

UNOFFICIAL COPY

1B



Doc#: 0715044033 Fee: \$38.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/30/2007 11:58 AM Pg: 1 of 8

211395

This instrument was prepared by:
David A. Barsky, Esq.
Krooth & Altman LLP
1850 M Street
Suite 400
Washington, DC 20036
(202) 293-8200

When recorded, return to:
U.S. Department of Housing and
Urban Development
Illinois State Office
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard, 26th
Floor
Chicago, Illinois 60604-3507
Attention: Office of Chief Counsel

USE AGREEMENT

OWNER: Bethel Anathoth Gardens, NFP
an Illinois not-for-profit corporation

HUD: The Secretary of the Department of Housing and
Urban Development of Washington, D.C.

PROJECT NAME: Anathoth Gardens
Chicago, Cook County, Illinois

PROJECT NO.: 071-11168 REF

Common Address: 34 North Keeler Avenue
Chicago, Illinois 60624
Cook County

Permanent Index Number: 16-10-423-035

Box 430

8K9

UNOFFICIAL COPY

Attachment 4

USE AGREEMENT

For Section 202 and 202/8 Projects that require HUD's approval to prepay their direct loan.

This Agreement entered into as of this 1st day of May, 2007 by and between Bethel Anathoth Gardens, NFP (herein called "Owner") and the Secretary of Housing and Urban Development, acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner (herein called "HUD"),

Witnesseth:

WHEREAS, HUD is directed, pursuant to Section 811 of the American Homeownership and Economic Opportunity Act (AHEO Act), to permit Owners to prepay Section 202 direct loans; and

WHEREAS, in consideration of the promise to permit the prepayment of the direct loan, and as required by Section 811(a)(1) of AHEO Act the Owner agrees to implement this Use Agreement.

NOW THEREFORE, the parties hereto agree as follows:

1. The Owner, for itself, its successors and assigns, covenants with HUD that the Owner will continue to operate the project on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement or any Section 8 rental assistance payments contract or any other rental housing assistance contract and all applicable Federal regulations for not less than the remaining term of the original Section 202 direct loan applicable to that site. The remaining term of the original Section 202 direct loan will expire on April 1, 2024. HUD will not unreasonably withhold consideration for relief of the rental assistance requirements of the Use Agreement if there is a termination of the rental assistance program and/or no appropriation for the rental assistance program associated with this project.
2. Where applicable:
 - a. Subject to the availability of appropriations and so long as Owner is in compliance with all HUD requirements, including but not limited to this Use Agreement, HUD shall provide the Owner and the Owner shall accept renewals of the Section 8 Housing Assistance Payments contract in accordance with the terms as presented by HUD for renewals of Section 8 contracts at that time.

UNOFFICIAL COPY

Attachment 4

- b. The Owner, for itself, its successors and assigns, covenants with HUD that the Owner will continue to operate the project in accordance with the requirements of the Rent Supplement Assistance Contract that is in effect between HUD and this project and all applicable Federal regulations, the Rent Supplement Assistance Contract and applicable HUD requirements for not less than the remaining term of the original Section 202 Direct Loan unless otherwise approved by HUD.
3. In the event of a breach or a threatened breach of any of the above covenants and agreements by the Owner, HUD and/or any tenant as a third-party beneficiary shall be entitled to institute legal action to enforce performance and observance of such covenants and agreements and to enjoin any acts which are violative of such covenants and agreements.
4. The Owner shall not (a) impede the reasonable efforts of tenants to organize as detailed in 24 CFR Part 245, or (b) unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the mortgaged property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to the operation of the mortgaged property.
5. The Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Use Agreement shall be recorded in the appropriate land records and that HUD and any successors and assigns and/or any third-party beneficiary may file suit against the Owner or any of its successors or assigns for an order of the court demanding 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.
6. The Owner agrees to maintain the project solely as rental housing for very-low income elderly or disabled persons (or low income elderly or disabled person as approved by HUD or moderate income elderly or disabled persons in the case of non-subsidized Section 202 projects) for the life of the Use Agreement.
7. The project will continue to operate until the maturity date of the original Section 202 Direct Loan in a manner that will provide rental housing for the elderly and persons with disabilities on terms at least as advantageous to existing and future tenants as the terms required by the original loan.
8. The Owner will accept all forms of Section 8 tenant based assistance for all units that do not have project-based assistance for the life of the Use Agreement.

UNOFFICIAL COPY

Attachment 4

9. Ownership of the project will be controlled by a nonprofit mortgagor entity or a limited partnership entity of which the general partner is an entity controlled by a legitimate nonprofit affordable housing provider.
10. 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.
11. In subsidized projects, admission to the project shall be limited to tenants having a very -low- or low- or moderate-income which does not exceed the limits established by HUD and in effect at the time of admission.
12. The Owner will obtain from each prospective tenant, for occupancy in a Section 8 or Rent Supplement assisted unit, a certification of income prior to admission to the project, and a recertification of income from each tenant each year following the date of admission. The Owner shall comply with all requirements of the Section 8 HAP Contract or the Rent Supplement Contract.
13. If any recertification discloses that family income, for a family living in Section 8 or Rent Supplement unit, exceeds the limits established by HUD and in effect at the time of recertification, the Owner shall require the tenant to pay an increased rental in an amount computed in accordance with a formula prescribed by HUD, and if the tenant refuses to pay the increased rent the Owner shall require the tenant to pay the unsubsidized rent for the unit.
14. The rent charged for each unit shall not exceed the upper limit of the range shown for such type of unit on a rental schedule approved in writing by HUD, and shall include the reasonable use of all utilities shown on said schedule, but in no event shall the total gross monthly rents for all dwelling units exceed the gross monthly dwelling income for all units approved by HUD on the rental schedule.
15. No increase will be made in the amount of the gross monthly dwelling income for all units as shown on the rental schedule unless such increase is approved by HUD, who will at any time entertain a written request for an increase properly supported by substantiating evidence and within a reasonable time shall:
 - a. Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance expenses over which the Owner has no effective control, or

UNOFFICIAL COPY

Attachment 4

- b. Deny the increase stating the reasons thereof.
16. The Owner shall maintain the premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition.
17. The books and accounts of the operations of the property and of the project shall be kept in accordance with the requirements of HUD.
18. Within ninety (90) days following the end of each fiscal year, the Owner shall provide a complete annual financial report based upon an examination of the books and records of the project prepared in accordance with the requirements of HUD and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.
19. The Owner further covenants and agrees that if the Owner conveys title to the project prior to the aforesaid maturity date, the Owner will require the HUD approved purchaser to assume the obligations of the Owner under this Agreement.
20. The Owner shall provide to HUD (or to such third party as HUD may, in its sole discretion, determine to have the monitoring function under this Agreement), promptly following receipt of a written request from HUD (or from such third party), copies of all Tenant certifications of income, re-certifications, calculations of permitted income ranges regarding the Housing Project, and such other documents as may be reasonably required to evaluate the Owner's compliance with the terms of this Agreement. In addition, the Owner shall permit representatives of HUD (or any third party given the monitoring responsibility) following notice from the HUD (or from the third party), to examine the originals of all such documents, at the Housing Project's office during regular business hours.
21. The Owner must certify annually by December 31st of each year (insert date within 30 calendar days of the anniversary date of this Agreement), to the local HUD field office, or such other location as determined by HUD, that it is operating the Project in compliance with this Agreement and, more specifically, that all of the individual units, as well as the physical structure of the project as a whole, for example grounds and equipment, comply with all applicable codes and requirement of this Agreement or that a remedial program to correct any existing deficiencies has been implemented.

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.

In witness whereof, the parties hereto have hereunto caused these presents to be executed on their behalf and their seals affixed the day and year written below.

BETHEL ANATHOTH GARDENS, NFP
an Illinois not-for-profit corporation

By: _____

Steven McCullough
Steven McCullough
President & CEO

ACKNOWLEDGEMENT BY OWNER BEFORE NOTARY PUBLIC

STATE OF ILLINOIS)

)SS:

COUNTY OF COOK)

Personally appeared before me this 24 day of May, 2007, Steven McCullough, who, after being duly sworn, says that he is the President and CEO of **BETHEL ANATHOTH GARDENS, NFP**, an Illinois not-for-profit corporation, and that he has authority to execute under oath and has so executed the above certification for and on behalf of such corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and official seal this 24 day of May, 2007.



[SEAL]

Cassandra Evans

Notary Public

My Commission Expires: 6/8/2010

UNOFFICIAL COPY

Attachment 4

Secretary of Housing and Urban Development Acting
by and through the Assistant Secretary for Housing --
Federal Housing Commissioner

By: [Signature]
Authorized Agent

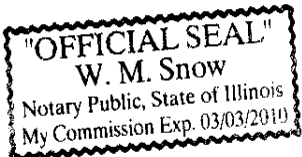
ACKNOWLEDGEMENT BY COMMISSIONER

STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

On this 30th day of May, 2007, before me MARY ANDERSON,
a Notary Public in and for the County of Cook, appeared to me personally known and
known to me to be the duly Authorized Agent of the Secretary of Housing and Urban
Development acting by and through the Assistant Secretary for Housing - Federal
Housing Commissioner, and the person who executed the aforesaid instrument bearing
the date as of May 1, 2007, and acknowledged that he executed the aforesaid instrument
for and on behalf of the said Secretary of Housing and Urban Development for the
purposes herein.

[Signature]
(NOTARY PUBLIC)

My Commission Expires: _____



UNOFFICIAL COPY

EXHIBIT "A"

LOTS 1, 2, 3, 4, 5 AND 6 IN BLOCK 35 IN THE SUBDIVISION OF THE SOUTH ½ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13, BY THE WEST CHICAGO LAND COMPANY, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office