

**Part II of the
Agreement to Enter into a
Senior Preservation Rental Assistance Contract
(ASPRAC II)
HUD-93741a**

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner
OMB Approval Number 2502-0554
Exp. 10/31/2014

For Use Section 202 Direct Loan prepayments as authorized under the American Homeownership Opportunity Act of 2000, as amended.

SPRAC Project Number:	Section 8 Project Number (if applicable):	FHA Project Number (if applicable):
Property Street Address:	Town/City/County:	State/ZIP Code:

2.1 Schedule of Completion.

- a. Timely Performance of Work. The Owner agrees to begin work no later than the time indicated in section 1.1. The Owner shall report to HUD the date work has commenced and shall thereafter furnish HUD with periodic progress reports (quarterly unless more frequent reporting is required by HUD). In the event the work is not commenced, diligently continued, or completed as required under this Agreement, HUD reserves the right to rescind this Agreement or take other appropriate action in accordance with section 2.13.
- b. Time for Completion. The project shall be completed in accordance with section 2.3 no later than the end of the period indicated in section 1.1, or in stages as provided for in Exhibit B. Where the Agreement provides for completion in stages, all references to project completion shall be considered to refer to project completion or completion of any stage, as appropriate.
- c. Delays. In the event there is a delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by HUD, the time for completion shall be extended to the extent that HUD determines that completion is delayed due to one or more of these causes.

2.2 Marketing.

- a. The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days prior to the anticipated date of availability for occupancy of the first unit in the project. The Owner must notify HUD of the date of commencement of marketing. Marketing and leasing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan, all Fair Housing and Equal Opportunity requirements, and the applicable provisions of Exhibit A, the proposed Contract.
- b. At the time of Contract execution, the Owner must submit a list of leased and unleased units, with justification for the unleased units, to qualify for vacancy payments for the unleased units in accordance with the Contract.

2.3 Execution of Senior Project Rental Assistance Contract.

- a. Time of Execution. Upon the execution of the Owner's prepayment and refinancing of its Section 202 Direct Loan, and HUD's approval of the Owner's request for Senior Preservation Rental Assistance subsidies, the Senior Preservation Rental Assistance Contract (SPRAC) shall be executed first by the Owner and then by HUD for the purpose of providing rental subsidies to unassisted tenants who are eligible Low-income or Very Low-Income Elderly Households (Households) in the project.
- b. Completion in Stages. If completion is in stages, the Contract and the signature block for the first stage shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit 1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed, and additional Exhibits 1a, 1b, etc., covering the additional units, shall become part of the Contract.
- c. Unleased Units at Time of Execution. At the time the Owner applies to HUD for SPRAC assistance, HUD shall examine the lists of dwelling units leased and not leased, referred to in section 2.2(a) and (b), and shall determine whether or not the Owner has met its obligations under that section with respect to any unleased units. At the time of SPRAC execution, HUD shall state in writing its determination with respect to the unleased units and for which of those units it will make SPRAC payments pursuant to the Contract.
- d. Leased Units at Time of Execution. At the time the Owner applies to HUD for SPRAC assistance, HUD shall examine the lists of dwelling units leased and not leased, referred to in section 2.2(a) and (b), and shall determine the maximum number of leased units that may be eligible to receive SPRAC assistance. At the time of SPRAC execution, HUD shall state in writing its final determination with respect to the total number of SPRAC-eligible leased units and for which of those units it will make SPRAC

payments pursuant to the Contract.

- i. The total possible number of leased units that are eligible for SPRAC assistance shall be established by HUD at time of the Owner's initial application. If, at the time of execution of the SPRAC, the total number of eligible leased units is less than the total number initially established at time of SPRAC application, HUD, at its sole discretion, may reduce the Owner's total SPRAC award.
 - ii. Conversely, the total number of leased units that are eligible for SPRAC assistance shall be capped at the total number of eligible units as determined by HUD at time of the Owner's initial application. While the total number of leased units may increase in number between the dates of the Owner's initial application and the execution of the SPRAC, HUD will not increase the amount of the Owner's SPRAC award at the time of contract execution, as the purpose of the SPRAC Program is to prevent the displacement of existing income-eligible tenants.
- e. **Contract Rents.** The Contract Rents by unit size (and in the case of group homes residential spaces), amounts of project rental assistance payments, and any other applicable terms and conditions shall be as specified in the proposed Senior Project Rental Assistance Contract.
- f. **No Changes in Contract.** Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than as provided in this Agreement.

2.4 Cooperation in Equal Opportunity Reviews:

- a. The Owner agrees to cooperate with HUD in conducting monitoring and compliance reviews and complaint investigations pursuant to all applicable civil rights statutes and regulations, Executive Orders, and civil rights related pro-program requirements.
- b. In carrying out the obligations under this Agreement, the Owner will comply with:
 - i. The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and its implementing regulations at 24 CFR Part 100; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1;
 - ii. The prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.
 - iii. The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;
 - iv. The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR Part 135;
 - v. The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women's Business Enterprises);
 - vi. The affirmative fair housing marketing requirements of 24 CFR Part 200, Subpart M and the implementing regulations at 24 CFR Part 108.
 - vii. The fair housing advertising and poster guidelines, CFR Parts 109 and 110.
 - viii. The civil rights and Equal Opportunity reporting requirements at 24 CFR Part 885.940 (f).

2.5 National Environmental Policy.

The Owner agrees to comply with all applicable requirements under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and HUD regulations at 24 CFR Parts 50, including related environmental laws, Executive Orders and HUD standards in 24 CFR 50.4

2.6 Flood Disaster Protection Act.

If the Project is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that it will obtain coverage of the Project, 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.

2.7 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:

- a. Not to utilize any facility in the performance of this Agreement or any nonexempt subcontractor which is listed on the EPA List of

Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list.

- b. Promptly to notify HUD of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facility;
- c. To 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. To include or cause to be included the provision of this section in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

2.8 Displacement and Relocation Assistance.

The Owner agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Assistance Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub.L. 100-17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 CFR Part 24 which set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part.

2.9 Lead Based Paint.

The Owner agrees to comply with requirement of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35 to the extent they are applicable to housing under the Contract.

2.10 Lobbying.

The Owner agrees to comply with the prohibitions against lobbying the Executive or Legislative Branches of the Federal Government contained in Pub. L. 101-121 (31 USC 1352) and implementing regulations at 24 CFR Part 87.

2.11 Labor Standards.

- a. For projects that are designed for dwelling use by 12 or more families (other than projects acquired without rehabilitation), not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276s-276a-5), must be paid to all laborers and mechanics employed in the construction or rehabilitation of the project. HUD may waive the Davis-Bacon requirements if laborers or mechanics voluntarily donate their services without full compensation (may be paid expenses, reasonable benefits or a nominal fee) for the purpose of lowering the costs of construction or rehabilitation; the laborers or mechanics are not otherwise employed in the construction or rehabilitation of projects that are assisted under this part and designed for dwelling use by 12 or more families; and HUD-determines that any amounts saved are fully credited to the Borrower undertaking the construction or rehabilitation.
- b. Except where the Davis-Bacon requirements have been waived under paragraph (a) of this section, contracts involving employment of laborers and mechanics shall be subject to provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).
- c. Owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.
- d. For the purpose of this section (2.12), project is designed for use by 12 or more families if it includes 12 or more units. Section 2.12 does not apply to group homes.

2.12 Defaults by Owner.

- a. Rights of HUD If Owner Defaults under Agreement.
 - i. Events of Default. A default by the Owner under this Agreement shall result if:
 - 1. The Owner has violated or failed to comply with any provision of, or obligation under, this Agreement; or
 - 2. The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Agreement; or
 - 3. If the Owner has violated or failed to comply with applicable HUD regulations or other administrative requirements for the Senior Preservation Rental Assistance units; or the Owner has filed any false statement or misrepresentation with HUD in connection with the Section 202 Direct Loan prepayment request.
 - ii. HUD Determination of Default. Upon a determination by HUD that a default has occurred, HUD shall notify the Owner of:
 - 1. The nature of the default,
 - 2. The action required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default), and

3. The time within which the Owner shall respond with a showing that all the required actions have been taken.

If the Owner fails to respond or take action to HUD's satisfaction, HUD shall have the right to take corrective action to achieve compliance, in accordance with paragraph (3) of this section, or to terminate this Agreement, in whole or in part, or to take other corrective action to achieve compliance, in its discretion.

- iii. Corrective Actions. Pursuant to paragraph (2) of this section, HUD in its discretion may take the following corrective actions:

1. Terminate the Senior Preservation Rental Assistance Contract.
2. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, or for such other relief as may be appropriate. These remedies are appropriate since the injury to HUD arising from a default under any of the terms of this Agreement could be irreparable and the amount of damage would be difficult to ascertain.

- b. Remedies not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Agreement shall not preclude the exercise of any other remedy under this Agreement or under any provision 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.

2.13 Disputes.

Any dispute concerning a question of fact arising under this Agreement 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 or a designee. Both parties shall proceed diligently with the performance of this Agreement and in accordance with the decision of the Field Office, pending resolution of the appeal.

2.14 Conflict of Interest.

Officers, directors, stockholders, and authorized representatives of the Owner may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development or operation of the project.

2.15 Interest of Member of 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 Agreement or to any benefits which may arise from it.

2.16 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 Agreement or the Contract, without the prior written consent of HUD.
- b. The Owner agrees that it will not change to a different contractor, except with HUD's prior written consent.
- c. The Owner agrees that the approved contractor has not made and will not make, except with HUD's prior written consent, any assignment or transfer in any form of the contractor's contract to construct or rehabilitate the project, or of any part of it, or any of the contractor's interests in it.
- d. The Owner agrees to notify HUD promptly of any proposed action covered by paragraph (a), (b), or (c) of this section, and further agrees to request the prior written consent of HUD. For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to a transfer by the Owner, in whole or in part.
- e. The provisions of this section also shall apply to transfers of interest by the contractor and by persons having interests in the contractor.
- f. Except where otherwise approved by HUD, this Agreement and the Contract shall continue in effect in the event:
 - i. Of assignment, sale, or other disposition of the project or this Agreement or the Contract,
 - ii. Of foreclosure, including foreclosure by HUD,
 - iii. Of assignment of the mortgage or deed in lieu of foreclosure, or
 - iv. HUD takes over possession, operation or ownership.

WARNING: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

NOTE: 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. HUD may not collect this information and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.