

Property Name ("Project") and Address:	Name of either the Public Housing Agency or Mod Rehab Owner ("Owner"):	Owner Address:

Rental Assistance Demonstration (RAD) Conversion Commitment (Public Housing and Section 8 Moderate Rehabilitation (Mod Rehab) Program Conversions; First Component)

**U.S. Department of Housing and Urban Development
Office of Multifamily Housing**

PIC Development Number or Mod Rehab Contract Number	Number of Units in PIC Development or under Mod Rehab Contract	Number of Units Converting and Included in this RAD Conversion Commitment

The Secretary of Housing and Urban Development ("Secretary"), acting by and through various officials ("HUD"), offers this commitment (this "Commitment") for the above project's participation in the Rental Assistance Demonstration (RAD) Program created by the Consolidated and Further Continuing Appropriations Act of 2012, and Notice PIH-2012-32 (the "Program"). This Commitment is subject to the terms and conditions set forth below.

TERMS AND CONDITIONS:

- 1. Applicable HUD Regulations and Requirements.** With regard to any Project covered by this Commitment, "Applicable HUD Regulations and Requirements" means (1) all applicable statutes and any regulations issued by HUD pursuant thereto that apply to the Project, including all Rental Assistance Demonstration (RAD) statutes and regulations, and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and Mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in the applicable closing document rather than add or delete provisions from such document.
- 2. Acceptance of Commitment/Expiration.** This Commitment shall terminate thirty (30) days from the date hereof unless the Owner executes and returns a copy of this Commitment to HUD, at the address that appears on the last page of this Commitment, to the attention of the official whose signature appears on the last page of this Commitment. The Owner may not make any alterations or modifications to this Commitment other than to execute this Commitment. If the transactions contemplated by this Commitment (collectively, the Transaction) are not closed to HUD's satisfaction within 90 days from the date this Commitment is issued, this Commitment

shall, unless extended by HUD in writing, expire and be of no further force or effect, legal or otherwise. Upon expiration, all rights and obligations of the respective parties shall cease.

In the case where, pursuant to paragraph 3, ownership of the project will be transferred, this Commitment shall also be executed by the transferred ownership entity at or prior to Closing and all requirements contained herein will apply to the new ownership entity.

3. **Closing Date.** The date upon which the binding legal instruments in the Transaction are executed and filed for record shall be called the "Closing Date." The Owner and HUD estimate that the Closing Date will be no later than _____ (the "Estimated Closing Date"). Attachment A hereto ("Closing Preparations") describes various conditions of closing and checklist items that must be completed before the closing can occur.
4. **HUD Approval of Project Ownership.** The Owner agrees that HUD approval of the legal entity that will own the Project following the closing of the Transaction is a condition of the Transaction.
 - a. **Ownership.**
 - The project is currently owned by the Owner, which is the intended RAD ownership entity.
 - At closing (or, in the case of Mod Rehab projects, prior to closing, if applicable), ownership of the Project will be transferred to _____, a _____ organized under the state of _____ ("Transferee"). The Owner agrees that transfer of ownership of the Project will occur at or prior to the Closing Date. At or prior to such transfer of ownership of the Project, the Owner shall assign its interest in this Commitment to Transferee, but only after receiving HUD approval of Transferee, which approval shall include, without limitation, Previous Participation approval through the Active Partners Participation Certification System (APPS) or through Form HUD-2530.
 - b. **2530 Approvals.**
 - All needed 2530 approvals have been received. All 'principals' of the proposed ownership entity (as such term is used for purposes of Form HUD-2530) have been approved by HUD.
 - All needed 2530 approvals have not been received. Prior to closing, all 'principals' of the proposed ownership entity (as such term is used for purposes of Form HUD-2530) shall have received Previous Participation approval from HUD, through the Active Partners Participation Certification System (APPS) or through Form HUD-2530.
 - c. **Proposed Organizational Documents.** To the extent a new entity was created to own the converting property, the organizational documents must be reviewed by HUD's attorneys and the form and substance of those documents must be consistent with HUD requirements.
 - HUD has approved the proposed organizational documents for the proposed ownership entity.
 - HUD has not yet approved the proposed organizational documents and such approval is a condition of closing the Transaction.
5. **Closing Documents.** The Owner shall execute or cause to be produced, as appropriate, such agreements, instruments, certificates and other documents as HUD may require to complete the Transaction (collectively, the "Closing Documents"), using forms prescribed by HUD and completed, executed, recorded and/or filed in the number of copies and in such manner as directed by HUD.
 - a. The Closing Documents shall include a specified "RAD Use Agreement", the form of which is attached to this document as Exhibit B.
 - b. The Closing Documents shall include a specified "Housing Assistance Payments Contract", the form of which is attached to this document as Exhibit C.
 - c. **Source of Financing.** The Closing Documents will include such documents as may be required by lenders and other parties providing funds for the Transaction, which documents shall be acceptable to HUD in HUD's sole and absolute discretion.

6. **Project Financial Condition.** Unless HUD gives written instructions otherwise, prior to the Closing Date the Owner shall take all steps necessary to ensure that:
 - a. Fire and other property insurance as required under applicable HUD requirements are and shall be maintained in full force and effect.
 - b. All ordinary and necessary operating expenses under Applicable HUD Requirements of the Project are paid through the Closing Date.
 - c. All statutory, regulatory, and HUD administrative requirements pertaining to the Project are and shall be satisfied notwithstanding the Owner's participation in the Program, except as expressly modified by this Commitment and/or the Closing Documents.Upon request by HUD, the Owner shall certify in writing that any or all of the foregoing requirements have been met.
7. **Project Physical Condition.** Except as expressly authorized in writing by the Secretary, during the period beginning with the date of this Commitment through the Closing Date, the Owner shall continue to maintain the physical condition of the Project in accordance with all applicable HUD regulations and requirements and all applicable local codes. Upon request by HUD, the Owner shall provide a written certification, in a form satisfactory to HUD, with respect to this requirement.
8. **Expenses and Transaction Costs.** Except as otherwise set forth in this Commitment and the attachments hereto, regardless of whether the Transaction is consummated, HUD shall not be responsible for any expenses or transaction costs incurred by or at the direction of the Owner in connection with the Transaction (including fees for consultants, attorneys, environmental contractors, tax advisors and accountants; city, county and/or state taxes and/or fees; recording fees, prepayment penalties and/or premiums; costs for title insurance and title examination; surveys and appraisals).
9. **HUD Claims, Causes of Action and Demands.** Notwithstanding the execution of this Commitment by HUD or the consummation of the Transaction, HUD's obligations hereunder remain subject to, without limitation, the provisions of Notice PIH-2012-32, and any and all claims, causes of action or demands that may be asserted against the Owner (including any party related to, affiliated with, or a subsidiary of, the Owner) by or on behalf of the Secretary, HUD or others, civil or criminal, whether known or unknown, foreseen or unforeseen, asserted or unasserted, matured or not, shall remain uncompromised and not prejudiced.
10. **Tax, Financial, and Legal Consequences.** HUD has not provided, nor shall it provide, any opinions, representations, warranties, or covenants regarding any federal, state and/or local tax consequences, financial consequences, or legal consequences relative to the Transaction. The Owner and all other parties to, or affected by the Transaction are advised by HUD to consult with their own legal counsel and tax advisers with respect to all such matters. The Owner agrees that it is relying on its own independent determination regarding the tax, financial and legal matters related to this Transaction and not upon any representation made by any other party to this Transaction or any other party's agent or employee. Under no circumstances shall the reliance or performance of the Owner on matters—including but not limited to the tax, or financial or legal matters—result in obligations, duties, or liabilities for HUD.
11. **Owner Certifications.** By executing this Commitment, the Owner hereby certifies to HUD that:
 - a. The Owner provided all notices relating to the Program in the form approved by HUD, to such persons and in the manner required by the Program in compliance with applicable Program requirements promulgated by the Secretary.
 - b. The Owner continues to meet all program eligibility requirements as stipulated in PIH Notice 2012-32.
 - c. As of date of this Commitment, the Owner is not subject to, or received any notice of any debarment, suspension or other administrative proceeding or investigation, including any sanctions against a public housing agency (including, but not limited to employees, Board Members and principals), initiated by HUD, or any other federal or state government agency against such party.
 - d. Prior to the Closing Date, the Owner agrees to notify HUD immediately, in writing, of any

proposed or actual transfer of any ownership interests in the Project (whether or not such transfer requires HUD approval).

- e. Through the Closing Date, the Owner agrees that no such transfer shall become effective until the Secretary has issued any approval that may be required under applicable HUD requirements.

Upon the request of HUD, the Owner shall provide HUD with evidence satisfactory to HUD relating to each of the foregoing certifications.

12. **Certifications, Representations and Warranties by Owner.** Any certification, representation or warranty delivered by Owner pursuant to this Commitment shall be true and correct when given, and shall remain true and correct at all times through and including the Closing Date. In the event any such certification, representation or warranty is no longer complete or correct, and without limiting HUD's rights and remedies, the Owner shall immediately provide to HUD an updated document completing or correcting the certification, representation or warranty.
13. **Failure by Owner to Take Required Actions.** In the event that Owner fails to take any action, or deliver any information, called for under this Commitment, within the time frames contemplated under this Commitment (including any time frames provided under applicable law and regulations, and taking into account any requirements of applicable law and regulations regarding notices and opportunities to cure), HUD may (without further notice and without offering an additional opportunity to cure) declare that this Commitment is null and void and of no further force or effect.
14. **Controlling Provisions; Severability.** This Commitment is subject to all applicable law and regulations. In the event of a conflict between the terms and conditions of this Commitment and applicable law or regulations, the applicable law or regulations shall control. Should any provision of this Commitment be held by a court of law to be unenforceable, such determination shall in no way compromise the enforceability of the other provisions.
15. **Successors and Assigns.** This Commitment and its attachments are binding upon the Owner and upon Owner's successors and assigns. Unless otherwise provided herein, this Commitment may not be assigned by the Owner, in whole or in part, except upon the prior written consent of HUD.
16. **Conditions of Closing.** This Commitment shall not be effective or enforceable against HUD until all conditions stated herein have been satisfied.
17. **HUD Approvals and Decisions.** Any approval or decision of HUD pursuant to this Commitment shall be in HUD's sole and absolute discretion. No such approval or decision shall be deemed to have been made unless given in writing and executed by an authorized representative of HUD. HUD's execution of the Closing Documents shall constitute any approvals or decisions not previously given in writing.
18. **Post-Closing Corrections.** Notwithstanding anything to the contrary contained in this Commitment, Owner agrees to execute, before or after the Closing Date, such documents, amendments or modifications as HUD deems necessary or appropriate to effectuate the intent of this Commitment or to complete or consummate the Transaction, including but not limited to instruments necessary to correct this Commitment or any of the Closing Documents.
19. **Changes to This Commitment.** Amounts and other business terms identified in this Commitment are estimates, based on the information readily available at the time this Commitment is issued, and reflect an assumption that the Transaction will close on the Estimated Closing Date. In the event such estimates are later determined to be inaccurate, the parties agree to notify each other and (unless HUD determines that the Transaction is not economically and practically feasible or otherwise is unacceptable, in which case HUD may declare this Commitment null and void and of no further force and effect) execute an amendment to this Commitment reflecting the revised terms. The final amounts and other business terms shall be determined by the Closing Date and inserted into the applicable Closing Documents. The Owner's execution of the Closing Documents shall constitute the Owner's acceptance of the final amounts and other business terms reflected therein. At or after the Closing Date, HUD will

execute a Final Administrative Amendment to this Commitment, reflecting the final amounts and other business terms, and the Owner will execute such Final Administrative Amendment if HUD so requests.

20. **Sources of Funds.**

a. **Type of Financing .**

- **No commercial first mortgage.** The project will not be financed with a commercial mortgage loan.
- **Conventional First Mortgage Financing.** On the Closing Date, the Owner shall cause the Project and Transaction to be financed with a non-FHA insured mortgage loan (the "New Loan"). The terms of the New Loan shall be consistent with the terms and conditions of this Commitment, and must otherwise be acceptable to HUD as to form and substance. As a condition of closing, and not less than 40 calendar days prior to the closing, the Owner shall submit to HUD a binding commitment for the New Loan, which commitment shall be acceptable to HUD in its sole and absolute discretion.
- **FHA-Insured First Mortgage Financing.** On the Closing Date, the Owner shall cause the Project and Transaction to be financed, with a new FHA insured mortgage loan (the "New Loan"). The terms of the New Loan shall be consistent with the terms and conditions of this Commitment and the applicable HUD requirements for the New Loan. The Owner must deliver to HUD a copy of the fully executed FHA Firm Commitment for the New Loan within 40 calendar days prior to closing
- **Secondary Mortgage Financing.** On the Closing Date, the Owner shall cause the Project and Transaction to be financed with a secondary mortgage loan (the "Secondary Loan"). The terms of the Secondary Loan shall be consistent with the terms and conditions of this Commitment, and must otherwise be acceptable to HUD as to form and substance. As a condition of closing, and not less than 40 calendar days prior to the closing, the Owner shall submit to HUD a binding commitment for the Secondary Loan, which commitment shall be acceptable to HUD in its sole and absolute discretion.

- b. **Business Terms of the New Loan (if applicable).** The terms of the New Loan are estimated to be as follows (note: repeat the table if more than one loan):

Original Principal Amount	
Lender	
Loan type	
Interest Rate	
Mortgage Insurance Premium (if not included in interest rate)	
Loan Term	

Note: The Mortgage or Deed of Trust securing the New Loan will be recorded after the RAD Use Agreement and will be subject to the RAD Use Agreement.

c. **Other Sources of Funds.**

- i. The Transaction will include such other sources of funds as are described in Exhibit D Sources and Uses of Funds. Exhibit E shall describe the key business terms of all sources of funds other than any commercial first mortgage loan described in the preceding paragraph.
- ii. Other than any commercial first mortgage loan described in the preceding paragraph, no additional debt (secured or unsecured) may be created against the

Please Note: The above contract rents will be effective for any closing that occurs during the period of the current appropriations, which shall run through _____. If the closing occurs after the above date, the contract rents will be revised to reflect the appropriations available at that time (See PIH Notice 2012-32).

23. **Required Repairs (not applicable in the case of new construction).** The Owner agrees to complete the Repairs described in Exhibit F in accordance the following provisions.
- a. The estimated cost of the Repairs, including contingency, shall be funded in the manner described below.
 - **FHA 221(d) financing will be utilized.** Because the transaction will be financed in accordance with Section 221(d) of the National Housing Act, the Repairs shall be funded through draws on the proceeds of the New Loan.
 - **223(f), FHA risk-sharing or other FHA financing will be utilized.** Because the transaction will be financed in accordance with the National Housing Act, the estimated cost of the Repairs, plus contingency, shall be deposited into a Rehabilitation Escrow. The Rehabilitation Escrow shall be held by the FHA-approved lender and shall be controlled and managed in accordance with HUD requirements applicable to the FHA program under which the New Loan will be endorsed for mortgage insurance.
 - **Otherwise.** The estimated cost of the Repairs, plus contingency, shall be deposited into a Rehabilitation Escrow.
 - The Rehabilitation Escrow will be held, controlled, and managed by _____ (“Rehab Administrator”).
 - The Repairs shall be administered in a commercially standard and reasonable manner, in accordance with a written agreement (“Rehabilitation Agreement”).
 - In the event of owner default under the Rehabilitation Agreement, the Rehab Administrator shall notify HUD within 10 calendar days after default and shall, within 30 calendar days after default, submit an action plan to HUD. HUD reserves the right (but is not obligated), at any point during the remaining life of the rehabilitation/construction escrow agreement, to take over administration of the rehabilitation, contract for the remaining repairs, pay for completion of repairs from rehabilitation funds, place a lien on the project for any actual costs of rehabilitation and administration that exceed available funds in the escrow, and enforce the lien in the event of nonpayment.
 - The Owner and Rehab Administrator shall provide to HUD a certification, acceptable to HUD in HUD’s sole and absolute discretion, that the Repairs will be managed in accordance with all applicable requirements of the Program.
 - b. In carrying out the Repairs, the Owner shall comply with applicable requirements of:
 - i. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations at 49 CFR Part 24 with regard to any temporary relocation of residents.
 - ii. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR Parts 8.22 and 8.23, with regard to any “substantial alterations” defined in such regulations.
 - iii. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR Part 8.23, with regard to any other “alterations” as defined in such regulations.
 - iv. The design and construction requirements of the Fair Housing Amendments Act of 1988 and its implementing regulations at 24 CFR Part 100.25, with regard to housing first constructed after March 13, 1991.
 - v. Section 3 of the Housing Act of 1968 and all of the related regulations, rules and requirements for any Repairs that qualify as “construction” or “rehabilitation” as defined in such regulations, rules and requirements.
 - vi. Davis-Bacon prevailing wage requirements, section 12 of the United States Housing Act of 1937, and Contract Work Hours and Safety Standards Act, and all of the related regulations, rules and requirements for any Repairs that qualify as

“construction” or “rehabilitation” as defined in such regulations, rules and requirements.

vii. The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-485 6), and implementing regulations at 24 CFR part 35, as applicable

- c. Failure by the Owner to complete the Repairs in accordance with this Commitment shall constitute a breach of this Commitment.
- d. The Repairs shall be completed within 12 to 18 months following the Effective Date of the HAP Contract.
- e. Any actual costs for the Repairs in excess of funds available shall be paid by the Owner from non-project funds.
- f. The Owner shall not be entitled to earn or receive any cash flow distributions from the Project until after completion of the Repairs, inspection of the completed Repairs, certification of the actual cost of the Repairs, and written HUD acceptance of the completed Repairs.
- g. HUD’s written acceptance of the completed Repairs shall constitute HUD’s consent for the Owner to direct the application of any remaining repair funds.

24. **New Construction.** In the case of New Construction, the Owner agrees to complete the Construction described in Exhibit F in accordance with the following provisions:

- a. The plans and specifications for the Construction shall meet all requirements listed below:
 - i. The more stringent of the following:
 - 1. A national building code, such as Uniform Building Code, Council of American Building Officials Code, or Building Officials Conference of America Code; or
 - 2. Applicable State and local laws, codes, ordinances, and regulations;
 - ii. Other Federal requirements including any Federal fire-safety requirements and HUD minimum property standards (e.g., 24 CFR part 200, subpart S for FHA-insured properties);
 - iii. The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-484 6), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-485 6), and implementing regulations at 24 CFR part 35, as applicable;
 - iv. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR Parts 8.22 and 8.23; and
 - v. The design and construction requirements of the Fair Housing Amendments Act of 1988 and its implementing regulations at 24 CFR Part 100.25.
- b. The estimated cost of the Construction, including contingency, shall be funded, and the Construction shall be managed, in the manner described below.
 - **FHA 221(d) financing will be utilized.** Because the transaction will be financed in accordance with Section 221(d) of the National Housing Act, the Construction shall be funded through draws on the proceeds of the New Loan.
 - **Non-FHA construction financing will be utilized.** The Financing Plan must propose a financing and construction management approach that provides at least as much protection to HUD as the FHA Section 221(d) approach. The Financing Plan must also include full plans and specifications and be based on a fixed price general construction contract. The Construction shall be funded and controlled in the following manner:
 - 1. The Owner shall engage a qualified general contractor.
 - 2. The general contractor shall obtain either (i) a payment and performance bond from a properly licensed surety, which bond and surety shall be acceptable to HUD in HUD’s sole and absolute discretion; or (ii) a letter of credit, acceptable to HUD in HUD’s sole and absolute discretion.
 - 3. The Owner shall provide a completion guarantee agreement, from a creditworthy guarantor, promising to complete construction if the general contractor fails to do so, and promising to pay any costs in excess of budget, including any costs due to change orders. Such completion guaranty, and guarantor, shall be acceptable to HUD in HUD’s sole and

absolute discretion.

d.	Input by Transaction Manager (Describe how construction will be funded (construction loan, construction escrow, ...) and how the funds will be controlled.)
e.	Input by Transaction Manager (Describe the construction inspection process.)
f.	Input by Transaction Manager (Describe the process for progress payments during construction.)
g.	Input by Transaction Manager (Describe the process for approval of change orders. There is no requirement for HUD to approve change orders.)

- h. The Owner shall provide to HUD a certification, acceptable to HUD in HUD's sole and absolute discretion, that the Construction will be managed in accordance with all applicable requirements of the Program.
- c. In carrying out the Construction, the Owner shall comply with applicable requirements of:
- i. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations at 49 CFR Part 24 with regard to any temporary relocation of residents.
 - ii. Section 3 of the Housing Act of 1968 and its implementing regulations at 24 CFR Part 135.
 - iii. Davis-Bacon prevailing wage requirements, section 12 of the United States Housing Act of 1937 and Contract Work Hours and Safety Standards Act, and all of the related regulations, rules and requirements.
- d. The scope of construction described in Exhibit F shall not be reduced. Any reduction in the scope of construction shall constitute a breach of this Commitment unless it has been approved by HUD.
- e. Failure by the Owner to complete the Construction in accordance with this Commitment shall constitute a breach of this Commitment.
- f. The Construction shall be completed within _____ months following the Closing Date.

25. Critical Repairs.

- **The project has critical repairs.** Exhibit G contains a list of critical repairs. On or before closing, the Owner will provide HUD with evidence, satisfactory to HUD in its sole and absolute discretion, that all critical repairs have been completed and paid for.
- **The project does not have critical repairs.**

26. Reserve for Replacements.

- a. The new Reserve for Replacements balance to be established at Closing (Initial Deposit to Replacement Reserves, or IDRR) is estimated to be _____.
- b. The initial monthly deposit to the Reserve for Replacements, to be made from project rental income, and to be effective after the Closing Date, and subject to annual increases as required by HUD, is estimated to be _____.

27. **Owner's Counsel.** The Owner agrees to select counsel to represent the Owner in connection with this Transaction, which counsel shall not, in HUD's sole and absolute discretion, have a conflict of interest, defined as a situation in which the proposed counsel (a) has a financial interest in the Project, or in the provision of goods or services (including financing) to the Project; or (b) has one or more personal, business, or financial interests or relationships which would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the proposed counsel.

28. Additional Special Terms and Conditions (as applicable).

- **Green Certification.** Owner has elected to pursue certification of _____ as a condition of its participation in the Program. The Owner shall not be entitled to earn its final Development Fee draw until after HUD has concurred in writing that such Green certification has been achieved.
- **Modification of Existing Junior Debt.** Within 30 days of execution of this Commitment, the Owner agrees to provide to HUD a true and correct copy of all notes, riders, allonges,

security instruments and other documents evidencing that certain loan owed by Owner to _____, dated _____, and in the original principal amount of _____. Owner acknowledges that the Closing Date shall not be scheduled until such time as Owner has demonstrated that such loan has been satisfied (from non-project funds) or has demonstrated, to HUD's satisfaction, in HUD's sole discretion, that Owner and the lender have modified (or agreed to modify at or prior to the Closing Date) such loan in a manner satisfactory to HUD in its sole and absolute discretion.

- Other special conditions (explain):

29. **Exhibits.** The following exhibits are a part of this Commitment, as follows:

- a. Closing Preparations
- b. Form of RAD Use Agreement.
- c. Form of RAD HAP Contract.
- d. Sources and Uses of Funds
- e. Key Business Terms
- f. List of Repairs or Description of New Construction
- g. List of Critical Repairs
- h. Form A of Owner Certification Re: Accounts Payable and Form B of Owner Certification Re: Accounts Payable
- i. Excess Obligations Approved for Payment as Transaction Costs and Excess Obligations to be Satisfied Prior to the Closing Date

30. **Entire Agreement; Survival.** All prior and contemporaneous oral and written communications are merged herein and superseded hereby, and this Commitment and all exhibits attached constitute the entire agreement between the Owner and HUD with respect to the Transaction. This Commitment shall survive Closing of the Transaction.

31. **Binding Effect.** The binding effect and implementation of this Commitment is not contingent in any way upon the provision by Congress of any funds. Owner acknowledges that Congress is not obligated to appropriate any funds to satisfy this Commitment

32. **Consistency with Federal Law.** Nothing contained in this Commitment shall impose on HUD any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes, rules, or regulations in effect at the time of such performance

This Commitment shall be binding upon the parties hereto and their successor and assigns.

I certify under penalty of perjury that the foregoing is true and correct.

Signature Page

Department of Housing and Urban Development

By: _____
Name: _____
Title: _____
Date: _____

ACCEPTED AND AGREED TO:

- Owner:

By: _____
Name: _____
Title: _____
Date: _____

- Transferee:

By: _____
Name: _____
Title: _____
Date: _____

Return the signed RAD Conversion Commitment to:

Name _____
Title _____
U.S. Department of HUD
Address _____

EXHIBIT A
Closing Preparations

1. HUD Approval of Project Ownership.

- a. HUD Previous Participation approval of all 'principals' is a condition of closing.
- b. HUD approval of proposed organizational documents of the project owner is a condition of closing.
- c. Note: unless paragraph 3 of the RAD Conversion Commitment permits transfer of the project, no transfer of the project may take place prior to closing.
- d. Note: no change of 'principals' may occur (either before or after the closing) without HUD's prior written approval.
- e. Note: no change to the proposed organizational documents may occur without HUD's prior written approval.

2. Availability of Public Housing Funds.

In accordance with HUD instructions, the PHA hereby certifies that, as of the Closing Date, the PHA will have sufficient Operating Fund and Capital Fund amounts remaining under its Annual Contributions Contract ("ACC") in an amount up to _____ in Capital Funds and up to _____ in Operating Funds available for reservation and transfer at closing, subject to availability of appropriations and in accordance with Applicable HUD Requirements.

3. Sources and Uses of Funds.

- a. On the Closing Date, the Owner shall prepare and certify to HUD, a final Sources and Uses of Funds Statement. This statement must be in the form of Exhibit D, the preliminary Sources and Uses of Funds Statement, attached. Note: if there will be construction financing, both construction and permanent Sources and Uses statements should be submitted.
- b. The final Sources and Uses of Funds Statement must reflect all of the final elements of the Transaction and must further demonstrate the following:
 - i. no disbursement of funds have been made to the Owner, except as otherwise expressly identified on the final Sources and Uses of Funds Statement and approved by HUD in writing; and
 - ii. no disbursements of funds have been made to any of the principals or affiliates of the Owner, except as otherwise expressly identified on the final Sources and Uses of Funds Statement and approved by HUD in writing; and
 - iii. no disbursements of funds have been made to any other party, except as otherwise expressly identified on the final Sources and Uses of Funds Statement and approved by HUD in writing.

4. Restrictions on New Junior Debt. If the Financing Plan includes new junior debt, the following requirements are applicable. If the Owner is considering adding new junior debt, prior written HUD approval is required (to document a change to the Financing Plan), and the following requirements will be applicable.

- a. For PHAs, any new debt must be expressly subject to the RAD Use Agreement.
- b. If the transaction involves FHA-insured financing, the proposed new junior debt must be unsecured, payable only from positive annual audited surplus cash, and must have a maturity date equal to or greater than the expiration date of the RAD Use Agreement.
- c. For PHAs, if there is no FHA-insured financing, the senior lender must submit a request to HUD to allow new junior debt, the request must specify that the proposed new junior debt shall be subject to the RAD Use Agreement, the request must include the consent of both the senior lender and the proposed junior lender, and the request must discuss whether the proposed new junior debt will be secured (and if so the lien position that is acceptable to both lenders), the repayment provisions that are acceptable to the both lenders, and the maturity date that is acceptable to both lenders.

5. Closing Documents.

- a. Execution of the RAD Use Agreement (for PHAs only).

- i. The RAD Use Agreement shall be recorded in the land records for the jurisdiction in which the Project is located.
 - ii. The RAD Use Agreement shall be superior to the lien and/or encumbrance evidenced by any and all mortgages, deeds of trust and other financing documents and regulatory documents related to the Project (including any LIHTC use agreement).
 - iii. The Owner shall obtain such consents, and have such documents executed, as HUD may determine necessary to establish such priority. At a minimum, the note / loan agreement of each secured lender must acknowledge the RAD Use Agreement and must acknowledge that its mortgage lien is subject to the RAD Use Agreement.
 - b. Execution of the RAD HAP Contract (for PBRA or PBV, as applicable).
 - c. Bond Financing (as applicable).
 - i. The Owner must submit documentation that issuance of the bonds has been authorized.
 - ii. The owner must submit the firm commitment to purchase the bonds.
 - d. Low-income Housing Tax Credits (LIHTC) Equity (as applicable).
 - i. The pay-in schedule must be included in the equity commitment.
 - ii. The pay-in schedule must be acceptable to HUD.
 - iii. The first equity installment must be funded into the closing escrow.
 - iv. The Owner must submit the LIHTC reservation letter (from the state allocating agency) as well as the equity commitment letter (from the investor).
 - e. Form HUD-92458 Rental Schedule, approved by HUD. (as applicable)
 - f. Property Management Agreement and Certification. (as applicable)
 - i. The Owner shall provide a contract for competent management of the Project, by and between the Owner and approved property management firm, the form and sufficiency of which must be satisfactory to HUD.
 - ii. Such contract shall be consistent with the HUD-approved Financing Plan and with this Commitment.
 - iii. HUD approval of a properly executed Management Certification (Form HUD-9839), to take effect at the Closing Date, consistent with such contract, shall be a condition of closing.
 - iv. The Management Certification must reflect a residential property management fee in a percentage that does not exceed the percentage noted in the approved Financing Plan and that is acceptable to the Multifamily Field Office with jurisdiction for the Project.
 - v. If the property has commercial income. The Management Certification must reflect a commercial property management fee that does not exceed the percentage noted in the approved Financing Plan and that is acceptable to the Multifamily Field Office with jurisdiction for the Project.
 - g. Fidelity Bond. (as applicable) As a condition of closing, the Owner will submit to HUD evidence that the property management agent has a fidelity bond in an amount equal to at least two months' potential rent collections for the Project, which bond shall be from a surety and in a form acceptable to HUD, and which bond names the lender of the New Loan, and HUD, as additional loss payees.
 - h. Consents. HUD's receipt, on or before the Closing Date, of written evidence, in a form satisfactory to HUD, that the Owner has received any and all consents required in order to consummate the Transaction. This may include the consent of any party whose consent is required pursuant to the Owner's organizational documents or applicable law, and any other parties that have contracts or agreements that may be modified, breached, or terminated as a result of the Transaction. The Owner shall be obligated to obtain these consents at its own cost and expense.
 - i. Other. Any other documents necessary to implement the Transaction.
- 6. Accounts Payable.**
- a. If the Owner submitted Form A (no payables), the following requirements are applicable.
 - i. The Owner submitted a certification titled "Form A Owner Certification Re: Accounts Payable" (the "Certification") to HUD, containing representations and warranties with respect to the financial condition of the Project. The Owner

acknowledges that HUD has relied upon the Certification as a basis for the issuance of this Commitment. The Owner represents and warrants that the Certification remains true and correct as of date the Owner executed this Commitment.

- ii. Prior to the Closing Date, at the request of HUD, the Owner shall reaffirm the truth and accuracy of the Certification ("Final Certification"), upon which the PAE and HUD shall rely for the purposes of the Transaction. Any deviation that arises between the Certification and the Final Certification is subject to the review and approval of HUD as a condition of closing of the Transaction.
- b. If the Owner submitted Form B, the following requirements are applicable.
- i. The Owner submitted a certification titled "Form B Owner Certification Re: Accounts Payable" (the "Certification") to HUD containing four (4) attachments. Generally, Attachment A to the Certification was a list of Accounts Payable, Attachment B was a list of all Other Project Liabilities, Attachment C was a list of the balances in all cash accounts, and Attachment D disclosed all other sources of funds of the Project for the satisfaction of the Accounts Payable and Other Project Liabilities. The Certification defines or characterizes in detail the items contained in each attachment. The Owner acknowledges that HUD has relied upon the Certification as a basis for the issuance of this Commitment. The Owner represents and warrants that the Certification remains true and correct as of date the Owner executed this Commitment.
 - ii. Items on Attachments A and B of the Certification were compared against items on Attachments C and D of the Certification to determine if there are obligations that exceed available assets ("Excess Obligations"). Excess Obligations that will be paid as costs of the Transaction, if any, are listed on Exhibit C-1 to this Commitment. Any remaining Excess Obligations, if any, are listed on Exhibit C-2 to this Commitment, and shall be paid by the Owner as a condition of closing of the Transaction, without utilization of any assets of, or any assets secured by a lien on, the Project.
 - iii. The Owner's Form B accounts payable certification must be updated, prior to closing, to establish the final payables to be cleared as transaction costs. HUD and the owner will select the most appropriate date for the Final Certification. Prior to the Closing Date, as of a date that is acceptable to HUD, the Owner shall update and revise the Certification ("Final Certification"), upon which HUD shall rely for the purposes of the Transaction. Any deviation that arises between the Certification and the Final Certification is subject to the review and approval of HUD as a condition of closing of the Transaction. HUD will revise Exhibits C-1 and C-2 to this Commitment based upon the Final Certification and based upon the Secretary's review of the Final Certification.
 - iv. Closing cannot be scheduled until the owner has cleared the payables listed on Exhibit C-2 and provided acceptable documentation of payment (from non-project funds) to HUD and to the closing escrow agent. The Owner shall provide information sufficient to ensure proper payment of the Excess Obligations listed on Exhibit C-1, on the Closing Date, by the closing escrow agent. Prior to the Closing Date, the Owner shall provide evidence satisfactory to HUD that the Excess Obligations listed on Exhibit C-2 have been paid in full (or otherwise satisfied) by the Owner, without utilization of any assets of, or any assets secured by a lien on, the Project.
7. **Opinion of Owner's Counsel.** Owner's counsel must give an opinion, unless an opinion from another counsel is approved by the HUD Closing Attorney, specifically supplementing the opinion given by Owner's counsel at the closing. HUD's obligations under the Commitment are conditioned further upon its receipt from the Owner's Counsel (including local counsel, as applicable), on or before the Closing Date, of a legal opinion in a form prescribed by HUD which states the following:
- a. the Owner is duly organized and validly existing under the laws of the applicable jurisdiction(s);
 - b. the Owner has the requisite power and authority to consummate the Transaction;
 - c. the Owner has secured all consents that are required to consummate the Transaction;

- d. each of the Closing Documents executed by or on behalf of the Owner in connection with the Transaction is a legally binding obligation of such party, enforceable in accordance with its terms;
 - e. there is no litigation or other claim pending or threatened against the Owner or the Project other than as disclosed therein;
 - f. for PHAs, the RAD Use Agreement is superior to the lien and/or encumbrance evidenced by any and all mortgages, deeds of trust and other financing documents and regulatory documents of record relating to the Project;
 - g. the Owner's counsel will provide, upon request by HUD, a dispositive legal opinion on any additional matter HUD considers pertinent to this Transaction; and
 - h. that the documents are in accordance with Applicable HUD Regulations and Requirements.
8. **Existing Loans That Will Survive the Closing.** If the Financing Plan provides for any existing loan to survive the closing, the following requirements will be applicable. If the Owner is considering a change to allow an existing loan to remain after closing, prior written HUD approval is required (to document a change to the approved Financing Plan), and the following requirements will be applicable.
- a. Any existing loans to Owner from any party (including, without limitation, affiliates of Owner), that are to remain outstanding after the Closing Date hereunder (collectively, the "Existing Loans"), shall be subordinated in all respects to the lien, payment and priority of the RAD Use Agreement, the New Loan if any, and all associated Mortgages, Deeds of Trust and other security instruments.
 - b. No Existing Loan shall be secured by the Project or any interest therein or related thereto after the Closing Date, unless HUD gives its permission in writing.
 - c. No Existing Loan shall be payable during the Use Restriction Period, except to the extent that they may be repayable solely from Surplus Cash, as defined by the Secretary, distributable and distributed to the Owner under and subject to all applicable HUD rules, regulations, guidelines and/or requirements, unless HUD gives its permission in writing.
 - d. On or before the Closing Date, Owner and the holders of any Existing Loans (that will not be paid off or otherwise satisfied at or prior to the Closing Date) shall acknowledge the foregoing and execute and deliver one or more subordination agreements satisfactory to HUD in HUD's sole and absolute discretion.
9. **Removal of Units from PIC (for PHAs only).**
PHAs must follow instructions provided by HUD to remove the project, or portions thereof, from PIC to effect conversion.
10. **Submission of Budget Revision.**
This submission is to satisfy paragraph 20(a) of the RAD Conversion Commitment, and must be completed in a manner acceptable to HUD.
11. **Additional Certifications That HUD May Request.**
- a. Certification of project financial condition (see paragraph 5).
 - b. Certification of project physical condition (see paragraph 6).

EXHIBIT B
Form of RAD Use Agreement

EXHIBIT C
Form of RAD HAP Contract

EXHIBIT D
Sources and Uses

EXHIBIT E
Key Business Terms

EXHIBIT F
List of Repairs or New Construction

EXHIBIT G

List of Critical Repairs

EXHIBIT H

FORM A OF OWNER CERTIFICATION RE: ACCOUNTS PAYABLE

[date]

[US Department of Housing and Urban Development]

Dear [HUD]:

Re: [name of project, PIC ID number, city, state] (the "Project")
Owner's Certification Regarding Accounts Payable

This certification is given in connection with the planned RAD conversion of the Project, [reflected in / to be reflected in] a RAD Conversion Commitment by and between [name of ownership entity] (the "Owner") and the United States Department of Housing and Urban Development ("HUD"). The Owner hereby certifies that:

1. The information contained herein is true and correct. The person whose signature appears below is duly authorized to make this certification on behalf of the Owner and has reviewed all relevant books and records of the Project. The Owner understands that HUD will rely upon the accuracy of this certification in developing and approving the RAD conversion of the Project. In the event any statement in this certification is no longer correct or complete, the Owner agrees to immediately issue an amended certification.
2. The Owner believes that, if the Project were to issue audited financial statements as of the date of this certification, such statements would reflect positive Surplus Cash.

Owner represents and warrants that this certification is correct and complete, and that no changes have been made to the wording of the standard form of certification promulgated by HUD. Owner agrees that failure to certify correctly and completely is a breach of the RAD Conversion Commitment.

[name and title of authorized Owner representative]
[date]

FORM B OF OWNER CERTIFICATION RE: ACCOUNTS PAYABLE

[date]

[US Department of Housing and Urban Development]

Dear [HUD]:

Re: [name of project, PIC ID number, city, state] (the "Project")
 Owner's Certification Regarding Accounts Payable

This certification is given in connection with the planned RAD conversion of the Project, [reflected in / to be reflected in] a RAD Conversion Commitment by and between [name of ownership entity] (the "Owner") and the United States Department of Housing and Urban Development ("HUD"). The Owner hereby certifies that, as of [insert 'as of' date for certification]:

1. The information contained herein is true and correct. The person whose signature appears below is duly authorized to make this certification on behalf of the Owner and has reviewed all relevant books and records of the Project. The Owner understands that HUD will rely upon the accuracy of this certification in developing and approving the RAD conversion of the Project. In the event any statement in this certification is no longer correct or complete, the Owner agrees to immediately issue an amended certification.
2. Attachment A hereto is a complete list of Accounts Payable of the Project, indicating date incurred, amount, vendor name, general nature of the goods or services purchased, and indicating whether the vendor has any Identity of Interest with any Principal of the ownership entity and/or any Principal of the property management agent. "Accounts Payable" means all items eligible to be reported on HUD/FASS Account 2110 "Accounts Payable – 30 Days." "Identity of Interest" is defined in HUD Handbook 4370.2, Chapter 3, paragraph 3-4, item 17. "Principal" is defined in the Mark-to-Market Operating Procedures Guide, Appendix A.
3. Attachment B hereto is a list of all Other Project Liabilities of the Project. "Other Project Liabilities" means amounts eligible to be reported on HUD/FASS Surplus Cash accounts S1300-080 "Loans and Notes Payable [due within 30 days]", S1300-100 "Accrued Expenses [not escrowed]", 2210 "Prepaid Revenue", or S1300-110 "Other Current Obligations."
4. Attachment C hereto is a complete list of the balances in all cash accounts (including any investment and petty cash accounts) eligible to be reported on HUD/FASS account 1120 "Cash – Operations."
5. Attachment D hereto is a complete disclosure of (a) all applications that have been made by or on behalf of the Project or the Owner for withdrawals from the Project's Reserve for Replacements or Residual Receipts accounts; (b) all Accounts Receivable of the Project (other than from Project tenants); (c) all insurance claims that have been filed on behalf of the Project or the Owner (for which proceeds have yet to be received); and (d) all events that have occurred with respect to the Project or the Owner and for which insurance claims may be filed. "Accounts Receivable" means amounts eligible to be reported on HUD/FASS Surplus Cash account S1300-030 "Other Cash."

Owner agrees that Accounts Payable and Other Project Liabilities of the Project, incurred prior

to the RAD closing date but not referenced in this certification, are not “eligible project expenses” as defined by the Secretary of HUD, shall not be paid from Project funds, and shall be

paid promptly by the Owner from Non-Project Funds, except as follows:

- Accounts Payable and Other Project Liabilities for normal monthly recurring costs incurred after the date of this certification, that are consistent with typical monthly amounts incurred previously by the Project, may be paid before or after the closing as eligible project expenses.
- Other pre-closing Accounts Payable and Other Project Liabilities may be paid after the date of this certification as eligible project expenses only after HUD issues specific prior written approval.

“Non-Project Funds” means funds of the Owner that are not assets of the Project, and that are not proceeds of any loan secured by the Project.

Owner represents and warrants that this certification is correct and complete, and that no changes have been made to the wording of the standard form of certification promulgated by HUD. Owner agrees that failure to certify correctly and completely is a breach of the RAD Conversion Commitment.

[name and title of authorized Owner representative]

[date]

[list attachments]

EXHIBIT I-1

EXCESS OBLIGATIONS APPROVED FOR PAYMENT AS TRANSACTION COSTS

(Include amount, date, and vendor, and indicate to whom payment will be made by the Closing Escrow Agent.)

EXHIBIT I-2

EXCESS OBLIGATIONS TO BE SATISFIED PRIOR TO THE CLOSING DATE

(Include amount, date and vendor.)