



W2327522

WHEN RECORDED MAIL TO:

National Title Agency LLC
5295 South Commerce Drive, #250
Murray City, Utah 84095

EN 2327522 PG 1 OF 7
ERNEST D ROWLEY, WEBER COUNTY RECORDER
12-MAR-08 321 PM FEE \$23.00 DEP JPM
REC FOR: NATIONAL TITLE AGENCY

236(e)(2) USE AGREEMENT

NTA - 4762232 - AB

After Recording Please Return to:
Randall Kelly, Esq.
Nixon Peabody LLP
401 9th Street, N.W., Suite 900
Washington, D.C. 20004
Telephone: (202) 585-8000

Project Name: Kara Manor Apartments
Project Location: Washington Terrace, Utah
FHA Project No.: 105-44032

236(e)(2) USE AGREEMENT

THIS AGREEMENT, entered into by the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT**, acting by and through the Federal Housing Commissioner (the "Secretary" or "HUD"), **KARA MANOR APARTMENTS, LLC**, a Utah limited liability company (the "Owner"), provides as follows:

WHEREAS, the Owner is the owner of that certain multifamily residential rental development commonly known as Kara Manor Apartments (the "Project"), which is a 44-unit project located in Washington Terrace, Utah located on real property which is more particularly described in Exhibit A attached hereto;

WHEREAS, the Project was financed with a loan evidenced by that certain Mortgage Note in the original principal amount of \$494,400 dated as of May 1, 1974 (the "Mortgage Note");

WHEREAS, the Mortgage Note was secured by that certain Mortgage dated May 1, 1974 recorded in the official land records of Weber County, Utah (the "Official Records") on May 1, 1974 as Entry No. 614424 at Book 1052 Page 451 (the "Mortgage"), and the loan was assisted by the Secretary under Section 236 of the National Housing Act, as amended ("NHA");

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"); and

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 Contract.** The Project currently receives the benefit of two (2) project-based Section 8 contract through those certain Housing Assistance Payment Contracts, Section 8 Nos. UT30L000018 and UT99M000033 (collectively, the "HAP Contract"), for the benefit of providing housing assistance payments to 44 units. The owner agrees to accept and utilize the housing assistance payments in accordance with the HAP Contracts, and agrees to accept on the same terms and conditions of the existing HAP Contracts,

any renewal or extension of the HAP Contracts or any contract under a program designated by the Secretary as a successor to the housing assistance payment program for as long as the IRP payments remain in effect, plus an additional five years.

2. **Termination of HAP Contracts.** In the event that the HAP Contracts are terminated or not renewed, for any reason, the Owner shall continue to rent the Project under the terms of the Section 236 IRP 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 five (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, and use restrictions deriving from tax credits.

4. 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 eighty percent (80%) of median income or lower, and (2) the affordability restrictions set forth in the Use Agreement and Amendment of Existing Regulatory Agreement for Limited Distribution Mortgagors recorded November 1, 1994, in Book 1736 at Page 1283 of the real property records of Weber County, Utah. Thus, all Section 236 statutory and regulatory requirements governing rents and occupancy operate, including the establishment of basic and fair market rents, pursuant to Section 236(f) of the NHA.

5. **Physical Condition of the Property.** The Owner shall, for the term of this 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.

6. **Financial Reporting Requirements.** The Owner shall, for the term of this Agreement comply with HUD financial reporting requirements at 24 CFR Part 5, Subpart H, or any successor regulation.

7. **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).

8. **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.

9. **Non-Discrimination in Housing.** The Owner will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, handicap, familial status or national origin, including the Fair Housing Act of 1968, as amended (42 U.S.C. § 3601 et seq.; 24 C.F.R. Part 100), Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 C.F.R. Parts 100 and 110, and Subparts I and M of Part 200).

10. **Enforcement.** The Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Agreement may be recorded in the appropriate land records and that the Commissioner, his/her successors and assigns and/or any third-party beneficiary may file suit against the Housing Owner or any of its successors or assigns for an order of the court commanding specific performance of any of these covenants and agreements, enjoining any acts which are violative of such covenants and agreements, for an award of whatever damages can be proven and/or for such other relief as may be appropriate. Should any of the above covenants be held invalid in whole or in part, it shall not affect or invalidate the balance of such covenant or any other covenants.

11. **Term.** This Agreement shall continue in full force and effect for as long as the IRP payments remain in effect, plus an additional five years, until May 1, 2019.

[Signatures and acknowledgments are contained on the following pages.]

[Signature page for Section 236(e)(2) Use Agreement – Kara Manor Apartments]

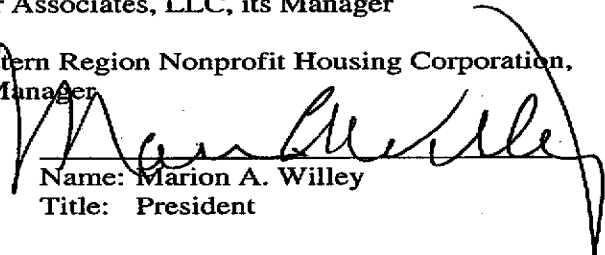
IN WITNESS WHEREOF, the parties hereto have executed this Agreement and have agreed that it shall be effective as of the 1st day of January, 2008.

OWNER:

KARA MANOR APARTMENTS, LLC,
a Utah limited liability company

By: Kara Manor Associates, LLC, its Manager

By: Western Region Nonprofit Housing Corporation,
its Manager

By: 
Name: Marion A. Willey
Title: President

STATE OF Utah)
) ss
COUNTY OF Salt Lake)

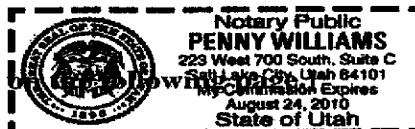
On the 29 day of January, 2008, before me, the undersigned personally appeared Marion A. Willey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Witness my hand and notarial seal this 29 day of January, 2008.


Notary Public

My Commission Expires: 8-24-10

[Signatures continue on



[Signature page for Section 236(e)(2) Use Agreement – Kara Manor Apartments]

**SECRETARY OF HOUSING AND
URBAN DEVELOPMENT ACTING BY
AND THROUGH THE FEDERAL
HOUSING COMMISSIONER**

By: Marcie LaPorte
Authorized Agent

ACKNOWLEDGMENT

State of Colorado)
)ss.
City and County of Denver)

Before me, Mary Martha Rhodes, a Notary public in and for the said state, on this late
day of January, 2008, personally appeared Marcie LaPorte, who is well
known to me to be the _____ Director, Denver Multifamily Hub, and the person
who executed the foregoing instrument by virtue of the authority vested in her by Section 7(d) of
the Department of Housing and Urban Development Act, 42 U.S.C.A. §3535(d), as amended,
and Section 236 of the National Housing Act, 12 U.S.C.A. §1715z-1, as amended, and I having
first made known to her the contents thereof, she did acknowledge the signing thereof to be her
free and voluntary act and done on behalf of Alphonso Jackson, the Secretary of Housing and
Urban Development, for the uses, purposes and considerations therein set forth.

Witness my hand and official seal the 6th day of March, 2008

(SEAL)



My Commission Expires 12/07/2011

Mary Martha Rhodes
Notary Public

My Commission Expires: 12/07/2011

Exhibit A

PARCEL 1:

A PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS EAST (SOUTH 89°34' EAST) 394.00 FEET ALONG THE QUARTER QUARTER SECTION LINE FROM THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER SECTION; RUNNING THENCE EAST (SOUTH 89°34' EAST) 132.00 FEET PARALLEL TO THE SOUTH LINE OF SAID QUARTER QUARTER SECTION; THENCE NORTH (NORTH 0°22' EAST) 169.00 FEET PARALLEL TO THE WEST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE EAST (SOUTH 89°34' EAST) 132.00 FEET PARALLEL TO THE SOUTH LINE OF SAID QUARTER QUARTER SECTION TO A POINT WHICH IS WEST 666 FEET FROM THE EAST LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER SECTION; THENCE NORTH (NORTH 0°22' EAST) 324.73 FEET PARALLEL TO THE WEST LINE OF SAID NORTHWEST QUARTER SECTION TO A POINT WHICH IS 136.00 FEET SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF 4900 SOUTH STREET; THENCE WEST (NORTH 89°31' WEST) 132.00 FEET PARALLEL TO SAID SOUTH LINE OF STREET; THENCE SOUTH (SOUTH 0°22' WEST) 133.85 FEET PARALLEL TO THE WEST LINE OF SAID NORTHWEST QUARTER SECTION; THENCE WEST (NORTH 89°34' WEST) 132.00 FEET PARALLEL TO THE SOUTH LINE OF THE QUARTER QUARTER SECTION; THENCE SOUTH (SOUTH 0°22' WEST) 360.00 FEET PARALLEL TO THE WEST LINE OF NORTHWEST QUARTER SECTION TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE SOUTH 33.00 FEET THEREOF, LYING WITHIN THE RIGHT-OF-WAY OF 5000 SOUTH STREET.

PARCEL 2:

BENEFITS, EASEMENTS AND RIGHTS OF WAY GRANTED AND CREATED BY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED SEPTEMBER 28, 1972 IN BOOK 1005 AT PAGE 536, AMENDMENT RECORDED APRIL 23, 1974 IN BOOK 1051 AT PAGE 581 AND RE-RECORDED APRIL 29, 1974 IN BOOK 1052 AT PAGE 202 OF OFFICIAL RECORDS.

Tax Parcel No. 07-067-0026