

# UNOFFICIAL COPY

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EXTENDED USE AGREEMENT

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This Extended Use Agreement (the "Agreement") is entered into this 28 day of February 1992 by and between the Illinois Housing Development Authority, a body politic and corporate established pursuant to the Illinois Housing Development Act, Laws 1967, p. 1931, constituting Chapter 67 1/2, Section 301, et seq., Illinois Revised Statutes, as amended, with its principal offices located at 401 N. Michigan Avenue, Suite 900, Chicago, Illinois 60611 (the "Authority"), and American National Bank & Trust Co. of Chicago, not personally but solely as trustee under an agreement dated December 27, 1991 and known as Trust No. 114960-07 with its principal offices located at 33 N. LaSalle Street, Chicago, Illinois 60690 (the "Trustee"). Broadmoor Apartments Associates Limited Partnership, an Illinois limited partnership, is the beneficial owner (the "Beneficial Owner") of the Project (as defined herein) (the "Beneficial Owner"). (The Trustee and the Beneficial Owner are sometimes referred to herein as "Owner"). In consideration of the mutual promises set forth below, and other good and valuable consideration, the Owner and Authority agree as follows:

## A. Recitals.

1. The Owner is the owner of a 134 unit housing development erected or to be erected on real estate located in Chicago, Illinois, legally described on Exhibit A attached hereto and made a part hereof, known as or to be known as The Broadmoor Apartments (the "Project").

2. The Authority has been designated by law as the housing credit agency for the State of Illinois for the allocation of low-income housing tax credit dollars.

3. The Owner has applied to the Authority for an allocation of low-income housing tax credit dollars in connection with the Project, and has represented to the Authority in its Low-Income Housing Tax Credit Application (the "Application") that it will lease at least 40% of the units in the Project (the "Low-Income Units") to individuals or families whose income is a maximum of 60% of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder (the "Regulations").

4. As a condition precedent to the allocation of low-income housing tax credit dollars, the Owner must enter into an extended low-income housing commitment, as provided in Section 42 of the Code, to be recorded in the Office of the Recorder of Deeds in the county in which the Project is located.

## B. Representations and Warranties of Owner.

The Owner makes the following representations and warranties to induce the Authority to enter into this Agreement.

(1) The Owner (i) is a limited partnership duly organized under the laws of the State of Illinois, and is qualified to transact business under the laws of that State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by this Agreement), and (iii) has the full legal

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right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(2) The execution and performance of this Agreement by the Owner (a) 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, and (b) 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 (c) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(3) The Owner has, as of the date of execution and delivery of this Agreement, good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (except for encumbrances created pursuant to this Agreement or other permitted encumbrances, as provided in the attached Exhibit B).

(4) 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 now contemplated by this Agreement) or would materially adversely affect its financial condition.

(5) The Owner shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, family status or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(6) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and the Regulations.

(7) Each unit in the Project contains or will contain complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.

(8) During the term of this Agreement, all Low-Income Units shall be leased and rented or made available to members of the general public who qualify as Qualifying Tenants, as defined in Section C below (or otherwise qualify for occupancy of the Low-Income Units).

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(9) Upon completion of the rehabilitation or construction of the Project and during the remainder of the term of this Agreement, the Owner covenants, agrees and warrants that each Low-Income Unit will be and will remain suitable for occupancy.

(10) Upon the completion of the rehabilitation or construction of the Project, the Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.

(11) The Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.

(12) The Owner warrants and represents that it has not 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.

## C. Occupancy Restrictions.

1. At least 40% of the residential units in the Project shall be both rent-restricted and occupied (or treated as occupied as provided herein) by individuals or families whose income is 60% or less of area median gross income (including adjustments for family size), as determined in accordance with the Code. Individuals or families meeting these requirements shall be referred to herein as a "Qualifying Tenant" or "Qualifying Tenants". The Owner shall make the determination of whether an individual or family is a Qualifying Tenant at least annually on the basis of the current income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Qualifying Tenant; provided that should such Qualifying Tenant's income subsequently exceed 140% of the applicable income limit, such tenant shall no longer be a Qualifying 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 Qualifying Tenant. If a tenant ceases to be a Qualifying Tenant, the Owner shall take such steps as may be necessary to ensure that the Project meets the minimum occupancy restriction requirements for a qualified low-income housing project as set forth in Section 42 of the Code and in the Regulations.

2. The Owner shall require each person who is intended to be a Qualifying Tenant to sign and deliver an income certification form prior to occupancy of a unit in the Project; and to sign and deliver such an income certification form at least annually so long as such person remains a tenant in the Project. The Owner shall retain the income certification forms for all

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Qualifying Tenants for a period of 5 years, or such other period as may be specified in the Code and/or the Regulations.

## D. Term of Restrictions.

(1) Compliance Period. Except as provided in Sections D(2) and (3) below, the term of the Occupancy Restrictions set forth in Section C of this Agreement shall (i) commence on the day on which the first year of the "credit period" begins, as that term is defined in Section 42(f) of the Code, and (ii) end on the date which is the last day of the compliance period, as that term is defined in Section 42(i)(1) of the Code ("the Compliance Period").

(2) Involuntary Non-compliance. This Agreement and the restrictions hereunder shall cease to apply in the event of an involuntary noncompliance caused by unforeseen events such as fire, seizure, requisition, a change in Federal law or an action of a Federal agency after the date of issuance which prevents the Authority from enforcing the requirements of this Agreement, or condemnation; provided that if insurance proceeds, condemnation awards or other amounts received as a result of such loss or destruction are used to restore the Project, the occupancy restrictions shall continue to apply. The abatement of occupancy restrictions set forth above shall cease to apply if, in the event of foreclosure, transfer of title by deed-in-lieu of foreclosure or similar event, at any time subsequent to such event and during the period set forth in paragraph (1) of this Section D, the Owner or a related person (as defined in the Code) obtains an ownership interest in the Project for Federal tax purposes, unless the Internal Revenue Service determines that such foreclosure, transfer of title by deed-in-lieu of foreclosure or similar event has occurred pursuant to an arrangement between the Owner and any lender(s) a purpose of which is to terminate the Occupancy Restrictions.

(3) Extended Use Agreement. The Owner shall comply with the requirements of Section 42 relating to the extended use period for an additional 15 years after the end of the Compliance Period. Such extended use period for any building that is part of this Project shall, however, terminate:

- (a) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure, subject to the foreclosure exceptions in Section D(2) above; or
- (b) On the last day of the one year period beginning on the date (after the 14th year of the Compliance Period) the Owner submits a written request to the Authority to find a person to acquire the Owner's interest in the low-income portion of any building which is part of the Project and the Authority is unable to present to the Owner a qualified contract for the acquisition of such low-income portion by any person who will continue to operate such low-income portion as a qualified low-income building, as that term is defined in the Code.

The Section 42 rent requirements shall continue for a period of three years following the termination of the extended use requirement pursuant to the procedures specified in this subsection (3). During such three-year period, the Owner shall not evict or terminate the tenancy of an existing

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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.

## E. Records and Enforcement.

(1) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Owner regarding the Project with respect to the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Agreement, Section 42 of the Code and the Regulations.

(2) The Owner and the Authority each acknowledges that the primary purposes for requiring that the Owner comply with the restrictions provided in this Agreement are to assure compliance of the Project and the Owner with Section 42 of the Code and the Regulations AND FOR THAT REASON THE OWNER, IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDIT DOLLARS FOR THIS PROJECT, AGREES AND CONSENTS THAT THE AUTHORITY AND ANY QUALIFYING TENANT (WHETHER PROSPECTIVE, PRESENT OR FORMER), SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(3) The Owner hereby agrees that the representations and covenants set forth in this Agreement may be relied upon by the Authority and all persons interested in Project compliance under Section 42 of the Code and the Regulations.

(4) The Owner agrees that if at any point following execution of this Agreement, Section 42 of the Code or the Regulations require the Authority to monitor the Section 42 occupancy restrictions, or, alternatively, if the Authority chooses to monitor the Section 42 occupancy restrictions, the Owner will take any and all actions reasonably necessary and required by the Authority to substantiate the Owner's compliance with such occupancy restrictions and will pay a reasonable fee to the Authority for such monitoring activities performed by the Authority.

## F. Transfer Restrictions.

The Owner agrees to notify the Authority in writing of any sale, transfer or exchange of the entire Project, or any low-income portion of the Project. The Owner agrees that it will cause or require as a condition precedent to any conveyance, transfer, assignment or any other disposition of the Project prior to the termination of the rental restrictions and occupancy restrictions provided herein (the "Transfer"), that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Owner under this Agreement, including this Agreement. The Owner shall have such assumption agreement recorded in the Office of the Recorder of Deeds in the county in which the Project is located and deliver a copy of such recorded agreement to the Authority prior to the Transfer. The Owner agrees that the Authority may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to

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assume in writing the requirements of this Section 42 of the Code and the Regulations.

## G. Covenants Run With the Land; Successors Bound.

(1) Upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the Office of the Recorder of Deeds of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the Authority an executed original of the recorded Agreement showing the date and recording number of record. The Owner agrees that the Authority will not issue the Internal Revenue Service Form 8609 constituting final allocation of the low-income housing tax credit dollars unless and until the Authority has received the recorded executed original of the Agreement.

(2) The Owner intends, declares and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project for the term of this Agreement binding upon the Owner's successors in title and all subsequent Owners and operators of the Project, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to the Authority and any past, present or prospective Qualifying Tenant) and its respective successors and assigns during the term of this Agreement. For the longer of the period the low-income housing tax credit is claimed or the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

## H. Interpretation.

Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 of the Code and the Regulations. In the event of any conflict between this Agreement and Section 42 of the Code and the Regulations, Section 42 of the Code and the Regulations shall control.

## I. Amendment.

This Agreement may be amended with the prior written approval of the Authority to reflect changes in the Act, Section 42 of the Code, the Regulations and any revenue ruling promulgated thereunder. The Owner hereby expressly agrees to enter into all amendments hereto which, in the opinion of counsel to the Authority, are reasonably necessary or desirable for maintaining compliance under Section 42 of the Code and the Regulations. No other amendment to this Agreement may be made without the prior written approval of the Authority.

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## J. Severability.

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

## K. 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.

To the Authority:

Illinois Housing Development Authority  
401 North Michigan Avenue, Suite 900  
Chicago, Illinois 60611  
Attn: Legal Department

To the Owner:

American National Bank & Trust Co.  
of Chicago  
33 N. LaSalle St.  
Chicago, IL 60690  
Attn: Land Trust Department

The Authority and the Owner may, by notice given as set forth above, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

## L. Governing Law.

This Agreement shall be governed by the laws of the State of Illinois and, where applicable, the laws of the United States of America.

## M. Project Decertification.

Notwithstanding anything in this entire agreement to the contrary, failure of the Owner to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or Authority from time to time pertaining to the obligations of the Owner as set forth therein or herein, Authority may, and in addition to all of the remedies provided by law or in equity, request the Internal Revenue Service to decertify the Project for low-income housing tax credit dollars and to immediately commence recapture of the low-income housing tax credit dollars heretofore allocated to the Project.

## N. Survival of Obligations.

The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the low-income housing tax credit dollars and shall not be deemed to terminate or merge with the awarding of the allocation.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

OWNER:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as trustee as aforesaid

By: [Signature]  
Its: \_\_\_\_\_

Attest: [Signature]  
Its: Gregory S. Kasprzyk  
ASSISTANT SECRETARY

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Its: Deputy Director

Attest: \_\_\_\_\_  
Its: Assistant Secretary

*Handwritten:* 2/28/92

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This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all its covenants, conditions, stipulations, terms, conditions, undertakings, and agreements hereinafter on the part of the Trustee are undertaken by it as such Trustee, and not as a company. No personal liability or loss of responsibility is incurred by it or any of its officers, directors, or employees, agents, or servants of any agency, authority, body, institution, government, undertaking or agreement of the Trustee in the performance of its duties hereunder.

*Watermark:* Cook County Clerk's Office

- DEPT 01 RECORDING \$37.00
- T#1111 TRN 1552 02/28/92 17:10:00
- #4024 # A # 92-130960
- COOK COUNTY RECORDER

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EXHIBIT A

## LEGAL DESCRIPTION:

LOTS 34, 35, 36, AND 37 IN GERMANIA ADDITION TO EVANSTON, BEING A SUBDIVISION OF BLOCKS 2 AND 3 IN DREYER'S LAKE SHORE ADDITION TO EVANSTON OF THAT PART OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE INDIAN BOUNDARY LINE AND SOUTH AND WEST OF SAID BLOCKS 2 AND 3, IN COOK COUNTY, ILLINOIS.

LOTS 55, 56 AND 57 IN GERMANIA ADDITION TO EVANSTON BEING A SUBDIVISION OF BLOCKS 2 AND 3 OF DREYER'S LAKE SHORE ADDITION TO EVANSTON AND THAT PART OF THE NORTH WEST QUARTER OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF INDIAN BOUNDARY LINE AND SOUTH AND WEST OF SAID BLOCKS 2 AND 3 IN COOK COUNTY, ILLINOIS.

## ADDRESS COMMONLY KNOWN AS:

7600 North Bosworth Avenue

7605-07 North Bosworth Avenue

7609-11 North Bosworth Avenue

1514 West Howard Street

Chicago, Illinois

## PERMANENT INDEX NO.:

11-29-105-017

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11-29-106-011

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