OMB Control Number 2502–0587
form HUD–9634; exp. XX/XX/XXXX

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 form is used for the administration of contracts as authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), 42 U.S.C. § 1437f note. The public reporting burden for completing this form is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, and gathering and maintaining the data needed. The information collected is required to obtain benefits. HUD may disclose certain information to Federal, State, or local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. Information collected will not otherwise be disclosed or released outside of HUD, except as required and permitted by law. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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 (2) 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 Administration Commissioner

BY

_____

(Authorized Agent)

ACKNOWLEDGEMENT BY OWNER BEFORE NOTARY PUBLIC
(*Complete according to requirements of state of execution.*)

ACKNOWLEDGEMENT BY OWNER:)

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: _____ (*mm/dd/yyyy*)

ACKNOWLEDGEMENT BY OWNER:)

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: _____ (*mm/dd/yyyy*)