Part II
Housing Assistance Payments Contract

Rental Assistance Demonstration (RAD) for the Conversion of Public Housing to Project-Based Section 8

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

Section 8 Project Number:	FHA Project Number (if applicable):

2.1 OWNER'S WARRANTIES.

(a) **Legal Capacity.** The Owner warrants that it has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

(b) **Condition of Property.** The Owner warrants that the rental units to be leased by the Owner under the Contract are in decent, safe and sanitary condition (as defined and determined in accordance with HUD regulations and procedures) or will be in such condition no later than the date of completion of initial repairs indicated in the RAD Conversion Commitment (RCC), 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 work indicated in the previous sentence.

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

(a) **Families to Be Housed.** The Contract Units are to be leased by the Owner to eligible Low-Income Families (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. (See also section 2.11.)

(b) **Waiting List.** The Owner shall establish the waiting list for the project in accordance with section 1.7 C.3. of Notice PIH 2012-32, captioned "Establishment of Waiting List."

(c) **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 Contract shall not be construed to include payments covered by this paragraph (c)(2). (See 24 C.F.R. § 880.501(e).)

2.3 RESIDENT PROCEDURAL RIGHTS; GRIEVANCE PROCESS. The Owner agrees to comply with the requirements of section 1.7 B.6.b. of Notice PIH 2012-32, captioned "Grievance Process."

2.4 RESIDENT PARTICIPATION AND FUNDING. In accordance with Attachment 1B.2A. of Notice PIH 2012-32, captioned "PBRA: Resident Participation and Funding," families in projects that convert to assistance under this Contract have the right to establish and operate a resident organization in accordance with 24 C.F.R. Part

245. Attachment 1B.2A. details all of the requirements governing Resident Participation and Funding, with which the Owner must comply.

2.5 HOUSING ASSISTANCE PAYMENTS TO OWNER.

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

(1) Subject to paragraph 1.3.b.1, part I, housing assistance payments shall be paid to the Owner for units under lease for occupancy by Families in accordance with the 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) **RAD Rehab Assistance Payments.** Subject to paragraph 1.3.b.1, part I, for any unit that (1) is vacant during the period of initial repairs pursuant to the RCC; and (2) was receiving payment under the Public Housing Operating Fund immediately prior to the effective date of this Contract, the Owner is entitled to receive a monthly RAD Rehab Assistance Payment in the amount of subsidy that the Owner received for the unit under the Public Housing Operating Fund and the Capital Fund immediately prior to the effective date of this Contract. The amount of monthly RAD Rehab Assistance Payments shall be up to $_____ per unit as determined by HUD and shall commence upon effective date of this Contract, so long as the Owner is in compliance with the approved repair schedule as provided in the RCC. All RAD Rehab Assistance Payments shall end, and the Owner will cease to be entitled to any such payment, (1) on _____; or (2) upon actual completion of such work, if sooner.

(c) **Vacancies During Rent-Up.** If a Contract Unit is not leased as of the effective date of the 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 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.

(d) **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 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 2.10.

(e) **Vacancies for Longer than 60 Days.** If an assisted unit continues to be vacant after the period specified in paragraph (c) or (d) 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 (see Exhibit 2) 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.

(f) **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 2.9(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.

(g) **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 2.9(b) of this Contract. The financial obligation of the CA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

(h) **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(c)(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 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 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 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.

2.6 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 Physical Condition Standards and inspection Requirements, currently codified in 24 C.F.R. Part 5 Subpart G, and HUD's 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 2.21(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 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 2.6(c)(1), shall be construed and applied in accordance with section 2.1(b) of the 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.

2.7 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.

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

(1) Project funds must be used for the benefit of the project, to make mortgage payments, to pay operating expenses, to make required deposits to the replacement reserve in accordance with section 2.7(c) of the Contract, and to provide distributions to the Owner as provided in section 2.7(b)(2) of the Contract.

(2) For the life of the Contract, surplus cash (as defined in Notice PIH 2012-32) may be distributed to the Owner only at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met.

(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 applicable regulations.

(i) The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of the Contract. 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.

2.8 RENT ADJUSTMENTS. 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 Contract term.

2.9 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 3 to this 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 the renting of the Contract Units, the Owner must comply with the income eligibility requirements of section 16(c)(1) of the Act [42 U.S.C. § 1437n(c)(1)] and 24 C.F.R. § 5.653(d)(1). 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). Sections 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 Contract.

(6) Where fewer than 100 percent of the units in the project are covered by this 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.

(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.

2.10 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, including section 1.7 B.6.a. of Notice PIH 2012-32, and any State and local law.

2.11 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 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 Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. (See also section 2.21.)

(b) **Reduction for Failure to Lease to Eligible Families.** If, at any time beginning six months after the effective date of the 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 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 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 Contract, and

(3) Sufficient appropriations are available to support the funding of the units to be restored.

2.12 NONDISCRIMINATION.

(a) **General.** The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, religion, sex, disability, familial status, or national origin.

(b) **Members of Certain Classes.** The Owner shall not automatically exclude anyone from participation in, or deny anyone the benefits of, the Housing Assistance Payments Program because of membership in a class, such as unmarried mothers, recipients of public assistance, and disabled persons.

(c) **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.

(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 Housing Assistance Payments 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.** 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 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.

(f) **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, 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.

2.13 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.

2.14 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, the Owner agrees to promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval of HUD to the contrary.

2.15 FLOOD INSURANCE. (See section 1.7 of the 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.

2.16 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 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 Contract, including the verification of information pertinent to the housing assistance payments.

2.17 DISPUTES.

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

(1) Any dispute concerning a question of fact arising under this 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 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 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 Contract and in accordance with the decision of the Field Office, pending resolution of the appeal.

2.18 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 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 perspective 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 Contract executed, or to be executed, on his or her behalf, or with respect to 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 or applicable to the Depositary Agreement.

2.19 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.

2.20 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 Contract or the project, or of any part of the Contract or the project, or any of the Owner's interest in the 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.

(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.
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(c) The Owner agrees that HUD may condition any prior written consent required under section 2.20(a) of this Contract on any reasonable requirements related to the effective administration of the 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 substantial interest in the Owner,

(iii) Transfers by more than one party of interests aggregating a substantial interest in the Owner,

(iv) Any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution of interests by any other method or means, and

(v) Any refinancing; or any restructuring of permanent debt by the Owner of the project, including any loan modification.

(2) An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer. An assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.

(3) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.

(e) 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.

(f) Except where otherwise approved by HUD, this Contract, and the ACC (if applicable) shall continue in effect and housing 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, 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.

2.21 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 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 Contract;

(ii) If the 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 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 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 Contract, including any funds. HUD shall continue to pay annual contributions with respect to the units covered by this Contract in accordance with the ACC and this 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 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 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 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 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) 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 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).

(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) 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 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 CA takes possession, housing 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 and operating the project and to pay the Owner's obligations under the note and mortgage or other loan documents.

(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. 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 Contract could be irreparable and the amount of damage would be difficult to ascertain.

(iv) Reduce or suspend housing 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 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 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 Contract or the ACC, where applicable, shall not preclude the exercise of any other remedy under this 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.

2.22 EXCLUSION OF THIRD PARTY RIGHTS.

(a) A Family that is eligible for housing assistance under the Contract is not a party to or a third party beneficiary of the Contract.

(b) Nothing in the Contract shall be construed as creating any right of any third party to enforce any provision of the Contract, or to assert any claim against HUD or the PHA (where the CA is a PHA), under the Contract.

2.23 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 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 Contract under the ACC.