City of Scottsbluff, Nebraska

Monday, March 20, 2023

Regular Meeting

Item Reports1

Council to discuss and consider action on releasing the CDBG Reuse Grant for the Lincoln Hotel Project, conditional on the Department of Economic Development's consent.

Staff Contact: Kevin Spencer, City Manager

MDI LIMITED PARTNERSHIP #48
1600 UNIVERSITY AVENUE #212
ST. PAUL, MN 55104-3825

November 10, 2022

Kim Wright, CMC
City Clerk/Risk Manager
City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361

Re: CDBG loan for Lincoln House Apartments

Lincoln Hotel/Park Hotel is a six-story building built in 1918 and listed on the National Register of Historic Places. In 1999 it was redeveloped into 35 beautiful 1- and 2-bedroom apartments and common support space with community lounge, kitchen and activity areas. The historic fabric, including facade and interior spaces, was retained while integrating a new elevator and stair tower. MDI Limited Partnership #48, a Nebraska limited partnership sole asset is Lincoln House.

The property has always operated on very narrow margins as you can see from the attached September 2022 Financial Statement and the 2023 Budget. The two Community Development Block Grant mortgages original and current balance is $125,000 at 1% interest and due November 2029. Accrued interest as of 12-31-2021 is $28,750.

Normally we would refinance after 15 or 20 years but in this case, there is no net operating income for additional debt service. The attached Land Use Restriction Agreement (LURA) restricts the rents we can charge until 2029. We must rent all apartments to families making 60% or less of Area Median Income (AMI). This results in turning away potential residents because they are over income and contributes to the number of vacant apartments we experience.

HUD CDBG funds are often given a to a project, but this does not work for projects using Low Income Housing and Historic Tax Credits. Grants can't be taken into basis for income tax purposes and thus reduces the amount of Historic and Housing Tax Credits. That is why these grants are structured as soft loans and usually forgiven after 15 or 20 years.

Part of the financing for Lincoln House in 1999 was a $126,000 loan, at 1% interest due November 2048 from Community First Bank, Alliance, NE (know Bank of the West). The funds were provided by the Federal Home Loan Bank Affordable Housing Program. This loan and accrued interest were forgiven March 2017. Release of Mortgage attached.

The first mortgage is a USDA Rural Development (RD) loan with a 12-31-2021 balance of $1,081,782 due December 2029. RD also provides Rental Assistance which allows residents to pay no more then 30% of their income for rent. The maximum annual owner distribution that RD allows is $8968/year. No distribution has been paid for the past ten years.

We have a potential buyer that is willing to assume the assets and liabilities except for the $125,000 CDBG loans. The Buyer is considering applying for Low Income Housing Tax Credits which would allow Lincoln Park to be upgraded and operate on a financially sound basis going forward.

We request forgiveness of the $125,000 CDBG loans and the accrued interest. Thank you for your consideration.

GLS Properties, LLC, General Partner

Gary L Stenson

Gary L Stenson, Chief Manager

Inst. 000 - 01160

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Jean A. Bauer
REGISTER OF DEEDS

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Landmark Real Estate
Services, L.L.C.
1525 10th Street
Gering, NE 69341

LAND USE RESTRICTION AGREEMENT
FOR LOW INCOME HOUSING TAX CREDITS

Between

NEBRASKA INVESTMENT FINANCE AUTHORITY,
as Authority

and

MDI LIMITED PARTNERSHIP #48,
as Owner

WHEN RECORDED RETURN TO:

Nebraska Investment Finance Authority
Suite 200
1230 O Street
Lincoln, NE 68508-1402
Attention: Executive Director

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Inst. 2000 - 01160

SUMMARY PAGE

Date:____________________________

THE OWNER -

Legal Name of Owner: MDI Limited Partnership #48

Type of Legal Organization: limited partnership
(e.g., corporation, partnership)

State of Organization: Nebraska

Business Address of Owner: 1600 University Avenue, #212, St. Paul, MN 55104

Contact Person: Gary Stenson

THE PROJECT -

Name of Project: Lincoln House

Project Address and
Legal Description: (See Attached Exhibit A) 1421 Broadway

Total Number of Buildings: 1

Building Identification Number(s): 98-01139

Total Number of Units: 35

Total Number of LIHTC Units: 35

One unit is occupied by a resident manager. Yes _X_ No ____

Cost of acquisition, construction and rehabilitation: $3,092,876

Qualified Basis: Acquisition - $76,942; Rehabilitation - $1,018,462

TAX CREDIT INFORMATION -

Allocation of Housing Tax Credit Dollars: $88,845

Occupancy Date: 10-30-99

<u>Income Election Set-aside</u>

Applicable Set-Aside Percentage(s)	40%	60%
Applicable Income Percentage(s):	50%	60%

<u>Targeted Rent Levels</u>

100% of the LIHTC units (35 units) have rents affordable at or below 53.07 % of the applicable area median income.

Required Number of Years From Occupancy Date: 45 years

Other conditions of targeting: Amenity and energy requirements per application.

Nonprofit Set-Aside: No

The Lender or Lenders: The City of Scottsbluff; State of Nebraska Department of Economic Development; Community First Bank; USDA Rural Development

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Inst. 2000 - 01160

LAND USE RESTRICTION AGREEMENT FOR LOW INCOME HOUSING TAX CREDITS

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement") is entered into as of the date set forth on the Summary Page hereof between the **NEBRASKA INVESTMENT FINANCE AUTHORITY** (the "Authority"), 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, and the **OWNER IDENTIFIED ON THE SUMMARY PAGE HEREOF** (the "Owner") and the Lender or Lenders identified on the Summary Page hereof (the "Lender").

WITNESSETH:

WHEREAS, the Authority has been designated by the Governor of the State of Nebraska as the housing tax credit entity for the State of Nebraska for the allocation of low income housing tax credit dollars; and

WHEREAS, the Owner is or shall be the owner of the rental housing development located and as described on the Summary Page hereof and in Exhibit A hereto (the "Project"); and

WHEREAS, the Owner has applied to the Authority for an allocation of low income housing tax credit dollars to the Project in an amount not to exceed the amount set forth on the Summary Page hereof; and

WHEREAS, the Owner and the Project must continuously comply with Section 42 and other applicable sections of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations"); and

WHEREAS, compliance by the Owner and the Project with Section 42 of the Code is in large part within the control of the Owner; and

WHEREAS, the Authority is unwilling to allocate low income housing tax credit dollars to the Project unless the Owner shall, by entering into this Agreement, consent to be regulated by the Authority in order that the Authority may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement in accordance with the Code and the Regulations; and

WHEREAS, the Owner has represented to the Authority in the Owner's Low Income Housing Tax Credit Application (the "Application") that the Owner shall lease at least the Applicable Set-Aside Percentage of the units in the Project to individuals or families whose income is the Applicable Income Percentage or less of area median gross income (including adjustments for family size) as determined in accordance with the Code ("Qualified Tenants"); and

WHEREAS, the Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and

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are covenants running with the land for the term stated herein and binding upon all subsequent owners of the Project for such term and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the Authority agree as follows:

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, and all words and phrases defined in Section 42 of the Code shall have the same meanings in this Agreement:

"*Applicable Income Percentage*" means the percentage stated in the Summary Page hereof as the percentage of area median gross income which may not be exceeded by individuals or families qualifying as Qualified Tenants.

"*Applicable Set-Aside Percentage*" means the percentage stated in the Summary Page hereof as the percentage of units in the Project to be leased to Qualified Tenants.

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

"*Functionally Related and Subordinate*" means and includes facilities for use by tenants, for example, laundry facilities, parking areas and recreational facilities, provided that the same are of a character and size commensurate with the character and size of the Project.

"*Occupancy Date*" means the first day on which the Project is placed in service, as set forth on the Summary Page hereof.

"*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 date which is the Required Number of Years after the Occupancy Date.

"*Qualified Tenants*" means and includes individuals and families whose income is equal or less than the Applicable Income Percentage of area median gross income (including adjustments for family size) as elected and determined in accordance with the Code and Regulations. Except as otherwise provided herein, the occupants of a unit shall not be considered to be of low income if any occupant is a student (as defined in Section 151(c)(4) of the Code). Notwithstanding the foregoing, a unit is not disqualified as a Qualified Unit merely because it is occupied (i) by a student receiving AFDC assistance under Title IV of the Social Security Act, (ii) by a student in a government-supported job training program, (iii) entirely by full-time students who are single parents and their children, provided such occupants are not dependents of another person or (iv) by full-time students who are married and file a joint return. The determination of whether an individual or family is a Qualified Tenant shall be made at least annually on the basis of the current income of such occupants. Any unit occupied by an individual or family who is a Qualified Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Qualified Tenant, provided that, should such Qualified Tenant's income subsequently exceed 140% of the applicable income limit, such tenant shall no longer be a Qualified Tenant if, after such determination of income, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualified Tenant.

"*Qualified Unit*" means a residential unit in the Project designated for occupancy by Qualified Tenants.

"*Related Persons*" means two or more persons related within the meaning of Section 147(a)(2) of the Code, including, but not limited to, familial and trust relationships, actual or attributed partnership interests, related corporations and certain corporate shareholders.

"*Rent Restricted Unit*" means a Dwelling Unit if the gross rent with respect to the Dwelling Unit does not exceed 30% of the imputed income limitation applicable to such Dwelling Unit (based on the number of bedrooms therein in accordance with Section 42(g)(2)(C) of the Code).

"*Required Number of Years*" means the number of years after the Occupancy Date on which the Qualified Project Period expires and as set forth on the Summary Page.

Section 2. Representation, Covenants and Warranties of the Owner. The Owner makes the following representations and warranties to induce the Authority to enter into this Agreement and further represents, warrants and covenants that:

(a) The Owner (i) is a legal organization as described on the Summary Page hereof organized under the laws of the State identified on the Summary Page thereof, and is qualified to transact business under the laws of the State of Nebraska, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as contemplated by this Agreement) and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Owner is a party or by which it or its property is bound and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any prior lien or encumbrance.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as contemplated by this Agreement) or would materially adversely affect its financial condition.

Section 3. Residential Rental Project. The Owner hereby agrees that the Project is to be developed, owned, managed and operated for the Qualified Project Period as "residential rental property," as such phrase is used in Section 42(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Owner hereby represents, covenants, warrants and agrees as follows:

(a) the estimated cost (or final cost, if applicable) of the acquisition, construction and rehabilitation of the Project will be equal to or in excess of the amount set forth on the Summary Page;

(b) that the Project constitutes and will constitute "residential rental property," as defined in Section 42 of the Code and the Regulations, the rental units of which will be rented or available for rental on a continuous basis to members of the general public;

(c) if the Owner becomes aware of any situation, event or condition which would result in noncompliance of a Dwelling Unit, the Project or the Owner with Section 42 of the Code or the Regulations, the Owner shall promptly give written notice thereof to the Authority;

(d) that all of the Dwelling Units will be similarly constructed and that each Dwelling Unit in the Project shall contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family (unless the Project qualifies as a single-room occupancy project or as transitional housing for the homeless pursuant to Section 42(i)(3) of the Code);

(e) that each building in the project will remain suitable for occupancy taking into account local health, safety, and building codes;

(f) that none of the Dwelling Units in the Project shall at any time be utilized on a transient basis (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless pursuant to Section 42(i)(3) of the Code); that none of the Dwelling Units in the project shall be leased or rented for a period of less than six months; (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless pursuant to Section 42(I)(3) of the Code) 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, nursing home, rest home, trailer park, trailer court, mobile home park, or recreational vehicle park or by a cooperative housing corporation (as defined in section 216(b)(1) of the Code);

(g) 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 on a non-transient basis (except for transitional housing for the homeless or single-room occupancy units provided under Section 42(i)(3)(B)(iii) and (iv) of the Code) for the Qualified Project Period;

(h) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with the Code and this Agreement, except for any units rented under the housing program pursuant to Section 8 of the United States Housing Act of 1937, as amended, which will be leased to eligible tenants in accordance with the constraints and regulations of such housing program;

(i) that the Project shall consist of one or more proximate buildings or structures located on a single tract of land which have similarly constructed units financed pursuant to a common plan (unless the Project qualifies as a scattered site project under Section 42(g)(7) of the Code), together with functionally related and subordinate facilities which shall be owned by the Owner or a Related Person;

(j) that the Owner shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status or national origin in the lease, use or occupancy of the Project or in employment of persons for the operation and management of the Project;

(k) that the Owner will accept as tenants, on the same basis as all other prospective tenants, persons who are holders of vouchers or certificates for federal housing assistance payments for existing housing pursuant to Section 8 of the United States Housing Act of 1937 or a successor federal program, and, in connection therewith, the Owner will not apply tenant selection criteria to such voucher or certificate holders which are more burdensome than the criteria applied to any other prospective tenants;

(l) that the Owner will not discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, state or local program or on the basis that they have a minor child or children living with them;

(m) that the Owner will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of subjecting the Owner of the Project to noncompliance with Section 42 of the Code and the Regulations;

(n) that the Owner (1) will not dispose to any person any portion of the Project to which this Agreement applies unless all of the Project is disposed of to such person and (2) may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Agreement. The Owner shall promptly notify the Authority of such transfer. This provision shall not act to waive any other restriction on such sale, transfer or exchange; and

(o) that the Owner (or its property manager with respect to the Project) shall attend in each year of the Qualified Project Period at least one of the property management/compliance monitoring sessions sponsored by the Authority.

Section 4. Occupancy Restrictions. For the purpose of satisfying the requirements of Section 42 of the Code, at least for the Qualified Project Period, the Owner hereby represents, covenants and agrees as follows:

(a) throughout the Qualified Project Period (excluding Dwelling Units not previously occupied), at least the Applicable Set-Aside Percentage of the completed Dwelling Units in the Project shall be both a Rent Restricted Unit and occupied solely by Qualified Tenants, prior to the satisfaction of which no additional units shall be rented or leased to any other tenants after initial rental occupancy of Dwelling Units by Qualified Tenants, as required by Section 42 of the Code. For purposes of satisfying the requirement that not less than the Applicable Set-Aside Percentage of the Dwelling Units be occupied by Qualified Tenants, no Qualified Tenant shall be denied continued occupancy because, after admission, the Qualified Tenant's family income exceeds the applicable qualifying income level set forth in the definition of "Qualified Tenant" herein. The Owner shall at all times during the Qualified Project Period maintain the percentage requirements of this Agreement by providing the next available units of comparable or smaller size to Qualified Tenants as needed to achieve compliance with the foregoing requirements. If necessary, the Owner shall refrain from renting Dwelling Units in the Project to persons other than Qualified Tenants in order to avoid violating the requirement that at all times during the Qualified Project Period at least the Applicable Set-Aside Percentage of the completed Dwelling Units in the Project shall be both a Rent Restricted Unit and occupied by Qualified Tenants;

(b) to obtain and maintain on file from each Qualified Tenant residing in the Project (which shall be obtained and updated each year during occupancy by such tenant) a copy of such tenant's executed Certification of Tenant Eligibility and Income Verification (attached hereto as Exhibit B or in such other form and manner as may be required by the applicable rules, regulations or policies now or hereafter promulgated by the Authority, the Department of the Treasury or the Internal Revenue Service), as well as supporting documentation, which is subject to independent investigation and verification by the Authority and which shall be submitted to the Authority as set forth in (c) below;

(c) the Owner will immediately notify the Authority if at any time the Dwelling Units in the Project are not occupied or available for occupancy as provided above, and the Owner will prepare and submit to the Authority, not later than January 15 of each year following the first year of the credit period, a Certificate of Continuing Program Compliance (the form of which is attached hereto as Exhibit C) and an Annual Tax Credit Summary Report (the form of which is attached hereto as Exhibit D), both executed by the Owner stating the number of Dwelling Units of the Project which, as of the first date of each calendar year, were occupied by Qualified Tenants (or were deemed to be occupied by Qualified Tenants as provided in subparagraph (a) above for all or part of such period), together with copies of annual Certifications of Tenant Eligibility and Income Verification (and supporting documentation) collected by the Owner;

(d) the Owner shall collect and keep records for each qualified low-income building in the Project that show for each year during the Qualified Project Period the following information for each building in the Project and retain such records for at least six years after the due date (with extensions) for filing the federal tax return for that year (provided, however, that the records for the first year of the Qualified Project Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building):

(i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(ii) the percentage of residential rental units in the building that are Qualified Units;

(iii) the rent charged on each residential rental unit in the building, including any utility allowances;

(iv) the number of occupants in each Qualified Unit and changes in the number of occupants in each Qualified Unit;

(v) the Qualified Unit vacancies in the building and information that indicates when and to whom the next available units were rented;

(vi) the annual income certification of each Qualified Tenant per Qualified Unit;

(vii) documentation to support each Qualified Tenant's annual income certification (for example, a copy of the Qualified Tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is to be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this subsection 4(d)(vii) is satisfied if the public housing authority provides a statement to the Owner declaring that the tenant's income does not exceed the applicable income limit under Code Section 42(g);

(viii) the eligible basis and the Qualified Basis of the building at the end of the first year of the Qualified Project Period; and

(ix) the character and use of the non-residential portion of the building included in the eligible basis of the building under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project);

(e) that the Authority shall have the right to perform an on-site inspection of the Project throughout the Qualified Project Period, in addition to the requirement that the Owner submit to the Authority each year information on tenant income, supporting documentation and rent for each low income unit as designated above;

(f) the form of lease to be used by the Owner in renting any units in the Project to Qualified Tenants shall provide for termination of the lease and consent by such person to immediate eviction proceedings in accordance with state law for failure to qualify as a Qualified Tenant, as applicable, as a result of any material misrepresentation made by such person with respect to his or her income, the failure to provide supporting income verification or failure by such person to annually update the Certification of Tenant Eligibility and Income Verification;

(g) to permit any duly authorized representative of the Authority, 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 Qualified Tenants residing in the Project; and

(h) throughout the Qualified Project Period, to target rents, to comply with targeted rent levels, and to comply all other conditions of targeting as set forth on the Summary Page hereof.

Section 5. Term of Restrictions.

(a) The term of the Occupancy Restriction set forth in Section 4 of this Agreement shall (i) commence on the Occupancy Date and (ii) end on the date which is the Required Number of Years after the Occupancy Date.

(b) Notwithstanding subsection (a) above, the Owner shall comply with the requirements of Section 42(h) relating to a 15-year extended use period (30 years total); provided, however, that, with respect to any building that is part of the Project, this Agreement shall terminate:

(1) on the date such building is acquired by foreclosure or instrument in lieu of foreclosure (including a deed of trust); or

(2) if the Owner has properly requested in accordance with Code Section 42(h)(6) that the Authority assist in procuring a qualified contract for the acquisition of the low-income portion of such building and the Authority is unable to present a qualified contract, one year after the date the written request was submitted to the Authority. Project Owner agrees that IRC section 42(h)(6)(E)(i)(II) shall not apply to, and shall not cause the termination of, the extended use period applicable to any building of the Project.

In the event foreclosure proceedings are initiated, the Authority shall receive notice of such foreclosure no less than 15 days prior to such foreclosure.

(c) Notwithstanding subsection (b) above, the Section 42 rent requirements shall continue for a period of three years following the termination of this Agreement. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low income unit.

(d) If the Project experiences financial trouble it can request a waiver of the applicable rent restriction stated on the summary page (ii) of this document. The right to grant a rent restriction waiver is vested in the Executive Director of the Authority. A waiver will be based on the written evidence supplied by the owner which is evaluated and certified by an independent third party CPA. The Authority may waive or adjust the specified rent restriction for a period not to exceed 36 months. After 30 months a review of the current evidence will be conducted to determine if the waiver should be extended.

Conditions justifying a waiver of the rent restriction include but are not limited to:

(1) Extraordinary changes in operating expenses.

(2) Capital requirements necessary to maintain a safe, sanitary unit, suitable for occupancy.

(3) Lender originated changes to financial conditions and debt arrangement that substantially impacts debt service coverage ratios.

Any dispute of the waiver decision by the Executive Director of the Authority can be appealed and settled by arbitration. The arbitration board shall consist of the following mutually acceptable representatives:

(1) A representative selected by the Executive Director of the Authority;

(2) A representative selected by the Owner of the Project; and

(3) A representative from the American Arbitration Association (moderator or voting member).

Under no circumstances shall the waiver process provide an opportunity for a project to deviate from the rent restriction because of improved market conditions or for any reason other than an increase in the certain county area median income, without the prior approval of the Executive Director of the Authority.

Section 6. Internal Revenue Service Notification. In the event the Authority discovers any noncompliance of any provisions hereof, the Authority will immediately give written notice to the Owner. The Owner shall have 90 days from the date of such notice (the "Correction Period") to correct such noncompliance. Following the Correction Period, the Authority will file with the IRS a copy of IRS Form 8823, explaining the nature of the noncompliance and whether or not such noncompliance has been corrected. Noncompliance includes, but is not limited to

(1) failure to receive or failure to permit the Authority to inspect tenant income certifications, supporting documentation and rent records, (2) upon inspection, non-compliance with provisions of Section 42, and (3) any change in the applicable fraction or eligible basis that would result in a decrease in the Qualified Basis. The Authority is authorized and entitled to do all acts necessary to comply with the monitoring and notification responsibilities set forth in Section 42(m)(1)(B)(iii) of the Code and any Regulations or other interpretations thereof by the IRS or the courts.

Section 7. Covenants Run With the Land. 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 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. 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. At the time of executing this Agreement, the Owner shall pay to the Authority all direct costs incurred or to be incurred by the Authority in causing 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 Authority agrees to deliver to the Owner a copy of the fully recorded document.

Section 8. 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 9. Remedies; Enforceability. In the event of a violation or attempted violation of any of the provisions hereof, any one or more of the following 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 Authority or any governmental entity succeeding to the Authority's functions or any individual who meets the income limitation applicable under Section 42 of the Code (whether prospective, present or former occupant). 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 or 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 of any similar breach or violation thereof at any later time or times. In addition, if any violation of this Agreement has not been corrected on a timely basis, the Authority may impose quarterly reporting responsibilities pertaining to such matters as the

Authority deems reasonable upon the Owner. Failure by an Owner to comply with any such reporting responsibilities shall constitute a violation of this Agreement.

Section 10. Amendment; Termination. The provisions hereof shall not be amended, revised or terminated (except as provided in Section 5 of this Agreement) prior to the stated term hereof except by an instrument in writing duly executed by the Authority and the Owner (or its successors in title) and duly recorded. The Authority's consent to any such amendment, revision or termination, other than a termination pursuant to Section 5 of this Agreement, shall be given only if (a) there shall be attached to the document evidencing such amendment, revision or termination an opinion of Owner's counsel satisfactory to the Authority that such amendment, revision or termination will not result in noncompliance of the Project or the Owner with Section 42 of the Code or (b) evidence satisfactory to the Authority has been filed with said Authority demonstrating that there has occurred an involuntary noncompliance caused by fire, seizure, requisition, change in federal law, action of a federal agency which prevents the Authority from enforcing this Agreement or condemnation or similar event. Notwithstanding the foregoing, this Agreement shall not terminate by reason of the aforementioned foreclosure, transfer of title by deed in lieu of foreclosure or other similar event or if the Owner or any Related Person or any person with whom the Owner has had family or business ties obtains ownership interest in the Project for federal tax purposes during the period in which the restrictions of this Agreement are or would be in effect.

Section 11. 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 herein.

Section 12. Fees, Release and Indemnification. The Owner agrees to pay the Authority as an application fee a nonrefundable fee, the greater of 1% of the annual credit requested or $500. The Owner agrees to pay the Authority as a reservation/commitment fee the greater of 2% of the annual credit amount received or $500. In addition, the Owner agrees to pay the Authority an allocation fee of 2% of the annual credit allocated and an annual fee equal to the greater of 2% of the annual credit allocated or $500. Any extraordinary legal fees incurred by the Authority with respect to the Project will be paid by the Owner. The Owner hereby agrees to pay, indemnify and hold the Authority harmless from any and all costs, expenses and fees, including all reasonable attorneys' fees which may be incurred by the Authority in enforcing or attempting to enforce this Agreement, including, but not limited to (i) in the event that the various reports are not submitted as required hereunder and the Authority conducts an on-site inspection of the Owner's book and records and (ii) following any default on the part of the Owner hereunder or its 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 otherwise by the Authority at the request of the Owner (including, but not limited to, the reasonable fees and expenses of the Authority's counsel in connection with any opinion to be rendered hereunder). The Owner agrees to release the Authority from any claim, loss, demand or judgment as a result of the allocation of tax credit dollars to the Project or the recapture of same by the Internal Revenue Service, and to indemnify the Authority for any claim, loss, demand or judgment against the Authority as the result of an allocation of tax credit dollars to the Project or the recapture of same by the Internal Revenue Service.

Section 13. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 14. 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:

Owner: to the name and address set forth on the Summary Page hereof.

Authority: Nebraska Investment Finance Authority
Suite 200
1230 O Street
Lincoln, NE 68508
Attention: Executive Director

Section 15. Governing Law. This Agreement shall be governed by the laws of the State of Nebraska.

Section 16. Termination. Notwithstanding any other provisions hereof, this Agreement and the restrictions and other provisions hereunder shall terminate on the termination of the Qualified Project Period without any further action being taken by any party hereto.

Section 17. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 18. Subordination. Owner has borrowed funds from Lender and such amounts are secured by the Project. In order to ensure the viability of the Project's low income housing tax credit dollars, Lender hereby agrees to subordinate its rights prior to foreclosure to the provisions of this Agreement throughout the term of this Agreement, as set forth in Section 5, and to the Vacancy Decontrol Rule following foreclosure.

Inst. 2000 - 01160

THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

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.

MDI LIMITED PARTNERSHIP #48,
as Owner

By Rob McMurry
Title Vice President

Attest:

By Geri A. Conway
Secretary

NEBRASKA INVESTMENT FINANCE AUTHORITY

By
Authorized Officer

LENDER

By Melba J. Dawson
Authorized Officer Acting State Director

LENDER

By ______________________
Authorized Officer

LENDER

By ______________________
Authorized Officer

LENDER

By ______________________
Authorized Officer

01-233241.01

Inst. 2000 - 01160

STATE OF ~~NEBRASKA~~ Minnesota)
) ss.
COUNTY OF Ramsey)

The foregoing instrument was acknowledged before me this 12 day of January, ~~19~~ 2000 by Rob McCready and ____________ of MDI #48 for and on behalf of Owner. ____________.

Geri A. Conway
Notary Public

My Commission expires: 1-31-00

GERI A. CONWAY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES 1-31-2005

STATE OF NEBRASKA)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 29 day of December, 1999 by an Authorized Officer of the Nebraska Investment Finance Authority.

GENERAL NOTARY-State of Nebraska
RANDY G. ARCHULETA
My Comm. Exp. Jan. 14, 2003

Randy G. Archuleta
Notary Public

My Commission expires: ________

STATE OF NEBRASKA)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 7th day of March, ~~19~~ 2000 by Melba Davison for and on behalf of Lender.

LaRae D. Brasch
Notary Public

My Commission expires: 1-5-2004

01-233241 01

RELEASE OF MORTGAGE

BANK OF THE WEST, as Successor-in-interest to Community First Bank, a Commercial Bank holder of that certain Mortgage made and executed by **MDI LIMITED PARTNERSHIP #48, a Nebraska limited partnership** as Mortgagor, and **COMMUNITY FIRST BANK, a Commercial Bank** as Mortgagee on **10/13/1998** , certifies that the Mortgage has been fully paid, satisfied or otherwise discharged. The Mortgage was recorded on **04/15/1999** , in the **Scotts Bluff County Register of Deeds** of **Scotts Bluff County Register of Deeds** , Nebraska and is indexed as **Book, Volume, or Liber No: 438 Page: 396** . The Mortgage having been complied with, the undersigned releases the Mortgage and all of its right, title and interest in the Property located at **1421 BROADWAY, SCOTTSBLUFF, NE,**
______________________.

Description/Additional information: Lots A, B, and C, Block Twelve (12), a replat of Lots One (1) through Eighteen (18), Block Twelve (12), Original Town Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska.

Dated this **03/10/2017**

BANK OF THE WEST, as Successor-in-interest to Community First Bank, a Commercial Bank

Virginia Davis

By : VIRGINIA DAVIS
Its : VICE PRESIDENT

STATE OF **CALIFORNIA, CONTRA COSTA COUNTY**

On **March 10, 2017** before me, the undersigned, a notary public in and for said state, personally appeared **VIRGINIA DAVIS**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that ~~he~~/she executed the same in ~~his~~/her capacity, and that by ~~his~~/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

M. N. DOMINGO
Notary Public - California
Contra Costa County
Commission # 2147287
My Comm. Expires Apr 20, 2020

M Domingo
Notary Public **M.N. DOMINGO**

Commission Expires: 04/20/2020

When Recorded Return To:
CT LIEN SOLUTIONS
PO BOX 29071
GLENDALE , CA 91209-9071
Phone #: 800-331-3282

Prepared By:
BANK OF THE WEST CLS
MANETTE DOMINGO
1977 Saturn Street
Monterey Park , CA 91755

Page # 1 57966544 RPY Ref# 1627420 26893 NE565 Scotts Bluff

EX 3E

1

RETURN:
COMMUNITY FIRST NATIONAL BANK
PO BOX A
ALLIANCE, NE 60301

2674

NUM. B
GEN. 33
PICT.
COMPARED

State of Nebraska, Scotts Bluff County ss.
Entered in Numerical Index and filed for record the 15 day of April, 1999 at 1:11 o'clock P M., and recorded in Book 43B of Mortgages on page 396
Jean A. Bauer Register of Deeds
By Cheryl Ferguson Deputy

$11.50

Community First Bank, a Commercial Bank
Affordable Housing Program Loan
MORTGAGE
$126,000.00

FOR VALUE RECEIVED, MDI Limited Partnership #48, a Nebraska limited partnership (hereinafter referred to as "Mortgagor"), with its principal place of business located at 1600 University Avenue West, Suite 212, St. Paul, MN 55104-3825, promises to pay to the Community First Bank, a Commercial Bank, (hereinafter referred to as the "Community First"), the principal sum of One Hundred Twenty Six Thousand Dollars ($126,000.00) with interest of one percent (1%) per annum compounded annually accruing on such amount.

The principal sum specified hereinabove and all accrued interest shall be due and payable in one lump sum on the 1st of November, 2048 and shall be payable at the office of the Community First Bank, 224 Box Butte Ave., Alliance NE 69301-0767, or such other place as Community First Bank may designate in writing.

In consideration of the sum of One Hundred Twenty Six Thousand Dollars ($126,000)
the receipt of which is hereby acknowledged, Mortgagor hereby mortgages and warrants unto Mortgagee its heirs, successors and assigns, all the following described Real Estate situated in Scotts Bluff County, Nebraska to wit:

Lot A, Block 12, replat of lots one (1) through eighteen (18), Original Town Addition, Scottsbluff, Scotts Bluff County, Nebraska (the "Property").

Lots B and C, Block 12, Replat of Lots 1 through 18, Block 12 T.M. Original Town Addition, Scottsbluff, Scotts Bluff County, Nebraska (the "Property").

This Mortgage is secured by a Promissory Note of even date herewith in the same principal amount as hereinabove stated, and this is the Mortgage described in such Promissory Note. Upon the occurrence of an Event of Default under the Promissory Note, the indebtedness evidenced hereby shall become immediately due and payable. If a failure to pay the amounts due under this Promissory Note occurs, and if the same is submitted for collection by Community First, its successor and assigns, the undersigned hereby agree(s) to pay all costs of collection, including reasonable attorney's fees.

All parties to this Mortgage, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest and notice of dishonor.

396

2674

The debt evidenced by this Mortgage may be prepaid, in total or in part, at any time prior to the final maturity date hereof, without any penalty or prior written approval of Community First.

The covenant of the Mortgagor to pay the principal and interest is included in this Mortgage for the purpose of establishing and continuing the existence of such indebtedness. However, it is a condition of said covenant that in the event of default under the terms hereof, neither Community First nor its assigns shall take any action against the Mortgagor, or its partners, except such as may be necessary in order to subject to the satisfaction of said indebtedness the property described in the Promissory Note to secure said indebtedness.

This Community First Mortgage was signed this 13th day of October, 1998.

IN THE PRESENCE OF:

MORTGAGOR
MDI LIMITED PARTNERSHIP #48
a Nebraska limited partnership

By: METROPLAINS PROPERTIES, INC.
a Minnesota corporation
General Partner

By: Gary L. Stenson

METROPLAINS PROPERTIES, INC., GENERAL PARTNER
BY: GARY L. STENSON, VICE PRESIDENT/SECRETARY

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this 13th day of October 1998, by Gary L. Stenson, Vice President/Secretary of MetroPlains Properties, Inc., a Minnesota Corporation, general partner of MDI Limited Partnership #48, a Nebraska limited partnership, on behalf of said corporation and said limited partnership.

KRISTEN J. GAVIN
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES 1-31-2000

Notary Public

c:\mdi\#48\mort#48.doc

397

RET: CITY OF SCB
1818 AVE A
SCB

7

NUM. B
GEN. eh
PICT. gd
COMPARED FE

DEED OF TRUST

THIS DEED OF TRUST, is made as of December 17, 1998 by and among the Trustor, MDI Limited Partnership #48, A Nebraska Limited Partnership, whose mailing address is Spruce Tree Centre, 1600 University Avenue, Suite 212, St. Paul, Minnesota 55104-3825 (herein "Trustor" whether one or more), the Trustee, JOHN A. SELZER, Attorney at Law, whose mailing address is 1502 Second Avenue, Scottsbluff, Nebraska 69361 (herein "Trustee") and the Beneficiary, CITY OF SCOTTSBLUFF, NEBRASKA, A Municipal Corporation, whose mailing address is 1818 Avenue A, Scottsbluff, Nebraska 69361 (herein "Lender").

FOR VALUABLE CONSIDERATION, including Lender's extension of credit identified herein to MDI Limited Partnership #48, A Nebraska Limited Partnership (herein "Borrower") and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, **IN TRUST, WITH POWER OF SALE**, for the benefit and security of Lender, under and subject to the terms and conditions hereinafter set forth, the real property, described as follows:

> Lots A, B and C, Block 12, Replat of Lots 1 through 18, Block 12, Original Town Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska, according to the recorded plat thereof

Together with all buildings, improvements, fixtures, streets, alleys, passageways, easements, rights, privileges and appurtenances located thereon or in anywise pertaining thereto, and the rents, issues and profits, reversions and remainders thereof, and such personal property that is attached to the improvements so as to constitute a fixture, including, but not limited to, heating and cooling equipment; and together with the homestead or marital interests, if any, which interests are hereby released and waived; all of which, including replacements and additions thereto, is hereby declared to be a part of the real estate secured by the lien of this Deed of Trust and all of the foregoing being referred to herein as the "Property".

This Deed of Trust shall secure (a) the payment of the principal sum and interest evidenced by a loan agreement executed by Borrower dated December 17, 1998 and a promissory notes executed in connection therewith, having a final maturity date of not later than September 25, 2030, in the original principal amount of $125,000.00, and any and all modifications, extensions and renewals thereof or thereto (herein called "Note"); (b) the payment of other sums advanced by Lender to protect the security of the Note; and (c) the performance of all covenants and agreements of Trustor set forth herein. The Note, this Deed of Trust and any and all other documents that secure the Note or otherwise executed in connection therewith, including without limitation guarantees, security agreements and assignments of leases and rents, shall be referred to herein as the "Loan Instruments".

Trustor covenants and agrees with Lender as follows:

1. **Payment of Indebtedness.** All indebtedness secured hereby shall be paid when due.

2. **Title.** Trustor is the owner of the Property, has the right and authority to convey the Property, and warrants that the lien created hereby is a second lien on the Property, subject only to a prior lien in favor of USDA/Rural Development, and the execution and delivery of this Deed of Trust does not violate any contract or other obligation to which Trustor is subject.

3. **Taxes, Assessments.** To pay before delinquency all taxes, special assessments and all other charges against the Property now or hereafter levied.

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