

**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.
2502-0612
(Exp. xx/xx/xxxx)

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This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in Notice H-2019-09 PIH-2019-23 (HA) and related notices. This information will be used as the binding agreement between the owner and HUD and sets out affordability and use restrictions for the converted projects. There are no assurances of confidentiality.

Prepared by:

After recording return to:

This Rental Assistance Demonstration Use Agreement (hereinafter called the "Agreement") is made for the benefit of and agreed to by the United States 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 _____, ("PHA") (if Project Owner is not the owner of the fee estate, include PHA or other owner of the fee estate.)]. This Agreement is effective as of the date on which the fully executed Agreement is unconditionally released from escrow by all parties in connection with the RAD conversion of the property covered hereby. Owner shall cause this Use Agreement to be recorded promptly and in no event later than 30 days following the Closing Date.

Whereas, the Rental Assistance Demonstration (hereinafter called “RAD”) provides for the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance.

Whereas, 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”).

Whereas, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011, as amended from time to time, the “RAD Statute”); and its implementing program requirements and guidance including, without limitation, the Rental Assistance Demonstration – Final Implementation, Revision 4 Notice, H-2019-09 PIH-2019-23 (HA) as amended from time to time, and any successor document and/or regulations (hereinafter called the “RAD Notice”), which this Agreement incorporates 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 and shall encumber the Property throughout the term of the RAD HAP Contract (including any renewal terms and the terms of any replacement HAP Contracts). The RAD Statute and RAD Notice require that, upon expiration of the initial RAD HAP Contract and each renewal RAD HAP Contract or any replacement HAP Contracts, the Secretary shall offer and the owner of the property shall accept renewal of the HAP Contract.

Now Therefore, in consideration of the foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD HAP Contract and 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 RAD Notice.

2. **Term.** The initial term of this Agreement commences upon the effective date set forth above. It is the intention of the parties that this Agreement shall remain in effect for a term not less than the stated term of the RAD HAP Contract, including the initial term of the RAD HAP Contract and any subsequent renewal terms of the RAD HAP Contract or any replacement HAP Contracts. The term of this Agreement shall not be affected by the premature termination of the RAD HAP Contract (by way of illustration and not limitation, for breach or non-compliance) prior to its stated term (whether the initial term, any renewal term, or the term of any replacement HAP Contracts). In furtherance of the foregoing, unless otherwise approved by HUD this Agreement shall remain in effect until and unless released by HUD and such release is

recorded as contemplated by Section 8. Such release shall be the evidence of the determination not to execute a replacement HAP Contract and of the termination of this Agreement.

3. Use Restriction and Tenant Incomes. The Assisted Units shall be leased in accordance with the RAD HAP Contract, including any applicable eligibility and/or income-targeting requirements. In the case that the RAD HAP Contract is terminated prior to the release of this Agreement, 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 Area Median Income (AMI) at the time of admission (“Eligible Tenants”). Additionally, rents for such Assisted Units must not exceed 30% of 80% of 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 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.

4. Survival. This Agreement shall survive foreclosure and bankruptcy. This Agreement will survive abatement of assistance or termination of the RAD HAP Contract unless otherwise approved by HUD.

5. Fair Housing and Civil Rights Requirements. The Project Owner and its agents, where applicable, shall ensure that the Project complies with applicable federal fair housing and civil rights laws, regulations, and other legal authorities, including those identified at 24 C.F.R. § 5.105.

6. Accessibility Requirements. 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.

7. Restrictions on Transfer.

- A. HUD has been granted and is possessed of an interest in the above described Project. 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 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 land for use as streets, alleys, or other public rights-of-way and grants and easements for the establishment, operation and maintenance of public utilities. Except as otherwise approved in writing by HUD, 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.

- B. 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 terminate the Owner's interest in the HAP Contract, including all of the Owner's rights and obligations therein, and transfer the HAP Contract to another "Owner," as defined in section 8(f)(1) of the United States Housing Act of 1937, to ensure the continuation of rental assistance, as authorized under the HAP Contract.

8. 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 Contract 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.

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.

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. Conflicts. Any conflicts between this Agreement and the RAD HAP Contract or any other applicable HUD program requirements shall be conclusively resolved by the Secretary.

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 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.

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. At HUD's option, HUD may implement any such statutory amendment through rulemaking.

14. Books and Records. The Project books and records shall be established and maintained in accordance with HUD requirements. The Project Owner shall furnish any information and

reports pertinent to compliance with this Use Agreement and applicable HUD requirements as reasonably may be required from time to time by HUD, in a manner prescribed by HUD. Following receipt of appropriate and reasonable notice, the Project Owner shall permit HUD or any of their duly authorized representatives to have access to the premises and, for the purposes of audit and examination, to have access to any books, documents, papers, and records of the Project Owner that are pertinent to compliance with this Agreement.

15. 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 or exercising other rights and remedies available to it. 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.

16. **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, the parties hereto, by their respective duly authorized representatives, have caused their names to be subscribed hereto.

The below parties hereby certify that the information provided on this form and in any accompanying documentation is true and accurate. The undersigned understand that any misrepresentations may be subject to civil and/or criminal penalties including, but not limited to, fine or imprisonment, or both under the provisions of Title 18, United States Code, Sections 1001 and 1010. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of facts contained therein.

Project Owner:

[Insert Project Owner signature block.]

Date: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

County of _____

ss.

On _____, 20___, before me, a Notary Public for the above jurisdiction, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the above jurisdiction that the foregoing paragraph is true and correct. Witness my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[PHA or fee owner, if different from Owner]:

[Insert PHA or fee owner signature block.]

Date: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____

ss.

County of _____

On _____, 20__, before me, a Notary Public for the above jurisdiction, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the above jurisdiction that the foregoing paragraph is true and correct. Witness my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

Department of Housing and Urban Development

By: _____

Name: _____

Title: Director, Office of Recapitalization

Date: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Washington

District of Columbia

ss.

On _____, 20__, before me, a Notary Public for the above jurisdiction, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the above jurisdiction that the foregoing paragraph is true and correct. Witness my hand and official seal.

Notary Public

Print Name: _____

My commission expires: _____

EXHIBIT A
Property Subject to this RAD Use Agreement