S89°58'E 240.20 FEET ALONG THE NORTH LINE OF THE SOUTH 32.00 FEET OF SAID LOT 4 TO THE WEST LINE OF HARRISON STREET; THENCE S00°09'E 160.80 FEET TO THE SOUTH LINE OF SECOND STREET; THENCE N89°39'E 310.00 FEET TO THE EAST LINE OF THE WEST 77.00 FEET OF SAID BLOCK 186, WHICH POINT IS ALSO 150.00 FEET WEST OF THE WEST LINE OF MONONA STREET; THENCE S00°09'E 301.10 FEET TO THE NORTH LINE OF FIRST STREET; THENCE S90°00'W 572.50 FEET TO THE POINT OF BEGINNING, CONTAINING 4.892 ACRES.