

**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
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Prepared by:

HUD Form as of December 2019

After recording return to:

This Rental Assistance Demonstration Use Agreement (hereinafter called the “Agreement”) is made as of [_____(date)], 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.)].

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 to private debt and equity to address immediate and long-term capital needs.

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 the corresponding PIH Notice 2012-32, rev-2, 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, run until the conclusion of the initial term of the RAD HAP contract, automatically renew upon each extension or renewal of the RAD HAP contract for a term that runs with each renewal term of the RAD HAP contract, and remain in effect even in the case of abatement or termination of the RAD HAP contract for the term the RAD HAP contract would have run, absent the abatement or termination.

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 date this Agreement is entered into and shall run until the conclusion of the initial term of the RAD HAP contract. The RAD HAP contract is effective for [15/20 years (insert appropriate term)]. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term of the RAD HAP contract and for additional periods to coincide with any renewal term of the RAD HAP contract or any replacement HAP contract. It is the intention of the parties that the RAD HAP and this Agreement shall each renew upon the completion of its initial term. Therefore, this Agreement shall remain in effect until a release is recorded as contemplated by Section 8. Such release shall be the evidence of the non-renewal of the HAP Contract, of the determination not to execute a replacement HAP contract and of the termination of this Agreement. This Agreement will survive abatement of assistance or termination of the RAD HAP contract unless otherwise approved by HUD.

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 completion of the term or renewal term, if applicable, of this Agreement (by way of illustration and not limitation, for breach or non-compliance), 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 will survive foreclosure and bankruptcy.

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. 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. 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 transfer the RAD HAP contract and the rental assistance contemplated therein to another entity and/or Property and/or Project. The Project Owner has constituted HUD as its attorney-in-fact to effect any such transfer.

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 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. 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. 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.

15. **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, these declarations are made as of the first date written above.

Department of Housing and Urban Development

By: _____
Name:
Title:
Date: _____

District of Columbia)
) ss:
)

Before me, _____, a Notary Public in
and for the District of Columbia on this _____ day of _____,
20____, personally appeared

_____, who is
personally known to me to be the person who executed the foregoing instrument by virtue of the
authority vested in him by the Department of Housing and Urban Development, and 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 _____.

Project Owner:

[Insert Project Owner signature block.]

Date: _____

State of _____)
County of _____) ss:

On this _____ day of _____, 20 _____, before me a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____, proved to me on the basis of satisfactory evidence to be the [title] of [Project Owner entity name] and the person who executed this instrument on behalf of Project Owner.

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)

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_____ (Notary Public)

My commission expires _____, 20 _____.

[PHA or fee owner]:

[Insert PHA or fee owner signature block.]

Date: _____

State of _____)
County of _____) ss:

On this _____ day of _____, 20 _____, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared _____ proved to me on the basis of satisfactory evidence to be the [title] of [Lessee entity name] and the person who executed this instrument on behalf of Lessee.

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)

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(Notary Public)

My commission expires _____, 20 _____.

EXHIBIT A – Property Subject to this RAD Use Agreement

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SECTION 18 NON-RAD PBV RIDER TO RAD USE AGREEMENT

WHEREAS, the PHA owned and operated _____ () dwelling units (the “**Units**,” or singularly, a “**Unit**”), more particularly described in those certain Declarations of Trust recorded in the Official Records of _____ (the “**Declarations of Trust**”), and as further described in Exhibit A, attached hereto and incorporated herein (the “**Disposition Property**”);

WHEREAS, the PHA owned and operated the Disposition Property as low-rent public housing with financial assistance provided by HUD under the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq. (the “**Act**”);

WHEREAS, construction and/or operation of the Disposition Property was financed in part by HUD under the Act;

WHEREAS, the PHA requested HUD approval of the conveyance of the Disposition Property in accordance with Rental Assistance Demonstration (“**RAD**”) and Section 18 of the Act, and specifically based on Section 3) A.3.c of PIH Notice 2018-04: “Comprehensive Rehabilitation or Replacement through Rental Assistance Demonstration (RAD).” Specifically, the PHA is demolishing the _____ () public housing units at the Disposition Property and replacing them under RAD and under Section 18 of the Act with Section 8 project-based voucher (“**PBV**”) assistance in accordance with 24 CFR part 983. The aggregate number of replacement units (RAD and PBVs) meets the RAD “substantial conversion of assistance” requirements; and

WHEREAS, as part of the RAD conversion, the PHA will ground lease the Disposition Property to the Project Owner, which will own a leasehold interest in and operate the Disposition Property as a combination of RAD Section 8 PBV and non-RAD Section 8 PBV replacement units, which project will commonly be known as _____ (the “**Project**”). The Project will contain _____ () dwelling units, of which _____ () dwelling units (“**RAD Units**”) are subject to a RAD Section 8 PBV Housing Assistance Payment Contract (HAP contract), and _____ () dwelling units are subject to a non-RAD Section 8 PBV HAP contract in accordance with HUD’s Section 18 disposition approval (“**Non-RAD PBV Units**”).

Now, therefore, in consideration of the foregoing, conversion of assistance pursuant to RAD, provision of rental assistance pursuant to the RAD Section 8 PBV HAP contract, SAC’s approval of a portion of the Disposition Property under Section 18 of the Act, and other valuable consideration, the parties hereby agree as follows:

1. Applicability of RAD Use Agreement. Except as noted or clarified in this Rider, all terms and conditions of the RAD Use Agreement apply to the Non-RAD PBV Units.

2. Section 2 of the RAD Use Agreement on Term which states that “unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term of the RAD HAP contract and for additional periods to coincide with any renewal term of the RAD HAP contract or any replacement HAP contract. It is the intention of the parties that the RAD HAP and this Agreement shall each renew upon the completion of its initial term. Therefore, this Agreement shall remain

in effect until a release is recorded as contemplated by Section 8. Such release shall be the evidence of the non-renewal of the HAP Contract, of the determination not to execute a replacement HAP contract and of the termination of this Agreement. This Agreement will survive abatement of assistance or termination of the RAD HAP contract unless otherwise approved by HUD” does not apply to the Non-RAD PBV Units.

Instead, the terms and conditions of HUD’s approval of the disposition of 80 units under Section 18 of the Act apply to the non-RAD PBV units. That approval requires, as a condition of HUD approving the disposition of the _____ units for below fair market value based on a finding of commensurate public benefit pursuant to 24 CFR 970.19, that this Rider reflect that the _____ units must be used exclusively as housing for low-income families under the Section 8 PBV program for a period of not less than 40 years. The Use Agreement shall automatically renew for any periods that are coterminous with any extended HAP contract applicable to the non-RAD PBV units. The parties intend to exercise the rights to extend the HAP contract to the maximum extent as may be permitted by section 8(o)(13)(G) of the Act, as amended, 24 CFR part 983, as amended, and 82 Fed. Reg. 5458, 5468. For purposes of this approval, the term "low-income families" is defined at Section 3(b)(2) of the Act and means families with incomes at or below 80% of median income for the area.

3. Section 7 of the RAD Use Agreement on Transfer of HAP which states that “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 transfer the RAD HAP contract and the rental assistance contemplated therein to another entity and/or Property and/or Project” does not apply to the Non-RAD PBV Units. Non-RAD PBV units are not subject to any of the transfer provisions in RAD.