

Capital Advance Program Use Agreement

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

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

OMB Approval No 2502-0470 (exp. 12/31/93)

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This Agreement made the 1st day of January, 1998, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and Beth-Anne Residences, a not for profit corporation, a private nonprofit corporation, organized and existing under and by virtue of the laws of the State of Illinois (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 071-EE067, financed with a Note and Mortgage (Deed of Trust), dated JAN 1, 1998, and covering real property as described in Exhibit "A" attached hereto, which Mortgage was recorded in the Recorder's Office of Cook County on JAN 20, 1998, as Instrument 98 050 992, Book, Page;

Whereas, The Project is subject to a Regulatory Agreement dated 5/21, 1998, and recorded on JAN 20, 1998, in the Recorder's Office of Cook County as document number 98050993, 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 April 20, 1999, 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 April 20, 1999, 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

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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 perfor-

mance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or 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.

In Witness Whereof, HUD and the Owner by its officers thereunto duly authorized has caused these presents to be signed in its name and corporate seal to be hereunto affixed and attested this 26th day of JANUARY, 1998.

(Seal)

Attest:

BETH ANNE RESIDENCES, an Illinois not for profit corporation

Name of Owner

Secretary

By (President)

*Mary Nelson*

Name

Name Mary Nelson

United States of America Secretary of Housing and Urban Development

Title President

By

Title

*Emuel Amos*

*DIRECTOR MF HOUSING*

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**EXHIBIT A**

**Legal Description**

**PARCEL 1**

LOTS 8, 8\*, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8J, 8J\*, 8K, 8L\* AND 8M OF BETH ANNE SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL 2**

EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR INGRESS, EGRESS, PARKING, STRUCTURAL SUPPORT, USE OF FACILITIES, USE OF RESIDENCES EASEMENT FACILITIES, SIGNS, UTILITIES, DELIVERIES, MECHANICAL UNITS, ENCROACHMENTS, RESIDENCES OWNED FACILITIES, SECURITY, COMMON WALLS, CEILINGS, FLOORS, AND LIGHT, AIR AND MAINTENANCE AS CONTAINED IN BETH-ANNE EASEMENT AND OPERATING AGREEMENT BETWEEN BETH-ANNE FOUNDATION AND BETH-ANNE RESIDENCES DATED JANUARY 20, 1998 AND RECORDED JANUARY 20, 1998 AS DOCUMENT NO. 98050991.

Address: 4952 West Thomas Street

PINs: 16-04-404-003-0000

Prepared by:

Richard F. Klimiter  
Rudnick & Wolfe  
203 North LaSalle  
Chicago, IL 60601

Return after recording to:

Joseph Strobel, Esq.  
HUD Legal Counsel, 26<sup>th</sup> Floor  
77 West Jackson  
Chicago, IL 60604

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