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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
3/25/2021 9:16:00 AM  
FEE \$40.00 Pgs: 8  
DEP eCASH REC'D FOR NATIONAL TITLE AGENCY LLC

**Recording Requested by:**

Levy, Levy & Levy  
1299 4<sup>th</sup> Street, Suite 400  
San Rafael, CA 94901  
Attn: Christina A. Howard, Esq.

**After Recording return to:**  
Office of Counsel  
U.S. Department of Housing and Urban Development  
1670 Broadway, 25<sup>th</sup> Floor  
Denver, CO 80202

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**USE AGREEMENT**

20-4090RB

03-087-0026  
03-278-0001

**Use Agreement**

**U.S. Department of Housing and  
Urban Development  
Office of Housing  
Federal Housing Commissioner**

**OMB Approval No. 2502-0577  
Expiration: 04/30/2018**

**Public reporting burden** for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is authorized by Section 250 of the National Housing Act, Section 223(f)(3) of the National Housing Act, and Section 219 of the 1999 Appropriations Act. This information is used to ensure that units are maintained and used solely as rental housing in accordance with the terms of the Use Agreement through the original maturity date of the mortgage. This information is also monitored by HUD (via form HUD-90075) to ensure compliance with the executed and recorded Use Agreement. No assurance of confidentiality is provided.

**Section 207 pursuant to Section 223(f) Rental Housing  
Prepayment subject to Section 223(f)(3)  
FHA Project No. 105-11117  
Project Name: The Hills at Renaissance Apartments**

**This Use Agreement** (this "Agreement") is made as of **March 1, 2021**, by and between **The Hills at Renaissance Apartments, LLC**, a Utah limited liability company (the "Owner"), and **SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Washington, D.C.** (the "Secretary" or "HUD").

**RECITALS**

**A.** The Owner is the owner of all of that certain real property located in the **City of Wood Cross City, in the County of Davis, in the State of Utah**, as more particularly described in **Exhibit A** attached hereto and made a part hereof (the "Real Property"), on which is constructed that certain rental apartment project known as **The Hills at Renaissance Apartments**, known as **FHA Project No. 105-11117** (the "Project") and together with the Real Property (the "Property").

**B.** The Property is encumbered by that certain first lien mortgage loan (the "Loan") made to the Owner, or a predecessor in interest, which loan is evidenced and/or secured by that certain Note dated **March 1, 2018** (the "Mortgage Note") and that certain **Multifamily Trust Deed, Assignment of Leases and Rents and Security Agreement** of even date therewith endorsed for insurance by the Secretary under Section 207 pursuant to Section 223(f) of the National Housing Act, 12 U.S.C. §1713 and §1715n(f), on **March 5, 2018**.

**C.** The Mortgage Note contains a prepayment provision derived from Section 223(f)(3) of the National Housing Act, 12 U.S.C. §1715n(f)(3), as follows:

The debt evidenced by this Note may not be prepaid either in whole or in part for a period of five years from the date of final endorsement hereof except in cases where the prior written approval of the Secretary is obtained and such

written approval is expressly based upon the existence of one of the following:

1. The Owner has entered into an agreement with the Secretary to utilize the property as a rental property for the remainder of the five year statutory period set out in the Mortgage Note;
2. The Secretary has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;
3. The Secretary has determined that continuation of the property as rental housing is clearly unnecessary to assure adequate rental housing opportunity for low and moderate income people in the community; or
4. The Secretary has determined that continuation of the property as rental housing would have an undesirable and deleterious effect on the surrounding neighborhood.

**D.** The Owner has requested the prior written approval of the Secretary to prepay the Mortgage Note pursuant to the above quoted provision;

**E.** The Owner has agreed to maintain the Project as rental property until **March 5, 2023**, which is the requisite period of five years after the date of the Secretary's endorsement of the Mortgage Note for mortgage insurance under Section 207 pursuant to Section 223(f) of the National Housing Act;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which are expressly acknowledged, the parties agree as follows:

**1. Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference as if full set forth herein.

**2. Approval of Prepayment.** The execution and recording of this Agreement shall constitute the Secretary's approval of the prepayment of the Mortgage Note described above, provided that such prepayment is made in accordance with the terms of the Mortgage Note for a prepayment penalty, if applicable.

**3. Term.** This Agreement shall remain in effect until **March 5, 2023** (such period being hereinafter referred to as the "Term").

**4. Use Requirement.** The Owner hereby agrees that the Project shall be used solely as rental housing with no reduction in the number of residential rental units.

**5. Tenant Selection.** Unless designed primarily for occupancy by elderly persons, Owners shall not, in selecting tenants, discriminate against any person or persons by reason of the fact that there are children in the family.

**6. Civil Rights Requirements.** The Owner shall comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, creed, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act of 1968, as amended (42 U.S.C. 3601 et. seq.; 24 C.F.R. 100 et. seq.) Executive Order 11063, and all requirements imposed by or pursuant to the regulations of HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107, and 110, and Subparts I and M of Part 200.

**7. Covenants to Run with Land.** The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property until **March 5, 2023**. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Secretary hereby agrees that upon the request of the Owner made on or after **March 5, 2023**, the Secretary shall execute a recordable instrument approved by the Secretary for purposes of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**8. Superiority.** The parties hereto understand and agree that, notwithstanding any provisions contained in this Agreement, or any other instrument or agreement affecting the Property, the restrictions and covenants hereunder are not intended by the parties hereto to either create a lien upon the Property, or grant any right of foreclosure, under the laws of the jurisdiction where the project is located, to any party hereto or third party beneficiary hereof upon a default of any provision herein, rather they are intended by the parties hereto to constitute a restrictive covenant that is filed of record prior in time to any instrument or agreement granting a security interest in the Project, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**9. Violations and Secretary's Remedies** If the Secretary determines that the Owner has violated any of the terms of this Agreement, the Secretary shall notify the

Owner of its determination and the Owner shall have thirty (30) calendar days after receipt of such notification in which to cure the violation. Promptly following the expiration of the foregoing thirty (30) day period, the Secretary shall reinspect the Project and/or take other investigative steps as it deems necessary in order to ensure compliance. Failure to cure the violation shall deem the owner in default. The parties further agree that upon any default under this Agreement, the Secretary may apply to any court, state or federal, for specific performance of this Agreement, or for such other equitable relief as may be appropriate, since the injury to the Secretary arising from a violation under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

**10. Notice to Tenants upon Expiration of Use Agreement.** The Owner shall notify each Tenant at least 90 days prior to the expiration of the Term of the Use Agreement that after the expiration of the Term of the Use Agreement, the Owner will be free to alter unit rents without the Secretary's approval (to the extent that the unit rents are not otherwise regulated by the Secretary under a Housing Assistance Payments Contract), and that the Tenant will be required to bear the entire cost of the rent, subject to any applicable requirements or restrictions under the lease or under State or local law. The notice to each Tenant shall also state: (a) The actual (if known) or the estimated unit rent that each Tenant will be charged for the unit that Tenant occupies following the expiration of the Term of the Use Agreement; (b) the difference between the actual (if known) or estimated unit rent that each Tenant will be charged for the unit that Tenant occupies, and the current unit rent paid by each Tenant the Terms of the Use Agreement. The Owner shall provide the Secretary a certification that each Tenant has been notified in accordance with this provision with an example of the text of the notice attached.

**11. Signatory Authority.** Any person signing this Agreement on behalf of a party (e.g., the General Partner signing for an owner) represents that he or she has the authority to bind the party for whom he or she is signing.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Use Agreement to be executed and made effective as of the date first above written.

**OWNER:**

**THE HILLS AT RENAISSANCE APARTMENTS, LLC,**  
a Utah limited liability company

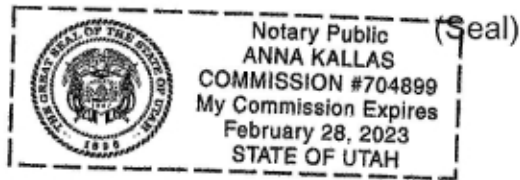
By: *J.B. Millburn*  
Jed B. Millburn, Manager

**ACKNOWLEDGMENT**

STATE OF UTAH )  
COUNTY OF Salt Lake )

On the 9<sup>th</sup> day of March, 2021, personally appeared before me Anna Kallas, a notary public, **Jed B. Millburn**, Manager of **THE HILLS AT RENAISSANCE APARTMENTS, LLC**, a Utah limited liability company, and acknowledged to me that he executed the same as such.

*A Kallas*  
Signature of Notarial Officer  
Notary Public  
Title of Office



My Commission Expires: February 28, 2023

SECRETARY OF HOUSING AND  
URBAN DEVELOPMENT, Washington, D.C.

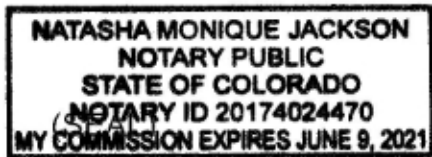
By: [Signature]  
Authorized Agent Tim Sovold  
Technical Branch Chief

ACKNOWLEDGMENT

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

Before me, Natasha Jackson, a Notary Public in and for the said State, on this 22<sup>nd</sup> day of March, 2021, personally appeared Tim Sovold, who is well known to me to be the Branch Chief, Denver Satellite Office, 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 207(b) of the National Housing Act, 12 U.S.C.A. § 1713(b), 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 the, Secretary of Housing and Urban Development, for the uses, purposes and considerations therein set forth.

Witness my hand and official seal the 22<sup>nd</sup> day of March, 2021.



[Signature]  
Notary Public

My Commission expires 0609-2021.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

PARCEL 1:

Lot #1, WOODLAND GARDENS PLAT "D", AMENDING WOODLAND GARDENS PLAT "C" SUBDIVISION, according to the official plat recorded in the office of the Davis County Recorder on November 3, 2017 as Map Filing No. 5833 in Book 6885 at Page 484.

PARCEL 2:

Lot 3, WOODLAND GARDENS, according to the official plat thereof on file and of record in the office of the Davis County Recorder.

Less and Excepting:

Beginning at the Northwesterly corner of Lot 3 of WOODLAND GARDENS SUBDIVISION recorded May 5, 1967 as Entry No. 308759 in Book S at Page 350 in the office of the Davis County Recorder, and running thence South  $26^{\circ}50'30''$  West 5.50 feet to a point on the Northerly side of a concrete wall; thence South  $63^{\circ}09'30''$  East 126.00 feet along said Northerly side and Northerly side extended; thence North  $26^{\circ}50'30''$  East 5.50 feet to the Northeasterly corner of said Lot 3; thence North  $63^{\circ}09'30''$  West 126.00 feet to the point of beginning.