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**This Rental Assistance Demonstration Use Agreement** (hereinafter called the "Agreement") made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and \_\_\_\_\_, Owner, (hereinafter called the "Owner"), provides as follows:

**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 \_\_\_\_\_ 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) and the corresponding PIH Notice 2012-32 published on July 26, 2012 (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;

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

- 1. Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in RAD Notice.
- 2. Term.** The initial term shall be \_\_\_\_\_. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term, and for an additional period to coincide with any renewal term of the HAP Contract. This Agreement will survive HAP abatement or termination of the HAP Contract unless otherwise approved by HUD.
- 3. Use Restriction and Tenant Incomes.** The HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the eligibility and income-targeting requirements under the HAP Contract. In the case that the HAP Contract is terminated (due to, e.g.: breach, or non-compliance), new tenants must have incomes at or below 80 percent of the average 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. Additionally, rents must not exceed 30% of 80% of median income for an appropriate sized unit. Notwithstanding the foregoing, in the event the Owner is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low Income Tenants or Very Low Income 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 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.

4. **Subordination.** Any mortgage liens will be subject to this Agreement. This Agreement will survive foreclosure and bankruptcy.
5. **Fair Housing and Civil Rights Requirements.** Compliance with all applicable 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.
6. **Federal Accessibility Requirements.** Compliance 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.
7. **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 any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project 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 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 PBV or PBRA units shall be effective to release such property from the restrictive covenants hereby created.

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 enjoy 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 in this Agreement shall not affect or invalidate any remaining provisions.
11. **Impairment of HAP Contract.** The terms and provisions of this Agreement shall continue in full force and effect except as expressly modified herein. Any conflicts between this Agreement and the HAP Contract shall be conclusively resolved by the Secretary.
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 Agreement are necessitated by subsequent statutory amendments, the Owner 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.
14. **No Negotiation.** This Agreement is not subject to negotiation by the Owner or any lender.

**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\_\_\_\_\_.

(Seal)

<b>HUD Attest:</b>	<b>Owner Attest:</b>
By:	By:
Title:	Title:
Date:	Date:

\_\_\_\_\_  
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, 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 Owner 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 \_\_\_\_\_.

**EXHIBIT A – Property Subject to this RAD Use Agreement**

**EXHIBIT B – RAD Conversion Commitment**