

USE AGREEMENT

For Projects Assisted Under the Section 811 Project Rental Assistance Program

This Agreement entered into this ____ day of ____, 20__ by and between [insert Owner's name] (herein called "Owner") and the Minnesota Housing Finance Agency (herein called "Grantee"),

Witnessed:

WHEREAS, HUD is directed, pursuant to Section 811 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), as amended by the Frank Melville Supportive Housing Investment Act of 2010, Public Law 111 – 374, to establish the Section 811 Project Rental Assistance Program ("PRA") to provide rental assistance to persons with disabilities at eligible multifamily projects; and

WHEREAS, in consideration of the Grantee promise to provide HUD funding to Owner, for the property known as [insert development name], located in [insert city],[insert state], more particularly described in the RAC or in a separate development legal description attached as an Exhibit A to the Use Agreement, in accordance with HUD requirements related to the PRA, or any successor program, Owner agrees to implement this Use Agreement.

NOW THEREFORE, the parties agree as follows:

Owner, for itself, its successors and assigns, covenants with the Grantee that the Owner will operate a predetermined number of Assisted Units in the Owner's project in accordance with the Section 811 Project Rental Assistance Program, Rental Assistance Contract (RAC), and HUD PRA requirements, including but not limited to any applicable HUD regulatory, administrative, and contractual requirements, for not less than the thirty (30) years from the date of the Use Agreement. Accordingly, this Use Agreement shall remain in effect until [insert expiration date – will be 30 years from date of use agreement], or until such time as the number of Assisted Units in the RAC has been reduced to zero, as approve by the Grantee.

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, the Grantee shall provide to the Owner Rental Assistance

Payments for units assisted by Section 811 of NAHA (Assisted Units). If Congress fails to appropriate funds adequate to meet the financial needs of the Assisted Units, HUD will not require the Grantee to enforce the Use Agreement covered under a RAC. Under such a circumstance, HUD will allow Grantee to continue to enforce or terminate the Use Agreement at the Grantee's discretion.

In the event of a breach or a threatened breach of any of the above covenants and agreements by the Owner, Grantee or HUD 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 may also seek an award of damages and/or other relief as may be appropriate.

Owner, for itself, its successors and assigns, hereby agrees and acknowledges that this Use Agreement shall be recorded in the appropriate land records.

With respect to the eligibility requirements for the Assisted Units, Owner will comply with the RAC. Owner will comply with all other PRA, or successor program requirements as promulgated by HUD, as appropriate.

With respect to Assisted Units, 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.

The rent charged for Assisted Units shall not exceed the upper limit of the range shown for such type of unit on a rental schedule approved in writing by Grantee, and shall include the reasonable use of all utilities (if applicable) shown on the rental schedule. Notwithstanding any other provision of this Agreement, adjustments after Contract execution shall not result in higher rents charged for Assisted Units as compared to the non-Assisted Units, as determined by Grantee.

Any requests for rent adjustments to the Grantee by the Owner shall be consistent with the requirements of the Rental Assistance Contract and all other PRA or successor program requirements.

Owner shall maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD requirements.

The books and accounts of the operations of the property shall be kept in accordance with the relevant HUD requirements related to the PRA, or any successor program.

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: (1) confirm the purchaser has been approved by Grantee; the Grantee will ensure the purchaser will operate the project in such a way that it will remain an "Eligible Project" pursuant to 42 U.S.C 8013(b)(3)(C) and (2) require the purchaser to assume the obligations of this Use Agreement and the Rental Assistance Contract.

Owner shall provide to Grantee or HUD, promptly following receipt of a written request from HUD, copies of all business or any other documents regarding the Housing Project, so that Grantee or HUD may evaluate Owner's compliance with the terms of this Agreement. In addition, Owner shall permit Grantee or HUD following notice from Grantee or HUD, to examine the originals of all such documents, at the Project's office during regular business hours.

Owner must certify annually by [insert month and day that use agreement was signed] of each year (insert date within 30 calendar days of the anniversary date of this Agreement or insert date that will align with other program reporting requirements), to the Grantee that it is operating the Project in compliance with this Agreement and, more specifically, that all Assisted Units and non-Assisted Units, as well as the physical structure of the project as a whole, for example grounds and equipment, comply with all applicable codes and requirements of this Agreement or that a remedial program to correct any existing deficiencies has been implemented.

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 caused these presents to be executed on their behalf and their seals affixed the day and year written below.

OWNER:

[INSERT OWNER NAME]

a Minnesota [insert owner designation]

By: [Insert General Partner/Member Name]
a Minnesota [insert GP/Member
designation]
[General Partner][Member]

By: _____
[insert authorized signer name],
[insert title]

STATE OF MINNESOTA)
) ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by [insert authorized signer name], the [insert title] of [insert GP/Member name], a Minnesota [insert GP/Member designation], [General Partner][Member] of [insert borrower name], a Minnesota [insert borrower designation], on behalf of the [corporation][company] and the [limited partnership][company].

Notary Public

GRANTEE:

MINNESOTA HOUSING FINANCE
AGENCY

By: _____
James Lehnhoff
Assistant Commissioner, Multifamily

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20_____, by James Lehnhoff, the Assistant Commissioner, Multifamily of Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, on behalf of the agency.

NOTARY PUBLIC

Drafted by:
Minnesota Housing Finance Agency
400 Wabasha Street North, Suite 400
Saint Paul, MN 55102-1109

EXHIBIT A