

ATTACHED VERIFIED INDEXED
 MICROFILMED

E# 1319291 BX 1736 PG 1283
DOUG CROFTS, WEBER COUNTY RECORDER
01-MOV-94 123 PM FEE \$34.00 DEP LF
REC FOR: KARA MANOR APARTMENTS

Project Name: Kara Manor Apts
Project Location: Ogden, Utah
Project Number: 105-44032

**USE AGREEMENT AND AMENDMENT OF EXISTING REGULATORY
AGREEMENT FOR LIMITED DIVIDEND MORTGAGORS**

FOR MULTIFAMILY PROJECTS INSURED OR ASSISTED
UNDER SECTION 236 OF THE NATIONAL HOUSING ACT
AND SUBJECT TO THE LOW INCOME HOUSING PRESERVATION
AND RESIDENT HOMEOWNERSHIP ACT OF 1990

This Agreement, entered into by the Secretary of Housing and Urban Development (the "Secretary" or "HUD"), and Kara Manor WRP, a Limited Partnership ("Owner"), provides as follows:

WHEREAS, the Kara Manor Apartments (the "Project"), a 44 unit project located in Ogden, Utah, was financed with a Secured Note (the "Mortgage Note") and Deed of Trust (the "Mortgage"), dated May 1, 1974 and insured and subsidized by the Secretary under Section 236 of the National Housing Act, 12 U.S.C. Section 1715z-1, and covering real property as described in Exhibit "A" attached hereto, which Mortgage was recorded in the Recorder's Office of Weber County, Ogden, UT, on May 1, 1974 as Entry number 614424 at Book 1052 Page 451;

WHEREAS, the Project is subject to a Regulatory Agreement, (the "Regulatory Agreement"), dated May 1, 1974 and recorded on May 1, 1974 in the County Recorder's Office of Weber County as Entry number 614425 Book 1052 Page 455, and re-recorded on May 9, 1974 as Entry No. 614931 in Book 1053 Page 192 of records, and re-recorded May 23, 1974 as Entry No. 616003 in Book 1054, Page 538 of Records;

WHEREAS, the Project is subject to the provisions of Subtitle A of Title VI of the National Affordable Housing Act, the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA") 12 U.S.C. 4101 *et seq.*, because it meets the definition of "eligible low income housing" in LIHPRHA;

WHEREAS, pursuant to LIHPRHA, the Owner has requested, and HUD has agreed to provide certain incentives, as set forth herein, in exchange for the Owner's agreement to continue the low-income affordability restrictions on the Project for the remaining useful life of the Project;

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

1. Definitions

a. "Adjusted Income" has the meaning set forth in the definition of "adjusted income" in 24 CFR Part 248 on the effective date of this Agreement.

b. "Low Income Tenants" are persons or families whose incomes are more than 50 percent but not in excess of 80 percent of Median Income as determined by HUD with adjustments for smaller or larger families.

c. "Median Income" is the median income for a four-person family as calculated by HUD based on the median income for the Salt Lake City-Ogden Utah MSA (or 125 percent of the national median income, if less).

d. "Moderate Income Tenants" are persons or families whose incomes are more than 80 percent of Median Income but not in excess of 95 percent of Median Income as determined by HUD with adjustment for smaller or larger families.

e. "Plan of Action" is that document submitted by the Owner, and approved by HUD, pursuant to LIHPRHA requesting incentives in exchange for maintaining the low and moderate income character of the Project for its remaining useful life.

f. "Remaining Useful Life" is the period during which the physical characteristics of the Project remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

g. "Very Low Income Tenants" are persons or families whose incomes do not exceed 50 percent of Median Income as determined by HUD with adjustments for smaller and larger families.

2. Term. This Agreement shall remain in effect for the remaining useful life of the Project, as that term is defined in Paragraph 1 of this Agreement. The Owner may petition HUD to make a determination that the remaining useful life of the Project has expired not less than fifty years from the date of approval of the Plan of Action for the Project. In making such a determination, HUD shall presume that the useful life of the Project has not expired, and the Owner shall have the burden of proof in establishing such expiration. HUD will not determine that the useful life of the Project has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as become necessary. Tenants and interested persons and organizations may provide comments on the Owner's petition and may appeal HUD's determination.

3. **Use Restriction.** The Project shall be used solely as rental housing for Very Low, Low and Moderate Income Tenants, except to the extent that commercial use has been approved by the Commissioner. If there is any approved commercial use or non-subsidized units in the Project, rents from the units receiving Section 8 assistance shall not be used to pay any expenses incurred with respect to the commercial use or the non-subsidized units).

4. **Maintenance of Affordability.**

a. Paragraph 4(c) of the Regulatory Agreement is deleted in its entirety. The Owner will, to the extent practicable, maintain the Project as affordable to the following number of Very Low, Low and Moderate Income Tenants:

	No. of Units
Very Low Income Tenants (up to 50 percent of median income)	42
Low Income Tenants (50.1 to 80 percent of median income)	2
Moderate Income Tenants (80.1 to 95 percent of median income)	0

b. The Owner may rent to a higher proportion of Very Low Income Tenants than required by the foregoing tenant income profile. However, HUD does not agree to provide Section 8 assistance beyond that which is indicated in Paragraph 11 of this Agreement.

c. No tenant in occupancy as of the effective date of this Agreement ("Current Tenant(s)") shall be required to relocate on the basis of his or her income.

d. Paragraph 4(d) of the Regulatory Agreement is amended to read as follows:

(d) to the extent that it does not conflict with the tenant income profile established in Section 222 of LIHPRHA, preference for occupancy shall be given to those families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster;

5. **Rents for Current Tenants.**

a. **General.** Any increase in Total Tenant Payments paid by Current Tenants shall be phased in within the restrictions imposed by Section 222(a)(2)(E) of LIHPRHA, as follows: If the total rent increase is greater than 30 percent of the existing rent, it will be phased in equally over a period

of not less than three years with each increase occurring at the beginning of a lease year; the first lease year beginning upon the date of this Agreement. If the total increase is greater than 10 percent yet not in excess of 30 percent, it will be phased in at no more than 10 percent per year. However, the rent level of any Current Tenant determined in accordance with this phase-in provision may be increased, if made necessary by reasonable increases in operating costs, during the phase-in period.

b. **Very Low and Low Income Tenants.** Current Very Low and Low Income Tenants shall be assisted by Section 8 assistance pursuant to Paragraph 11 of this Agreement and shall pay rent in accordance with the Housing Assistance Payments Contract ("HAP Contract").

c. **Moderate Income Tenants.** Current Moderate Income Tenants and tenants with incomes exceeding the limit for Moderate Income Tenants shall make a Total Tenant Payment of not more than the lowest of 30 percent of their Adjusted Income, the existing Section 8 fair market rent ("FMR") or (if applicable in accordance with HUD instructions) the Project Specific Rents (PSR). Any rent increases resulting from this Paragraph shall be phased in in accordance with Paragraph 5(a) of this Agreement. If the rents paid by Moderate Income Tenants and tenants with incomes exceeding the limit for Moderate Income Tenants immediately prior to the date of this Agreement are higher than those specified in this Paragraph, those rents shall not be changed because of the implementation of this Agreement.

d. In the event the income of a Current Moderate Income Tenant decreases below 80 percent of Median Income and Section 8 assistance is not available, that tenant shall pay the lower of: (i) the FMR (or the PSR, when applicable); or (ii) the higher of 30 percent of the Adjusted Monthly Income (AMI) or the Minimum Rent. The Minimum Rent shall be equal to 30 percent of 80 percent of Median Income for the applicable family size adjusted by family allowances.

6. Rents for Future Tenants.

a. **Very Low and Low Income Tenants.** Future Very Low and Low Income Tenants admitted in accordance with the tenant income profile established in Paragraph 4 of this Agreement shall be assisted by Section 8 assistance pursuant to Paragraph 11 of this Agreement and shall pay rent in accordance with the HAP Contract.

b. The Owner may admit additional Very Low Income Tenants to the Project in excess of that required by the tenant income profile set forth in Paragraph 4 of this Agreement. In

the event that Section 8 assistance is not available for these additional Very Low Income Tenants, they shall pay for rent the lower of: (i) the FMR (or the PSR, when applicable); or (ii) the higher of 30 percent of AMI or the Floor Rent. The Floor Rent shall be equal to 30 percent of what a family at 50 percent of Median Income for the applicable family size adjusted by family allowances.

c. **Low Income Tenants.** Future Low Income Tenants shall receive Section 8 assistance and the Total Tenant Payments shall be determined in accordance with the HAP Contract. In the event that Section 8 assistance is not available, Future Low Income Tenants shall pay the lesser of the FMR or the Minimum Rent.

d. **Moderate Income Tenants.** The Total Tenant Payment for future Moderate Income Tenants shall pay for rent not more than the lowest of 30 percent of Adjusted Income, the FMR or (if applicable in accordance with HUD instructions) the Project Specific Rent (PSR). In the event the income of a Future Moderate Income Tenant decreases below 80 percent of Median Income and Section 8 assistance is not available, that tenant shall pay the Minimum Rent.

7. Rent Adjustments.

a. Any increase in rents for Current Tenants that results from implementation of this Agreement will be phased in in accordance with Paragraph 5(a) of this Agreement.

b. Tenants shall be recertified annually. Any Tenant who refuses to certify or recertify income shall pay for rent the lesser of the FMR or (if applicable in accordance with HUD instructions) the Project Specific Rents (PSR).

c. Project rent adjustments shall be calculated based on an adjustment factor established by HUD and applied to the portion of rent attributable to project operating expenses. The Owner may apply for a rent adjustment on an annual basis on the anniversary date of approval of a LIHPRHA Plan of Action. If the Owner believes that the rent adjustment approved by HUD is not adequate, the Owner may appeal HUD's determination within 30 days of receiving notice of HUD's decision. HUD may approve a rent increase in excess of that needed to cover project operating expenses only if HUD determines such an increase is necessary to reflect extraordinary necessary expenses of owning and maintaining the Project (any such budget based rent increase is for the year approved only and shall not carry forward into subsequent years).

d. Paragraph 4(f) of the Regulatory Agreement are deleted in their entirety.

8. **Utility Allowances.** Except for Basic and Market Rents, utility allowances must be included in the Total Tenant Payments established in this Agreement.

9. **Establishment of Basic and Market Rents.** Paragraph 4(b) of the Regulatory Agreement is deleted in its entirety and paragraph 4(a) of the Regulatory Agreement is revised to read as follows:

The aggregate basic monthly rental charges for the Project shall be the amount approved by the Commissioner as necessary to enable the owner to receive the annual authorized return determined pursuant to the HUD-approved Plan of Action (including therein the debt service payable on any HUD-approved equity loan), pay debt service on the federally assisted first mortgage on the project (less the amount of any interest reduction payments) and on any loan for rehabilitation of the project, meet project operating expenses, and establish adequate reserves. The aggregate market rental charges for the Project shall be the aggregate basic rental charges plus the monthly interest reduction payment.

10. **Calculation and Remittance of Excess Income.** Paragraph 4(i) of the Regulatory Agreement is revised to read as follows:

The Owner shall remit to the Commissioner on or before the tenth day of each month all rental charges collected that exceed the aggregate basic rent, up to, but not exceeding the monthly subsidy amount. Any income received in excess of the monthly subsidy amount shall be deposited in the Residual Receipts account.

11. **Section 8 Assistance.** The Owner agrees to accept assistance under a HAP Contract executed pursuant to Section 8 of the United States Housing Act of 1937 with respect to 44 units in the Project. The Owner agrees to accept and utilize such assistance in accordance with the HAP Contract, and agrees to accept any renewal or extension of the HAP Contract or any contract under a program designated by the Secretary as a successor to the Section 8 Program. To the extent authorized by law and to the extent that appropriated funds are available, the Secretary agrees to provide Section 8 assistance under Section 8 or any successor program with respect to 44 units in the Project. If assistance under Section 8 or any successor program ceases to

be available during the term of this Agreement, this Agreement will be renegotiated by the parties in accordance with Section 224(b) of LIHPRHA.

12. Distributions and Amendment of Regulatory Agreement. Paragraphs 6(e)(1) and (2) of the Regulatory Agreement are amended to read as follows:

(1) All distributions shall be made only as of or after the end of a semiannual or annual fiscal period, or as indicated in paragraph 6(e)(2) of this Agreement, and only as permitted by the law of the applicable jurisdiction; all such distributions in any one fiscal year shall be limited to \$ 49,722.00 and the right to such distributions shall be cumulative. All or a portion of the annual or semiannual distributions may be applied to monthly debt service payments for an equity takeout loan approved by the Secretary. Except with respect to the proceeds of a HUD-approved equity takeout loan, no distribution shall be made from borrowed funds or when there is any default under this agreement or under any mortgage secured by the project.

(2) The Owner shall obtain a physical inspection report each year from a certified architect, engineer, or other party whose qualifications have been approved by the Secretary. The Owner shall keep the inspection report in the Project records for at least three years. Prior to distribution of surplus cash, the Owner must certify to the Department that the Project meets the requirements of Paragraph 7 of this Agreement and that any deficiencies known to the Owner are being corrected.

13. Reserve for Replacements and Amendment of Regulatory Agreement. Paragraph 2(a) of the Regulatory Agreement is amended by adding the following language to the end thereof:

The Secretary will not approve the release of funds from the Reserve for Replacements account if doing so would reduce the balance below an amount equivalent to one month's maximum gross rent potential, except in emergencies such as natural disasters requiring immediate repairs or to avoid a default on the mortgage insured by the Commissioner.

14. Savings Due to Management Efficiencies. Any net savings from reductions in operating expenses due to management efficiencies shall be deposited into the Reserve for Replacement Account. The Owner may have access to these funds on a semiannual basis upon a finding by HUD that a withdrawal will not reduce the balance in the Reserve for Replacements account below that required in Paragraph 2(a) of the Regulatory Agreement, as amended by this Agreement, and that the Owner is maintaining the property in accordance with the housing quality standards set forth in 24 CFR part 886.

15. Residual Receipts. (a) On an annual basis, the Secretary may permit the Owner to withdraw funds from the Residual Receipts account as necessary to ensure that the Owner receives an annual distribution equaling the authorized return determined pursuant to the HUD-approved Plan of Action, less any amounts paid as debt service on a HUD-approved equity loan.

(b) To the extent necessary to ensure that the Owner receives the annual authorized return (including debt service payments on a HUD-approved equity loan) during the tenant rent phase-in period established pursuant to Paragraph 5(a) of this Agreement, the Secretary shall permit the Owner to receive the following additional incentives, in the following order of preference:

- (i) Access to Residual Receipts accounts;
- (ii) Excess income payments not yet remitted pursuant to Paragraph 4(i) of the Regulatory Agreement, as amended by Paragraph 10 of this Agreement; and
- (iii) Increases in rents, as permitted under the Section 8 HAP Contract.

(c) This guarantee shall be operative only if the short-fall in income is due to the rent phase-in and not due to other factors such as vacancies and excess expenses.

16. Displacement. No Current Tenant shall be displaced, except for good cause.

17. Civil Rights Requirements. The Owner will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, and all

requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities, including, but not limited to 24 CFR Parts 1, 100, 107, and 110, and Subparts I and M of Part 200.

18. Housing Quality Standards. The Owner shall maintain the Project in accordance with the housing quality standards set forth in 24 CFR Part 886 and local housing codes. In the event there is a conflict between the Housing Quality Standards and local codes, the stricter standard shall prevail. HUD shall conduct an annual physical assessment of the Project in order to ensure compliance with the Housing Quality Standards.

19. Violations of this Agreement. If the Department determines that the Owner has violated the terms of this Agreement, including compliance with the Housing Quality Standards, HUD shall notify the Owner of its determination and the Owner shall have 90 days in which to cure the violation. At the expiration of the 90 days, HUD shall reinspect the Project or take other investigative steps in order to ensure compliance. The failure to cure any violation within 90 days of notification of the violation may result in the forfeiture of, or reduction in, the Owner's annual distribution; withholding of escrowed equity loan proceeds; reduction in, or suspension of, the Section 8 assistance authorized in this Agreement; acceleration of debt secured by the Project; payment of relocation expenses to tenants admitted to the Project inconsistently with the tenant income profile established in this Agreement; and the imposition of any other sanctions authorized in law.

20. Agreement Binding Upon Successors and Assigns. Upon conveyance of the Project during the term of this Agreement, the Owner shall require its successor or assignee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon the Owner's successors and assigns.

21. Reports. The Owner shall furnish the Secretary with such reports concerning the financial condition, operation and condition of the Project as the Secretary may prescribe.

22. Incorporation of Regulatory Agreement by Reference. Paragraphs 2, 4(e), (g), (h), (j) and (k), 5, 6(a)-(h), 6(k), 7, 9, 10, 13 and 17 of the Regulatory Agreement are adopted and incorporated by reference herein. In the event that the Owner prepays the Mortgage Note or the FHA mortgage insurance is terminated, the provisions listed above shall remain in full force and effect, binding the Owner, its successors and assigns

as if the Mortgage Note were not prepaid or the mortgage insurance terminated, except that in the case of such prepayment or termination:

a. the phrase "the Secretary" shall be substituted for the term "Mortgagee" throughout the adopted language of the Regulatory Agreement; and

b. the "mortgaged property," or "mortgaged premises" referred to in the Regulatory Agreement, shall be the Project.

23. Enforcement. In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of such provision, to enjoin any conduct in violation of such provision and to recover damages (including refunds, with interest, on rent overcharges), and/or to obtain whatever other relief may be appropriate.

24. Severability. The invalidity, in whole or in part, of any provision of this Agreement shall not affect or invalidate any remaining provisions.

25. Impairment of Regulatory Agreement. The terms and provisions of the Regulatory Agreement shall continue in full force except as modified herein. Conflicts between this Agreement and the Regulatory Agreement shall be resolved in favor of this Agreement.

26. Execution of Other Agreements. The Owner agrees that it has not and will not execute any other agreement with provisions contradictory of, 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and have agreed that it shall be effective as of the 31 day of October, 1994.

Ellen Mathers
Witness

OWNER

SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

Ernest Johnson
Witness

BY: Director
Housing Division
HUD, Rocky Mountain Field
Office

STATE OF _____ }
COUNTY OF _____ }
ss:

Before me, Name: L. Crawford, a Notary Public in and for said State, on this 25th day of October, 1994, personally appeared Larry Sidebottom who is personally well known to me to be the Director, Housing Division HHD, and the person who executed the foregoing instrument by virtue of the authority vested in him by Section 204(g) of the National Housing Act, as amended, and I having first made known to him the contents thereof, he did acknowledge the signing thereof to be his free and voluntary act and deed on behalf of Henry G. Cisneros, as the Secretary of Housing and Urban Development for the uses, purposes and considerations therein set forth.

Witness my hand and official seal this 25 day of
October, 1994.



My commission expires

Mark L. Crawford
Notary Public
May 27, 1997.

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD)

ss: Greenwich

On this 31st day of October, A.D., 1994, before me residing therein, duly commissioned and sworn, personally appeared RICHARD P. RICHMAN, a Notary Public in and for said county and State, proved to me on the basis of satisfactory evidence to be the RICHARD P. RICHMAN ^{6th} ~~6th~~ partner of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Mary K. Holzer
NOTARY PUBLIC
MARY K. HOLZER
NOTARY PUBLIC
MY COMMISSION EXPIRES SEP. 30, 1996

(SEAL)

My Commission expires _____, 19 ____.



EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

105-44032-LDC-SUP

KARA MANOR WRP, a UTAH LIMITED PARTNERSHIP

Washington Terrace, Utah

Weber County

SECTION 236

A part of the Northwest Quarter of the Northwest Quarter of Section 17, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point which is East (South $89^{\circ}34'$ East) 394.00 feet along the Quarter section line from the Southwest corner of said Northwest Quarter of the Northwest Quarter Section; running thence East (South $89^{\circ}34'$ East) 132.00 feet parallel to the South line of said Quarter Section; thence North (North $0^{\circ}22'$ East) 169.00 feet parallel to the West line of said Northwest Quarter Section; thence East (South $89^{\circ}34'$ East) 132 feet parallel to the South line of said Quarter Quarter Section to a point which is West 666 feet from the East line of said Northwest Quarter of the Northwest Quarter Section; thence North (North $0^{\circ}22'$ East) 324.73 feet parallel to the West line of said Northwest Quarter section to a point which is 136 feet South of the South right-of-way line of 4900 South Street; thence West (North $89^{\circ}31'$ West) 132.00 feet parallel to said South line of Street; thence South (South $0^{\circ}22'$ West) 133.85 feet parallel to the West line of said Northwest Quarter Section; thence West (North $89^{\circ}34'$ West) 132.00 feet parallel to the South line of the Quarter Quarter Section thence South (South $0^{\circ}22'$ West) 360.00 feet parallel to the West line of Southwest Quarter Section to the point of beginning. EXCEPTING THEREFROM the South 33.00 feet thereof, lying within the right-of-way of 5000 South Street, together with benefits, easements and rights-of-way granted and created by Declaration of Covenants, Conditions, and Restrictions, recorded April 23, 1974 as Entry No. 613829 in Book 1051, Page 581 of Records, and re-recorded April 29, 1974 as Entry No. 614221 in Book 1052, Page 202 of Records.