

SAMPLE USE AGREEMENT

This Agreement entered into 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 the "Commissioner"), and
her/his successors, witnesseth:

WHEREAS, the Commissioner is authorized, pursuant to Section
201 of the Housing and Community Development Amendments of 1978,
to provide financial assistance to owners of eligible projects to
restore or maintain the financial soundness, to assist in
improvement of the management; and to maintain the low- to
moderate-income character of the projects; and

WHEREAS, Section 201(d) as amended by Section 211(c) of the
Housing and Community Development Amendments of 1979, provides
that no financial assistance may be made available to a housing
owner unless said housing owner has agreed to maintain the
low- to moderate-income character of the project for a period at least
equal to the remaining term of the project mortgage; and

WHEREAS, the Housing Owner and the Commissioner have entered
into a Financial Assistance Contract pursuant to said Section
201, which said Contract is incorporated herein and made a part
hereof.

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

1. The Housing Owner, for itself, its successors and assigns, covenants with the Commissioner, his/her successors in office that the Housing Owner will continue to operate the project in accordance with the provisions of Section* _____ of the National Housing Act and the regulations thereunder until _____. **

2. In the event that certain Regulatory Agreement dated _____ between the Housing Owner and the Commissioner is terminated by prepayment in full of the insured or HUD-held mortgage loan, the Housing Owner covenants and agrees that it will continue to operate the project in accordance with Section ____* of the National Housing Act, or any successor legislation, and the regulations thereunder until _____.** In such event, the Housing Owner also covenants and agrees as follows:

(A) Housing Owner will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, handicap, familial status or national origin, including the Fair Housing Act of 1968, as amended (42 USC 3601 et

* Insert Section under which the mortgage is or was insured.

** Insert maturity date of mortgage note.

seq.; 24 CFR 100), Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100 and 110, and Subparts I and M of Part 200).

(B) Admission to the project shall be limited to tenants having a low or moderate income which does not exceed the limits established by the Commissioner and in effect at the time of admission.

(C) The Housing Owner will obtain from each prospective tenant a certification of income prior to admission to the project, and a recertification of income from each tenant each year following the date of admission.

(D) If any recertification discloses that family income exceeds the limits established by the Commissioner and in effect at the time of recertification, the Housing Owner shall either terminate the lease, or require the tenant to pay an increased rental in an amount computed in accordance with a formula prescribed by the Commissioner.

(E) The rent charged for each unit shall not exceed the upper limit of the range shown for such type of unit on a rental schedule approved in writing by the Commissioner, and shall include the reasonable use of all utilities shown on said schedule, but in no event shall the total gross monthly rents for all dwelling units exceed the gross monthly

dwelling income for all units approved by the Commissioner on the rental schedule.

(F) No increase will be made in the amount of the gross monthly dwelling income for all units as shown on the rental schedule unless such increase is approved by the Commissioner, who will at any time entertain a written request for an increase properly supported by substantiating evidence and within a reasonable time shall:

(I) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance expenses over which the Housing Owner has no effective control, or

(II) Deny the increase stating the reasons thereof.

(G) In selecting tenants, the Housing Owner shall not discriminate against any person or persons by reason of the fact that there are children in the family.

(H) The Housing Owner shall maintain the premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition.

(I) The books and accounts of the operations of the property and of the project shall be kept in accordance with the requirements of the Commissioner.

(J) Within sixty days following the end of each fiscal year, the Commissioner may request the Housing Owner to provide a

complete annual financial report based upon an examination of the books and records of the project prepared in accordance with the requirements of the Commissioner, certified to by an officer or responsible owner and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.

3. The Housing Owner further covenants and agrees that if the Housing Owner conveys title to the project prior to the aforesaid maturity date, the Housing Owner will require its grantee to assume the obligations of the Housing Owner under this Agreement.

4. In the event of a breach or a threatened breach of any of the above covenants and agreements, the Commissioner, his/her successors and assigns and/or any tenant of the project 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.

5. The Housing Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Agreement may be recorded in the appropriate land records and that the Commissioner, his/her 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 commanding specific performance of any of these covenants and agreements,

Appendix 21
4355.1

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)

5/92

6

Appendix 21
4355.1

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 _____, 19____,

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 _____, 19____,
and acknowledged that he executed the aforesaid instrument for and
on behalf of _____ for the
purposes herein.

(NOTARY PUBLIC)

My Commission Expires:

7

5/92

Appendix 21
4355.1

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

ON this _____ day of _____, 19____, 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 _____, 19____, 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:

5/92

8