

[Project Name]
[City, County, State]
FHA Project No.: _____

**PARTIAL PAYMENT OF CLAIM
USE AGREEMENT**

THIS USE AGREEMENT (this "Agreement") is made, as of _____, 2011 by and between _____, a/an _____ whose address is _____ (the "Owner"), and **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** (the "Secretary" or "HUD").

RECITALS

WHEREAS, the Owner is the owner of that certain real property located at _____, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property"), on which is constructed that certain rental project known as _____, known as FHA Project No. _____ (the "Project") and, together with the Real Property, (the "Property").

WHEREAS, the Property is encumbered by that certain [Mortgage][Deed of Trust] Note dated _____, in the original principal amount of _____ and 00/100ths Dollars (\$_____) (the "Loan") made to the Owner, or a predecessor in interest, which Loan is evidenced and/or secured by that certain [Mortgage][Deed of Trust] of even date therewith.

WHEREAS, the [Mortgage][Deed of Trust] Note and the indebtedness evidenced thereby (the "Loan") were originally insured by the Secretary, acting by and through the Federal Housing Commissioner under Section _____[pursuant to _____] of the National Housing Act, as amended, which contract of insurance is evidenced by the initial/final endorsement of the [Mortgage][Deed of Trust] Note by HUD;

WHEREAS, the Secretary has made the findings required under 24 CFR §207.258b to offer debt relief under the Partial Payment of Claim ("PPC") Program; and as a condition of the Secretary's offer, the Owner has agreed that the Project shall be subject to certain affordable housing rental restrictions and other requirements, as set forth herein.

WHEREAS, as a condition of the Secretary's offer under the PPC Program, of even date herewith the Owner has executed a Second [Mortgage][Deed of Trust] Note of even date herewith in favor of the Secretary (the "Second Note") which is to be secured by a Second [Mortgage][Deed of Trust] of even date herewith against the Project (the "Second [Mortgage][Deed of Trust]") and a Second Regulatory Agreement for Multifamily Housing

Projects of even date herewith (the "Second Regulatory Agreement"). The Second [Mortgage][Deed of Trust] and the Second Regulatory Agreement shall be subordinated to this Agreement;

WHEREAS, as a further condition of the Secretary's offer under the PPC Program, the Secretary is requiring that the Owner covenant and agree with the Secretary that the affordable housing occupancy restrictions currently affecting the Project set forth in (i) that certain _____ between Owner and _____, and/or other future Low-Income Housing Tax Credit allocation authority ("_____"), dated as of _____, and recorded _____ in Book _____, Page _____, in the land records of _____ County, _____ (the "Recorder's Office"), [insert information regarding applicable use restrictions of record, including parties and recording information] as attached hereto as Exhibit B and made a part hereof (collectively, the "LURA"), and (ii) that certain Land Use Restriction Agreement between Owner, the County of _____, _____, and _____, as trustee, dated as of _____ and recorded _____ in Book _____, Page _____, in the Recorder's Office, a copy of which is attached hereto at Exhibit C (the "Bond LURA") (the LURA and the Bond LURA are hereinafter referred to collectively as the "Use Restrictions" or "Restrictions") are incorporated by reference herein and shall remain in full force and effect in accordance with their respective terms, as supplemented herein, until _____, 2031 (hereinafter referred to as the "Termination Date" and the period beginning on the effective date of this Agreement and ending on the Termination Date being hereinafter referred to as the "Term" of this Agreement); and

WHEREAS, the parties hereto have agreed to execute this Agreement to confirm that the affordable housing occupancy restrictions currently affecting the Project set forth in the Restrictions shall continue to run with the land and be effective against the Project until the Termination Date.

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. Compliance with Occupancy Restrictions. Notwithstanding the provisions in the Restrictions to the contrary, the Owner agrees to continue to comply with the provisions of the Restrictions which impose affordable housing occupancy restrictions on the Project from the date hereof until the Termination Date.
3. Controlling Provisions. To the extent of any inconsistency between the LURA and the Bond LURA regarding the affordable housing occupancy restrictions, the provisions of the LURA shall control. In the event of any conflict between the provisions of this Agreement and the provision of any applicable HUD regulations (including Section 8 regulations), or related HUD administrative requirements, the HUD regulations, or related administrative requirements in effect on the date of execution of this Agreement shall control.

4. 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, creed, sex, national origin, handicap, or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 90-284, 82 Stat. 73), the Fair Housing Act of 1968, as amended (42 U.S.C. §3601 et seq.; 24 CFR 100 et seq.), Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the 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.

5. 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 as amended from time to time, and the Uniform Physical Condition Standards set forth in 24 CFR Part 5, Subpart G as amended from time to time; (b) maintain and operate the Affordable 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 from time to time.

6. Management and Maintenance of the Project.

a. The Owner shall provide for satisfactory management of the Project.

b. The Owner shall not, without the prior written approval of the Secretary, demolish any part of the Project or subtract from, without replacing, any real or personal property of the Project. In the event all or any of the buildings constituting the Project are destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the [Mortgage][Deed of Trust].

c. The books and records, documents and other papers relating to the financial condition of the Project, shall at all times be maintained in accordance with Generally Accepted Accounting Principles which are subject to an audit performed in accordance with Generally Accepted Auditing Standards and shall be subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. The Owner shall keep copies of all written contracts or other instruments that affect the Project, all or any of which may be subject to inspection and examination by the Secretary or his agents.

7. Reports.

a. The Owner shall provide the Secretary an annual financial statement in compliance with 24 CFR Part 5, Subpart H, Uniform Financial Reporting Standards.

b. The Owner will provide the Secretary with an annual certification that

- (1) All Units in the Project meet HUD's physical inspection standards contained in 24 CFR Part 5, Subpart G, Physical Condition Standards and Inspection Requirements,
- (2) The Project is in compliance with the occupancy restrictions set forth in the LURA.

c. The Owner shall maintain on file, for a period of not less than three (3) years, tenant income certifications and such other documents as may be reasonably required to evaluate the Owner's compliance with the terms of this Agreement. In addition, the Owner shall provide copies of such tenant income certifications and other documents evidencing compliance with the terms of this Agreement to HUD (or any third party as HUD may, in its sole discretion, determine to have a monitoring function under this Agreement) and shall permit representatives of HUD (or of said third party monitoring agent, if any) to examine the originals of all such documents at the Project's office during regular business hours, following notice from HUD.

8. Assumption of Owner's Obligations. The Owner further covenants and agrees that if the Owner conveys title to the Property prior to the Termination Date, the Owner will require the HUD approved purchaser to assume the obligations of the Owner under this Agreement.

a. Release After Termination Date. The Secretary hereby agrees that, upon the request of the Owner made on or after the Termination 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

9. Violations and Secretary's Remedies.

a. Violations: 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 (the "Corrective Period"). Promptly following the expiration of the Corrective Period, the Secretary shall take such steps as he or she 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 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.

b. Secretary's remedies: Notwithstanding section 9.a. above, upon an event of default and the Owner's failure to take corrective action to the Secretary's satisfaction the Owner agrees to provide the Secretary with liquidated damages. The liquidated damages shall be in the amount no less than \$1,000 per violation per unit. Such liquidated

damages shall be levied every three months commencing with the end of the Corrective Period until compliance is achieved.

c. The Secretary may seek any other equitable remedy, including but not limited to, specific performance, in addition to liquidated damages.

10. Covenants to Run with Land. Notwithstanding the provisions of any other document or agreements to the contrary, 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 which shall survive foreclosure or transfer of title by deed in lieu of foreclosure 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 of the Term, 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

11. 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.

12. 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.

13. 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.

14. Amendment. This Agreement may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

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. Recording. The Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Agreement shall immediately be recorded by Owner, at no expense to HUD, in the appropriate land records office and returned to HUD as soon as possible following recordation.

17. Notice to Tenants upon Expiration of Use Agreement. The Owner shall notify each tenant at least 90 days prior to the expiration of the Term of the Use Agreement that after the expiration of the Term of the Use Agreement, the Owner will be free to alter Unit rents without the Secretary's approval, and that the tenant will be required to bear the entire cost of the rent, subject to any applicable requirements or restrictions under the lease or under State or local law. The notice to each tenant shall also state: (a) The actual (if known) or the estimated Unit rent that each tenant will be charged for the Unit that tenant occupies following the expiration of the Term of the Use Agreement; (b) the difference between the actual (if known) or estimated Unit rent that each tenant will be charged for the Unit that tenant occupies, and the current Unit rent paid by each tenant under the Terms of the Use Agreement. The Owner shall provide the Secretary a certification that each tenant has been notified in accordance with this provision with a copy of the text of the notice attached

18. 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.

19. Governing Law. This Agreement shall be governed by the laws of the state in which the Project is located and, where applicable, the laws of the United States of America

20. 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.

21. Signatory Authority. Any person signing this Agreement on behalf of a party (e.g., the General Partner signing for an owner) represents that he or she has the authority to bind the party for whom he or she is signing.

[Signatures and acknowledgments are contained on the following pages.]

[Signature page for Use Agreement]

OWNER:

[NAME],
[a/an State of formation and type of entity]

BY: _____,
_____,
its _____

[add applicable tiers of signature lines,
depending upon entity type]

ACKNOWLEDGEMENT

State of _____]
] SS:
County of _____]

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the _____ of _____, a/an _____, _____ of _____, a/an _____, who acknowledged to me that he executed same instrument for the purposes and consideration therein expressed and as the act of said limited partnership.

Given under my hand seal of office this _____ day of _____, 2011.

Notary Public, State of _____

My Commission Expires: _____

[SIGNATURE CONTINUES ON FOLLOWING PAGE]

HUD:

**SECRETARY OF HOUSING AND
URBAN DEVELOPMENT**, acting by
and through the **FEDERAL HOUSING
COMMISSIONER**

By: _____

Name: _____

Title: Authorized Agent

ACKNOWLEDGEMENT

WASHINGTON,
DISTRICT OF COLUMBIA

This instrument was acknowledged before me, in said District, on _____, 2011 by _____, as the duly appointed Authorized Agent for and on behalf of the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT**, acting by and through the **FEDERAL HOUSING COMMISSIONER**.

Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires: _____

Exhibit A

Legal Description

Exhibit B

LURA

Exhibit C

Bond LURA