

**USE AGREEMENT**

**(For Section 202 and 202/8 Projects That Require HUD Approval to Prepay Their Direct Loan)**

This Agreement entered into as of the 1st day of August, 2007 by and between **Dominguez Park Apartments, L.P.**, a Utah limited partnership (herein called "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, Owner owns a multifamily housing project (herein called the "Project"), situated on the property described in Exhibit A attached hereto, subject to a mortgage loan in the original principal amount of \$1,861,300.00 dated March 10, 1981, and having a maturity date of May 1, 2022 which affects Parcel 1 and a mortgage loan in the original principal amount of \$2,050,400.00 dated May 9, 1980, and having a maturity date of October 1, 2021 which affects Parcel 2 (herein called the "Section 202 Direct Loans") made by HUD under Section 202 of the Housing Act of 1959, as amended, wherein the term of this Use Agreement being the latest maturity date of May 1, 2022; and

WHEREAS, HUD is directed, pursuant to Section 811 of the American Homeownership and Economic Opportunity Act (the "AHEO Act"), to permit owners to prepay Section 202 Direct Loans; and

WHEREAS, in consideration of the promise to permit the prepayment of the Section 202 Direct Loans, and as required by Section 811(a)(1) of the AHEO Act the Owner agrees to implement this Use Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. The Owner, for itself, its successors and assigns, covenants with HUD that the Owner will continue to operate the Project on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 Direct Loan agreements or any Section 8 rental assistance payments contract or any other rental housing assistance contract and all applicable Federal regulations until at least May 1, 2022, the latest maturity date of the original Section 202 Direct Loans. HUD will not unreasonably withhold consideration for relief of the rental assistance requirements of the Use Agreement if there is a termination of the rental assistance program and/or no appropriation for the rental assistance program associated with this project;
2. Where applicable:
  - a. Subject to the availability of appropriations and so long as Owner is in compliance with all HUD requirements, including but not limited to this Use Agreement, HUD shall provide the Owner and the Owner shall accept renewals of the Section 8 Housing Assistance Payments contracts in accordance with the terms as presented by HUD for renewals of Section 8 contracts at that time,
  - b. The Owner, for itself, its successors and assigns, covenants with HUD that the Owner will continue to operate the Project in accordance with the requirements of the Rent Supplement Assistance Contracts that are in effect between HUD and this Project and all applicable Federal regulations, the Rent Supplement

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH

NATIONAL TITLE AGENCY LLC  
5295 S COMMERCE DR #250  
MURRAY UT 84107  
BY: ZJM, DEPUTY - W1 6 P.

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Assistance Contracts and applicable HUD requirements until at least May 1, 2022, the latest maturity date of the Section 202 Direct Loans unless otherwise approved by HUD.

3. In the event of a breach or a threatened breach of any of the above covenants and agreements by the Owner, HUD and/or any tenant 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 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: (i) 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 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 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.
6. The Owner agrees to maintain the Project solely as rental housing for low or very-low income elderly or disabled persons until May 1, 2022, the life of this Use Agreement.
7. The Project will continue to operate until May 1, 2022, the latest maturity date of the original Section 202 Direct Loans in a manner that will provide rental housing for the elderly and persons with disabilities on terms at least as advantageous to existing and future tenants as the terms required by the original loans.
8. The Owner will accept all forms of Section 8 tenant based assistance for all units that do not have project-based assistance until May 1, 2022, the life of this Use Agreement.
9. Ownership of the Project will be controlled by the Section 202 mortgagor entity; a limited partnership entity of which the sole general partner is the Section 202 mortgagor entity or a corporation wholly owned by the mortgagor entity; or a transfer to Dominguez Park Apartments, L.P., a Utah limited partnership, for which Utah Nonprofit Housing Corporation, a Utah non-profit corporation serves as the General Partner; or an experienced nonprofit elderly housing provider eligible as an owner under Section 202(k)(3) and (k)(4) of the Housing Act of 1959 as amended by Section 831 of the American Homeownership and Economic Opportunity Act of 2000 and in accordance with HUD's transfer of physical assets (TPA) procedures.
10. 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.

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11. In subsidized projects, admission to the Project shall be limited to tenants having a very-low- or low- or moderate-income which does not exceed the limits established by HUD and in effect at the time of admission.
  12. The Owner will obtain from each prospective tenant, for occupancy in a Section 8 or Rent Supplement assisted unit, 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. The Owner shall comply with all requirements of the Section 8 Housing Assistance Payments Contract or the Rent Supplement Assistance Contract.
  13. If any recertification discloses that family income, for a family living in Section 8 or Rent Supplement unit, exceeds the limits established by HUD and in effect at the time of recertification, the Owner shall require the tenant to pay an increased rental in an amount computed in accordance with a formula prescribed by HUD, and if the tenant refuses to pay the increased rent the Owner shall require the tenant to pay the unsubsidized rent for the unit.
  14. 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 HUD, 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 HUD on the rental schedule.
  15. 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 HUD. HUD will at any time entertain a written request for an increase properly supported by substantiating evidence and within a reasonable time shall:
    - (a) 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 Owner has no effective control, or
    - (b) Deny the increase stating the reasons thereof.
  16. The Owner shall maintain the premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition.
  17. The books and accounts of the operations of the property and of the Project shall be kept in accordance with the requirements of HUD.
  18. Within ninety (90) days following the end of each fiscal year, the Owner shall 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 HUD and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.
  19. The Owner further covenants and agrees that if the Owner conveys title to the Project prior to May 1, 2022, the latest maturity date of the Section 202 Direct Loans, the Owner will require the HUD approved purchaser to assume the obligations of the Owner under this Use Agreement.

~~require the HUD approved purchaser to assume the obligations of the Owner under this Use Agreement.~~

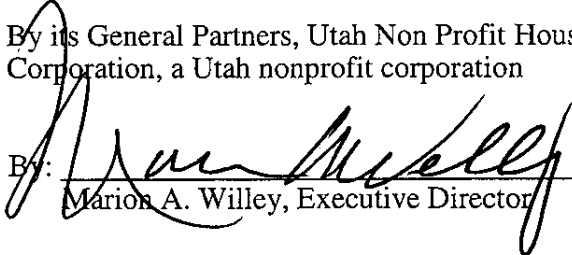
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20. The Owner shall provide to HUD (or to such third party as HUD may, in its sole discretion, determine to have the monitoring function under this Use Agreement), promptly following receipt of a written request from HUD (or from such third party), copies of all Tenant certifications of income, re-certifications, calculations of permitted income ranges regarding the Project, and such other documents as may be reasonably required to evaluate the Owner's compliance with the terms of this Use Agreement. In addition, the Owner shall permit representatives of HUD (or any third party given the monitoring responsibility) following notice from the HUD (or from the third party), to examine the originals of all such documents, at the Project's office during regular business hours.
21. The Owner must certify annually by September 1<sup>st</sup> of each year (insert date within 30 calendar days of the anniversary date of this Agreement), to the local HUD field office, or such other location as determined by HUD, that it is operating the Project in compliance with this Use Agreement and, more specifically, that all of the individual units, as well as the physical structure of the Project as a whole, for example grounds and equipment, comply with all applicable codes and requirements of this Use Agreement or that a remedial program to correct any existing deficiencies has been implemented.
22. 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.

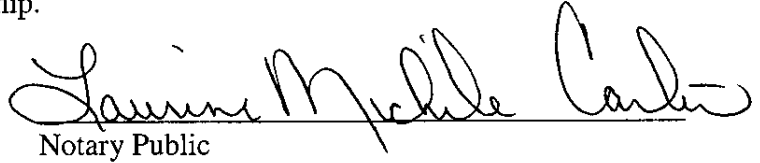
**Dominguez Park Apartments, L.P.**  
**a Utah limited partnership**  
(Owner)

By its General Partners, Utah Non Profit Housing  
Corporation, a Utah nonprofit corporation

By:   
Marion A. Willey, Executive Director

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )


10th The foregoing instrument was subscribed, sworn to, and acknowledged before me this 10th day of August, 2007, by Marion A. Willey, Executive Director of Utah Non Profit Housing Corporation, a Utah nonprofit corporation, the General Partner of Dominguez Park Apartments, L.P., a Utah limited partnership.

  
Notary Public

My Commission Expires: 2-20-2010



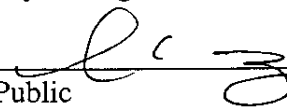
U.S. Department of Housing  
and Urban Development,  
Acting by and through the  
Federal Housing Commissioner

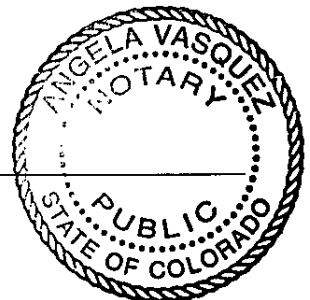
By:   
Name: Marcie LaPorte  
Its: Director, Denver Multifamily Hub

STATE OF COLORADO )  
 ) ss:  
CITY AND COUNTY OF DENVER)

Before me, Angela Vasquez, a Notary Public in and for the said State, on this 14 day of August, 2007, personally appeared Marcie LaPorte, who is well known to me to be the Director, Denver Multifamily Hub, and the person who executed the foregoing instrument by virtue of the authority vested in her by Section 204(g) of the National Housing Act, as amended, and I having first made known to her by the contents thereof to be her free and voluntary act and deed on behalf of Alphonso Jackson, as the Secretary of Housing and Urban Development, for the uses, purposes and considerations therein set forth.

Witness my hand and official seal the 14 day of August, 2007.

  
Notary Public



My Commission Expires: 9/10/2007

My Commission Expires 09/10/2007

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**EXHIBIT A**

All that real property located in Salt Lake County, Utah and described as:

PARCEL 1:

Beginning at a point on the West line of 700 West Street being South 89°55'00" West 206.07 feet and North 00°02'30" West 1168.454 feet and South 89°57'30" West 33.00 feet from the Southeast Corner of Section 35, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°57'30" West 415.90 feet; thence South 0°02'30" East 338.687 feet to the center of an existing irrigation ditch; thence North 86°50'30" West 353.11 feet along said center of ditch; thence North 318.98 feet; thence North 89°57'30" East 303.23 feet; thence North 0°02'30" West 32.00 feet; thence North 89°57'30" East 405.00 feet; thence North 82°21'49" East 30.27 feet; thence North 89°57'30" East 30.00 feet to the West line of 700 West Street; thence South 00°02'30" East 36.00 feet along said West line to the point of beginning.

PARCEL 2:

Beginning at a point in the center of an irrigation ditch and on the West right of way line of Sixth West Street (700 West), said point being South 89°55' West 206.07 feet and North 00°02'30" West 804.67 feet and North 86°50'30" West 33.05 feet from the Southeast Corner of Section 35, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 86°50'30" West 416.55 feet along the center of said irrigation ditch; thence North 00°02'30" West 338.687 feet; thence North 89°57'30" East 415.90 feet; thence South 00°02'30" East 361.94 feet to the point of beginning.

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