

**SAMPLE USE AGREEMENT**

**Mark-up-to-Market Where a For-Profit Owner is  
Transferring the Property to a Non-Profit Owner  
or  
Budget-Based Rent Increase for  
Capital Repairs for a Nonprofit Owner**



This Agreement entered into this \_\_\_\_ day of \_\_\_\_\_,  
2000 by and between \_\_\_\_\_ (herein  
called "Housing Owner") and the Secretary of Housing and  
Urban Development, acting by and through the Assistant  
Secretary for Housing-Federal Housing Commissioner (herein  
called "HUD"),  
Witnesseth:

WHEREAS, pursuant to section 24 of the Multifamily  
Assisted Housing Reform and Affordability Act of 1997,  
(P.L.105-65, 111 Stat. 1384) HUD is authorized in  
connection with the expiration of section 8 project-based  
Housing Assistance Payments contracts to renew such  
contracts with owners of eligible projects upon such terms  
and conditions as HUD considers appropriate; and,

WHEREAS, HUD may approve rent levels at budget-based  
rents, not to exceed comparable market rents for the area,  
and has determined to approve such budget-based rents as may  
be necessary to restore or maintain the financial  
soundness of certain eligible projects, to assist in  
improvement of the management, and to maintain the low-to-  
moderate-income character of the eligible projects; and,

WHEREAS, HUD has determined that renewals providing for  
increased section 8 budget-based comparable market rents may  
be made available to eligible housing owners only if said  
eligible housing owners have agreed to maintain the project

as affordable for low-income families and the housing owners agree to accept future section 8 project-based contract renewals for twenty (20) years in accordance with this Use Agreement and the section 8 Housing Assistance Payments contract for the project, subject to the availability of appropriations; and

WHEREAS, the Housing Owner and HUD, or a section 8 Contract Administrator under an Annual Contributions Contract with HUD, have entered into a section 8 Housing Assistance Payments Contract for \_\_\_\_\_ (project name or contract number) pursuant to said authority under section 524, and the parties intend said contract to be incorporated herein and made a part hereof.

NOW THEREFORE, in consideration of the mutual promises set forth herein and in the said section 8 Housing Assistance Payments Contract, the parties hereto agree as follows:

1. The Housing Owner, for itself, its successors and assigns, covenants with HUD that the Housing Owner will continue to operate the project in accordance with the requirements of section 8 of the U.S. Housing Act of 1937 (42 USC 1437f), as amended, all applicable Federal regulations, the section 8 Housing Assistance Payments Contract and applicable HUD requirements for twenty (20) years from the date of this Use Agreement.
2. Subject to the availability of appropriations and so long as Housing Owner is in compliance with all HUD requirements, including but not limited to this Use Agreement, HUD shall provide the Housing Owner and the Housing Owner shall accept annual renewals of the section 8 Housing Assistance Payments contract in accordance with its terms.
3. In the event of a breach or a threatened breach of

any of the above covenants and agreements by the Housing Owner, HUD and/or any tenant of the project receiving the benefits of the section 8 Housing Assistance Payments Contract as a third-party beneficiary shall be entitled to institute legal action to enforce performance and observance of such covenants and agreements and to enjoin any acts which are violative of such covenants and agreements.

4. The Housing Owner shall not (a) impede the reasonable efforts of tenants to organize as detailed in 24 CFR Part 245, or (b) unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the mortgaged property when requested by: (1) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to the operation of the mortgaged property.
5. The Housing Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Use Agreement shall be recorded in the appropriate land records and that HUD and any successors and assigns and/or any third-party beneficiary may file suit against the Housing Owner or any of its successors or assigns for an order of the court demanding specific performance of any of these covenants and agreements, enjoining any acts which are violative of such covenants and agreements, for an award of whatever damages can be proven and/or for such other relief as may be appropriate.

Should any of the above covenants be held invalid in whole or in part, it shall not affect or invalidate the balance of such covenant or any other covenants.

In witness whereof, the parties hereto have hereunto caused these presents to be executed on their behalf and their seals affixed the day and year written below.

WITNESS

\_\_\_\_\_  
(Housing Owner)

BY

\_\_\_\_\_  
Secretary of Housing and  
Urban Development Acting  
by and through the  
Assistant Secretary  
for Housing - Federal  
Housing Commissioner

BY

\_\_\_\_\_  
(Authorized Agent)

ACKNOWLEDGEMENT BY OWNER BEFORE NOTARY PUBLIC  
 (Complete according to requirements of state of execution.)  
 ACKNOWLEDGEMENT BY COMMISSIONER:  
 STATE OF \_\_\_\_\_ ) SS:  
 CITY AND COUNTY OF \_\_\_\_\_ )

ON this \_\_\_\_\_ day of \_\_\_\_\_,  
 20\_\_\_\_, before me \_\_\_\_\_, a Notary  
 Public in and for the City and County of \_\_\_\_\_,  
 \_\_\_\_\_, appeared \_\_\_\_\_ to  
 me personally known and known to me to be the duly  
 Authorized Agent of \_\_\_\_\_, and  
 the person who executed the aforesaid instrument bearing the  
 date of \_\_\_\_\_, 20\_\_\_\_, and acknowledged that he  
 executed the aforesaid instrument for and on behalf of  
 \_\_\_\_\_ for the purposes herein.

\_\_\_\_\_  
 (NOTARY PUBLIC)

My Commission Expires:

ACKNOWLEDGEMENT BY COMMISSIONER:)
STATE OF ) SS:
CITY AND COUNTY OF )

ON this \_\_\_\_\_ day of \_\_\_\_\_,
20\_\_, before me \_\_\_\_\_, a Notary
Public in and for the City and County of \_\_\_\_\_,
\_\_\_\_\_, appeared \_\_\_\_\_ to
me personally known and known to me to be the duly
Authorized Agent of the Secretary of Housing and Urban
Development acting by and through the Assistant Secretary
for Housing - Federal Housing Commissioner, and the person
who executed the aforesaid instrument bearing the date of
\_\_\_\_\_, 20\_\_, and acknowledged that he executed
the aforesaid instrument for and on behalf of the said
Secretary of Housing and Urban Development for the purposes
herein.

\_\_\_\_\_ (NOTARY PUBLIC)

My Commission Expires:

OMB Control #2502-0587
Exp. (09/30/2014)

"Public reporting burden for this collection of information is estimated to average 1 hour. This includes the time for collecting, reviewing, and reporting the data. The information is being collected for purposes of establishing a use agreement between the owner and HUD and will be used for that purpose. Response to this request for information is required in order to receive the benefits to be derived. 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. No confidentiality is assured."