

**Rental Assistance
Demonstration
Use Agreement**

**U.S. Department of Housing
and Urban Development**
Office of Housing
Office of Public and Indian Housing

OMB Approval No.
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Prepared by:

After recording return to:

This Rental Assistance Demonstration Use Agreement (hereinafter called the "Agreement") is made the as of [_____ day of _____, 20 _____, by and between _____ (date)], for the benefit of and agreed to by the United States of America, Secretary Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (hereinafter called "HUD") by _____, ("Project Owner"), [and _____, Owner, (hereinafter called the "Owner"), provides as follows: ("PHA") (if Project Owner is not the owner of the fee estate, include PHA or other owner of the fee estate.)].

Whereas, Rental Assistance Demonstration (hereinafter called “RAD”) provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access ~~by Owners~~ to private debt and equity to address immediate and long-term capital needs.

~~Whereas, Projects funded under the public housing programs may under RAD convert their assistance to long term, project-based Section 8 rental assistance contracts. Under this component of RAD, Owners may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component. Owners will convert their assistance at current subsidy levels.~~

~~Whereas, Projects shall have a RAD Use Agreement that will be recorded superior to other liens on the property, run for the same term as the initial term of the HAP contract, automatically renew upon each extension or renewal of the HAP contract for a term that runs with each renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination).~~

Whereas, HUD has approved the conversion of the “Project” identified as-

_____ the [PHA or Project Owner] is the fee owner of the real property described on Exhibit A (the “Property”), upon which is or will be located improvements owned or to be owned by Project Owner receiving assistance converted pursuant to RAD, which project will commonly be known as _____ (the “Project”). The Project will contain [_____] dwelling units, of which [_____] (“Assisted Units”) are subject to a RAD Housing Assistance Payment contract, as the same may be renewed, amended or replaced from time to time (“RAD HAP contract”).

~~and covering real property as described in Exhibit “A” attached hereto; and that this approval is evidenced by and through the terms of the RAD Conversion Commitment as described in Exhibit “B” attached hereto; and that was previously subject to a public housing Declaration of Trust~~

~~dated _____ and recorded on _____ in the Recorder's Office of _____ County as document number _____, Book _____, Page _____; and such public housing Declaration of Trust was released on (date) _____ and recorded on (date) _____ in the Recorder's Office of _____ County as document number _____, Book _____, Page _____~~

Whereas, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, ~~2011~~ 2011, as amended from time to time, the “RAD Statute”); and the corresponding PIH Notice 2012-~~32 published on July 26, 2012~~ 32, rev-2, as amended from time to time, and any successor document and/or regulations (hereinafter called the “RAD Notice”), which this ~~Use~~ Agreement incorporates, ~~in exchange for HUD's agreement to permit this conversion to PBVs or PBRA, the Owner has agreed to continue to operate the assisted PBV or PBRA units only as rental housing for the initial term, and each renewal term of the HAP Contract, unless otherwise approved by HUD;~~ by this reference, the PHA and/or the Project Owner, as applicable, has agreed to encumber the Property and the Project Owner has agreed to operate the Project in accordance with this Agreement in exchange for HUD’s agreement to execute or permit the execution of the RAD HAP contract and the assistance provided thereby;

Whereas, in accordance with the RAD Statute and RAD Notice, except as otherwise agreed in writing by HUD, this Agreement is to be recorded superior to other liens on the Property, run until the conclusion of the initial term of the RAD HAP contract, automatically renew upon each extension or renewal of the RAD HAP contract for a term that runs with each renewal term of the RAD HAP contract, and remain in effect even in the case of abatement or termination of the

RAD HAP contract for the term the RAD HAP contract would have run, absent the abatement or termination.

Now Therefore, in consideration of the ~~mutual promises set forth herein~~ foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD HAP contract and ~~of~~ other valuable consideration, the parties hereby agree as follows:

~~1.~~ **Definitions.** All terms used in this Agreement and not otherwise defined have the same meaning as set forth in the ~~definitions in~~ RAD Notice.

~~1.2.~~ **Term.** ~~The initial term shall be _____~~ Term. The initial term of this Agreement commences upon the date this Agreement is entered into and shall run until the conclusion of the initial term of the RAD HAP contract. The RAD HAP contract is effective for [15/20 years (insert appropriate term)]. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term of the RAD HAP contract and for an additional period ~~periods~~ to coincide with any renewal term of the ~~HAP Contract~~ RAD HAP contract or any replacement HAP contract. It is the intention of the parties that the RAD HAP and this Agreement shall each renew upon the completion of its initial term. Therefore, this Agreement shall remain in effect until a release is recorded as contemplated by Section 8. Such release shall be the evidence of the non-renewal of the HAP Contract, of the determination not to execute a replacement HAP contract and of the termination of this Agreement. This Agreement will survive ~~HAP~~ abatement of assistance or termination of the RAD HAP Contract ~~contract~~ unless otherwise approved by HUD.

2. Use Restriction and Tenant Incomes. The ~~HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the~~ Assisted Units shall be leased in accordance with the RAD HAP contract, including any applicable eligibility and/or income-targeting requirements ~~under the HAP Contract.~~ In the case that the RAD HAP Contract is terminated (due to, e.g.: breach, contract is terminated prior to the completion of the term or renewal term, if applicable, of this Agreement (by way of illustration and not limitation, for breach or non-compliance), new tenants for the remainder of the term of this Agreement new tenants leasing the Assisted Units (except if any of the Assisted Units is a HUD-approved manager unit) must have incomes at or below 80 percent of the average-median income Area Median Income (AMI) at the time of admission ~~for the remainder of the term of the Agreement, applicable to all units previously covered under the HAP contract~~ ("Eligible Tenants"). Additionally, rents for such Assisted Units must not exceed 30% of 80% of ~~median income for an appropriate~~ the AMI for households of the size occupying an appropriately sized unit. Notwithstanding the foregoing, in the event the Project Owner so requests and is able to demonstrate to HUD's satisfaction that despite the Project Owner's good faith and diligent efforts to do so, the Project Owner is unable either (1) to rent a sufficient percentage of Assisted Units to ~~Low Income Tenants or Very Low Income~~ Eligible Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Project Owner and HUD. Any such modification of the restrictions listed in this paragraph shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

~~3.4.~~ **Subordination.** ~~Any mortgage liens will be subject to this Agreement~~ Survival. This Agreement will survive foreclosure and bankruptcy.

~~4.5.~~ **Fair Housing and Civil Rights Requirements.** ~~Compliance with all~~ The Project Owner and its agents, where applicable, shall ensure that the Project complies with applicable federal fair

housing and civil rights requirements including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR §§ 1.4(b)(3) and 941.202, as applicable, is required. laws, regulations, and other legal authorities, including those identified at 24 C.F.R. § 5.105.

~~5. 6-~~ **Federal Accessibility Requirements.** Compliance The Project 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, ~~is required.~~

~~6. 7-~~ **Restrictions on Transfer** ~~of the Agreement.~~ HUD has been granted and is possessed of an interest in the above described Project ~~such that the Owner shall remain seized of the title to said Project and refrain from transferring, conveying, encumbering or permitting or suffering.~~ Except as authorized below, the Project Owner and, if a party hereto, the PHA, shall not transfer, convey, encumber or permit or suffer any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project and/or Property or any part thereof without ~~the release of said covenants by HUD. The Owner has constituted HUD as its attorney in fact to transfer PBV or PBRA assistance to another entity in the event of default under the HAP Contract. With HUD approval, after 10 years from the effective date of the initial term of the HAP Contract, if the Project is economically non-viable or physically obsolete, assistance may be transferred subject to this Agreement. Any such new Owner shall assume the obligations under this Agreement as a condition of any transfer. This Agreement shall be binding upon the Owners and all future successors and assigns until released by HUD. 8-~~ **Release.** The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the Owner of any real or personal property which is determined to be excess to the needs of the Project, or (2) upon any instrument of prior written consent of HUD.

Notwithstanding the foregoing, HUD hereby authorizes (a) leases in the normal operation of the Project, (b) subordinate liens contemplated by a RAD Conversion Commitment executed in connection with the Project, whether such liens are recorded concurrent with the recordation of this Use Agreement or recorded subsequent hereto (such as permanent financing to replace construction-period financing), and (c) conveyance or dedication of ~~property, or any interest therein,~~ land for use as streets, alleys, or other public rights-of-way, ~~or~~ and grants and easements for the establishment, operation and maintenance of public utilities. Except as otherwise approved in writing by HUD, ~~or (3) upon any instrument transferring or conveying an interest therein, or (4) upon any instrument of release made by the Owner of the assisted PBV or PBRA units shall be effective to release such property from the restrictive covenants hereby created.~~ any lien on the Project and/or Property shall be subject and subordinate to this Agreement. Unless this Agreement is released by HUD, any transferee of the Project and/or Property shall take title subject to this Agreement. In the event of a default under the RAD HAP contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may transfer the RAD HAP contract and the rental assistance contemplated therein to another entity and/or Property and/or Project. The Project Owner has constituted HUD as its attorney-in-fact to effect any such transfer.

7. Amendment or Release. This Agreement may not be amended without HUD consent. This Agreement shall remain as an encumbrance against the Property unless and until HUD executes a release for recording. This Agreement may only be released by HUD in its sole discretion. In the event that the RAD HAP is, in accordance with all applicable laws and RAD program requirements, not renewed or replaced, HUD shall not unreasonably fail to provide such a release upon the completion of the applicable term of this Agreement.

~~8. 9-~~ **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 within the Project, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of

such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.

~~9. 10.~~ **Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.

~~10. 11.~~ **Impairment of HAP Contract.** ~~The terms and provisions of this Agreement shall continue in full force and effect except as expressly modified herein.~~ **Conflicts.** Any conflicts between this Agreement and the ~~HAP Contract~~ RAD HAP contract or any other applicable HUD program requirements shall be conclusively resolved by the Secretary.

~~11. 12.~~ **Execution of Other Agreements.** The Project Owner and, if a party hereto, the PHA, agrees that it has not and will not execute any other agreement with provisions contradictory ~~of~~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.

~~12. 13.~~ **Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Project Owner and, if a party hereto, the PHA, agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. ~~In the alternative, at~~ HUD's option, HUD may implement any such statutory amendment through rulemaking.

13. Lender Provisions.

A. Nothing in this Agreement prohibits any holder of a mortgage or other lien against the Property or Project from foreclosing its lien or accepting a deed in lieu of foreclosure. Any lien holder shall give HUD, as a courtesy, written notice prior to declaring an event of default. Any lien holder shall provide HUD concurrent notice with any written filing of foreclosure filed in accordance with state law provided that the foreclosure sale shall not occur sooner than sixty days (60) days after such notice to HUD. The Notice to HUD may be personally delivered or sent by U.S. certified or registered mail, return receipt requested, first class postage prepaid, addressed as follows:

If for PBRA transactions:

U.S. Department of Housing and Urban Development

451 7th Street SW, Room 9100

Washington, DC 20410

Attention: Office of the Assistant Secretary for Housing - Rental Assistance
Demonstration

If for PBV transactions:

U.S. Department of Housing and Urban Development

451 7th Street SW, Room 4100

Washington, DC 20410

Attention: Office of the Assistant Secretary for Public and Indian Housing -
Rental Assistance Demonstration

B. Notwithstanding any lien holder's foreclosure rights, this Agreement survives foreclosure and any new owners of the Property or the Project take ownership subject to this Agreement.

C. Transfer of title to the Property or the Project may be grounds for termination of assistance under the RAD HAP contract. However, HUD may permit, through prior written consent by HUD, the new owner of the Property or the Project to assume the RAD HAP contract, subject to the terms included therein, or enter into a new HAP contract. Any HUD consent to continued HAP assistance is subject to the RAD Statute and other RAD program requirements.

D. Each entity interested in purchasing the Property in a foreclosure sale administered under state foreclosure law may submit a written request to HUD to continue RAD HAP contract assistance in the event of such entity's successful acquisition at the foreclosure sale. Such request shall be submitted by the latter of ten business days after first publication of the foreclosure sale or 60 days prior to such foreclosure sale.

~~14. No Negotiation. This Agreement is not subject to negotiation by the Owner or any lender.~~ Successors and Assigns. This Agreement shall be binding upon the Project Owner and, if a party hereto, the PHA, and all future successors and assigns of either with respect to any portion of the Property or the Project.

In Witness Whereof, HUD and the Owner thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this _____ day of _____, 20____. these declarations are made as of the first date written above.

(Seal)

HUD Attest:

Department of Housing and Urban Development

By: _____

Name:

Title:

Date: _____

~~State or~~
~~County~~ District of Columbia

)
)
)

ss:

Before me, _____, a Notary Public in and for ~~said State,~~ the District of Columbia on this _____ day of _____, 20____, personally appeared

_____, who is personally ~~well~~ known to me to be the _____, of HUD, and ~~the~~ person who executed the foregoing instrument by virtue of the authority vested in him by ~~, and I having first made known to him the contents thereof, he~~ the Department of Housing and Urban Development, and did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and Urban Development for the uses, purposes and considerations therein set forth.

Witness my hand and official seal this _____ day of _____, 20____.

(Seal)

(Notary Public)

My commission expires _____, 20____.

Project Owner ~~Attest:~~

By:

Title:

[Insert Project Owner signature block.]

Date: _____

State ~~or of~~ _____)
County of _____) ss:
_____) ~~ss:~~

On this _____ day of _____, 20 _____, before me a
Notary Public in and for said County and State, residing therein, duly commissioned and sworn,
personally appeared _____, ~~a Notary Public in and~~
~~for said county and State,~~
proved to me on the basis of satisfactory evidence to be the ~~Owner of~~
_____, ~~that~~
~~executed the within instrument and acknowledged to me that such~~
~~_____ executed the same~~ [title] of [Project Owner entity name]
and the person who executed this instrument on behalf of Project Owner.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in
this Certificate first above written.
(Seal)

_____ (Notary Public)

My commission expires _____, 20 _____.

~~EXHIBIT A — Property Subject to this RAD Use Agreement~~

[PHA or fee owner]:

[Insert PHA or fee owner signature block.]

Date:_____

State of

)

County of

)

ss:

On this _____ day of _____, 20____, before me, a
Notary Public in and for said County and State, residing therein, duly commissioned and sworn,
personally appeared _____
proved to me on the basis of satisfactory evidence to be the [title] of [Lessee entity name] and
the person who executed this instrument on behalf of Lessee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in
this Certificate first above written.

(Seal)

(Notary Public)

My commission expires _____, 20_____.

EXHIBIT A – Property Subject to this RAD Use Agreement

~~EXHIBIT B—RAD Conversion Commitment~~

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Padding cell	

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