PROJECT NAME:

PROJECT LOCATION:

IREMS NUMBER:

GRRP AWARD NUMBER:

GRRP APPLICATION ID:

**GREEN AND RESILIENT RETROFIT PROGRAM USE AGREEMENT**

**THIS USE AGREEMENT** (this “Agreement”) is made, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_ *{limited/general partnership/ corporation}* (the “Owner”), and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (hereinafter called “HUD” or “Secretary”).

**RECITALS:**

**A.** WHEREAS, the Owner is the [fee owner of *OR* holder 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 (the “Real Property”), upon which is located improvements commonly known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Project”) and, together with the Real Property (the “Property”). The Project contains [\_\_\_\_\_] dwelling units, of which [\_\_\_\_\_] dwelling units (the “Assisted Units”) are subject to an Assistance Contract (as defined below), as the same may be renewed, amended or replaced from time to time.

**B.** **[Option 1] [PBRA HAP]** WHEREAS, the Property receives project-based Housing Assistance Payments through Section 8 Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ entered into by the Owner, or a predecessor in interest, for \_\_\_\_\_\_ units, dated \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, \_\_\_\_, under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f (the “Assistance Contract”).

**B.** **[Option 2][811 PRAC] WHEREAS,** The Property receives project-based Project Rental Assistance Payments through No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ entered into by the Owner, or a predecessor in interest, for \_\_\_\_\_ units, dated \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, \_\_\_\_, under 42 U.S.C. § 8013(d)(2) (the “Assistance Contract”).

**B.** **[Option 3][202 PRAC] WHEREAS,** the Property receives project-based Project Rental Assistance Payments through No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ entered into by the Owner, or a predecessor in interest, for \_\_\_\_\_ units, dated \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, \_\_\_\_, under 12 U.S.C. § 1701q(c)(2) (the “Assistance Contract”).

**B.** **[Option 4][236 IRP] WHEREAS,** the Property is assisted under Section 236 of the National Housing Act, as amended (12 U.S.C. § 1715z-1) through the receipt of interest reduction payments under the authority of Section 236(e)(2) of the National Housing Act and/or receives project-based Project Rental Assistance Payments through Section 8 Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ entered into by the Owner, or a predecessor in interest, for \_\_\_\_\_ units, dated \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, \_\_\_\_, under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f (the “Assistance Contract”).

**C.** **WHEREAS,** the Owner has acknowledged acceptance of all conditions for participation in HUD's Green and Resilient Retrofit Program (GRRP), authorized by Title III of the Inflation Reduction Act of 2022, Pub. L. No 117-169 in the section titled “Improving Energy Efficiency or Water Efficiency or Climate Resilience of Affordable Housing,” and HUD committed to provide GRRP funding to the Owner so long as the Owner agreed to extended affordability period and other requirements, as set forth in this Agreement and the associated GRRP Legal Documents.

**NOW, THEREFORE,** in consideration of the foregoing and the mutual promises set forth herein, 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.**  “Area Median Income” or “AMI” shall mean the median gross income for a person or a family, as applicable, as from time to time calculated and released by the Secretary, based on the median income for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Metropolitan Statistical Area (hereinafter called the “**\_\_\_\_\_\_\_\_\_\_\_\_\_\_** MSA”). If the Area Median Income for the \_\_\_\_\_\_\_\_\_\_\_\_ MSA is no longer released at least annually by the Secretary, then the median income calculation which most closely approximates the aforesaid calculation, based on available data, as if it had been recalculated annually, shall be substituted as the Area Median Income for all purposes under this Use Agreement, and in such event, the parties hereto shall acknowledge in writing the utilization of such substitute median income calculation.

**b.**  “Low-Income Families” are persons or families whose annual incomes do not exceed 80% of Area Median Income.

**c.** Any other capitalized term not defined herein shall have the definition given in Housing Notice 2023-05, as such may be amended or modified.

**3.** **Affordability Period.**

**a**. [**OPTION 1][GRRP GRANT]** This Agreement shall remain in effect until [INSERT AUTOMATICALLY TERMINATION DATE\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, \_\_\_\_\_, (the “Affordability Period”), which is [*insert the longer of*: twenty-five (25) years from the date of execution of this Agreement *OR* five (5) years beyond any existing, recorded affordability restriction running in favor in favor of HUD*].*

**a**. [**OPTION 2][GRRP SURPLUS CASH LOAN]** This Agreement shall remain in effect until \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, \_\_\_\_\_, (the “Affordability Period”), which is [*Insert the longer of*: the longer of fifteen (15) years from the date of execution of this Agreement *OR* five (5) years beyond any existing use restriction regarding affordability running in favor of HUD]*.*

**b**. Upon expiration of the Affordability Period, this Agreement shall automatically cease and terminate, and the Property shall be deemed released of the restrictions contained herein. Notwithstanding the foregoing, upon expiration of the Affordability Period, HUD agrees to execute and deliver to the Owner such documents as the Owner shall reasonably request releasing and confirming the release and termination of this Agreement. The Owner’s and any third party’s costs associated with confirming the release of this Agreement in the land records, including recording costs, shall be at the Owner’s expense.

**4. Use Restriction.** The Assisted Units shall be leased in accordance with the terms of the existing Assistance Contract, including any applicable eligibility and/or income-targeting requirements. In the case that the Assistance Contract is terminated prior to the release of this Agreement, Owner, for itself and its successors and assigns, hereby covenants and agrees that for the remainder of the term of this Agreement the formerly Assisted Units will be reserved exclusively for Low-Income Families. Additionally, rents for such Assisted Units must not exceed 30% of 80% of the AMI for families of the size occupying an appropriately sized unit based on the family’s composition.

**a. Exceptions to the Use Restriction**. The following events shall not constitute a breach of the Use Restriction:

1. Vacant Units. If one or more of the Assisted Units are left vacant for a commercially reasonable period (1) while one tenant is moving out of a unit and before another has moved in to such unit, (2) while waiting for a new qualifying tenant for a unit in the event there are no tenants immediately available to move in after the previous qualifying tenant vacates, or (3) while a unit is being renovated and/or repaired.
2. Casualties. If one or more of the Assisted Units are damaged or destroyed by fire or other casualty and the use of such unit(s) in conformance with this Use Agreement ceases during a period of repairs and/or reconstruction; provided that (1) HUD is timely notified of the casualty; (2) Owner uses commercially reasonable efforts to cause the unit(s) to be repaired or restored to substantially the same condition as existed prior to the event causing damage or destruction, (3) the Assisted Unit(s) are actually repaired or restored within two years after the date of the casualty, or such longer period as may be approved by HUD in writing, such approval not to be unreasonably withheld, conditioned or delayed, and (4) the Assisted Unit(s) are thereafter operated in accordance with this Use Agreement.

**5. Continuation of Assistance Contract.** The Owner agrees to accept and utilize rental assistance in accordance with the Assistance Contract. If the Assistance Contract expires during the Affordability Period, the Owner must request and accept any available offer to renew or extend the Assistance Contract so that the assistance will continue for the remainder of the Affordability Period.

**6.** **Displacement Prohibition.** No current tenant shall be involuntarily displaced, except as a direct result of acquisition, demolition, or rehabilitation of the Property, subject to the requirements of the Uniform Relocation Act and its implementing regulations (49 CFR part 24). For units not assisted through the Assistance Contract, 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 Public Housing Act of 1937 (42 U.S.C. §1437f), or any successor legislation.

**7. Books and Records.** The Project books and records shall be established and maintained in accordance with HUD requirements. The Owner shall furnish any information and reports pertinent to compliance with this Use Agreement and applicable HUD and GRRP requirements as reasonably may be required from time to time by HUD, in a manner prescribed by HUD. Following receipt of appropriate and reasonable notice, the Project Owner shall permit HUD or any of their duly authorized representatives to have access to the premises and, for the purposes of audit and examination, to have access to any books, documents, papers, and records of the Project Owner that are pertinent to compliance with this Agreement.

**8. Fair Housing and Civil Rights Requirements**. The Owner and its agents, where applicable, shall ensure that the Project complies with any applicable federal fair housing and civil rights laws, regulations, and other legal authorities, including those identified in section VI.B (Administrative, National and Departmental Requirements) of FR-6770-N-91B (Elements), FR-6770-N-91C (Leading Edge), or FR-FR-6770-N-91A (Comprehensive), respectively.

**9. Accessibility Requirements.** The Owner and its agents, where applicable, shall ensure that the Project complies with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR parts 35 and 36, respectively.

**10. Execution of Other Agreements.** The Owner agrees that it has not and will not execute any other agreement with provisions contradictory to, 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 and supersede any other conflicting requirements.

**11. Events of Default.** If the Secretary determines that the Owner has violated any of the terms of this Agreement, the Secretary shall notify the Owner of its determination and the Owner shall have thirty (30) calendar days after receipt of such notification in which to cure the violation, unless such longer time is agreed to by HUD in writing. Promptly following the expiration of the foregoing period, the Secretary shall reinspect the Project and/or take other investigative steps as it deems necessary in order to ensure compliance. Failure to cure the violation shall deem the Owner in default. The parties further agree that upon any default under this Agreement, the Secretary may take any remedy available under law and may apply to any court, state or federal, for specific performance 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. Amendment.** This Agreement may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**13. Survival.** This Agreement shall survive foreclosure and bankruptcy. Unless otherwise approved by HUD, this Agreement will survive abatement of assistance or termination of the Assistance Contract at any point other than the natural expiration of its term.

**14. Successors and Assigns.** This Agreement shall be binding upon the Owner and all future successors and assigns with respect to any portion of the Property or the Project.

**15. 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.

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

**17. 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.

[SIGNATURE PAGES ATTACHED]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed and made effective as of the date first above written.

*The below parties hereby certify that the information provided on this form and in any supporting documentation submitted herewith is true and accurate. The undersigned understand that any misrepresentations may be subject to civil and/or criminal penalties including, but not limited to, fine or imprisonment, or both under the provisions of Title 18, United States Code, Sections 1001 and 1010. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of facts contained therein.*

OWNER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*Insert signatory’s typed name and title, and Project Owner signature block]*

Date:

|  |
| --- |
| A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document. |

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me, a Notary Public for the above jurisdiction, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the above jurisdiction that the foregoing paragraph is true and correct. Witness my hand and official seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Agent

[*Insert typed signatory’s name and title*]

Date:

|  |
| --- |
| A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document. |

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_

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I certify under penalty of perjury under the laws of the above jurisdiction that the foregoing paragraph is true and correct. Witness my hand and official seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*{insert appropriate acknowledgment form}*

**Exhibit A**

**Legal Description**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Public reporting burden for this collection of information is estimated to average 30 minutes 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 information is required to obtain benefits. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Title III of the Inflation Reduction Act of 2022, H.R. 5376 (IRA), section 30002 titled “Improving Energy Efficiency or Water Efficiency or Climate Resilience of Affordable Housing,” authorizes the Green and Resilient Retrofit Program (GRRP). The program provides grants or loans for building retrofits to HUD-assisted multifamily projects with utility efficiency or climate resilience needs. The Elements cohort of the program targets properties currently undergoing a recapitalization or other transaction with HUD and offers owners a menu of green and resilient building design features for reimbursement. This information collection is used to determine eligibility of HUD-assisted multifamily properties for participation in the GRRP Elements program and the terms on which participation should occur. The purpose of the program is to fund projects that improve energy or water efficiency, enhance indoor air quality or sustainability, implement the use of zero-emission electricity generation, low-emission building materials or processes, energy storage, or building electrification strategies, or address climate resilience, of an eligible property. While no assurances of confidentiality are pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.