

**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

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

PART 2 OF HAP CONTRACT

2. DEFINITIONS

Contract Administrator (CA). The Public Housing Agency that executes the HAP Contract with the Owner and administers the voucher funding under the Consolidated Annual Contributions Contract with HUD.

Contract units. The housing units covered by this HAP Contract. The contract units are described in Exhibit A.

Family. The persons approved by the CA to reside in a contract unit with assistance under the program.

First Full Year. The first full calendar year of the HAP Contract beginning the year after the calendar year of the effective date. To clarify, in cases in which a project converts in December and the effective date of the HAP Contract is January 1, the Year of Conversion is the calendar year starting on the effective date and the First Full Year begins the year following.

HAP Contract. This housing assistance payments contract between the CA and the owner. The contract consists of Part 1, Part 2, and the contract exhibits (listed in section 1.c of the HAP Contract).

Housing assistance payment. The monthly assistance payment by the CA for a contract unit, which includes: (1) a payment to the Owner for rent to the Owner under the family's lease minus the tenant rent; and (2) an additional payment to or on behalf of the family if the utility allowance exceeds total tenant payment.

Household. The family and any CA-approved live-in aide.

Housing quality standards (HQS). The HUD minimum quality standards for dwelling units occupied by families receiving project-based voucher program assistance.

HUD. U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements which apply to the project-based voucher program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives. HUD requirements include Notice PIH 2012-32 (HA), “Rental Assistance Demonstration—Final Implementation, Revision 2,” as revised or amended from time to time (or any successor document) (RAD Notice). Any references in this HAP Contract to specific sections of the RAD Notice include any successor provisions whether explicitly stated or not.

Owner. Any person or entity who has the legal right to lease or sublease a unit to a participant.

Premises. The building or complex in which a contract unit is located, including common areas or grounds.

Principal or interested party. This term includes a management agent and other persons or entities participating in project management, and the officers and principal members, shareholders, investors, and other parties having a substantial interest in the HAP Contract, or in any proceeds or benefits arising from the HAP Contract.

Program. The project-based voucher program (see authorization for project-based assistance at 42 U.S.C. 1437f(o)(13)).

PHA. Public Housing Agency. A public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

Rent to Owner. The total monthly rent payable to the Owner under the lease for a contract unit. Rent to Owner includes payment for any housing services, maintenance and utilities to be provided by the Owner in accordance with the lease. **Tenant.** The person or persons (other than a live-in aide) who executes the lease as a lessee of the dwelling unit.

Tenant rent. The portion of the rent to Owner payable by the family, as determined by the CA in accordance with HUD requirements. The CA is not responsible for paying any part of the tenant rent.

Year of Conversion. The time from the effective date of the HAP Contract through the end of that calendar year.

3. PURPOSE

- a. This is a HAP Contract between the CA and the Owner.
- b. The purpose of the HAP Contract is to provide housing assistance payments for eligible families who lease contract units that comply with the HUD HQS from the Owner.

- c. The CA must make housing assistance payments to the Owner in accordance with the HAP Contract for contract units leased and occupied by eligible families during the HAP Contract term. HUD provides funds to the CA to make housing assistance payments to Owners for eligible families.

4. RENT TO OWNER; HOUSING ASSISTANCE PAYMENTS

a. Amount of initial rent to Owner

The initial rent to Owner for each contract unit is stated in Exhibit A, which is attached to and made a part of the HAP Contract. At the beginning of the HAP contract term, and until rent to Owner is adjusted in accordance with section 5 of the HAP Contract, the rent to Owner for each bedroom size (number of bedrooms) shall be the initial rent to Owner amount listed in Exhibit A.

b. HUD rent requirements

Notwithstanding any other provision of the HAP Contract, the rent to Owner may in no event exceed the amount authorized in accordance with HUD requirements. The CA has the right to reduce the rent to Owner, at any time, to correct any errors in establishing or adjusting the rent to Owner in accordance with HUD requirements. The CA may recover any overpayment from the Owner.

c. CA payment to Owner

1. Each month the CA must make a housing assistance payment to the Owner for a unit under lease to and occupied by an eligible family in accordance with the HAP Contract.
2. The monthly housing assistance payment to the Owner for a contract unit is equal to the amount by which the rent to Owner exceeds the tenant rent.
3. Payment of the tenant rent is the responsibility of the family. The CA is not responsible for paying any part of the tenant rent, or for paying any other claim by the Owner against a family. The CA is only responsible for making housing assistance payments to the Owner on behalf of a family in accordance with the HAP Contract.
4. The Owner will be paid the housing assistance payment under the HAP Contract on or about the first day of the month for which payment is due, unless the Owner and the CA agree on a later date.
5. To receive housing assistance payments in accordance with the HAP contract, the Owner must comply with all the provisions of the HAP contract. Unless the Owner complies with all the provisions of the HAP

Contract, the Owner does not have a right to receive housing assistance payments.

6. If the CA determines that the Owner is not entitled to the payment or any part of it, the CA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the Owner, including amounts due under any other housing assistance payments contract.
7. The Owner will notify the CA promptly of any change of circumstances that would affect the amount of the monthly housing assistance payment, and will return any payment that does not conform to the changed circumstances.
8. Notwithstanding anything else in this HAP Contract, in the Year of Conversion, any housing assistance payments shall equal amounts funded in accordance with Part 1, Section 1.d.4.a (Funding for the Year of Conversion) of this HAP Contract.

d. Termination of assistance for family

The CA may terminate housing assistance for a family under the HAP Contract in accordance with HUD requirements. The CA must notify the Owner in writing of its decision to terminate housing assistance for the family in such case.

5. ADJUSTMENT OF RENT TO OWNER

a. PHA determination of adjusted rent

1. Subject to section 5.b. of the HAP Contract, at each anniversary date during the term of the HAP Contract, the CA will adjust the rent to Owner by applying HUD's operating cost adjustment factor (OCAF), subject to the availability of appropriations for each year of the HAP Contract term.
2. The adjustment of rent to Owner shall always be determined in accordance with all HUD requirements. The amount of the rent to Owner may be adjusted up or down, in the amount defined by the CA in accordance with HUD requirements.

b. Reasonable rent

The rent to Owner for each contract unit may at no time exceed the reasonable rent charged for comparable units in the private unassisted market, as determined by the CA in accordance with 24 C.F.R. § 983.303. However, the rent to Owner shall not be reduced below the initial rent to Owner for dwelling units under the HAP Contract except in the following cases: (1) to correct errors in calculations in accordance with HUD requirements; (2) if additional housing assistance has been combined with PBV assistance after the execution of the HAP Contract and a rent

decrease is required pursuant to 24 C.F.R. § 983.55; or (3) if a decrease in rent to Owner is required based on changes in the allocation of responsibility for utilities between the Owner and the tenant..

c. No special adjustments

The CA will not make any special adjustments of the rent to Owner.

d. Owner compliance with HAP contract

The CA shall not approve, and the Owner shall not receive, any increase of rent to Owner unless all contract units are in accordance with the HQS, and the Owner has complied with the terms of the assisted leases and the HAP Contract.

e. Notice of rent adjustment

Rent to Owner shall be adjusted by written notice by the CA to the Owner in accordance with this section. Such notice constitutes an amendment of the rents specified in Exhibit A.

6. OWNER RESPONSIBILITY

The Owner is responsible for:

- a. Performing all management and rental functions for the contract units.
- b. Maintaining the units in accordance with HQS.
- c. Complying with equal opportunity requirements.
- d. Enforcing tenant obligations under the lease.
- e. Paying for utilities and housing services (unless paid by the family under the lease).
- f. Collecting from the tenant:
 1. Any security deposit;
 2. The tenant rent; and
 3. Any charge for unit damage by the family.

7. OWNER CERTIFICATION

The owner certifies that during the term of the HAP Contract:

- a. All contract units meet HQS, or successor standard, or will meet HQS no later than the date of completion of the “Work” (including any environmental mitigation

measures) as indicated in the RAD Conversion Commitment (RCC) which will be no later than _____.

- b. The Owner is providing all the services, maintenance and utilities as agreed to under the HAP Contract and the leases with assisted families.
- c. Each contract unit for which the Owner is receiving housing assistance payments is leased to an eligible family referred by the CA, and the lease is in accordance with the HAP Contract and HUD requirements.
- d. To the best of the Owner's knowledge, the members of the family reside in each contract unit for which the Owner is receiving housing assistance payments, and the unit is the family's only residence.
- e. The Owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- f. The amount of the housing assistance payment is the correct amount due under the HAP Contract.
- g. The rent to Owner for each contract unit does not exceed rents charged by the Owner for other comparable unassisted units.
- h. Except for the housing assistance payment and the tenant rent as provided under the HAP Contract, the Owner has not received and will not receive any payments or other consideration (from the family, the CA, HUD, or any other public or private source) for rental of the contract unit.
- i. The family does not own, or have any interest in the contract unit. If the Owner is a cooperative, the family may be a member of the cooperative.

8. CONDITION OF UNITS

a. Owner maintenance and operation

The Owner must maintain and operate the contract units and premises to provide decent, safe and sanitary housing in accordance with the HQS, including performance of ordinary and extraordinary maintenance. The Owner must provide all the services, maintenance and utilities set forth in Exhibits B and C, and in the lease with each assisted family.

b. PHA inspections

- 1. The CA must inspect each Contract unit after rehabilitation is completed in accordance with the RCC.

2. Before providing assistance to a new family in a contract unit, the CA must inspect the unit. The CA may not provide assistance on behalf of the family until the unit fully complies with the HQS.
3. At least annually during the term of the HAP Contract, the CA must inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph 2 of this section are not counted towards meeting this annual inspection requirement.
4. If more than 20 percent of the annual sample of inspected contract units in a building fail the initial inspection, the CA must reinspect 100 percent of the contract units in the building.
5. The CA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the Owner is providing

maintenance, utilities, and other services in accordance with the HAP Contract. The CA must take into account complaints and any other information that comes to its attention in scheduling inspections.

c. Violation of the housing quality standards

1. If the CA determines a contract unit is not in accordance with the HQS, the CA may exercise any of its remedies under the HAP Contract for all or any contract units. Such remedies include termination, suspension or reduction of housing assistance payments, and termination of the HAP Contract.
2. The CA may exercise any such contractual remedy respecting a contract unit even if the family continues to occupy the unit.
3. The CA shall not make any housing assistance for a dwelling unit that fails to meet the HQS, unless the Owner corrects the defect within the period specified by the CA and the CA verifies the correction. If a defect is life threatening, the Owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any CA-approved extension).

d. Maintenance and replacement—owner's standard practice

Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the Owner.

9. LEASING CONTRACT UNITS

a. Selection of tenants

1. During the term of the HAP Contract, the Owner must lease all Contract units to eligible families selected and referred by the CA from the CA's waiting list. The waiting list shall be established and maintained in accordance with HUD requirements, including the special PBV waiting list provisions in the RAD Notice (including Section 1.6.D.4 or successor provision).
2. The Owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.
3. Consistent with HUD requirements, the Owner may apply its own admission procedures in determining whether to admit a family referred by the CA for occupancy of a contract unit. The Owner may refer families to the CA, and recommend selection of such families from the CA waiting list for occupancy of vacant units.
4. The Owner must promptly notify in writing any rejected applicant of the grounds for rejection.
5. The CA must determine family eligibility in accordance with HUD requirements.
4. The contract unit leased to each family must be appropriate for the size of the family under the CA's subsidy standards.
5. If a contract unit was occupied by an eligible family at the time the unit was selected by the CA, or is so occupied on the effective date of the HAP Contract, the Owner must offer the family the opportunity to lease the same or another appropriately-sized contract unit with assistance under the HAP Contract.
6. The Owner is responsible for screening and selecting tenants from the families referred by the CA from its waiting list.

b. Vacancies

1. The Owner must promptly notify the CA of any vacancy in a contract unit. After receiving the Owner notice, the CA shall make every reasonable effort to refer a sufficient number of families for Owner to fill the vacancy.
2. The Owner must rent vacant contract units to eligible families on the CA waiting list referred by the CA.

3. The CA and the Owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.
4. If any contract units have been vacant for a period of 120 or more days since Owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the CA to fill such vacancies), the CA may give notice to the Owner amending the HAP Contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

10. TENANCY

a. Lease

The lease between the Owner and each assisted family must be in accordance with HUD requirements. In all cases, the lease must include the HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

b. Termination of tenancy

1. The Owner may only terminate a tenancy in accordance with the lease and HUD requirements.
2. The Owner must give the CA a copy of any Owner eviction notice to the tenant at the same time that the Owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used to commence an eviction action under State or local law.
3. The Owner shall provide adequate written notice of termination of the lease, which shall be (A) a reasonable period of time, but not to exceed 30 days if the health or safety of other tenants, Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or in the event of any drug-related or violent criminal activity or any felony conviction; (B) Not less than 14 days in the case of nonpayment of rent; and (C) Not less than 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.
4. The Owner must renew all tenant leases upon expiration, unless good cause under 24 C.F.R. § 983.257(a) exists for non-renewal of a lease.

c. Family payment

1. The portion of the monthly rent to Owner payable by the family (“tenant rent”) will be determined by the CA in accordance with HUD

requirements. The amount of the tenant rent is subject to change during the term of the HAP Contract. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the CA to the family and the Owner.

2. The amount of the tenant rent as determined by the CA is the maximum amount the Owner may charge the family for rent of a contract unit, including all housing services, maintenance and utilities to be provided by the Owner in accordance with the HAP Contract and the lease.
3. The Owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the CA. The Owner must immediately return any excess rent payment to the tenant.
4. The family is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under the HAP Contract. The Owner may not terminate the tenancy of an assisted family for nonpayment of the CA housing assistance payment.
5. The CA is only responsible for making the housing assistance payments to the Owner on behalf of the family in accordance with the HAP Contract. The CA is not responsible for paying the tenant rent, or any other claim by the Owner.

d. Other Owner charges

1. Except as provided in paragraph 2, the Owner may not require the tenant or family members to pay charges for meals or supportive services. Nonpayment of such charges is not grounds for termination of tenancy.
2. In assisted living developments receiving project-based voucher assistance, Owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to Owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the Owner in an assisted living development.
3. The Owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to the unsubsidized tenant in the premises.

e. Security deposit

1. The Owner may collect a security deposit from the family.

2. The Owner must comply with HUD and CA requirements, which may change from time to time, regarding security deposits from a tenant.
3. The CA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the Owner to unassisted families.
4. When the family moves out of the contract unit, the Owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the family owes under the lease. The Owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the Owner, the Owner must promptly refund the full amount of the balance to the family.
5. If the security deposit is not sufficient to cover amounts the family owes under the lease, the Owner may seek to collect the balance from the family. However, the CA has no liability or responsibility for payment of any amount owed by the family to the Owner.

11. FAMILY RIGHT TO MOVE

- a. The family may terminate its lease at any time after the first year of occupancy. The family must give the Owner advance written notice of intent to vacate (with a copy to the CA) in accordance with the lease. If the family has elected to terminate the lease in this manner, the CA must offer the family the opportunity for tenant-based rental assistance in accordance with HUD requirements.
- b. Before providing notice to terminate the lease under paragraph a, the family must first contact the CA to request tenant-based rental assistance if the family wishes to move with continued assistance. If tenant-based rental assistance is not immediately available upon lease termination, the CA shall give the family priority to receive the next available opportunity for tenant-based rental assistance.

12. OVERCROWDED, UNDER-OCCUPIED, AND ACCESSIBLE UNITS

The CA subsidy standards determine the appropriate unit size for the family size and composition. The CA and Owner must comply with the requirements in 24 CFR 983.259.

13. PROHIBITION OF DISCRIMINATION

- a. The Owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.

- b. The Owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.* ; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959– 1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* ; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964– 1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971– 1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).
- c. The CA and the Owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

14. PHA DEFAULT AND HUD REMEDIES

If HUD determines that the CA has failed to comply with the HAP Contract, or has failed to take appropriate action to HUD's satisfaction or as directed by HUD, for enforcement of the CA's rights under the HAP Contract, HUD may assume the CA's rights and obligations under the HAP Contract, and may perform the obligations and enforce the rights of the CA under the HAP Contract.

15. OWNER DEFAULT AND PHA REMEDIES

a. Owner default

Any of the following is a default by the Owner under the HAP Contract:

- 1. The Owner has failed to comply with any obligation under the HAP Contract, including the Owner's obligations to maintain all contract units in accordance with the housing quality standards.
- 2. The Owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

3. The Owner has committed any fraud or made any false statement to the CA or HUD in connection with the HAP Contract.
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4. The Owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
 5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:
 - A. The Owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or
 - B. The Owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
 6. The Owner has engaged in any drug-related criminal activity or any violent criminal activity.
- b. **CA remedies**
1. If the CA determines that a breach has occurred, the CA may exercise any of its rights or remedies under the HAP Contract.
 2. The CA must notify the Owner in writing of such determination. The notice by the CA to the Owner may require the Owner to take corrective action (as verified by the CA) by a time prescribed in the notice.
 3. The CA's rights and remedies under the HAP Contract include recovery of overpayments, termination or reduction of housing assistance payments, and termination of the HAP Contract.
- c. **CA remedy is not waived**

The CA's exercise or non-exercise of any remedy for Owner breach of the HAP Contract is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

16. OWNER DUTY TO PROVIDE INFORMATION AND ACCESS REQUIRED BY HUD OR PHA

a. Required information

The Owner must prepare and furnish any information pertinent to the HAP Contract as may reasonably be required from time to time by the CA or HUD. The Owner shall furnish such information in the form and manner required by the CA or HUD.

b. PHA and HUD access to premises

The Owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner to the extent necessary to determine compliance with the HAP Contract, including the verification of information pertinent to the housing assistance payments or the HAP Contract.

17. CA AND OWNER RELATION TO THIRD PARTIES

a. Injury because of Owner action or failure to act

The CA has no responsibility for or liability to any person injured as a result of the Owner's action or failure to act in connection with the implementation of the HAP Contract, or as a result of any other action or failure to act by the Owner.

b. Legal relationship

The Owner is not the agent of the CA. The HAP Contract does not create or affect any relationship between the CA and any lender to the Owner or any suppliers, employees, contractors or subcontractors used by the Owner in connection with the implementation of the HAP Contract.

c. Exclusion of third party claims

Nothing in the HAP Contract shall be construed as creating any right of a family or other third party (other than HUD) to enforce any provision of the HAP Contract, or to assert any claim against HUD, the CA or the Owner under the HAP Contract.

d. Exclusion of Owner claims against HUD

Nothing in the HAP Contract shall be construed as creating any right of the Owner to assert any claim against HUD.

18. PHA-OWNED UNITS

Notwithstanding Section 17 of the HAP Contract, a CA may own units assisted under the PBV program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units and all other HUD requirements governing PHA ownership of PBV units.

19. CONFLICT OF INTEREST

a. Interest of members, officers, or employees of CA, members of local governing body, or other public officials

1. No present or former member or officer of the CA (except tenant-commissioners), no employee of the CA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, or in the HAP Contract.
2. HUD may waive this provision for good cause.

b. Disclosure

The Owner has disclosed to the CA any interest that would be a violation of the HAP Contract. The Owner must fully and promptly update such disclosures.

c. 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 HAP Contract or to any benefits arising from the contract.

20. EXCLUSION FROM FEDERAL PROGRAMS

a. Federal requirements

The Owner must comply with and is subject to requirements of 2 CFR part 2424.

b. Disclosure

The Owner certifies that:

1. The Owner has disclosed to the CA the identity of the Owner and any principal or interested party.
2. Neither the Owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

21. TRANSFER OF THE CONTRACT OR PROPERTY

a. When consent is required

1. The Owner and the CA agree that neither the HAP Contract nor the premises may be transferred without the written consent of CA and HUD.

2. “Transfer” includes:

- A. Any sale or assignment or other transfer of ownership, in any form, of the HAP Contract or the property;
- B. The transfer of any right to receive housing assistance payments that may be payable pursuant to the HAP Contract;
- C. The creation of a security interest in the HAP Contract or the property;
- D. Foreclosure or other execution on a security interest;
- E. A creditor’s lien, or transfer in bankruptcy; or
- F. Any refinancing or restructuring of permanent debt imposing liens on the property by the Owner of the project, except to such extent permitted pursuant to that certain Rental Assistance Demonstration Use Agreement entered into in connection with the premises.

3. Owner, CA and HUD hereby agree that:

- A. CA and HUD hereby consent to any transfer of a passive or non-controlling interest in the Owner entity, including (by way of illustration and not of limitation, such transfers include transfers of the interests of limited partners in a limited partnership, transfers of the interests of members other than managing members or managers in a limited liability company, and transfers of interests in a corporation that cumulatively represent less than half the beneficial interest in the HAP Contract or the premises).
- B. The Owner must obtain advance consent of CA and HUD for transfer of any interest of a general partner of a limited partnership or for the transfer, elimination or addition of a manager or managing member of a limited liability company. If such assignment is made in connection with any HUD-approved financing for the premises, including without limitation low-income housing tax credits, subject to the provisions of Section 37 of this HAP Contract, HUD and CA hereby consent to: an assignment by a general partner of a limited partnership Owner to a limited partner; and an assignment by the managing member of a limited liability company Owner to another member of Owner.
- C. Limited CA and HUD consent to collateral assignments of the HAP Contract to lenders is provided in Section 36 of this HAP Contract.

b. Transferee assumption of HAP Contract

No transferee (including the holder of a security interest, the security holder’s transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive any payment of housing assistance

payments pursuant to the HAP Contract, or to exercise any rights or remedies under the HAP Contract, unless the CA and HUD has consented in advance, in writing to such transfer, and the transferee has agreed in writing, in a form acceptable to the CA and HUD in accordance with HUD requirements, to assume the obligations of the Owner under the HAP Contract, and to comply with all the terms of the HAP Contract.

c. Effect of consent to transfer

1. The creation or transfer of any security interest in the HAP Contract is limited to amounts payable under the HAP Contract in accordance with the terms of the HAP Contract.
2. The CA and HUD's consent to transfer of the HAP Contract or the property does not to change the terms of the HAP Contract in any way, and does not change the rights or obligations of the PHA or the Owner under the HAP Contract.
3. The CA and HUD's consent to transfer of the HAP Contract or the property to any transferee does not constitute consent to any further transfers of the HAP Contract or the property, including further transfers to any successors or assigns of an approved transferee.

d. When transfer is prohibited

The CA and HUD will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

22. SUBSIDY LAYERING

a. Owner disclosure

The Owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

b. Limit of payments

Housing assistance payments under the HAP Contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide

affordable housing after taking account of such related assistance. The CA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the Owner to compensate in whole or in part for such related assistance.

23. OWNER LOBBYING CERTIFICATIONS

- a. The Owner certifies, to the best of Owner's knowledge and belief, that:
 1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the HAP Contract, or the extension, continuation, renewal, amendment, or modification of the HAP Contract.
 2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HAP Contract, the Owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. This certification by the Owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

24.

Intentionally Omitted.

25. TERMINATION OF HAP CONTRACT FOR WRONGFUL SELECTION OF CONTRACT UNITS

The HAP Contract may be terminated upon at least 30 days' notice to the Owner by the CA or HUD if the CA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

26. NOTICES AND OWNER CERTIFICATIONS

- a. Where the Owner is required to give any notice to the CA pursuant to the HAP Contract or any other provision of law, such notice must be in writing and must be given in the form and manner required by the CA.
- b. Any certification or warranty by the Owner pursuant to the HAP Contract shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

27. ENTIRE AGREEMENT; INTERPRETATION

- a. The HAP Contract, including the exhibits, is the entire agreement between the CA and the Owner
- b. The HAP Contract must be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP Contract. The Owner agrees to comply with all such laws and HUD requirements.

28. RAD REHAB ASSISTANCE PAYMENTS

For any unit (1) that is vacant during the period of Work pursuant to the RCC; and (2) for which the Owner is not otherwise receiving housing assistance payments in accordance with section 4(c) of this HAP Contract; the Owner is entitled to receive a monthly RAD Rehab Assistance Payment calculated in accordance with the provision of the RAD Notice governing RAD Rehab Assistance Payments (i.e., Notice PIH 2012-32 (HA), REV-2, section 1.7.A.9. or successor provision), in the amount of \$___ per unit, as determined by HUD; shall apply to no more than _____ units in any given month; and shall commence upon the effective date of this HAP 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 payments, (1) on _____ ; or (2) upon actual completion of the Work, if sooner. Provided, however, during the Year of Conversion (as defined in Section 2), any RAD Rehab Assistance Payments shall not exceed amounts funded pursuant to Section 1.d.4(a).

29. CA BOARD APPROVAL

The CA's Board must approve the operating budget for the covered project annually in accordance with HUD requirements.

30. 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, or as determined feasible by the first mortgage lender, 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.

31. RESIDENT PROCEDURAL RIGHTS' GRIEVANCE PROCESS

The Owner and the CA must comply with the grievance process requirements in the RAD Notice (including section 1.6.C.7.ii. or successor provision) for projects converting to PBV assistance.

32. RESIDENT PARTICIPATION AND FUNDING

In accordance with Attachment 1B.2.B. of the RAD Notice, captioned “PBV Resident Participation and Funding,” families in projects that convert to PBV assistance have the right to establish and operate resident organizations for the purpose of addressing issues related to their living environment. The Attachment details all of the requirements governing Resident Participation and Funding, with which the Owner must comply.

33. FLOOD INSURANCE

If the project is located in an area that has been identified by 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 Program, the Owner agrees that: (1) the project will be covered, during the life of the property, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; and (2) that it will advise any prospective purchaser or transferee of the property in writing of the continuing requirement to maintain such flood insurance during the life of the property.

34. REPLACEMENT RESERVE REQUIREMENT

The Owner shall establish and maintain a replacement reserve in accordance with the RCC.

35. LABOR STANDARDS

By execution of this HAP Contract, the Owner warrants that construction or repair Work on the project that is initiated within eighteen (18) months of the effective date of the HAP Contract shall be in compliance with applicable labor standards, including Davis-Bacon wage requirements, as stated in the “Addendum to the HAP Contract—Labor Standards.” The “Addendum to the HAP Contract—Labor Standards” shall be included as an “Additional Exhibit” under Part 1, Section 1.c. of the HAP Contract.

36. LENDER PROVISIONS

Notwithstanding anything else in this HAP Contract:

- a. The holder of any HUD-approved mortgage against the project may take action against the Owner and the project that results in the holder of the mortgage or its designee (either referred to herein as “Lender Temporary Custodian”) coming into ownership of the project or assuming the role of “Owner” under this HAP Contract. Transfer of the project or the HAP Contract from the Owner is grounds for termination of the HAP Contract assistance unless otherwise approved by HUD.

HUD and CA hereby consent to a collateral assignment of this contract to any Lender Temporary Custodian and pre-approve any Lender Temporary Custodian as a temporary custodian of the project and as a new “Owner” pursuant to this HAP Contract, and continued assistance to the project pursuant to this HAP Contract, subject to the following conditions:

1. HUD and CA must receive thirty (30) days prior written notice of the transfer of the project to the Lender Temporary Custodian and the form of the documents necessary to effect such transfer.
2. In connection with the transfer, Lender Temporary Custodian must execute and deliver to HUD and CA an assumption on the HAP Contract, in such form as acceptable to HUD.
3. Such approval and consent to continue assistance pursuant to this HAP Contract is expressly limited to a period of only 90 days that commences the date of such transfer of the project, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as HUD deems reasonably necessary for Lender to find a permanent replacement Owner. Consistent with Public Law 112-55, in the event that the Lender Temporary Custodian comes into ownership of the project, the Lender Temporary Custodian shall use such interim period to identify a proposed permanent Owner determined by HUD to be capable of abiding by the HAP Contract, Use Agreement, and any and all applicable RAD program requirements. The provision of housing assistance payments to any proposed permanent replacement Owner is subject to HUD’s consent.
4. Prior to a transfer of the project to a Lender Temporary Custodian, HUD may at any time by written notice to a Lender Temporary Custodian revoke the approvals given herein if HUD becomes aware of any conditions or circumstances (by way of illustration and not limitation, such conditions or circumstances may include debarment, suspension or limited denial of participation) that would disqualify or compromise the ability of Lender Temporary Custodian from acting as an interim custodian of the project pursuant to the HAP Contract.

37. LOW-INCOME HOUSING TAX CREDIT PROVISIONS

Notwithstanding anything else in this HAP Contract:

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

Banc of America, N.A.

MA1-225-02-02

225 Franklin Street, Boston, MA 02110

Attention: Asset Management

- b. **Right to Cure.** Any cure of any default by Owner under the HAP Contract, Use Agreement or RCC offered by Equity Investor shall be treated the same as if offered by Owner.
- c. **Transfer of Investor Members/Partners.** Equity Investor, and each successor member or partner in Owner, may transfer its interest in the Owner without prior written consent of HUD if:
 - 1. HUD receives prior written notice of such transfer; and
 - 2. HUD receives executed copies of any and all documents necessary to effect such transfer, including any and all amendments to Owner's organizational documents.
- d. **Removal of General Partner/Managing Member**
 - 1. HUD and CA have pre-approved the replacement of the Owner's general partner or managing member with an affiliate of Equity Investor, or any successor equity investor ("Interim Replacement GP/MM") as a temporary replacement general partner/managing member of the Owner, in the event Owner's general partner or managing member is removed for cause in accordance with Owner's organizational documents.
 - 2. Interim Replacement GP/MM may remove Owner's general partner or managing member in accordance with the Owner's organizational documents without further written consent from HUD or CA and HUD and CA shall continue assistance to the project in accordance with the HAP Contract, provided that Interim Replacement GP/MM provide HUD and CA with prior written notice of such replacement and HUD and CA receive executed copies of any and all documents necessary to effect such replacement.
 - 3. Such approval of such Interim Replacement GP/MM is expressly limited to a period of only 90 days that commences the date of such removal, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as HUD deems reasonably necessary to provide for a permanent replacement of the general partner or managing member. After such interim period, any proposed permanent replacement for the Owner's general partner or managing member is subject to HUD's consent.

4. HUD may at any time by written notice to Equity Investor or any successor revoke the approvals given herein if HUD becomes aware of any conditions or circumstances that would disqualify or compromise the ability of Interim Replacement GP/MM from acting as an interim general partner/managing member pursuant to this HAP Contract.

38. CONTINUATION OF HAP CONTRACT

Except where otherwise approved by HUD, this HAP Contract shall continue in effect and housing assistance payments will continue in accordance with the terms of the HAP Contract in the event: (1) Of assignment, sale, or other disposition of this HAP Contract; (2) Of foreclosure, including foreclosure by HUD; (3) Of assignment of the mortgage or deed in lieu of foreclosure; (4) HUD or the CA takes over possession, operation or ownership; or (5) The Owner prepays the mortgage.

39. ALTERNATIVE REQUIREMENTS

- a. Owner Proposal Selection Procedures. Projects will be selected for assistance in accordance with the provisions in the RAD Notice. Therefore, 24 C.F.R. § 983.51 does not apply.
- b. Percentage Limitation. Section 8(o)(13)(B) of the 1937 Act and 24 C.F.R. § 983.6 do not apply to assistance provided under RAD.
- c. Consistency with PHA Plan and Other Goals. Section 8(o)(13)(ii) of the 1937 Act and 24 C.F.R. §§ 983.57(b)(1) and (c) do not apply.

**Signatures:
Contract Administrator**

Housing Authority County of San Bernardi

Print or Type Name of Contract Administrator

Signature

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)

Owner

Waterman Gardens Partners 2, L.P.

Print or Type Name of Owner

Signature

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)