

USE AGREEMENT
FOR MULTIFAMILY PROJECTS PARTICIPATING IN THE
MARK-TO-MARKET PROGRAM UNDER THE MULTIFAMILY
ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997

THIS USE AGREEMENT (this "Agreement") is made, as of _____, _____, by and between _____, a _____ {limited/general partnership}[corporation] (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/a leasehold interest in} that certain real property located in the {City/Town/Village} of _____, in the County of _____, in the {State/Commonwealth} of _____, 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 _____ Apartments, [[if an FHA refinancing use new FHA project number: FHA Project No. _____ formerly known as FHA Project No. _____]] [[if a Modification or a Payoff w/o Refi, use existing FHA Project number: FHA Project No. _____]] [[if a Non-FHA Refi add: formerly known as FHA Project No. _____]] (the "Project") and, together with the Real Property, the "Property").

[[If Payoff w/o Refi, Delete "B."]] B. The Property is encumbered by that certain first lien mortgage loan (the "Loan") made to the {Owner/Prior Owner}, or a predecessor in interest, by _____, a _____ corporation, or a predecessor in interest, which Loan is evidenced and/or secured by that certain {Deed of Trust/Mortgage} Note dated _____, _____ in the original principal amount of _____ and ___/100 Dollars (\$_____), that certain {Deed of Trust/Mortgage} of even date therewith, that certain Security Agreement dated _____, _____ and certain other instruments executed in connection with the Loan.

C. In connection with, as a condition to and in consideration for the Owner's participation in the Mark-to-Market Program, as authorized by the "Multifamily Assisted Housing Reform and Affordability Act of 1997," Title V of the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. No. 105-65, 111 STAT. 1384, approved 10/27/97), the Owner and the Secretary entered into that certain Restructuring Commitment dated _____, _____ as amended through the date hereof, pursuant to which the parties have agreed, among other things, that: (i) the Loan shall be [[if refi, or payoff

w/o refi, add: fully][[*if modified, add: partially*]] prepaid; and (ii) the Project shall be subject to certain rental restrictions and other requirements, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

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

2. Definitions.

a. "Closing Date" shall mean the date upon which the Transaction is consummated through the execution and recordation of binding legal instruments (the "Closing").

b. "Code" shall mean Section 42 of the Internal Revenue Code of 1986, as amended, and any Treasury regulations promulgated thereunder, as in effect as of the date hereof.

c. "Expiration Date" shall mean the thirtieth (30th) [[or such longer period of time as required by the Restruction Plan: _____ (____)]] anniversary of the Closing Date of this Agreement.

d. "Low Income Tenants" shall mean persons or families having an income that is greater than fifty percent (50%) but not more than sixty percent (60%) of Median Income (as hereinafter defined), with adjustments for smaller or larger families.

e. "Median Income" shall mean the median gross income for a person or a family, as applicable, in the area in which the Project is located, as established under Section 8 of the United States Housing Act of 1937, as amended ("Section 8").

f. "Rent-Restricted" shall mean a gross rent (as defined in the Code) that does not exceed thirty percent (30%) of the imputed income limitation (as defined in the Code) for the applicable Units (as hereinafter defined).

g. "Units" shall mean all of the dwelling units in the Project.

h. "Very Low Income Tenants" shall mean persons or families having an income that is fifty percent (50%) or less of Median Income, with adjustments for smaller and larger families.

3. Term. This Agreement shall be effective from the Closing Date through the Expiration Date (such period being hereinafter referred to as the "Term").

4. Use Requirement. Throughout the Term, the Project shall be used solely as rental housing with no reduction in the number of residential units unless approved in writing by HUD, except to the extent that another use may have been approved by the Secretary prior to the commencement of the Term, or to the extent that such other use is approved by the Secretary during the Term.

5. Affordability Requirement. The Owner hereby agrees that, at any time during the Term less than 20% of the Units in the Project, receive rental assistance under a Section 8 project-based Housing Assistance Payments contract, the Owner shall comply with the affordability requirement marked below, at the time of closing, with an "X" (the "Affordability Requirement"):

a. ____ at least 20% of the Project's units shall be occupied by Very Low Income tenants whose annual gross incomes are equal to or less than 50% of the area median gross income, and the rental rates for such units shall not exceed 30% of the "imputed income limitation" (as defined in Section 42 of the Internal Revenue Code) for such units; or

b. ____ at least 40% of the Project's units shall be occupied by Low Income tenants whose annual gross incomes are equal to or less than 60% of the area median gross income, and the rental rates for such units shall not exceed 30% of the "imputed income limitation" (as defined in Section 42 of the Internal Revenue Code) for such units.

Notwithstanding the foregoing, in the event the Owner is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low Income Tenants or Very Low Income Tenants in order to satisfy the Affordability Requirement, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of Units subject to the Affordability Requirement or otherwise modify the Affordability Requirement in a manner acceptable to the Owner and HUD. Any such modification of the Affordability Requirement shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

6. Displacement Prohibition. The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the holder of a Certificate or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation (hereinafter referred to as "Section 8").

7. Determination of Tenant Income. The initial determination of whether an individual or family qualifies as a Very Low Income Tenant or a Low Income Tenant shall be made no more than ninety (90) days prior to the date that the tenancy is commenced. Subsequent determinations shall be made once annually thereafter (hereafter "recertifications") as specified below, and on the basis of the then current income of the resident. For recertification purposes, each tenant's Income Certification shall be fully executed and dated no more than ninety (90) calendar days prior to the date of each anniversary of the date that the tenancy had commenced. The Owner shall obtain, and maintain on file for a period of not less than three (3) years following the Owner's receipt thereof, an executed original Tenant's Initial Income Certification and subsequent Income Recertifications, in the form attached hereto as Exhibit B, or such other form as may be prescribed or approved by the Secretary, for each Very Low Income Tenant and each Low Income Tenant.

8. Character of Units. Any Unit occupied by an individual or a family qualifying as a Very Low Income Tenant or a Low Income Tenant shall continue to be treated as if occupied by a Very Low Income Tenant or a Low Income Tenant, as applicable, even though such individual or family subsequently ceases to be of very low or low income so long as the income of such individual or family does not exceed 140% of the income limitation applicable under the Affordability Requirement and such Unit remains Rent-Restricted. If a Unit is no longer occupied by an individual or family that qualifies as a Very Low Income Tenant or a Low Income Tenant, such Unit shall be treated as occupied by a Very Low Income Tenant or a Low Income Tenant, as applicable, until reoccupied, at which time the character of the Unit shall be redetermined; provided, however, that such Unit shall not be treated as reoccupied for such purpose if it is occupied for one (1) temporary period of not more than 31 days. All Units leased to Very Low Income Tenants or Low Income Tenants shall have substantially the same equipment, amenities and facilities and shall be of substantially the same quality and type of construction as the other Units.

9. Civil Rights Requirements. The Owner will comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, 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, 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.

10. Housing Standards. The Owner agrees that, throughout the Term, it shall (a) maintain the Project in good repair and condition in accordance with applicable local codes and the Uniform Physical Condition Standards set forth in 24 CFR Part 5, Subpart G as amended; (b) maintain and operate the Units and related facilities to provide decent, safe and sanitary housing, including the provision of all services, maintenance and utilities; and (c) comply with the lead-based paint regulations set forth in 24 CFR Part 35, as amended. If the Secretary determines that the Owner is not fully satisfying one or more of the foregoing obligations, the Secretary shall have the right to impose any remedies, administrative actions and/or sanctions provided under or authorized by applicable law and regulations, including without limitation as provided under 24 CFR Part 24.

11. Violations; Secretary's Remedies. If the Secretary determines that the Owner has violated any of the terms of this Agreement, including, but not limited to, failure to comply with any of the requirements imposed under Section 10 above, the Secretary shall notify the Owner of its determination and the Owner shall have ninety (90) calendar days after receipt of such notification in which to cure the violation. Promptly following the expiration of the foregoing ninety (90) day period, the Secretary shall reinspect the Project and/or take other investigative steps as it deems necessary in order to ensure compliance. The failure to cure any violation to the Secretary's satisfaction within such ninety (90) day period shall constitute a covenant default under the Regulatory Agreement for Projects with Mortgage Restructuring Mortgages in the Mark-to-Market Program, which may result in the acceleration of the Mortgage Restructuring Note that is held by the Secretary and the Mortgage Restructuring Mortgage secured by the Project, payment of relocation expenses to tenants admitted to the Project in violation of the Affordability Requirement; and, the imposition of any other remedies, administrative actions and/or sanctions provided under or authorized by applicable law and regulations, including those provided under 24 CFR Part 24. 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, for an injunction against violation 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.

12. Submission of Certifications. The Owner must submit to the Secretary or the Participating Administrative Entity ("PAE"), within thirty (30) calendar days following the Secretary's request therefor, any certifications, statements or other information as the Secretary may reasonably require relating to the monitoring of the Owner's compliance with this Agreement. During the term of this Agreement, the Owner shall submit to the Secretary

(by delivery to the local HUD office), the PAE (if serving as the Use Agreement Monitor), and to the unit of local government responsible for providing affordable housing to the jurisdiction in which the Project is located (the "Affected Unit of Local Government"), within thirty (30) calendar days following each anniversary of the execution of this Agreement, an executed original of the Owner's Compliance Certification, in the form attached hereto as Exhibit C, certifying that the Owner is in compliance with the terms of this Agreement. The Owner shall maintain on file, for a period of not less than eight (8) years from the date thereof, a copy of each Owner's Compliance Certification submitted in accordance with this Section.

13. Covenants to Run with Land. The Owner hereby subjects the Property 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 throughout the Term. 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 the Expiration Date, 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.

14. 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.

15. Third-Party Enforcement. In the event of a breach or threatened breach of any of the provisions of this Agreement in any material respect, and after giving notice and a reasonable opportunity to cure, the following individuals and groups may institute proper legal action to enforce performance of this agreement, to enjoin any conduct in violation of this agreement, to recover damages (including refunds, with interest, on rent overcharges)

and reasonable attorneys' fees and/or to obtain whatever other relief may be appropriate: a tenant of the property that is the subject of this Agreement, and any organization representing these tenants, or an applicant for occupancy, class of such eligible tenants and/or applicants, organizations representing project tenants, the Affected Unit of Local Government, the Participating Administrative Entity that was responsible for restructuring the property pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), and/or the Secretary, or his or her successors or assigns, may institute proper legal action to enforce performance of such provisions, to enjoin any conduct in violation of such provisions, to recover damages (including refunds, with interest, on rent overcharges) and reasonable attorneys' fees and/or to obtain whatever other relief may be appropriate.

16. Subsequent Modifications and Statutory Amendments. The Secretary may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement. The Secretary or his or her successors or assigns may also modify this Agreement, without consent of any other party, including those having the right of enforcement, to require that any third party obtain prior HUD approval for any enforcement action concerning preexisting or future violations of the Use Agreement.

17. Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this Agreement and that, in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

18. Binding Effect. Upon conveyance of the Property during the Term, the Owner shall require its successor or assignee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

19. Amendment. Notwithstanding paragraph 16, this Agreement may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

20. Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

21. Headings. The headings and titles to the sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

22. Governing Law. This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Project is located.

23. Counterparts. This Agreement may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one agreement.

[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.

WITNESS/ATTEST:

OWNER:

_____,
a _____ {limited/general
partnership}[corporation}

By: _____

Name: _____

Title: _____

[[insert appropriate acknowledgment form]]

WITNESS:

**SECRETARY OF HOUSING
AND URBAN DEVELOPMENT,
WASHINGTON, D.C.**

By: _____

Authorized Agent
_____ Office

WITNESS my hand and official seal.

My Commission expires:

_____ [SEAL]
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

[attached]

**EXHIBIT B
TENANT'S INCOME CERTIFICATION**

Project: _____
 Tenant: _____
 Unit: _____
 Address: _____

ANTICIPATED INCOME

For each person who is expected to occupy the unit at any time during the next twelve (12) months, please provide the following information:

Name	Salary/Wages*	Other Income**	Total Income
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

* State the gross amount of compensation, before any payroll deductions, including any bonuses, overtime pay, tips, commissions or fees anticipated to be received during the next twelve months.

** State any other income anticipated to be received from any source whatsoever during the next twelve months, including but not limited to:

1. if net family assets (ie: the net cash value of capital investments after deducting the cost that would be incurred in disposing of the same) exceed \$5,000, the greater of (i) interest, dividends, rental income or other income derived from all such assets, and (ii) the value of such assets multiplied by the current passbook savings rate as determined by HUD;
2. if net family assets do not exceed \$5,000, interest, dividends, rental income or other income derived from all such assets;

3. net income from a profession or operation of a business;
4. regular or periodic payments received instead of earnings, such as unemployment compensation, worker's compensation and severance (but not including lump sum payments that are received only once);
5. periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits;
6. periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts from persons not listed above;
7. welfare or public assistance, but if the public assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included shall consist of:
 - a. the amount of the assistance that is not specifically designated for shelter and utilities, plus
 - b. the maximum amount which the public assistance agency could in fact allow the occupant for shelter utilities;
8. for members of the armed forces, all regular pay, special pay and allowances (except special pay for hazardous duty); and
9. any earned income tax credit that exceeds the taxes paid for that year.

Do NOT include in the amount of other income shown above the following items:

- a. temporary, special or irregular payments that may be received (including gifts);
- b. income earned by children under 18 years of age;
- c. payments received for the care of foster children;
- d. amounts that are specifically for medical expenses;
- e. lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlements for personal or property losses;

- f. income of a live-in aid who resides in the apartment to assist an elderly or disabled person;
- g. amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment; provided that any amounts of such scholarships or payments to veterans not used for the above purposes that are available for subsistence are to be included in income;
- h. amounts received under training programs funded by HUD;
- i. amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency; or
- j. amounts received by a participant in other publicly assisted programs that are specifically for out-of-pocket expenses incurred (ie: special equipment, clothing, transportation, child care, etc.) and that are paid to allow participation in a specific program.

I, the undersigned, certify that I have read and answered fully, frankly and personally each of the foregoing questions and requests for information for all persons who are to occupy the Unit in the Project. I consent to the disclosure of this information to the Secretary of Housing and Urban Development. I certify under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, _____.

Tenant

EXHIBIT C
OWNER'S COMPLIANCE CERTIFICATION

Project Name: _____
 FHA Project #: _____
 Owner: _____
 Total # of Units: _____

THIS OWNER'S COMPLIANCE CERTIFICATION (this "Certification") is made by the undersigned, the Owner of the above referenced Project (the "Owner"), pursuant to that certain Use Agreement dated as of _____, _____, by and between the Owner and the Secretary of Housing and Urban Development, Washington, D.C. (the "Use Agreement").

1. As of the date of this Certification, the following number of Units in the Project (i) are occupied by Very Low Income Tenants or Low Income Tenants (as such terms are defined in the Use Agreement) or (ii) were previously occupied by Very Low Income Tenants or Low Income Tenants and have been vacant and not reoccupied (except for a temporary period of not more than 31 days):

- a. Number of Units occupied by Very Low Income Tenants: _____
- b. Number of Units occupied by Low Income Tenants: _____
- c. Number of Units previously occupied by Very Low Income Tenants or Low Income Tenants that have been vacated and not reoccupied (except for a temporary period of not more than 31 days): _____

Attached to this Certification, as Attachment A, is a list of the Units that are currently occupied by Very Low Income Tenants or Low Income Tenants and the names of such tenants.

2. The total number of Units occupied or previously occupied by Very Low Income Tenants or Low Income Tenants (as indicated in Section 1.c. above) is _____ % of the total number of Units.

3. The undersigned hereby certifies that, as of the date of this Certification, (i) the Owner is not in default under any of the provisions of the Use Agreement, (ii) to the best of the Owner's knowledge, no default has occurred in the observance of any of the Owner's covenants contained in

the Use Agreement which observance would have been undertaken by any person related to or controlled by the Owner, and (iii) to the best of the Owner's knowledge, no event has occurred in connection with the operation of the Project that has caused or will cause the Project to cease to meet the requirements of the Use Agreement.

WARNING: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S.C., Sections 1001 and 1010.

Owner

Dated: _____, _____

