

**Part II of the  
Rental Assistance Contract**

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

Section 811 Project Rental Assistance (PRA Demo)  
Demonstration

PRA Demo Project Number:	Section 8 Project Number (if applicable):	FHA Project Number (if applicable):
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**2.1 OWNER'S WARRANTIES.**

- (a) **Legal Capacity.** The Owner warrants that it has the legal right to execute this Contract and to lease Assisted Units covered by this Contract.
- (b) **Completion of Work.** The Owner warrants that the project as described in section 1.1 is Decent, Safe and Sanitary and that the Assisted Units comply with the terms and conditions of the Agreement to Enter into the Rental Assistance Contract. 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 effective date of this Contract.

**2.2 FAMILIES TO BE HOUSED; GRANTEE ASSISTANCE.**

- (a) **Families to Be Housed.** The Assisted Units are to be leased by Eligible Families solely as private dwellings and as their principal place of residence. (See also section 2.8.) Families to be housed must be consistent with the Grantee's Cooperative Agreement, including Grantee's Program Description (as contained in Exhibit 2 of the Cooperative Agreement), and Grantee's Inter-Agency Partnership Agreement.
- (b) **Grantee Assistance.**
  - (1) The Grantee agrees to make Project Rental Assistance Payments on behalf of Eligible Families for the Assisted Units, to enable the Eligible Families to lease Decent, Safe, and Sanitary housing pursuant to Section 811 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 8013, as amended by the Frank Melville Supportive Housing Investment Act of 2010, Pub. L. No. 111-374 and the applicable HUD administrative and regulatory requirements.
  - (2) If there is a Utility Allowance and if the Utility Allowance exceeds the total Eligible Family contribution, the Owner shall pay the Eligible Family or the appropriate entity the amount of the excess. The Grantee 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 Contract shall not be construed to include payments covered by paragraph (b)(2) of section 2.2.

**2.3 MAXIMUM HOUSING ASSISTANCE COMMITMENT; PROJECT ACCOUNT.**

- (a) **Maximum Annual Contract Commitment.** The Grantee shall not make any Project Rental Assistance Payments excess of the amount identified in section 1.1(c) and Exhibit 1, Part I of the RAC, unless Grantee, at its discretion,

approves Owner's request to adjust the amount of Project Rental Assistance Payments in cases where the Project Rental Assistance Payments are inadequate to provide for reasonable operating costs for the Assisted Units.

The Grantee may reduce the amount identified in section 1.1(c) where there is a reduction in the number of Assisted Units, in the Contract Rents or pursuant to any other provision of this Contract.

#### **2.4 PROJECT RENTAL ASSISTANCE PAYMENTS TO OWNERS.**

(a) **Project Rental Assistance Payments on Behalf of Families.**

- (1) Project Rental Assistance Payments shall be paid to the Owner for Assisted Units under lease for occupancy by Eligible Families in accordance with the Contract as attached in Exhibit 1, Part I of the RAC. The Project Rental Assistance Payments will cover the difference between the Contract Rent and that portion of the rent payable by the Eligible Family as determined in accordance 24 C.F.R. Part 5 and other applicable administrative and regulatory requirements.
- (2) The amount of Project Rental Assistance Payments payable on behalf of the Eligible Family and the amount of rent payable by the Eligible Family shall be subject to change by reason of changes in Eligible Family Income, Eligible Family composition, or pursuant to any HUD regulations or administrative guidance related to the Assisted Units; or by reason of a change in any applicable Utility Allowance, as approved or required by the Grantee. Any such change shall be effective as of the date stated in a notification of the change to the Eligible Family, which need not be at the end of the Lease Term.

(b) **Vacancies During Rent-Up.** Grantees can determine whether to include payment of vacancies in its Project Rental Assistance program. If the Grantee decides to provide vacancy payments, for each Assisted Unit that is not leased as of the effective date of this contract, the Owner is entitled to vacancy payments that may not exceed 80 percent of the Contract Rent for up to 60 days of vacancy, provided that the Grantee/Owner: (1) commences and performs appropriate feasible actions to fill the vacancy, consistent with Grantee's PRA program and its marketing plan to eligible families and otherwise complied with section 2.2 of the Agreement, and (2) has not rejected any eligible applicants, except for good cause acceptable to the Grantee.

(c) **Vacancies after Rent-Up.** If an Eligible Family vacates an Assisted Unit and the Grantee program includes vacancy payments, the Owner is entitled to Project Rental Assistance Payments (except as provided in paragraph (d) of this section) that may not exceed 80 percent of the Contract Rent for up to 60 days of vacancy if the Owner:

- (1) Certifies that it did not cause the vacancy by violating the lease, the Contract or any applicable law;
- (2) Notified the Grantee 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 under this Contract; and
  - (i) Commence and perform appropriate feasible actions to fill the vacancy, consistent with the Grantee's PRA program and its marketing plan to eligible families; and
  - (ii) Has not rejected any eligible applicant, except for good cause acceptable to the Grantee.
- (4) Certifies that any eviction of an Eligible Family resulting in a vacancy was carried out in compliance with section 2.9.

(d) **Vacancies for Longer than 60 Days.** If an Assisted Unit continues to be vacant for more than 60 consecutive days either during rent-up or after rent-up the Owner shall not be entitled to any payments under 2.4(b)-(c). Grantee and Owner shall comply with any administrative requirements imposed by HUD as related to vacancies for the Section 811 Project Rental Assistance program.

- (e) **Grantee Not Obligated for the Eligible Family's Rent.** The Grantee has not assumed any obligation for the amount of rent payable by any Eligible Family or the satisfaction of any claim by the Owner against any Eligible Family other than in accordance with section 2.4 of this Contract. The financial obligation of the Grantees limited to making Project Rental Assistance Payments on behalf of Eligible Families in accordance with this Contract.
- (f) **Owner's Monthly Requests for Payments.**
- (1) The Owner shall submit monthly requests to the Grantee or as directed by the Grantee for Project Rental Assistance Payments. Each request shall set forth: (i) the name of each Eligible Family and the address and/or number of the unit leased by the Eligible 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, Part I of the RAC for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Eligible Family leasing the unit; and (v) the total amount of Project Rental 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 Assisted 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 Contract and is payable under the Contract, (iv) none of the amount claimed has been previously claimed or paid under this Contract, and (v) the Owner has not received and will not receive any payments or other consideration from the Eligible Family, the Grantee, HUD, or any other public or private source for the Assisted Unit beyond that authorized in this Contract and the lease.
  - (3) If the Owner has received an excessive payment, the Grantee, 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 Project Rental 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 a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

## **2.5 MAINTENANCE, OPERATION AND INSPECTION.**

- (a) **Maintenance and Operation.** The Owner agrees to maintain and operate the Assisted Units and related facilities in a Decent, Safe, and Sanitary condition in accordance with the requirements in 24 CFR part 5, subpart G including the provision of all the services, maintenance and utilities set forth in section 1.1(e). The Owner also agrees to comply with the lead-based paint regulations at 24 CFR Part 35. If the Grantee determines that the Owner is not meeting one or more of these obligations, the Grantee shall have the right to take action under section 2.19(b).
- (b) **Inspection.**
- (1) Prior to occupancy of any Assisted Unit by an Eligible Family, the Owner and the Eligible Family shall inspect the Assisted Unit and both shall certify, on a form prescribed or approved by the Grantee, that they have inspected the Assisted Unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the form. The Owner shall keep a copy of this inspection and make part of the lease as an attachment to the lease.
  - (2) The Grantee shall inspect or cause to be inspected the Assisted Units and related facilities at a frequency that conforms with other federal or state housing program requirements, but at least every 2 years 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 Grantee shall take into account complaints by Eligible Family and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Eligible Family of its determination.

- (c) **Units Not Decent, Safe, and Sanitary.** If the Grantee notifies the Owner that it has failed to maintain an Assisted Unit in a Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the Grantee may exercise any of its rights or remedies under the Contract, including reduction or suspension of Project Rental Assistance Payments.
- (d) **Notification of Abatement.** Any reduction or suspension of Project Rental Assistance Payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Eligible Family of any such abatement.
- (e) **Overcrowded and Underoccupied Units.** Where the Grantee 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.
- (f) **Accessibility Requirements.** The Owner agrees to maintain the project in compliance with the following accessibility requirements: HUD Uniform Physical Condition Standards at 24 CFR 5.703, the Uniform Federal Accessibility Standards at 24 CFR 40.7, section 504 of the Rehabilitation Act of 1973 as implemented by 24 CFR part 8, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

## **2.6 FINANCIAL REQUIREMENTS.**

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

The Owner must submit to the Grantee:

- (1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by Grantee; and
- (2) Statements as to project operation, financial conditions and occupancy as Grantee may require pertinent to administration of the Contract and monitoring of project operations.

## **2.7 INITIAL RENTS; RENT ADJUSTMENTS.**

(a) With respect to the initial rents, Grantee and Owner agrees that in no circumstance may the initial RAC rent level exceed the applicable Section 8 Small Area Fair Market Rent or Fair Market Rent (FMR) level as determined by HUD, unless such rent level is substantiated by a market study that has been prepared in accordance with the requirements of a state housing agency or of Chapter 9 of HUD's Section 8 Renewal Guide. In cases where the initial RAC rent level exceeds applicable Section 8 Small Area Fair Market Rent or Fair Market Rent, Exhibit 1 shall identify how the initial rent settings were determined, as approved by HUD.

### **(b) Annual Adjustments.**

(1) After initial rent setting made in the first year of the Contract, subsequent rents shall be adjusted annually based on [CHECK ONE BOX ONLY]:

[ ] HUD's Operating Cost Adjustment Factor (OCAF).

[ ] other operating cost index as has been adopted by the Grantee for purposes of subsidizing affordable housing, as approved by HUD and as further described in Exhibit 2.

[ ] other means as may be approved by HUD, and as further described in Exhibit 2.

- (2) Upon request from the Owner to the Grantee, Contract Rents will be adjusted on the anniversary date of the Contract in accordance with this Contract.
  - (3) Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the annual adjustment result in Contract Rents less than the Contract Rents on the effective date of the Contract.
- (c) **Funding of Adjustments.** Project Rental Assistance Payments will be made in amounts commensurate with Contract Rent adjustments under this section up to the maximum amount authorized under section 2.3(a) of this Contract.
- (d) **Overall Limitation.** Notwithstanding any other provision of this Contract, adjustments after Contract execution, shall not result in material differences between the rents charged for Assisted Units and comparable unassisted units, as determined by Grantee; except to the extent that the differences existed with respect to the Contract Rents set at Contract execution.
- (e) **Incorporation of Rent Adjustment.** Any adjustment in Contract Rents shall be incorporated into an Exhibit by a dated addendum to the Exhibit 1, Part I of the RAC establishing the effective date of the adjustment.

## **2.8 MARKETING AND LEASING OF UNITS.**

- (a) **Compliance with Equal Opportunity Requirements.** Projects shall be managed and in accordance with all applicable EEO requirements.
- (b) **Security Deposits.** The Owner agrees to comply with applicable HUD PRA Demo regulations or any successor regulation and other requirements 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 the selection of Eligible Families from among those referred to the Owner who have been determined to be eligible for community-based long, long-term services as provided through Medicaid waivers, Medicaid state plan options, state funded services or other appropriate services related to the type of disability targeted under the Inter-Agency Partnership Agreement. Additionally, Owner shall be responsible for the determination of income eligibility of applicants, computation of the amount of Project Rental Assistance Payments on behalf of each selected Eligible Family and of total Eligible Family contributions and recordkeeping in accordance with applicable HUD regulations and requirements.
  - (2) The Owner shall not charge any Eligible Family any amount in excess of the total Eligible Family contribution.
  - (3) The Owner must lease Assisted Units only to Eligible Families.
  - (4) The Lease entered into between the Owner and the Eligible Family shall be on the form as prescribed by HUD.
  - (5) (i) The Owner shall make a reexamination of Eligible Family income, composition, and the extent of medical or other unusual expenses incurred by the Eligible Family at least annually, and appropriate redeterminations shall be made by the Owner of the amount of Eligible Family contribution and the amount of Project Rental Assistance Payment, in accordance with applicable HUD regulations and requirements.

- (ii) If an Eligible Family reports a change in income or other circumstances that would result in a decrease of total Eligible Family contribution between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the total Eligible Family contribution. The Owner may require in its lease that Families report increases in income or other changes between scheduled reexaminations.
- (iii) An Eligible Family's eligibility for Project Rental Assistance Payments continues until the total Eligible Family contribution equals the total housing expense for the unit it occupies. The termination of availability at this point will not affect the Eligible 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 Contract.

(6) The Owner shall maintain as confidential all information relating to PRA Demo applicants and Assisted Families, the disclosure of which would constitute an unwarranted invasion of personal privacy.

- (d) **Rent Redetermination after Adjustment in Utility Allowance.** Consistent with section 2.7 and any HUD administrative requirements related to Utility Allowance, Owner agrees to adjust the rents of assisted Eligible Families in cases where there is a Utility Allowance adjustment.
- (e) **Processing of Applications and Complaints.** The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable Grantee requirements and shall maintain records and furnish such copies or other information as may be required by HUD or the Grantee.
- (f) **Review: Incorrect Payments.** In making Project Rental Assistance Payments to Owners, the Grantee will review the Owner's determinations under this section. If as a result of reviews, audits or information received by the Grantee, it is determined that the Owner has received improper or excessive Project Rental Assistance Payments, the Grantee shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

## **2.9 Termination of Tenancy or PRA Demo Rental Assistance by the Owner.**

The Owner agrees not to terminate any tenancy of or assistance on behalf of an assisted Eligible Family except in accordance with the lease, all HUD regulations and other requirements in effect at the time of the termination, and any State and local law.

## **2.10 NONDISCRIMINATION.**

- (a) **General.** The Owner shall not in the selection of Eligible Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, handicap, familial status, or national origin.
- (b) **The Fair Housing Act.** The Owner shall comply with all requirements imposed by the Fair Housing Act, which prohibits discrimination in the sale, rental, financing and advertising of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and any related rules and regulations.
- (c) **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 CFR, Subtitle A, Part 1; the HUD requirements pursuant to these regulations; and Executive Order 11063 and any regulations and requirements issued thereunder, 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,

creed, or national origin, be excluded from participation in, or be denied the benefits of, the Project Rental Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of HUD, 24 CFR, Subtitle A, Part 1 issued under Title VI of the Civil Rights Act of 1964, HUD regulations issued pursuant to Executive Order 11063 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, any of which shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Owner.

- (d) **Section 504 of the Rehabilitation Act of 1973.** The Owner shall comply with all the requirements imposed by section 504 of the Rehabilitation Act of 1973, as amended, and any related rules and regulations. Section 504 provides that no qualified handicapped person shall, on the basis of handicap, 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 handicapped person on the basis of handicap 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.
- (e) **Employees of Owner.**
- (1) In carrying out the obligations under this Contract, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap, 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, handicap, 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, handicap, 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.
- (f) **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, as amended, 42 U.S.C. 6101 et seq., 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 Grantee 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 FLOOD INSURANCE.**

The Owner agrees that the project will be covered, during its anticipated economic or useful life, 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.

### **2.13 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.**

In compliance with regulations issued by the Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees to:

- (a) Not utilize any facility in the performance of this Contract or any nonexempt subcontractor which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- (b) Promptly notify the Grantee of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- (c) Comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 308 of the Water Act, and all regulations and guidelines issued thereunder; and
- (d) Include or cause to be included the provisions of this Contract in every nonexempt subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

### **2.14 REPORTS AND ACCESS TO PREMISES AND RECORDS.**

- (a) The Owner shall furnish any information and reports pertinent to this Contract as reasonably may be required from time to time by HUD and the Grantee.
- (b) The Owner shall permit HUD and the Grantee 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 Contract, including the verification of information pertinent to the Project Rental Assistance Payments.

### **2.15 DISPUTES.**

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

### **2.16 INTEREST OF MEMBERS, OFFICERS, OR 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 Agreement 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 Grantee, except where his or her interest is as a tenant;
  - (2) (i) any employee of the Grantee who formulates policy or influences decisions with respect to the PRA Demo project;



- (ii) any other employee of the Grantee, 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 Grantee was activated;
  - (5) any other State or local public official (including State legislators), who exercise any functions or responsibilities with respect to the PRA Demo project;
  - (6) any Grantee, where any of its members, officers, or employees has a personal interest in the project (except an employee who does not formulate policy or influence decisions with respect to the PRA Demo project may have an interest as a tenant).
- (b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the PRA Demo program or in a PRA Demo project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or perspective interest to the Grantee and the HUD Headquarters and may, with appropriate justification, if consistent with State law, apply through the Grantee for a waiver. The Grantee will review the waiver request and forward their recommendation to HUD Headquarters.
- (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 an Agreement or a Contract executed, or to be executed, on his or her behalf, or with respect to an Agreement or a 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.

**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 Contract or to any benefits which may arise from it.

**2.18 ASSIGNMENT, SALE OR 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 Contract, without the prior written consent of Grantee.
- (b) The Owner and the party signing this 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.
- (c) Except where otherwise approved by Grantee, this Contract shall continue in effect and Project Rental Assistance Payments will continue in accordance with the terms of the Contract in the event:
  - (1) Of assignment, sale, or other disposition of the project or this Contract,
  - (2) Of foreclosure, including foreclosure by HUD,
  - (3) Of assignment of the mortgage or deed in lieu of foreclosure,
  - (4) The Grantee or HUD takes over possession, operation or ownership,

- (5) The Owner prepays the mortgage.

## **2.19 DEFAULTS BY GRANTEE AND/OR OWNER.**

### **(a) Rights of Owner if Grantee Defaults under Contract.**

- (1) Events of Default. The occurrence of any of the following events constitutes a default:
- (i) If the Grantee fails to perform or observe any term or condition of this Contract;
  - (ii) If the Contract is held to be void, voidable, or ultra vires;
  - (iii) If the power or right of the Grantee to enter into the Contract is drawn into question in any legal proceeding.
- (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 Grantee giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the Grantee is in default and whether the Owner is not in default. If HUD determines that the Grantee is in default and that the Owner is not, HUD shall take appropriate action to require the Grantee to cure the default. If necessary for the prompt continuation of the project, HUD may assume the Grantee's rights and obligations under the Contract. HUD may, subject to appropriations and its ability to recover funds from the Grantee, pay Project Rental Assistance Payments with respect to the Assisted Units in accordance with this Contract until reassigned to another Grantee or returned to the original Grantee under this Agreement. All rights and obligations of the Grantee assumed by HUD will be returned to the same or another Grantee:
- (i) when HUD is satisfied that all defaults have been cured and that the Assisted Units will thereafter be administered in accordance with all applicable requirements, or
  - (ii) when the 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 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 Grantee and HUD if Owner Defaults under Contract.**

- (1) Events of Default. A default by the Owner under this Contract shall result if:
- (i) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease, including failure to correct any deficiencies identified by the Grantee in connection with any inspection; or
  - (ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Contract 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) Grantee Determination of Default. Upon a determination by the Grantee that a default has occurred, the Grantee shall notify the Owner, with a copy to HUD, 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.
  - (iv) If the Owner fails to respond or take action to the satisfaction of the Grantee, the Grantee shall have the right to take corrective action to achieve compliance, in accordance with paragraph (b)(3) or to terminate this Contract with HUD approval, in whole or in part, or to take other corrective action to achieve compliance in its discretion, or as directed by HUD).
- (3) **Corrective Actions.** Pursuant to paragraph (b)(2) of this section the Grantee, in its discretion or as directed by HUD, may take the following corrective actions:
- (i) Bring any action necessary to enforce any obligations of the Owner growing out of the project operation, and operate the project in accordance with the terms of this Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this Contract. If the Grantee takes possession, Project Rental Assistance Payments shall continue in accordance with the Contract.
  - (ii) 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.
  - (iii) Apply to any court, State or Federal, for specific performance of this Contract, for an injunction against any violation of the Contract, for the appointment of a receiver to take over and operate the project in accordance with the Contract, or for such other relief as may be appropriate.
  - (iv) Reduce or suspend Project Rental Assistance Payments.
  - (v) Recover any overpayments.
- (4) **HUD Rights.**
- (i) Notwithstanding any other provisions of this Contract, in the event HUD determines that the Owner is in default of its obligations under the Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the Grantee 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 Grantee hereby expressly agree to recognize the rights of HUD under this Contract to the same extent as if the action(s) were taken by the Grantee.
- (c) **Remedies Not Exclusive and Non-Waiver of Remedies.** The availability of any remedy under this Contract, shall not preclude the exercise of any other remedy under this Contract 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.

**Exhibit 1: Initial Rent Setting Methodology, where applicable. [Exhibit 1 is not required if the initial RAC rent level does not exceed the applicable Section 8 Small Area Fair Market Rent or Fair Market Rent (FMR) level as determined by HUD.]**

**Exhibit 2: Explanation of Rent Adjustments Under Section 2.7, where applicable.**