

# Capital Advance Program Use Agreement

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

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

OMB Approval No. 2502-0470 (exp. 8/31/2013)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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 project meets statutory requirements with respect to the development and operation of the project, as well as 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 private nonprofit corporation, organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ (hereinafter called the "Owner"), provides as follows:

**Whereas**, the Owner and HUD have entered into a Capital Advance Agreement 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 \_\_\_\_\_;

**Whereas**, The Project is 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 Project only as rental housing for very-low income elderly or disabled persons for not less than 40 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:

- 1. Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in 24 CFR Part 889 or 890.
- 2. Term.** This Agreement shall remain in effect for not less than 40 years from \_\_\_\_\_, unless otherwise approved by HUD.
- 3. Use Restriction.** The Project shall be used solely as rental housing for very-low income elderly or disabled persons.
- 4. Transfer.** 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 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 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 project to another private nonprofit corporation in the event of default under the Capital Advance Agreement or the Regulatory Agreement. The Owner may transfer the Project 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.
- 5. 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 Project shall be effective to release such property from the restrictive covenants hereby created.
- 6. 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 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.
- 7. Severability.** The invalidity, in whole or in part, of any of the provisions set forth above shall not affect or invalidate any remaining provisions.

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**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)**

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**Attest:**

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

By:	Title:
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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 commis-  
sioned 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 \_\_\_\_\_.