

**USE AGREEMENT**

For Section 202 and 202/8 Projects that require HUD's approval to prepay their direct loan.

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (herein called "Owner") and the Secretary of Housing and Urban Development, acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner (herein called "HUD"),

Witnesseth:

WHEREAS, HUD is directed, pursuant to Section 811 of the American Homeownership and Economic Opportunity Act of 2000 (AHEO Act), as amended by Public Law 111 - 372, to permit the Owner to prepay Section 202 direct loans;

WHEREAS, \_\_\_\_\_(the " Project"), a \_\_ unit project located in \_\_\_\_\_, covering real property as described in Exhibit "A" attached hereto, which Mortgage was recorded in \_\_\_\_\_Recorder' s Office on \_\_\_\_\_as Document No. \_\_\_\_\_; and

WHEREAS, in consideration of the promise to permit the prepayment of the direct loan, and as required by Section 811 of AHEO Act Owner agrees to implement this Use Agreement, and agrees that such provisions shall run with the land.

NOW THEREFORE, the parties agree as follows:

1. Owner, for itself, its successors and assigns, covenants with HUD that the Owner will continue to operate the project on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 direct loan agreement and, where applicable, Section 8 or any HUD rental assistance payments contract and all applicable Federal regulations for not less than the twenty years following the maturity date of the original Section 202 direct loan. Accordingly, this Use Agreement shall remain in effect until [insert expiration date];
2. Where applicable:

a. Subject to the availability of appropriations and so long as Owner is in compliance with all HUD requirements, including but not limited to this Use Agreement, HUD shall provide, and Owner shall

accept, renewals of the Section 8 Housing Assistance Payments contract in accordance with the relevant HUD requirements related the Section 202 and 202/8 program at that time.

- b. Subject to the availability of appropriations, projects selected to receive the Senior Preservation Rental Assistance Contracts (SPRACs) or any other HUD rental assistance, shall comply with the requirements of the particular HUD rental assistance program.
3. In the event of a breach or a threatened breach of any of the above covenants and agreements by the Owner, HUD and/or any tenant as a third-party beneficiary shall be entitled to institute legal action to enforce performance and observance of such covenants and agreements and to enjoin any acts which violate such covenants and agreements. HUD and/or any tenant as a third-party beneficiary may also seek an award of damages and/or other relief as may be appropriate.
4. Owner shall not impede the reasonable efforts of tenants to organize pursuant to 24 CFR Part 245, or any successor regulations of Part 245, or unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the mortgaged property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to the operation of the mortgaged property.
5. When the 202 Direct Loan project initially refinances the 202 Direct Loan, the Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Use Agreement shall be recorded in the appropriate land records. [Subsequent refinancings of the 202 Project do not require a re-recording of this Use Agreement.]
6. Consistent with the tenancy eligibility requirements, if any, of the original Section 202 Direct Loan agreement, Owner will accept all forms of HUD rental assistance when offered for units that

do not have section 8 or any other HUD rental assistance for the life of the Use Agreement.

7. Upon execution of the refinancing for the project, as approved by HUD, Owner must use the proceeds that result from the refinancing in a manner that is advantageous to the tenants of the project. Or, Owner must use the proceeds in the provision of affordable rental housing and related social services of elderly persons that are tenants of the project or are tenants of other HUD assisted senior housing by the nonprofit owner, private nonprofit project sponsor or private nonprofit organization project developer. The following are examples of allowable uses of the proceeds pursuant to AHEO:
- (a) for up to 15 percent of the cost of increasing the availability or provision of supportive services, which may include the financing of service coordinators and congregate services. HUD may waive the 15 percent limitation, as necessary, to better enable seniors to age in place, if a waiver is sought by a nonprofit owner, sponsor or organization.;
  - (b) rehabilitation, modernization, or retrofitting of structures, common areas, or individual dwelling units, including reducing the number of units by reconfiguring units that are functionally obsolete, unmarketable, or not economically viable;
  - (c) construction of an addition or other facility in the project, including assisted living facilities (or, upon the approval of the Secretary, facilities located in the community where the project sponsor refinances a project under this section, or pools shared resources from more than one such project);
  - (d) rent reduction of unassisted tenants residing in the project;
  - (e) rehabilitation of the project to ensure long-term viability; and
  - (f) payment to the project owner, sponsor, or third-party developer of a developer's fee in an amount not to exceed or duplicate: (i) in the case of a project refinanced through a State low income housing tax credit program, the fee permitted by the low income housing tax credit program as

calculated by the State program as a percentage of acceptable development cost as defined by that State program; or (ii) in the case of a project refinanced through any other source of refinancing, 15 percent of the acceptable development costs (includes, as applicable, the cost of acquisition, rehabilitation, loan prepayment, initial reserve deposit and transaction costs).

8. To ensure Owner's compliance with the use of proceeds requirements found in section 7, Owner shall comply with all HUD administrative requirements with respect to those proceeds.
9. Ownership of the project will at all times be controlled by a nonprofit mortgagor entity or a limited partnership entity of which the general partner is a: (1) nonprofit affordable housing provider; (2) for profit corporation wholly owned and controlled by one or more non-profit affordable housing provider; or (3) a limited liability company wholly owned and controlled by one or more nonprofit affordable housing provider.
10. Owner will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, handicap, familial status or national origin, including the Fair Housing Act of 1968, as amended.
11. The rent charged for each unit shall not exceed the upper limit of the range shown for such type of unit on a rental schedule approved in writing by HUD, and shall include the reasonable use of all utilities shown on said schedule, but in no event shall the total gross monthly rents for all dwelling units exceed the gross monthly dwelling income for all units approved by HUD on the rental schedule.
12. No increase will be made in the amount of the gross monthly dwelling income for all units as shown on the rental schedule unless such increase is approved by HUD, who will at any time entertain a written request for an increase properly supported by

substantiating evidence and within a reasonable time shall approve or deny such request.

13. Owner shall maintain the premises and equipment, appurtenant thereto, in good repair and condition.
14. The books and accounts of the operations of the property and of the project shall be kept in accordance with the relevant HUD requirements related to the Section 202 and 202/8 program.
15. Within ninety (90) days following the end of each fiscal year, Owner shall provide a complete annual financial report based upon an examination of the books and records of the project prepared in accordance with the requirements of HUD and certified by a Certified Public Accountant, or other person acceptable to HUD.
16. Owner further covenants and agrees that if Owner conveys title to the project prior to the Use Agreement's expiration, Owner will prior to transfer of title, confirm the purchaser has been approved by HUD.
17. Owner shall provide to HUD (or to such third party as HUD may, in its sole discretion, determine to have the monitoring function under this Agreement), promptly following receipt of a written request from HUD (or from such third party), copies of all business or any other documents regarding the Housing Project, so that HUD may evaluate Owner's compliance with the terms of this Agreement. In addition, Owner shall permit representatives of HUD (or any third party given the monitoring responsibility) following notice from the HUD (or from the third party), to examine the originals of all such documents, at the Project's office during regular business hours.
18. Owner must certify annually by of each year (insert date within 30 calendar days of the anniversary date of this Agreement), to the local HUD field office, or such other location as determined by HUD, that it is operating the Project in compliance with this Agreement and, more

specifically, that all of the individual units, as well as the physical structure of the project as a whole, for example grounds and equipment, comply with all applicable codes and requirement of this Agreement or that a remedial program to correct any existing deficiencies has been implemented.

- 19. Runs With the Land. This Agreement shall run with the land and be binding upon the Owner, as well as any successors and assigns. Notwithstanding the above sentence, upon conveyance of the Project during the term of this Agreement, the Owner shall by contract, require its successors or assignees to assume its obligations under this Agreement.

Should any of the above covenants be held invalid in whole or in part, it shall not affect or invalidate the balance of such covenant or any other covenants.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

In witness whereof, the parties hereto have hereunto ~~caused these presents to be executed on their behalf and~~ their seals affixed the day and year written below.

WITNESS

(Owner)

BY

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and  
Acting

Secretary of Housing  
Urban Development  
by and through the  
Assistant Secretary  
for Housing - Federal  
Housing Commissioner

BY

(Authorized Agent)

ACKNOWLEDGEMENT BY OWNER BEFORE NOTARY PUBLIC  
(Complete according to requirements of state of execution.)

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ACKNOWLEDGEMENT BY COMMISSIONER:)  
STATE OF \_\_\_\_\_ ) SS:  
CITY AND COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, before me \_\_\_\_\_, a Notary  
Public in and for the City and County of \_\_\_\_\_,  
\_\_\_\_\_, appeared \_\_\_\_\_  
to  
me personally known and known to me to be the duly  
Authorized Agent of \_\_\_\_\_, and  
the person who executed the aforesaid instrument bearing  
the  
date of \_\_\_\_\_, 20\_\_\_\_, and acknowledged that he  
executed the aforesaid instrument for and on behalf of  
\_\_\_\_\_ for the purposes herein.

\_\_\_\_\_  
(NOTARY PUBLIC)

My Commission  
Expires: \_\_\_\_\_

ACKNOWLEDGEMENT BY COMMISSIONER:)  
STATE OF \_\_\_\_\_ ) SS:  
CITY AND COUNTY OF \_\_\_\_\_ )

ON this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, before me \_\_\_\_\_, a Notary  
Public in and for the City and County of \_\_\_\_\_,

\_\_\_\_\_, appeared \_\_\_\_\_  
to  
me personally known and known to me to be the duly  
Authorized Agent of the Secretary of Housing and Urban  
Development acting by and through the Assistant Secretary  
for Housing - Federal Housing Commissioner, and the person  
who executed the aforesaid instrument bearing the date of  
\_\_\_\_\_, 20\_\_\_\_, and acknowledged that he executed  
the aforesaid instrument for and on behalf of the said  
Secretary of Housing and Urban Development for the purposes  
herein.

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NOTARY PUBLIC)

My Commission Expires: \_\_\_\_\_