

USE AGREEMENT (3/00)

Project Name: Cumberland Green Cooperative
project Location 1798 Cumberland Green Drive
St. Charles, IL 60174
Project Number 071-011-NI

236(e)(2) USE AGREEMENT

This Agreement, entered into by the Secretary of Housing and Urban Development (the "Secretary" or "HUD"), Chicago Title Land Trust Company (hereinafter called the "Trustee"), not-personally but solely as-successor Trustee under a Trust Agreement date January 21, 1972 and known as Trust Number 43285 and Cumberland Green Cooperative (a/k/a Cumberland Green Cooperative, Inc.), an Illinois not-for-profit corporation (hereinafter called "Beneficiary")(Trustee and Beneficiary are collectively referred to herein as "Owner"), provides as follows:

WHEREAS, Cumberland Green Cooperative, a 204 unit project located in St Charles, Illinois, was financed with a Mortgage Note (the "Mortgage Note") and Mortgage (the "1972 Mortgage"), dated May 3, 1972 and insured and assisted by the Secretary under Section 236 of the National Housing Act (NHA), as amended, and covering real property as described in Exhibit "A" attached hereto, which 1972 Mortgage was recorded in the Kane County office of the Recorder of Deeds on May 9, 1972 as Document No. 12255567;

WHEREAS, the Owner and the Illinois Housing Development Authority ("IHDA") entered into a First Supplement to and Modification of Mortgage dated as of February 25, 1973, which First Supplement to and Modification of Mortgage increased the indebtedness to the Owner by IHDA to a principal sum not exceeding Four Million Five Hundred Twenty-Five Thousand and No/100 Dollars (\$4,525,000.00), and which First Supplement to and Modification of Mortgage was recorded in the Kane County office of the Recorder of Deeds on April 11, 1972, as Document No. 1260352;

WHEREAS, the Owner and IHDA substituted that certain Mortgage (the "1975 Mortgage") dated as the 7th day of May, 1975 which was recorded in the Kane County office of the Recorder of Deeds as document No. 1326717 for the 1975 Mortgage which was modified by that certain First Supplement to and Modification of Mortgage dated as of July 18, 1980 recorded in the Kane County office of the Recorder of Deeds as Document No. 1556166, which First Supplement to and Modification of Mortgage increased the indebtedness to the Owner by IHDA to a principal sum not exceeding FIVE MILLION THREE HUNDRED THIRTY THOUSAND AND NO/100THS DOLLARS (\$5,330,000.00);

WHEREAS, the Owner has refinanced the Project with the Secretary's approval, that such refinancing involved a prepayment of the Mortgage Note and the creation of a successor Mortgage and Note with interest reduction payments ("IRP") to continue under the authority of section 236(e)(2) of the NHA, and pursuant to the terms of the Agreement for Interest Reduction Payments of even date herewith (collectively, the "Transaction");

WHEREAS, in exchange for the Secretary's approval of the Transaction, the Owner has agreed to subject the Project to certain use restrictions, as set forth herein, which shall run with the land;

NOW, . THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree as follows:

1. 1.Continuation of All Affordability Restrictions. As a condition for receiving continued IRP under section 236(e)(2), the Owner agrees, pursuant to that provision, "to operate the project in accordance with all low-income affordability restrictions for the project in Connection with .the Federal Assistance for the project for a-period not less then the term for which such interest reduction payments are to be made as a result of the section .. 236(e)(2) refinancing, plus an additional 5 years. By "all" low-income affordability restrictions" and the word "Federal" before "assistance," the statutory provision requires the continuation of any low-income affordability restrictions in effect at the project on the date of the prepayment of the section 236 mortgage, if such restrictions have resulted from Federal, as opposed to, for example, state or local assistance, whether such assistance is presently being provided, or was provided at some point in the past. Examples of affordability restrictions linked to Federal assistance can include, but not be limited to, the section 236 restrictions governing the use IRP use restrictions on projects that were preservatio¹¹ eligible and received preservation incentives pursuant to an approved plan of action, use restrictions deriving from tax credits, etc.

At the subject project, the following affordability restrictions shall continue for the period referred to in the preceding paragraph: The affordability restriction inherent, through the operation of the section 236 statute, and in the section 236 program, which is to provide affordable housing for low-income tenants, and, which as implemented by HUD, makes the housing affordable for tenants whose income is at 80 percent of median income or lower. Thus, all section 236 statutory and regulatory requirements governing rents and occupancy operate, including the establishment of basic and fair market rents, pursuant to 24 CFR 236(f) of the NRA.

2. **Physical Condition of the Property.** The owner shall, for the term of this use agreement, maintain the property in a condition that is decent, safe and sanitary, and in good repair. It shall do so in conformity with HUD requirements at 24 CFR Part 5, Subpart G, or any successor regulation.
3. **Financial Reporting Requirements.** The owner shall, for the term of this use agreement comply with HUD financial reporting requirements at 24 CFR Part 5, Subpart G, or any successor regulation.
4. **Tenant-based Assistance.** The owner shall not unreasonably refuse to lease a dwelling unit to, or discriminate against, a prospective tenant because the tenant is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC Section 1437f).
5. **Runs With the Land.** This Agreement shall run with the land and be binding upon the Owner, as well as any successors and assigns. Notwithstanding the above sentence, upon conveyance of the Project during the term of this Agreement, the Owner shall by contract, require its successors or assignees to assume its obligations under this Agreement.
6. **Term.** This Agreement shall continue in full force and effect until May 31, 2017

1N WITNESS WHEREOF, the parties hereto have executed this Agreement and have agreed that it shall be effective as of the 30th day of October 2008.

Beneficiary

Cumberland Green Cooperative
an Illinois not-for-profit corporation.

By _____

Name _____

Its _____

Subscribed and Sworn to before me this
30 day of October 2008

Notary

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

this Instrument Is executed by the undersigned Land Trustee not personally but solely as Trustee in the exercise of power and authority conferred upon and vested in it as such trustee. it is expressly understood and agreed that all the warranties, indemnities representations covenants undertaking and agreement herein made on the part of the trustee are undertaken by solely in its capacity as trustee and not personally. no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the trustee on account of any warranty, Indemnity , representation covenant undertaking or agreement of the trustee in this Instrument.

By _____

Name _____

Owner: Chicago Title Land Trust Company as Successor Trustee to LaSalle National Bank, as Trustee under Trust Agreement Dated January 21, 1972 and known as Trust Number 43285

By _____

Name _____

Title _____

Subscribed and sworn to before me this
11 day of September 2008,

Notary Public

SECRETARY OF HOUSING
AND URBAN DEVELOPMENT

By _____

Director
Multifamily Housing Division HUD

Subscribed and sworn to before me this
30 day of October , 2008

Notary Public

EXHIBIT
Legal Description

LOTS 1, 2, 3, 5 AND 8 OF PHASE NO. 1, CUMBERLAND GREEN, P U.D. ST. CHARLES, KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED MAY 5, 1972 AS DOCUMENT NUMBER 1225300, EXCEPTING THAT PART OF LOT 8, PHASE NO. 1, CUMBERLAND GREEN, P.U.D , ST. CHARLES, KANE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF UMBERLAND GREEN DRIVE THENCE SOUTH 0 DEGREES 23 MINUTES 18 SECTION EAST ALONG SAID WESTERLY LINE EXTENDED 161.92 FEET TO SAID SOUTHLINE THENCE NORTH 89 DEGFREES 36 MINUTES 42 SECONDS EAST ALONGSAID SOUTH LINE 80.0 FEET TO THE POINT OF BEGINNING IN THE CITY OF ST CHARLES , KANE COUNTY ILLINOIS