

Capital Advance Mixed-Finance Program Use Agreement

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0470 (Exp. 08/31/2013)

For Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act

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Do not send this form to the above address.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the projects meet statutory requirements, ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

This Agreement made the _____ day of _____, 20____, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and _____, a for-profit limited partnership, organized and existing under and by virtue of the laws of the State of _____ (hereinafter called the "Owner"), provides as follows:

Whereas, the Sponsor/Owner and HUD have entered into a Capital Advance Agreement or a Firm Commitment for Capital Advance Financing Upon Project Completion to assist in financing a rental housing project to house elderly persons or persons with disabilities, (hereinafter called "persons"), in accordance with Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act, and the applicable regulations;

Whereas, HUD through the Capital Advance Agreement has provided funding for the Project identified as project number _____, financed with a Note and Mortgage (Deed of Trust), dated _____ and covering real property as described in Exhibit "A" attached hereto, which Mortgage was recorded in the Recorder's Office of _____ County on _____, as Instrument _____, Book _____, Page _____; or

Whereas, HUD through a Firm Commitment for Capital Advance Financing Upon Project Completion for the Project identified as project number _____ and covering real property as described in Exhibit "A" attached hereto;

(Strikethrough the item above that do not apply.)

Whereas, The capital advance-assisted units are subject to a Regulatory Agreement, dated _____ and recorded on _____ in the Recorder's Office of _____ County as document number _____, Book _____, Page _____;

Whereas, pursuant to section 202 of the Housing Act of 1959 (elderly projects) or section 811 of the National Affordable Housing Act (disabled projects) and the corresponding regulations, in exchange for HUD's agreement to provide capital advance financing and project rental assistance payments, the Owner has agreed to continue to operate the assisted units only as rental housing for very-low income elderly or disabled persons for not less than 55 years from _____, unless otherwise approved by HUD;

Now Therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

- Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in 24 CFR Part 891.
- Term.** This Agreement shall remain in effect for not less than 55 years from _____, unless otherwise approved by HUD.
- Use Restriction.** The assisted units shall be used solely as rental housing for very-low income elderly or disabled persons. If there is any approved commercial use or non-assisted units in the Project, rents from the assisted units shall not be used to pay any expenses incurred with respect to the commercial use or non-assisted units.
- Subordination.** This Use Agreement is subordinate to any low income housing tax credit use agreement.
- Maintenance of Affordability.**
 - Upon expiration or termination of the Project Rental Assistance Contract, the Owner, to the extent practical, will maintain the assisted-units as affordable to very-low-income tenants.

- b. The Owner will accept any rental assistance offered by HUD.
 c. In the event that rental assistance is not available for the assisted units, the very-low-income tenants shall pay for rent 30 percent of 50 percent of Median Income for the area.
6. **Transfer.** HUD has been granted and is possessed of an interest in the above described assisted units such that the Owner shall remain seized of the title to said property and refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said assisted units in the 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 the assisted units to another entity in the event of default under the Capital Advance Agreement or the Regulatory Agreement. The Owner may transfer the assisted units during the term of this Agreement only with the prior written approval of HUD, and any such grantee shall assume the obligations under this Agreement as a condition of any transfer. In any event, this Agreement shall be binding upon the Owner's successors and assigns.
 7. **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 assisted units, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public rights-of-way, or for the establishment, operation and maintenance of public utilities, 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 units shall not be effective to release such property from the restrictive covenants hereby created.
 8. **Reports.** The Owner shall furnish the Secretary with such reports concerning the financial condition, operation and condition of the assisted units as the Secretary may prescribe.
 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 of the assisted units, 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.
 10. **Severability.** The invalidity, in whole or in part, of any of the provisions set forth above shall not affect or invalidate any remaining provisions.
 11. **Impairment of Regulatory Agreement.** The terms and provisions of the Regulatory Agreement shall continue in full force and effect except as expressly modified herein. Conflicts between this Agreement and the Regulatory Agreement shall be resolved in favor of this Agreement.
 12. **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 and supersede any other conflicting requirements.
 13. **Subsequent Statutory Amendments.** If revisions to the provisions of this Use Agreement are necessitated by subsequent statutory amendments, the Owner agrees to execute modifications to this Use 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 by amending 24 C.F.R. Part 891.

In Witness Whereof, HUD and the Owner by its officers 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_____.

(Seal)

Attest:	Name of Owner:
Secretary	By: (President)
:	
United States of America, Secretary of Housing and Urban Development	
By:	Title:

State or)
County of) ss:
_____)

Before me, _____, a Notary Public in and for said State,
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 section 202 of the Housing Act of 1959 or section 811 of
the National Affordable Housing Act, and I having first made known to him the contents thereof, he 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 _____.

State or)
County of) ss:
_____)

On this _____ day of _____, 20 _____, before me 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 Secretary of _____, that
executed the within instrument and acknowledged to me that such _____ 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.
(Seal)

(Notary Public)
My commission expires _____, 20 _____.

State or)
County of) ss:
_____)

On this _____ day of _____, 20 _____, before me 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 President of _____,
that executed the within instrument and acknowledged to me that such _____ 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.
(Seal)

(Notary Public)
My commission expires _____, 20 _____.