

Middlesex South Registry of Deeds

Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number	: 89128
Document Type	: AGR
Recorded Date	: April 21, 2021
Recorded Time	: 10:25:14 AM
Recorded Book and Page	: 77561 / 299
Number of Pages(including cover sheet)	: 10
Receipt Number	: 2645931
Recording Fee	: \$105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.com

Use Agreement

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

OMB Approval No. 2502-0577
Expiration Date: 06/30/2021

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. 023-11641Project Name Woodland Station Apartments

This Use Agreement (this "Agreement") is made, as of April 1, 2021, by and between Woodland Station LLC*, ~~xx~~ limited liability company ~~xxxxxx/xxxxxx/xxxxxx~~ ~~corporation~~ (the "Owner") and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Washington, D.C. (the "Secretary" or "HUD"). **

*2310 Washington Street, Newton, MA 02462

** 10 Causeway Street, Boston, MA 02222

RECITALS

A. The Owner is the owner of ~~{all of xxxxxxxx/xxxxxx}~~ that certain real property located in ~~the City/Town/Village of~~ Newton, in the County of Middlesex, in the ~~State~~ Commonwealth of Massachusetts, 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 Woodland Station Apartments ~~xxxxxx~~, known as FHA Project No. 023-11641 (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 ~~Deed of Trust/Mortgage~~ Note dated July 1, 2018 and that certain ~~Deed of Trust/Mortgage~~ ~~xxx~~ Mortgage 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 July 19, 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:

Property Address; 1940 Washington Street, Newton, MA 02466

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 July 19 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 July 19 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 July 19, 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 July 19, 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.

WOODLAND STATION LLC, a Massachusetts
limited liability company

By: ND Woodland Station II LLC, a Massachusetts
limited liability company, its Sole Member

By: NDNE Real Estate, Inc., a Massachusetts
corporation, its Manager

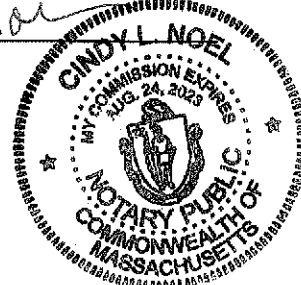
By: [Signature]
Name: Edward L. Marsteiner II
Title: Executive Vice President

By: [Signature]
Name: Stephen A. Kinsella
Title: Treasurer

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF MIDDLESEX)

On this 8 day of April, 2021, before me, the undersigned notary public personally
appeared Edward L. Marsteiner II, Executive VP and Stephen A. Kinsella, Treasurer of NDNE Real
Estate, Inc., Manager of ND Woodland Station II LLC, Sole Member of WOODLAND
STATION LLC, a Massachusetts limited liability company, proved to me through satisfactory
evidence of identification, which was a driver's license/personally known to me, to be the person
whose names are signed on the preceding or attached document, and acknowledged to me that
they signed it voluntarily for its stated purpose.

[Signature]
Notary Public



Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the
jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and
administrative sanctions.

WOODLAND STATION APARTMENTS

Newton, Massachusetts
FHA Project #023-11641

**THE UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ACTING BY OR
THROUGH THE SECRETARY**

By: _____

Stacey Ashmore, Authorized Agent
for SHEILABALICKI

MA
STATE OF NEW JERSEY)

Norfolk)
COUNTY OF BERGEN)

ss.

On this 19 day of April, 2021, in the County of Bergen, on this day personally appeared **Stacey Ashmore**, Authorized Agent for the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** and her/his successors acting by and through the Federal Housing Commissioner, proved to me through satisfactory evidence of identification, which was **personally known to me** and did acknowledge that she is the person who executed the foregoing instrument and acknowledged the same to be her free and voluntary act and deed, as said Authorized Agent, before me, the undersigned, a Notary Public in and for the State of New Jersey. MA

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal.

Kathleen Vecchione
Notary Public

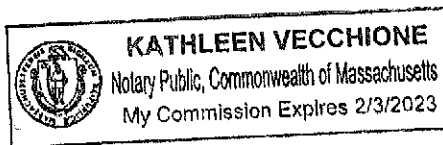


Exhibit A – Legal Description

A certain parcel of land situated in the City of Newton, Middlesex County, Massachusetts shown as "Proposed Lease Area" on a plan of land entitled "Plan of Land in Newton, Massachusetts to be Leased by the M.B.T.A. to Woodland Station LLC", dated March 23, 2004, by Welch Associates Land Surveyors, Inc., recorded with the Middlesex South Registry of Deeds with the Notice of Lease in Book 43930, Page 364 (the "Lease Plan").

Said parcel of land is situated on the southerly side of Washington Street and is more particularly described as follows:

Beginning at a point on the southerly side of Washington Street; thence

S 33°55'26" E, a distance of ninety five and 17/100 (95.17') feet; thence

N 57°21'45" E, a distance of one hundred seventeen and 00/100 (117.00') feet; thence

S 35°20'23" E, a distance of twenty three and 48/100 (23.48') feet; thence

S 62°30'44" W, a distance of thirty two and 41/100 (32.41') feet; thence

S 38°44'33" E, a distance of fifty nine and 46/100 (59.46') feet; thence

S 51°15'27" W, a distance of twenty and 00/100 (20.00') feet; thence

S 38°44'33" E, a distance of ninety five and 36/100 (95.36') feet; thence

S 39°51'52" E, a distance of eleven and 64/100 (11.64') feet; thence

S 24°07'14" E, a distance of seventy nine and 84/100 (79.84') feet; thence

S 57°47'04" E, a distance of one hundred fifty and 60/100 (150.60') feet; thence

S 35°20'23" E, a distance of thirty five and 62/100 (35.62') feet; thence

S 43°54'00" E, a distance of one hundred seventy seven and 09/100 (177.09') feet; thence

S 55°01'04" E, a distance of two hundred thirty seven and 73/100 (237.73') feet; thence

S 46°11'54" W, a distance of two hundred twenty eight and 65/100 (228.65') feet; thence

N 43°50'13" W, a distance of seven hundred thirty seven and 61/100 (737.61'); thence

NORTHWESTERLY, more or less, by a curve to the right, having an arc length of twenty six and 55/100 (26.55') feet, a radius of two hundred fifty and 00/100 (250.00') feet, a chord bearing of N 40°47'41" W, and a chord length of twenty six and 54/100 (26.54'); thence

N 37°45'09" W, a distance of ninety one and 83/100 (91.83') feet; thence

NORTHWESTERLY, more or less, by a curve to the right, having an arc length of fifty three and 55/100 (53.55') feet, a radius of forty and 85/100 (40.85') feet, a chord bearing of N 01°23'44" W, and a chord length of forty nine and 80/100 (49.80') feet, thence

N 36°09'35" E, a distance of twenty three and 05/100 (23.05') feet; thence

NORTHEASTERLY, more or less, by a curve to the left, having an arc length of sixty eight and 89/100 (68.89') feet, a radius of fifty five and 00/100 (55.00') feet, a chord bearing of N 02°13'30" E, and a chord length of sixty four and 47/100 (64.47') feet; thence

N 33°39'24" W, a distance of twenty six and 29/100 (26.29') feet; thence

N 56°19'11" E, a distance of thirty and 89/100 (30.89') feet to the point of beginning.

All of said measurements are as shown on the above referenced plan.

Said parcel of land contains three and 863/1000 (3.863) acres of land, more or less.

Together with the following appurtenant rights for Tenant's benefit: (1) the appurtenant rights set forth on Exhibit A-1 attached hereto (which is also Exhibit A-1 to the Ground Lease), subject to the terms and conditions set forth therein; and (2) the water and sewer easement rights appurtenant to the leasehold estate affecting land presently owned by Brae Burn Country Club, described in the Deed and Grant of Easements by and among Woodland Station LLC, the MBTA and Brae Burn Country Club dated May 26, 2005, recorded with the Middlesex South Registry of Deeds in Book 45340, Page 358, subject to the terms and conditions set forth in said instrument.

All capitalized terms not otherwise defined shall have the same meaning as provided in that certain Land Lease between Massachusetts Bay Transportation Authority and Woodland Station LLC dated April 6, 2004, a notice of which is recorded with the Middlesex South Registry of Deeds at Book 43930, Page 364 (the "Ground Lease").

EXHIBIT A-1

The following appurtenant rights for Tenant's benefit under the Ground Lease affecting the following areas shown on the Lease Plan: (a) the non-exclusive right in common with Landlord to use the Access Road for all purposes needed for Tenant's Residential Project including, without limitation, installing and connecting to utilities therein; (b) the right to install underground pipes under Landlord's Other Property to discharge stormwater drainage into the existing swales along the railroad tracks; (c) the non-exclusive right to use an area to be maintained as a buffer area between Tenant's Residential Project and Landlord's Other Property; (d) the non-exclusive right to use Landlord's Other Property to plant trees, bushes and other site amenities, including signage identifying Tenant's Residential Project and a below ground sewer pumping station; and (e) the non-exclusive right to use that portion of Landlord's Other Property which is shown on a plan entitled "Plan of Easements and Appurtenant Rights in Newton, Massachusetts prepared for Woodland Station LLC," dated May 26, 2005, prepared by Geller DeVelliz Inc., a copy of which is attached to the First Amendment to Land Lease dated May 26, 2005 as Exhibit C thereto ("Easement Plan") that is labeled "Access and Utility Area" on said Easement Plan (hereinafter said land shall be referred to as the "Access and Utility Area") for the following purposes: (i) access on foot and by vehicle to and from the Leased Premises including, without limitation, access to and egress from the garage which is part of Tenant's Residential Project; (ii) to install, operate, use, maintain, repair and replace utilities therein including, without limitation, sewer lines and water lines with all appurtenances thereto (such lines being hereinafter referred to, respectively, as the "Sewer Line" and "Water Line"); (iii) except in the event of an emergency, to enter the Access and Utility Area at all reasonable times in the exercise of the foregoing rights; (iv) to construct a road beginning at the end of the Access Road and ending at the Brae Burn property (the "Maintenance Road") as shown on the Easement Plan; and (v) to install utilities requested by Brae Burn and approved by the MBTA (the "Additional Utilities"). Tenant also shall have such temporary construction easements and temporary and/or permanent slope easements affecting Landlord's Other Property as may be required for Tenant's Residential Project. Subject to advance review and approval by Tenant, Landlord may install an identification sign for Landlord's Other Property on the Leased Premises in a mutually agreed location using Landlord's standard sign graphics and with a design and materials consistent with the quality and appearance of Tenant's Residential Project. Tenant shall have the right, at all times and from time to time, to enter upon said appurtenant areas to install, maintain, repair, replace, relocate and use the foregoing facilities for the purposes described above.

All of the above easements herein granted are expressly granted with the obligation on the part of the party exercising such easements rights: (a) to repair, at its own cost, any damage arising from such exercise by such party of any rights or easements; (b) to provide reasonable advance written notice to the other party prior to commencing such excavation, (c) to provide

evidence of compliance with the applicable insurance requirements of the Lease prior to exercising such right, (d) in the case of excavation, to restore, at its own cost, the surface of the affected property to the same condition thereof as immediately prior to such excavation as is reasonably possible and perform such excavation only at such time and in such manner as to avoid unreasonable interruption in the other party's use and enjoyment of the affected property (including, without limitation, Landlord's Mass Transportation Activities) and (e) to comply with all applicable laws, statutes, regulations and ordinances now or hereafter in effect.