

Part II
PBRA Housing Assistance Payments Contract for the Conversion of Section 202 Project Rental Assistance Contract (PRAC) to Project-Based Section 8 (Rental Assistance Demonstration Component 2)

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

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in PIH 2012-32 and subsequent notices. The information will be used to direct the owner to appropriate technical assistance to initiate the conversion process. There are no assurances of confidentiality.

Section 8 Project Number:	FHA Project Number (if applicable):
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2.1 OWNER'S WARRANTIES, COMPLETION DATE FOR ANY WORK, OWNER CERTIFICATIONS, AND INSPECTION REQUIREMENTS.

- (a) **Legal Capacity.** The Owner warrants that it has the legal right to execute this HAP Contract and to lease dwelling units covered by this HAP Contract.
- (b) **Condition of Property.** The Owner warrants that the rental units to be leased by the Owner under the HAP Contract are in decent, safe and sanitary condition (as defined and determined in accordance with HUD regulations and procedures) and comply with all applicable accessibility requirements, including Section 504 of the Rehabilitation Act, the Fair Housing Act, and Titles II and III of the Americans with Disabilities Act or will be in such condition no later than the date of completion of the Work (including any environmental mitigation measures), as indicated in Section 11.4 of the RAD Conversion Agreement, which will be on _____. The Owner further warrants that it will remedy any defects or omissions covered by this warranty if called to its attention within 12 months of the date of completion of any Work indicated in the previous sentence.
- (c) **Labor Standards.** By execution of the HAP Contract, the Owner warrants that to the extent that construction or rehabilitation is performed on nine or more units that were not previously rent-assisted or rent-restricted and will be newly assisted as a result of the conversion under RAD (including without limitation, through transfer of assistance), such construction or rehabilitation shall be in compliance with applicable labor standards, including Davis-Bacon wage requirements.
- (d) **Inspection Requirement.** The Owner agrees to submit a written request to HUD for an inspection of the project by HUD's Real Estate Assessment Center no later than the Completion Date for any Work referenced in Section 2.1(b).

2.2 FAMILIES TO BE HOUSED; CONTRACT ADMINISTRATOR (CA) ASSISTANCE.

- (a) **Families to Be Housed.** The Contract Units are to be leased by the Owner to eligible Low-Income Elderly Families (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. (See also section 2.9.)

(b) **CA Assistance.**

- (1) The CA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable the Families to lease decent, safe, and sanitary housing pursuant to section 8 of the Act.
- (2) If there is a Utility Allowance and if the Allowance exceeds the total Family contribution, the Owner shall pay the Family the amount of the excess. The CA will pay funds to the Owner in trust solely for the purpose of making this payment. Any pledge by the Owner of payments properly payable under this HAP Contract shall not be construed to include payments covered by this paragraph (b)(2). (See 24 C.F.R. § 880.501(e).)

2.3 HOUSING ASSISTANCE PAYMENTS TO OWNER.

(a) **Housing Assistance Payments on Behalf of Families.**

- (1) Housing assistance payments shall be paid to the Owner for units under lease for occupancy by Families in accordance with the HAP Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of the rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.
 - (2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by the Family shall be subject to change by reason of changes in Family Income, Family composition, extent of exceptional medical or other unusual expenses or program rules in accordance with the HUD-established schedules and criteria; or by reason of a change in any applicable Utility Allowance approved or required by the CA. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease Term.
- (b) **Vacancies During Rent-Up.** If a Contract Unit is not leased as of the effective date of the HAP Contract, the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the HAP Contract, provided that the Owner (1) commenced marketing; (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on its waiting list, if any, and advertising the availability of the unit in a manner specifically designed to reach eligible Families; and (3) has not rejected any eligible applicant, except for good cause acceptable to the CA.
- (c) **Vacancies after Rent-Up.** If an eligible Family vacates a unit, the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the first 60 days of vacancy if the Owner:
- (1) Certifies that it did not cause the vacancy by violating the lease, the HAP Contract or any applicable law or by moving a Family to another unit;
 - (2) Notified the CA of the vacancy or prospective vacancy and the reasons for it immediately upon learning of the vacancy or prospective vacancy;
 - (3) Has fulfilled and continues to fulfill the requirements specified in paragraphs (b)(1), (2), and (3) of this section; and
 - (4) Certifies that any eviction resulting in a vacancy was carried out in compliance with section 2.8.
- (d) **Vacancies for Longer than 60 Days.** If an assisted unit continues to be vacant after the period specified in paragraph (b) or (c) of this section, the Owner may apply to receive additional payments for the vacancy period in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit, as determined or approved by HUD, for up to 12 additional months for the unit if:

- (1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;
 - (2) The Owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and
 - (3) The Owner has demonstrated to the satisfaction of HUD that:
 - (i) For the period of vacancy, the project is not providing the Owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and
 - (ii) The project can achieve financial soundness within a reasonable time.
- (e) **Prohibition of Double Compensation for Vacancies.** The Owner is not entitled to payments for vacant units to the extent it can collect for the vacancy from other sources (such as security deposits, other amounts collected from the Family, payments from the CA under section 2.7(b), and governmental payments under other programs). If the Owner collects any of the Family's share of the rent for a vacancy period in an amount which, when added to the vacancy payment, results in more than the Contract Rent, the excess must be reimbursed as HUD directs.
- (f) **CA Not Obligated for Family Rent.** The CA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with section 2.7(b) of this HAP Contract. The financial obligation of the CA is limited to making housing assistance payments on behalf of Families in accordance with this HAP Contract.
- (g) **Owner's Monthly Requests for Payments.**
- (1) The Owner shall submit monthly requests to the CA or as directed by the CA for housing assistance payments. Each request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of each unit, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit 1 for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with section 2.2(b)(2)); and (v) the total amount of housing assistance payments requested by the Owner.
 - (2) Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief (i) the dwelling units are in decent, safe, and sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this HAP Contract and is payable under the HAP Contract, (iv) none of the amount claimed has been previously claimed or paid under this HAP Contract, and (v) the Owner has not received and will not receive any payments or other consideration from the Family, the PHA (where the CA is a PHA), HUD, or any other public or private source for the unit beyond that authorized in this HAP Contract and the lease.
 - (3) If the Owner has received an excessive payment, the CA, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.
 - (4) The Owner's monthly requests for housing assistance payments are subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses any writing containing any materially false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of the executive branch of the Government of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

2.4 MAINTENANCE, OPERATION AND INSPECTION.

- (a) **Maintenance and Operation.** The Owner agrees to maintain and operate the Contract Units, unassisted units, if any, and related facilities to provide decent, safe, and sanitary housing, including the provision of all the services, maintenance and utilities set forth in section 1.4(c), in accordance with HUD's Uniform Physical Condition Standards and inspection Requirements, currently codified in 24 C.F.R. Part 5 Subpart G, and HUD's Uniform Physical Condition Standards for Multifamily Properties, currently codified in 24 C.F.R. Part 200 Subpart P. The Owner also agrees to comply with the lead-based paint regulations at 24 C.F.R. Part 35. If the CA determines that the Owner is not meeting one or more of these obligations, the CA shall have the right to take action under section 2.19(b).
- (b) **Inspection.**
- (1) Prior to occupancy of any Contract Unit by a Family, the Owner and the Family shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. The Owner shall keep copies of these reports on file for at least three years.
 - (2) The CA shall inspect or cause to be inspected the Contract Units and related facilities at least annually, or as otherwise directed by HUD, and at such other times (including prior to initial occupancy and rerenting of any unit) as may be necessary to ensure that the Owner is meeting its obligation to maintain the units in decent, safe, and sanitary condition including the provision of the agreed-upon utilities and other services. The CA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.
- (c) **Units Not Decent, Safe, and Sanitary.**
- (1) If the CA notifies the Owner that it has failed to maintain a dwelling unit in decent, safe, and sanitary condition and the Owner fails to take corrective action within the time prescribed in the notification, the CA may exercise any of its rights or remedies under the HAP Contract, including reduction or suspension of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the CA does not have other section 8 funds for such purposes, the CA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of rent payable by the Family.
 - (2) The foregoing provision, section 2.4(c)(1), shall be construed and applied in accordance with section 2.1(b) of the HAP Contract.
- (d) **Notification of Abatement.** Any reduction or suspension of housing assistance payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Family of any such abatement.
- (e) **Overcrowded and Underoccupied Units.** Where the CA determines a unit is larger or smaller than appropriate for an eligible Family, the Owner agrees to correct the situation in accordance with HUD regulations and requirements in effect at the time of the determination.

2.5 FINANCIAL REQUIREMENTS.

(a) **Submission of Financial and Operating Statements.**

The Owner agrees to comply with HUD's Uniform Financial Reporting Standards, currently codified in 24 C.F.R. Part 5 Subpart H and 24 C.F.R. 200.36.

(b) **Use of Project Funds.**

- (1) Project funds must be used for the benefit of the project and the tenants, to make mortgage payments, to pay operating expenses, to make required deposits to the replacement reserve in accordance with section 2.5(c) of the HAP Contract, and to provide distributions to the Owner as provided in section 2.5(b)(2) of the HAP Contract.
- (2) After HUD's acceptance of the Owner's completion certification (as required in the Conversion Agreement), Surplus Cash may be distributed to the Owner for the life of the HAP Contract only at the end of each fiscal year of project operation and only after all project expenses have been paid (or funds have been set aside for payment), and all reserve requirements have been met, including the operating reserve, as required in paragraph 2.5(d).

(c) **Replacement Reserve.**

- (1) The Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with the RAD Conversion Agreement.
 - (i) The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of the HAP Contract, unless otherwise stated in the RAD Conversion Agreement. The amount of the deposit to the replacement reserve will be adjusted each year by the amount of the automatic annual adjustment factor. See 24 C.F.R. Part 888.
 - (ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.
 - (iii) All earnings including interest on the reserve must be added to the reserve.
 - (iv) Funds will be held by the mortgagee and may be drawn from the reserve account and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.
 - (v) In the event the project is not subject to any financing, funds will be held by the Owner, and may be drawn from the reserve account and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.
 - (vi) The Owner shall not fund extraordinary maintenance and repair and/or replacement of capital items out of project funds without the prior written consent of HUD.
- (2) In the case of HUD-insured projects, the provisions of this paragraph (c) will apply instead of the otherwise applicable mortgage insurance requirements.

(d) **Operating Reserve.** The Owner shall establish and maintain an operating reserve consistent with the requirements of the RAD Notice.

2.6 RENT ADJUSTMENTS.

- (a) **Operating Cost Adjustment Factor.** Contract Rents will be adjusted annually by HUD's Operating Cost Adjustment Factor (OCAF) at each Anniversary of the HAP Contract, subject to the availability of appropriations for each year of the HAP Contract term and provided that the OCAF-adjusted rent potential shall not exceed the Maximum Rent. The Maximum Rent is equal to the greater of (i) 120% of the Fair Market Rent (FMR) potential based on the FMRs in effect at such time for the FMR area in which the project is located, less Utility Allowances; or (ii) the comparable market rent potential for the market area, as demonstrated by a Rent Comparability Study (RCS) prepared in accordance with HUD requirements and procured and paid for by the Owner. If the Maximum Rent exceeds the OCAF-adjusted rent potential, the Contract Rents shall be adjusted by the OCAF. If the OCAF-adjusted rent potential exceeds the Maximum Rent, the adjusted rents shall be limited by the Maximum Rent.
- (b) **Use of Small Area Fair Market Rent in Calculation of Maximum Rent.** Subject to approval by HUD, the Owner may request that the applicable Small Area Fair Market Rent (SAFMR) be used in lieu of the applicable FMR for purposes of calculating the Maximum Rent.
- (c) **Exception to Application of Maximum Rent.** When an RCS has been used to justify an OCAF-adjusted rent potential in excess of 120% of the Fair Market Rent potential any time during the term of the HAP Contract, for the next four annual rent adjustments, the Maximum Rent shall not apply and the Contract Rents shall be adjusted by the OCAF.
- (d) **Terminology.** For purposes of this section 2.6, the term "OCAF-adjusted rent potential" means the sum of all OCAF-adjusted Contract Rents for all units under the HAP Contract; the term "Fair Market Rent potential" means the sum of all fair market rents for all units under the HAP Contract; and the term "comparable market rent potential" means the sum of all comparable market rents for all units under the HAP Contract.

2.7 MARKETING AND LEASING OF UNITS.

- (a) **Compliance with Equal Opportunity Requirements.** Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan (Exhibit 2 to this HAP Contract) and with all regulations relating to fair housing advertising. Projects shall be managed and operated without regard to race, color, religion, sex, disability, familial status or national origin.
- (b) **Security Deposits.** The Owner agrees to comply with applicable section 8 regulations and other requirements, as revised from time to time, regarding security deposits and to comply with all State and local law.
- (c) **Eligibility, Selection and Admission of Families.**
 - (1) The Owner shall be responsible for determination of eligibility of applicants, selection of Families from among those determined to be eligible, computation of the amount of housing assistance payments on behalf of each selected Family and of total Family contributions and recordkeeping in accordance with applicable HUD regulations and requirements.
 - (2) The Owner shall not charge any applicant or assisted Family any amount in excess of the total Family contribution except as authorized by HUD.
 - (3) In initial renting of the Contract Units, the Owner must comply with the income eligibility requirements of section 16(c)(2) of the Act [42 U.S.C. § 1437n(c)(2)] and 24 C.F.R. § 5.653(d)(2). The Owner must further comply with the income targeting requirements of section 16(c)(3) of the Act [42 U.S.C. § 1437n(c)(3)] and 24 C.F.R. § 5.653(c). Section 16(c)(4) – (6) of the Act [42 U.S.C. § 1437n(c)(4) – (6)] shall also apply.

- (4) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by HUD.
- (5) (i) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family at least as often as required by HUD regulations or other requirements, and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with applicable HUD regulations and requirements.
- (ii) If a Family reports a change in income or other circumstances that would result in a decrease of total Family contribution between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the total Family contribution. The Owner may require in its lease that Families report increases in income or other changes between scheduled reexaminations.
- (iii) A Family's eligibility for housing assistance payments continues until the total Family contribution equals the total housing expense for the unit it occupies. The termination of eligibility at this point will not affect the Family's other rights under the lease nor preclude resumption of payments as a result of later changes in income or other circumstances during the term of this HAP Contract.
- (6) Where fewer than 100 percent of the units in the project are covered by this HAP Contract, assisted Families shall be dispersed throughout. At initial rent-up, the Owner shall lease the units identified in Exhibit 1 to eligible Families. Thereafter, the Owner may lease other units of appropriate size and type to eligible Families in accordance with Exhibit 1.
- (7) The Owner shall maintain as confidential all information relating to section 8 applicants and assisted Families, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- (8) The project's Affirmative Fair Housing Marketing Plan (Exhibit 2) including any admissions preferences for which applicable guidance or regulations require prior HUD approval (e.g., residency preferences) must be approved by HUD before they are implemented.
- (d) **Rent Redetermination after Adjustment in Utility Allowance.** In the event that the Owner is notified of a CA determination approving or requiring an adjustment in the Utility Allowance applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.
- (e) **Processing of Applications and Complaints.** The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable HUD and PHA regulations (where the CA is a PHA), and requirements and shall maintain records and furnish such copies or other information as may be required by HUD or the PHA.
- (f) **Review: Incorrect Payments.** In making housing assistance payments to Owners, the PHA (where the CA is a PHA) or HUD will review the Owner's determinations under this section. If, as a result of this review, or other reviews, audits or information received by the PHA or HUD at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or HUD shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

2.8 Termination of Tenancy or Section 8 Assistance by the Owner. The Owner agrees not to terminate any tenancy of or assistance on behalf of an assisted Family except in accordance with all HUD regulations and other requirements in effect at the time of the termination and any State and local law.

2.9 Reduction of Number of Units for Failure to Lease to Eligible Families.

- (a) **Limitation on Leasing to Ineligible Families.** The Owner may not at any time during the term of this HAP Contract lease more than 10 percent of the assisted units in the project to families which are ineligible under section 8 requirements at initial occupancy without the prior written approval of HUD. Failure on the part of the Owner to comply with this prohibition is a violation of the HAP Contract and grounds for all available legal remedies, including specific performance of the HAP Contract, suspension or debarment from HUD programs and reduction of the number of units under the HAP Contract, as set forth in paragraph (b) of this section. (See also section 2.19.)
- (b) **Reduction for Failure to Lease to Eligible Families.** If, at any time beginning six months after the effective date of the HAP Contract, the Owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by Families eligible under section 8 requirements at initial occupancy, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the HAP Contract. HUD or the PHA may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible Families is permitted in writing by HUD under paragraph (a) of this section.
- (c) **Restoration.** HUD will agree to an amendment of the ACC or the HAP Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:
- (1) HUD determines that the restoration is justified by demand,
 - (2) The Owner otherwise has a record of compliance with its obligations under the HAP Contract, and
 - (3) Sufficient appropriations are available to support the funding of the units to be restored.

2.10 NONDISCRIMINATION.

- (a) **General.** The Owner shall operate the project in a manner consistent with all applicable nondiscrimination, equal opportunity, and equal access requirements, including but not limited to the requirements in this section 2.10 of the HAP Contract.
- (b) **Equal Access Rule.** The Owner shall make residential housing in the project available without regard to sexual orientation, gender identification, or marital status in accordance with 24 C.F.R. 5.105(a)(2).
- (c) **The Fair Housing Act.** The Owner shall comply with all applicable requirements imposed by the Fair Housing Act and HUD's implementing regulations at 24 C.F.R. Parts 100, 108, 110, 121, and 200 which, among other requirements, prohibit discrimination in the sale, rental, financing, and advertising of housing on the basis of race, color, national origin, religion, sex, disability, and familial status, and require the Owner to affirmatively further fair housing in the operation of the project.
- (d) **Title VI of the Civil Rights Act of 1964 and Executive Order 11063.** The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. et seq.; the HUD Regulations issued thereunder, 24 C.F.R. Part 1; the HUD requirements pursuant to these regulations; and Executive Order 11063 and the regulations and requirements issued thereunder at 24 C.F.R. Part 107 to the end that, in accordance with that Act, Executive Order 11063, and the regulations and requirements of HUD, no person in the United States shall, on the grounds of race, color, religion (creed), sex, or national origin, be excluded from participation in, or be denied the benefits of, the Section 8 Program, or be otherwise subjected to discrimination. This provision is included pursuant to HUD's implementing regulations for Title VI at 24 C.F.R. Part 1, the implementing regulations for Executive Order 11063 at 24 C.F.R. Part 107, and the HUD requirements pursuant to the regulations. The obligation of the Owner to comply therewith inures to the benefit of the United States of America, HUD, and the PHA (where the CA is a PHA), any of which

shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Owner.

- (e) **Section 504 of the Rehabilitation Act of 1973 and Other Accessibility Requirements.** The Owner shall comply with all the requirements imposed by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq., and HUD regulations issued thereunder at 24 C.F.R. Part 8. Section 504 applies design standards on housing that receives Federal financial assistance and, more generally, provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. Accordingly, the Owner (1) shall not discriminate against any qualified individual with a disability on the basis of disability, and (2) shall cause to be incorporated into all contracts executed in connection with this project a provision requiring compliance with rules and regulations issued pursuant to section 504. The Owner shall comply, as applicable, with accessible design and operations requirements under the Fair Housing Act and implementing regulations at 24 C.F.R. Part 100, and Title II and III of the Americans with Disabilities Act and implementing regulations at 28 C.F.R. Parts 35 and 36, respectively.
- (f) **Employees of Owner.**
- (1) In carrying out the obligations under this HAP Contract, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, disability, familial status, or national origin. The Owner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, disability, familial status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, disability, familial status, or national origin. The Owner will incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.
- (g) **Age Discrimination Act of 1975.** The Owner shall comply with any rules and regulations issued or adopted by HUD under the Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq. at 24 C.F.R. Part 146, which prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

2.11 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS. The Owner and the PHA (where the CA is a PHA) agree to cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to or permitted by all applicable civil rights statutes, Executive Orders, and rules and regulations.

2.12 PROPERTY AND LIABILITY INSURANCE. The Owner agrees that the project shall be covered at all times by commercially available property and liability insurance to protect the project from financial loss. To the extent insurance proceeds permit, and as determined feasible by any first mortgage lender (determination of infeasibility shall be subject to HUD approval), the Owner agrees to promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project.

2.13 FLOOD INSURANCE. (See section 1.9 of the HAP Contract for applicability.) The Owner agrees that the project will be covered, during the life of the property, regardless of transfer of ownership, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.14 REPORTS AND ACCESS TO PREMISES AND RECORDS.

- (a) The Owner shall furnish any information and reports pertinent to this HAP Contract as reasonably may be required from time to time by HUD and the PHA (where the CA is a PHA).
- (b) The Owner shall permit HUD and the PHA (where the CA is a PHA) or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this HAP Contract, including the verification of information pertinent to the housing assistance payments.

2.15 DISPUTES.

(a) **Projects for which a PHA is the CA.**

- (1) Any dispute concerning a question of fact arising under this HAP Contract which cannot be resolved by the PHA (where the CA is a PHA) and the Owner may be submitted by either party to the HUD Field Office, which will promptly make a decision and furnish a written copy to the Owner and the PHA.
- (2) The decision of the Field Office will not be reviewable unless, within 30 calendar days from the date of receipt of the Field Office's determination, either party mails or otherwise furnishes to HUD a written appeal with written justification addressed to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the HAP Contract and in accordance with the decision of the Field Office pending resolution of the appeal.

- (b) **Projects for which HUD is the CA.** Any dispute concerning a question of fact arising under this HAP Contract which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the HAP Contract and in accordance with the decision of the Field Office, pending resolution of the appeal.

2.16 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF PHA, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS.

- (a) No person or entity in the following clauses shall have an interest, direct or indirect, in this HAP Contract or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter.
 - (1) any member or officer of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;
 - (2) (i) any employee of the PHA (where it is the CA or the Owner) who formulates policy or influences decisions with respect to the section 8 project;
 - (ii) any other employee of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;

- (3) any member of the governing body or the executive officer of the locality (city or county) in which the project is situated;
 - (4) any member of the governing body or executive officer of the locality (city or county) in which the PHA (where it is the CA or the Owner) was activated;
 - (5) any other State or local public official (including State legislators), who exercise any functions or responsibilities with respect to the section 8 project;
 - (6) any PHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the project, including an interest by reason of membership on the board of the PHA which is the CA (except an employee who does not formulate policy or influence decisions with respect to the section 8 project may have an interest as a tenant).
- (b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the section 8 program or in a section 8 project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the PHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the PHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to HUD Headquarters, with appropriate recommendations from the Field Office, for a determination of whether a waiver will be granted.
 - (c) No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to a HAP Contract executed, or to be executed, on his or her behalf, or with respect to a HAP Contract to which this person is a party.
 - (d) The Owner shall insert in all contracts, subcontracts, and arrangements entered into in connection with the project or any property included or planned to be included in the project, and shall require its contractors and subcontractors to insert in each of the subcontracts, the provisions of paragraphs (a) through (d).
 - (e) The provisions of paragraphs (a) through (d) of this section shall not apply to a utility service if the rates are fixed or controlled by a governmental agency or applicable to the Depositary Agreement.

2.17 INTEREST OF MEMBER OR DELEGATE TO CONGRESS. No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this HAP Contract or to any benefits which may arise from it.

2.18 ASSIGNMENT, SALE, FORECLOSURE, OR DEED IN LIEU OF FORECLOSURE.

- (a) The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion of this HAP Contract or the project, or of any part of the HAP Contract or the project, or any of the Owner's interest in the HAP Contract or the project, without the prior written consent of HUD. However, in the case of an assignment as security for the purpose of obtaining financing of the project, HUD shall consent in writing if HUD has approved the terms of the financing. Certain limited consents are set forth in this Section 2.18 and in Sections 2.22 and 2.23 below.
- (b) The Owner agrees to notify HUD (and the PHA where it is the CA) promptly of any proposed action covered by paragraph (a) of this section. The Owner further agrees to request the prior written consent of HUD for any such proposed action.
- (c) The Owner agrees that HUD may condition any prior written consent required under section 2.18(a) of this HAP Contract on any reasonable requirements related to the effective administration of the HAP Contract, as determined by HUD.

- (d) (1) For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
- (i) A transfer by the Owner, in whole or in part,
 - (ii) A transfer by a party having a controlling interest in the Owner,
 - (iii) Transfers by more than one party of interests aggregating a controlling interest in the Owner, and
 - (iv) The creation or modification of any lien, including pursuant to any refinancing or any restructuring of permanent debt by the Owner of the project, including any loan modification, , except to such extent permitted pursuant to the Use Agreement entered into in connection with this project..
- (2) If such assignment is made in connection with any HUD-approved financing for the project, including without limitation low-income housing tax credits, subject to the provisions of section 2.23, HUD hereby consents to:
- (i) an assignment by the Owner of an interest in the project or in this HAP Contract to one of its members, partners or shareholders; or
 - (ii) an assignment by the general partner or managing member of Owner of its interest to a limited partner or other member of Owner, respectively.
- (3) The term "controlling interest" means the interest of any general partner, managing member, or other organization or entity that controls the day-to-day operations of the Owner.
- (e) The Owner and the party signing this HAP Contract on behalf of the Owner represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect to it.
- (f) Except where otherwise approved by HUD, this HAP Contract, and the ACC (if applicable) shall continue in effect and housing assistance payments will continue in accordance with the terms of the HAP Contract in the event:
- (1) Of assignment, sale, or other disposition of the project or this HAP Contract, or the ACC,
 - (2) Of foreclosure, including foreclosure by HUD,
 - (3) Of assignment of the mortgage or deed in lieu of foreclosure,
 - (4) The PHA or HUD takes over possession, operation or ownership,
 - (5) The Owner prepays the mortgage.

2.19 DEFAULTS BY PHA (if a PHA is the CA) AND/OR OWNER.

(a) Rights of Owner if PHA (where the CA is a PHA) Defaults under HAP Contract.

- (1) Events of Default. The occurrence of any of the following events, if the Owner is not in default, is defined as a default under the ACC:
- (i) If the PHA (where the CA is a PHA) fails to perform or observe any term or condition of this HAP Contract;
 - (ii) If the HAP Contract is held to be void, voidable, or ultra vires;
 - (iii) If the power or right of the PHA (where the CA is a PHA) to enter into the HAP Contract is drawn into question in any legal proceeding; or

(iv) If the PHA (where the CA is a PHA) asserts or claims that the HAP Contract is not binding upon the PHA for any such reason.

(2) Owner Request for HUD Determination of Default. If the Owner believes that an event as specified in paragraph (a)(1) has occurred, and the Owner is not in default, the Owner may, within 30 days of the initial occurrence of the event:

(i) Notify HUD of the occurrence of the event;

(ii) Provide supporting evidence of the default and of the fact that the Owner is not in default; and

(iii) Request HUD to determine whether there has been a default.

(3) HUD Determination of Default and Curing of Default. HUD, after notice to the PHA (where the CA is a PHA) giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the PHA is in default and whether the Owner is not in default. If HUD determines that the PHA is in default and that the Owner is not, HUD shall take appropriate action to require the PHA to cure the default. If necessary for the prompt continuation of the project, HUD shall assume the PHA's rights and obligations under the HAP Contract, including any funds. HUD shall continue to pay annual contributions with respect to the units covered by this HAP Contract in accordance with the ACC and this HAP Contract until reassigned to the PHA. All rights and obligations of the PHA assumed by HUD will be returned as constituted at the time of the return: (i) when HUD is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements, or (ii) when the HAP Contract is at an end, whichever occurs sooner.

(4) Enforcement by Owner. The provisions of this paragraph (a) are made for the benefit of the Owner, the lender, the PHA where it is the lender and then only in its capacity as lender, and the Owner's other assignees, if any, who have been specifically approved by HUD prior to the assignment. These provisions shall be enforceable by these parties against HUD by suit at law or in equity.

(b) Rights of PHA (where the CA is a PHA) and HUD if Owner Defaults under HAP Contract.

(1) Events of Default. A default by the Owner under this HAP Contract shall result if:

(i) The Owner has violated or failed to comply with any provision of, or obligation under, this HAP Contract, the Conversion Agreement, or of any Lease, including failure to correct any deficiencies identified by the CA in connection with any annual or other inspection; or

(ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this HAP Contract, the Conversion Agreement, or under any Lease; or

(iii) For projects with mortgages insured by HUD or loans made by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance or loan program, with the insured mortgage, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the mortgage insurance or loan.

(2) CA Determination of Default. Upon a determination by the CA that a default has occurred, the CA shall notify the Owner and the lender, with a copy to HUD (where the CA is a PHA), of

(i) The nature of the default;

(ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner and/or the lender to cure the default); and

- (iii) The time within which the Owner and/or the lender shall respond with a showing that all the required actions have been taken.

If the Owner and/or lender fail to respond or take action to the satisfaction of the CA (and HUD, where the CA is a PHA), the CA shall have the right to take corrective action to achieve compliance in accordance with paragraph (b)(3), or to terminate this HAP Contract with HUD approval (where the CA is a PHA), in whole or in part, or to take other corrective action to achieve compliance in the CA's discretion, or as directed by HUD (where the CA is a PHA). If the corrective actions that the CA takes or requires the Owner to take fail to bring the Owner into compliance with this HAP Contract to the satisfaction of the CA, the CA may terminate this HAP Contract, in whole or in part, but only with prior written approval by HUD (where the CA is a PHA).

- (3) Corrective Actions. Pursuant to paragraph (b)(2) of this section, the CA, in its discretion or as directed by HUD (where the CA is a PHA), may take the following corrective actions either directly or in conjunction with or acting through a PHA:

- (i) Suspend any distributions of cash to the Owner.
- (ii) Require a substitution of the management agent.
- (iii) Reduce or suspend housing assistance payments.
- (iv) Recover any overpayments.
- (v) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of this HAP Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this HAP Contract. If the CA takes possession, housing assistance payments shall continue in accordance with the HAP Contract.
- (vi) Collect all rents and charges in connection with the operation of the project and use these funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage or other loan documents.
- (vii) Apply to any court, State or Federal, for specific performance of this HAP Contract, for an injunction against any violation of the HAP Contract, for the appointment of a receiver to take over and operate the project in accordance with the HAP Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to the PHA (where the CA is a PHA) and/or HUD arising from a default under any of the terms of this HAP Contract could be irreparable and the amount of damage would be difficult to ascertain.
- (viii) Take any other remedial action permitted at law or in equity.

- (4) HUD Rights.

- (i) Notwithstanding any other provisions of this HAP Contract, in the event HUD determines that the Owner is in default of its obligations under the HAP Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the PHA (where the CA is a PHA) giving them a reasonable opportunity to take corrective action, to proceed in accordance with paragraph (b)(3).
- (ii) In the event HUD takes any action under this section, the Owner and the PHA hereby expressly agree to recognize the rights of HUD to the same extent as if the action were taken by the PHA. HUD shall not have the right to terminate the HAP Contract except by proceeding in accordance with paragraphs (b)(1), (2), and (3) of this section and with the ACC.

- (c) **Remedies Not Exclusive and Non-Waiver of Remedies.** The availability of any remedy under this HAP Contract or the ACC, where applicable, shall not preclude the exercise of any other remedy under this HAP Contract or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.20 EXCLUSION OF THIRD-PARTY RIGHTS.

- (a) A Family that is eligible for housing assistance under the HAP Contract is not a party to or a third-party beneficiary of the HAP Contract.
- (b) Nothing in the HAP Contract shall be construed as creating any right of any third party to enforce any provision of the HAP Contract, or to assert any claim against HUD or the PHA (where the CA is a PHA), under the HAP Contract.

2.21 NO AGENCY RELATIONSHIP BETWEEN HUD AND THE PHA (WHERE THE CA IS A PHA). If the CA is a PHA under ACC with HUD, the PHA is not the agent of HUD, and the HAP Contract does not create any relationship between HUD and any suppliers, employees, contractors, or subcontractors used by the PHA to carry out functions or responsibilities in connection with administration of the HAP Contract under the ACC.

2.22 LENDER PROVISIONS. Notwithstanding anything else in this HAP Contract:

- (a) The holder of any HUD-approved mortgage encumbering the property on which the project is located may take action against the Owner and the project that results in the holder of the mortgage or its designee (either referred to herein as the "Lender Temporary Custodian") coming into ownership of the project or assuming the role of "Owner" under this HAP Contract. Transfer of the project or the HAP Contract from the Owner is grounds for termination of the HAP Contract assistance unless otherwise approved by HUD. HUD hereby consents to a collateral assignment of this HAP Contract to any Lender Temporary Custodian and pre-approves any Lender Temporary Custodian as a temporary custodian of the project and as a new "Owner" pursuant to this HAP Contract, and continued assistance to the project pursuant to this HAP Contract, subject to the following conditions:
- (1) HUD must receive thirty (30) days prior written notice of the transfer of the project to the Lender Temporary Custodian and the form of the documents necessary to effect such transfer.
 - (2) In connection with the transfer, Lender Temporary Custodian must execute and deliver to HUD an assumption of the HAP Contract, in such form as acceptable to HUD.
 - (3) Such approval and consent to continue assistance pursuant to this HAP Contract is expressly limited to a period of only 90 days that commences the date of such transfer of the project, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as HUD deems reasonably necessary for Lender to find a permanent replacement owner. In the event that the Lender Temporary Custodian assumes the role of "Owner" under the HAP Contract, the Lender Temporary Custodian shall use such interim period to identify a proposed permanent Owner determined by HUD to be capable of abiding by the HAP Contract and any and all applicable RAD program requirements. The provision of housing assistance payments to any proposed permanent replacement Owner is subject to HUD's consent.
 - (4) Prior to a transfer of the project to a Lender Temporary Custodian, HUD may at any time by written notice to a Lender Temporary Custodian revoke the approvals given herein if HUD becomes aware of any conditions or circumstances (by way of illustration and not limitation, such conditions or circumstances may include debarment, suspension or limited denial of participation) that would disqualify or compromise the ability of Lender Temporary Custodian from acting as an interim custodian of the project pursuant to the HAP Contract.

- (b) The provisions of any form that HUD may execute on which HUD consents to the assignment of this HAP Contract as security for financing, including any of the HUD-drafted forms in use for such purpose, shall be subject to the conditions set forth in subparagraph (a) of this section..

2.23 LOW-INCOME HOUSING TAX CREDIT PROVISIONS. Notwithstanding anything else in the HAP Contract:

- (a) **Notice.** As long as the equity investor identified below (“Equity Investor”) is a partner or member of Owner, HUD shall endeavor as a courtesy to Equity Investor to deliver to Equity Investor a copy of any notice of default that is delivered to Owner under the terms of the HAP Contract, Use Agreement, or Conversion Agreement. Equity Investor’s address for such notice purposes is:

- (b) **Right to Cure.** Any cure of any default by Owner under the HAP Contract, Use Agreement or Conversion Agreement offered by Equity Investor shall be treated the same as if offered by Owner.

- (c) **Transfer of Investor Members/Partners.** Equity Investor, and each successor member or partner in Owner, may transfer its interest in the Owner without prior written consent of HUD if:

- (1) HUD receives prior written notice of such transfer; and
- (2) HUD receives executed copies of any and all documents necessary to effect such transfer, including any and all amendments to Owner’s organizational documents.

- (d) **Removal of General Partner/Managing Member.**

- (1) HUD has pre-approved the replacement of the Owner’s general partner or managing member with an affiliate of Equity Investor, or any successor equity investor (“Interim Replacement GP/MM”) as a temporary replacement general partner/managing member of Owner, in the event Owner’s general partner or managing member is removed for cause in accordance with Owner’s organizational documents.
- (2) Interim Replacement GP/MM may remove Owner’s general partner or managing member in accordance with the Owner’s organizational documents without further written consent from HUD and HUD shall continue assistance to the project in accordance with the HAP Contract, provided that Interim Replacement GP/MM provide HUD with prior written notice of such replacement and HUD receives executed copies of any and all documents necessary to effect such replacement.
- (3) Such approval of such Interim Replacement GP/MM is expressly limited to a period of only 90 days that commences the date of such removal, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as HUD deems reasonably necessary to provide for a permanent replacement of the general partner or managing member. After such interim period, any proposed permanent replacement for the Owner’s general partner or managing member is subject to HUD’s consent.
- (4) HUD may at any time by written notice to Equity Investor or any successor revoke the approvals given herein if HUD becomes aware of any conditions or circumstances that would disqualify or compromise the ability of Interim Replacement GP/MM from acting as an interim general partner/managing member pursuant to this HAP Contract.