Part II
Senior Preservation Rental
Assistance Contract (SPRAC II)
HUD-93742a

U.S. Department of Housing
Urban Development
Office of Housing
Federal Housing Commissioner
OMB Approval Number _____
Expiration Date: _____

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

Contents of Senior Preservation Rental Assistance Contract Part H

2.1 Owner Warranties
a. Legal Capacity
b. Condition of Property

2.2 Contract Administrator (CA)

2.3 Families to Be Housed

2.4 Marketing and Leasing of SPRAC Units
a. Marketing
b. Wait List
c. Selection, Admission, and Denial of Admission
d. Ineligibility Determination
e. Security Deposits
f. HUD Lease
g. Family Rent
h. Utility Allowance
Reexamination of Family Income and Composition
Rent Redetermination after Adjustment in Utility Allowance
k. Incorrect SPRAC Payments to Owner
1. Leasing to Ineligible Families
m. Occupancy by Non-Elderly or Non-Disabled Families

2.5 Resident Participation

2.6 Termination of Tenancy or SPRAC by the Owner

2.7 SPRAC Rents
a. Initial SPRAC Rents
b. SPRAC Rent Adjustments

2.8 SPRAC Payments to Owner
a. SPRAC Payments on Behalf of Families
b. Vacancies after Rent-up and Limited Vacancy Payments
c. Vacancies Longer than 60 days
d. Prohibition of Double Compensation for Vacancies
e. CA Not obligated for Family Rent or Other Claims Against the Family
f. Owner's Monthly Request for Payments

2.9 Reduction of Number of SPRAC Units for Failure to Lease to Eligible Families
a. Restriction Against Leasing to Ineligible Families

DRAFT

b. Reduction for Failure to Lease to Eligible Families
c. Restoration

[Approval v06/11/2024]

DRAFT

2.10 Maintenance, Operation and Inspection

a. Maintenance and Operation
b. Inspection
c. Distribution of SPRAC Units
d. SPRAC Units Not Decent, Safe, and Sanitary
e. Notification of Abatement
f. Overcrowded and Underoccupied SPRAC Units
g. Records

2.11 Financial Requirements

a. Submission of Financial and Operating Statements
b. Replacement Reserve
c. Limitation on Distributions

2.12 Nondiscrimination

a. Fair Housing Act
b. Title VI of the Civil Rights Act of 1964 and Executive Order 11063
c. Section 504 of the Rehabilitation Act of 1973.
d. Employee of Owner.

2.13 Cooperation in EO Compliance Review

2.14 Property and Liability Insurance

2.15 Flood Insurance

2.16 Reports and Access to Premises and Records

2.17 Disputes

a. Projects for which a PHA is the CA
b. Projects for which HUD is the CA

2.18 Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials

2.19 Interest of Members or Delegates to Congress

2.20 Assignment, Sale, Foreclosure, or Deed in Lieu of Foreclosure

a. Sale, Assignment, Conveyance or Transfer
b. Notification
c. HUD Right to Condition Consent
d. Meaning of Sale, Assignment or Transfer
e. SPRAC Remains in Effect

2.21 Default 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 SPRAC
b. Rights of PHA (where the CA is a PHA) and HUD if Owner Defaults under SPRAC
c. Remedies Not Exclusive and Non-Waiver of Remedies

2.22 Exclusion of Third-Party Rights

2.23 No Agency Relationship Between HUD and the PHA (Where the CA is a PHA)

2.24 Uniform Relocation Assistance Act

2.25 Privacy Act

2.26 Conflicts Clause

2.27 Definitions

DRAFT

2.28 Warning

2.29 Public Burden Reporting

DRAFT

Senior Preservation Rental Assistance Contract Part II

2.1 Owner's Warranties.

a. Legal Capacity. The Owner warrants that it has the legal right to execute this Senior Preservation Rental Assistance Contract (SPRAC) and to lease SPRAC Units at the subject property.

b. Condition of Property. The Owner warrants that the SPRAC Units to be leased by the Owner are in decent, safe, and sanitary condition, in accordance with section 2.10(a), and any other applicable HUD requirements.

2.2 Contract Administrator (CA).

The CA agrees to make SPRAC payments on behalf of Families for the SPRAC Units, to enable the Families to lease decent, safe, and sanitary housing pursuant to section 811 of the American Homeownership Economic Opportunity Act of 2000, as amended by the Frank Melville Supportive Housing Investment Act of 2010.

2.3 Families to be Housed.

At the time of the HUD authorized Section 202 Direct Loan prepayment, SPRAC assistance shall be provided to house currently unassisted tenant households who may be either Low-Income or Very Low-Income Families. For purposes of this SPRAC, "Family(ies)" means an Elderly Family as defined by 24 C.F.R § 891.505, or any successor regulation promulgated by the Senior Preservation Rental Assistance program, and may include "Handicapped Families," as defined in 24 C.F.R. § 891.505, depending on the terms of the Owner's original Section 202 Loan. Any such unassisted tenant household residing in any of the subject project's SPRAC Units may continue to reside there, and the unit shall be eligible for SPRAC payments. Upon turnover of these SPRAC Units:

- The Owner must restrict successive SPRAC tenancies to Very Low-Income Elderly Families (SPRAC Award based on ranking under either Tier One or Tier Two).
- The Owner must restrict successive SPRAC tenancies to Low-Income Elderly Families (SPRAC Award based on ranking under either Tier Three or Tier Four).

[OWNER DIRECTIONS: MUST DELETE ONE OF THE ABOVE.]

2.4 Marketing and Leasing of SPRAC Units.

a. Marketing. Owner agrees to:

i. market the SPRAC Units in accordance with 24 C.F.R § 891.600(a)(2), or in accordance with any successor SPRAC requirements;

ii. make good faith efforts to lease the SPRAC Units to eligible Families; and

iii. not reject any applicants to the SPRAC Units, unless such applicants fail to meet eligibility requirements outlined in section 2.4(c)(1)-(4) of this SPRAC, and other requirements as prescribed by HUD.

b. Waiting List. The Owner shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying to reside in a SPRAC Unit at the subject project. The Owner will place potentially eligible Families on a waiting list for the SPRAC Units and notify the Families of when a suitable SPRAC Unit may become available. If, using methodology established under paragraph (b)(i) of this section, the Owner determines that the waiting list is so long that the applicant would not likely be admitted within the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

i. For purposes of managing the applicant waiting list for the subject property, the Owner is required to establish a standard numeric threshold for the purpose of determining when it may be necessary to close the waiting list and temporarily cease accepting applications for SPRAC Units.

ii. At HUD's request, the Owner shall furnish a copy of its waiting list policies and procedures to HUD. HUD reserves the right to require the Owner to make revisions to its waiting list policies and procedures.

c. Selection, Admission and Denial of Admission.

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i. The Owner shall be responsible for determining the eligibility of applicants and the selection of Families from among those determined to be eligible; computing SPRAC payments; Family Rent; and maintaining

DRAFT

records related to SPRAC Unit tenancy in accordance with applicable HUD requirements, including 24 C.F.R § 891.610(a) and (b), or any successor SPRAC regulations. At HUD's request, the Owner shall furnish all applications of admissions (including denial of admission) to HUD.

ii. In leasing the SPRAC Units, the Owner must:

1. confirm all information provided by the applicants Families on the application;

comply with the income eligibility requirements of section 2.3 of this SPRAC;

2. comply with 24 C.F.R part 5, subpart **B** entitled "Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information";

3. comply with 24 C.F.R part 5, subpart I entitled "Preventing Crime in Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity and Alcohol Abuse"; and

4. maintain all records related to the SPRAC Units, in accordance with 24 C.F.R § 891.610(f), or any successor SPRAC requirements.

d. In cases where an applicant is determined to be an ineligible Family the Owner shall comply with 24 C.F.R § 891.410(e), or any successor SPRAC regulations.

e. Security Deposits. The Owner agrees to comply with 24 C.F.R § 891.435, with an additional requirement under § 891.635, or any successor SPRAC regulations. Owner agrees to further comply with all State and local law related to security deposits.

f. HUD Lease. The HUD Lease between the Families and the Owner shall be in the form prescribed by HUD, consistent with the requirements of 24 C.F.R § 891.425. The HUD Lease must be used and may not be modified without the prior written approval of HUD.

g. Family Rent. The Family Rent is defined in section 2.26 of this SPRAC. The Owner shall not charge the eligible Family in excess of Family Rent.

h. Utility Allowance. If the Utility Allowance, as defined in 2.26 of this SPRAC, exceeds the Family Rent, 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. The Owner's acknowledgement and acceptance of responsibility for payments payable under this SPRAC shall not be construed to include payments specifically covered by this paragraph. (See 24 C.F.R § 880.610 or any successor SPRAC regulations).

i. Reexamination of Family Income and Composition.

i. At least once annually, the Owner shall make a reexamination of Family income, composition, applying income disregards and income adjustments in accordance with the HUD requirements under 24 C.F.R §§ 5.609 and 5.611. To determine very low-income thresholds, the Owner-Applicant should determine the annual income of applicable tenant households by following the income verification process described in HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs. The Family Rent redeterminations shall be reflected in the amount of SPRAC payment requested by the Owner, 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 Family Rent between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the Family Rent.

iii. A Family's eligibility for SPRAC payments continues until the Family Rent equals this SPRAC rent. The termination of SPRAC eligibility at this point will not affect the Family's other rights under the HUD Lease nor preclude resumption of payments as a result of later changes in income or other circumstances during the term of this SPRAC.

j. 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 SPRAC Units, the Owner shall promptly make a corresponding adjustment in the Family Rent and the amount of SPRAC payments.

DRAFT

k. Incorrect SPRAC Payments to Owner. In making SPRAC payments to Owner, CA will review the Owner's determinations under this section. If at any time the CA determines that the Owner received improper or excessive SPRAC payments, the CA shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

I. Leasing to Ineligible Families. If the Owner is temporarily unable to lease a SPRAC Unit or Units to an eligible Family or Families, one or more SPRAC units may, with the prior written approval of HUD, be leased to otherwise eligible Families that do not meet the income eligibility requirements under section 2.3 of this SPRAC. However, those over-income Families must pay 30 percent of their annual household income towards rent, up to the SPRAC rent level. Upon turnover, Owner agrees to resume leasing to an eligible Family pursuant to section 2.3.

m. Occupancy by Non-Elderly or Non-Disabled Families.

i. HUD may permit the Owner to lease SPRAC Units to non-elderly or non-disabled Families if:

1. the Owner has made reasonable efforts to lease the SPRAC Units to eligible Families;

2. the Owner has been granted HUD approval under paragraph (I) of this section; and

3. the Owner is temporarily unable to otherwise achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure.

ii. HUD approval under this section will be of limited duration. If there is a HUD-insured mortgage on the project, HUD may impose terms and conditions for this approval that are consistent with this SPRAC program objectives, and necessary to protect its interest under the FHA-insured loan. Upon turnover, Owner agrees to resume leasing to an eligible Family pursuant to section 2.3.

2.5 Resident Participation.

The Owner agrees to comply with 24 C.F.R § 245.15, subparts B, C, D and E, or any successor SPRAC regulations, and the HUD Multifamily Occupancy Guidebook 4350.3.

2.6 Termination of Tenancy or SPRAC by the Owner.

a. HUD's regulations at 24 C.F.R part 5, subpart I, apply.

b. HUD's regulations at 24 C.F.R part 247 apply to all decisions by an owner to terminate the tenancy, this SPRAC or modify the HUD Lease.

c. In actions or potential actions to terminate tenancy or SPRAC involving domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking, the owner must follow HUD's regulations in 24 C.F.R part 5, subpart L

2.7 SPRAC Rents.

a. Initial SPRAC rents. At the beginning of the term of this SPRAC and until SPRAC rents for the SPRAC Units are adjusted in accordance with section 2.7(b) of this SPRAC, the initial SPRAC rents for each bedroom size shall be the amount listed in Exhibit A, which is attached to and made a part of this SPRAC. These initial rents shall be set at the lesser of the comparable market rents for the market area or 150% of the fair market rents based on a Rent Comparability Study (RCS) commissioned by the Owner and prepared in accordance with HUD Requirements in the Section 8 Renewal Policy Guidebook prior to execution of this SPRAC.

b. SPRAC rent adjustments

i. Operating Cost Adjustment Factor (OCAF). Except for the adjustment to comparable rents provided for at the end of each five year period as provided for in paragraph (b)(2) of this section, the CA shall annually, on the anniversary of this SPRAC, adjust SPRAC Unit rents according to Operating Cost Adjustment Factor (OCAF)

methodology, as established by HUD. Such adjustments by an OCAF shall not result in a negative adjustment (decrease) to SPRAC rents. The OCAF shall not be used for purposes of the recurring five-year rent adjustment as required under paragraph (b)(2) of this section.

ii. Fifth year adjustment (comparability adjustment at expiration of each five-year period after SPRAC execution):

1. At the expiration of each 5-year period of this SPRAC term, the CA shall compare existing SPRAC rents with comparable market rents for the market area. At such anniversary of this SPRAC, the CA shall make any adjustments in the monthly SPRAC rents, as reasonably determined by the CA in accordance with HUD requirements, necessary to set this SPRAC rents for all unit sizes at comparable market rents. Such adjustments may result in a negative adjustment (decrease) or positive adjustment (increase) of this SPRAC rents for one or more unit sizes.

2. To assist in the redetermination of SPRAC rents, the CA may require that the Owner submit to the CA a rent comparability study (RCS) prepared at the Owner's expense, and in accordance with HUD requirements under the Section 8 Renewal Policy Guide, and any future such Departmental guidance, as applicable.

iii. Procedure for rent adjustments during renewal term. To adjust SPRAC rents during the term of this SPRAC (in accordance with either paragraph 2.7(b)(1) or paragraph 2.7(b)(2) of this section), the CA shall give the Owner notice of the revised Exhibit A. The revised Exhibit A shall specify the adjusted SPRAC rent amount for each bedroom size as determined by the CA in accordance with paragraph 2.7(b)(1) or paragraph 2.7(b)(2) of this section. The notice shall specify the effective date of the adjustment to the SPRAC rent . The notice by the CA of the revised Exhibit A constitutes an amendment to this SPRAC.

iv. No other adjustments. Except for SPRAC rent adjustments in accordance with paragraph 2.7(b) of this section, there shall not be any other adjustments of the SPRAC rents during the term of this SPRAC. Special adjustments shall not be granted.

2.8 SPRAC Payments to Owner.

a. SPRAC Payments on Behalf of Families.

i. SPRAC payments shall be paid to the Owner solely for SPRAC Units under lease for occupancy at the time of the Owner's Section 202 direct loan prepayment application submission by eligible Families in accordance with this SPRAC, and not for any unassisted units that are vacant and unoccupied at the time of the Owner's prepayment application submission. The SPRAC payment will cover the difference between the SPRAC Rent and the Family Rent as determined in accordance with the HUD-established schedules and criteria.

ii. The amount of this SPRAC payment payable on behalf of a Family and the Family Rent shall be subject to change by reason of changes in Family Income, Family composition, any applicable income disregards and income adjustments in accordance with 24 C.F.R § 5.609 and any other applicable HUD requirements, or by reason of a change in any applicable Utility Allowance approved or required by the CA. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease Term.

b. Vacancies after Rent-Up and Limited Vacancy Payments. If an eligible Family resides in a SPRAC Unit at the time of the Section 202 Direct Loan prepayment, and subsequently vacates the unit after the execution of this SPRAC, the Owner is entitled to SPRAC payments in the amount of 80 percent of this SPRAC Rent for the first 60 days of vacancy, if the Owner:

i. certifies that it did not cause the vacancy by violating the lease, this SPRAC or any applicable law or by moving a Family to another unit;

ii. notified the CA of the vacancy or prospective vacancy and the reasons for it immediately upon learning of the vacancy or prospective vacancy; and

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iii. certifies that any eviction resulting in a vacancy was carried out in compliance with the HUD Lease, 24 C.F.R part 247, subpart A and all other applicable HUD requirements.

c. Vacancies for Longer than 60 Days. If a SPRAC Unit remains vacant for more than 60 consecutive days upon tenant turnover, the Owner shall not be eligible to receive SPRAC further payments for that SPRAC Unit. The full SPRAC payments from the CA to the Owner will not resume for any such SPRAC Unit until such time as the Owner can demonstrate to HUD's satisfaction that the unit has been leased to an eligible Family according to the terms and conditions of this SPRAC.

d. Prohibition of Double Compensation for Vacancies. The Owner is not entitled to payments for SPRAC payments pursuant to section 2.8(b) of this SPRAC if the Owner collects amounts to offset this SPRAC Rent from any other sources, including but not limited to Family's security deposits, other amounts collected from the Family, and

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payments received from any other public or private source. 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 this SPRAC Rent, the excess must be reimbursed as HUD directs.

e. CA Not Obligated for Family Rent or Other Claims Against the Family. The CA does not assume any obligation for the Family Rent or the satisfaction of any claims by the Owner against the Family. The CA's fmancial obligation is limited to making SPRAC payments on behalf of Family in accordance with this SPRAC.

f. Owner's Monthly Request for Payments.

i. The Owner shall submit monthly requests to the CA for SPRAC payments. Each request shall set forth: (i) the name of each Family and the address and/or number of the SPRAC Unit leased by the Family; (ii) the address and/or the number of each SPRAC Unit, if any, not leased to Families for which the Owner is claiming payments; (iii) this SPRAC Rent as set forth in Exhibit 1 for each unit for which the Owner is claiming payments; (iv) the Family Rent for the Family leasing the SPRAC Unit.

ii. Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief: (i) the SPRAC Units are in decent, safe, and sanitary condition, in accordance with section 2.1(b), and state and local code, (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 SPRAC and is payable under this SPRAC, (iv) none of the amount claimed has been previously claimed or paid under this SPRAC, 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 SPRAC Unit beyond that which is authorized in this SPRAC and the HUD Lease.

iii. If the Owner receives amounts from any source exceeding the SPRAC rent, the CA, in addition to any other rights to recovery, may deduct the excess amount from any subsequent payment or payments to the Owner.

iv. The Owner's monthly requests for SPRAC 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.

v. In the event that the rehabilitation of a SPRAC Unit requires the eligible Family to temporarily relocate, the CA agrees to provide SPRAC payments to the SPRAC Unit. During the period when the Family is temporarily relocated, Owner agrees to only accept from the Family the Family Rent, consistent with section 2.4(g) of this SPRAC. Upon completion of the SPRAC Unit rehabilitation, and once the eligible Family returns to the unit, Owner may request the CA provide post-rehabilitation SPRAC payments in accordance the requirements of this SPRAC program.

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

a. Restriction Against Leasing to Ineligible Families. The Owner may not offer and lease SPRAC Units to ineligible Families without the prior written approval of HUD (see section 2.4(1) of this SPRAC for Owner's request to lease SPRAC Units to ineligible Families). Owner's failure to comply with this prohibition is a default under this SPRAC and grounds for all available legal remedies, including specific performance of this SPRAC, suspension or debarment from HUD programs and reduction of the number of SPRAC Units under this SPRAC, as set forth in paragraph (b) of this section. (See also section 2.21).

b. Reduction for Failure to Lease to Eligible Families. If, beginning six months after the effective date of this SPRAC, the Owner fails for a continuous period of six months to have at least 90 percent of the SPRAC Units leased or available for leasing by Families, the CA may, on at least 30 days' notice, reduce the number of SPRAC Units covered by this SPRAC. The CA may reduce the number of SPRAC Units to the number of SPRAC Units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease SPRAC Units to eligible Families is permitted in writing by HUD under section 2.4(1) of this SPRAC. Additionally, CA

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may reduce the number of SPRAC Units covered by SPRAC as a remedy to an Owner's violation under section 2.9(a) of this section.

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c. Restoration. HUD, at its sole discretion, may amend the number of SPRAC Units, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

i. HUD determines that the restoration is justified by demand;

ii. The Owner otherwise has a record of compliance with its obligations under this SPRAC; and

iii. Sufficient appropriations are available to support the funding of the SPRAC Units to be restored.

2.10 Maintenance, Operation, and Inspection.

a. Maintenance and Operation. The Owner agrees to maintain and operate the SPRAC Units 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) of this SPRAC, 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) of this SPRAC.

b. Inspection.

i. Prior to occupancy of any SPRAC Unit by a Family and the subsequent provision of SPRAC funds to the Owner to support the rent for the SPRAC Unit, the Owner and the Family shall inspect the SPRAC Unit. Both parties must separately and independently certify that they have each determined the unit to be decent, safe, and sanitary before occupancy and subsequent provision of SPRAC funds by HUD. The Owner shall keep copies of these reports on file for at least three years, and shall furnish copies of any such reports to HUD upon HUD's request at any time throughout the three-year record-keeping period.

ii. The CA shall inspect or cause to be inspected the SPRAC Units and related facilities at least once annually, or as otherwise directed by HUD, and at such other times (including prior to initial occupancy and re-renting of any unit) as may be necessary to ensure that the Owner is meeting its obligation to maintain this SPRAC 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.

iii. The SPRAC Units are subject to the annual certification required by paragraph 18 of the Section 202 Use Agreement.

c. Distribution of SPRAC Units. Where fewer than 100 percent of the units in the project are covered by this SPRAC, eligible Families shall be dispersed throughout the project.

d. SPRAC Units Not Decent, Safe, and Sanitary. If the CA notifies the Owner that it has failed to maintain a dwelling unit in decent, safe, and sanitary condition, pursuant to section 2.1(b) of this SPRAC, and the Owner fails to take corrective action within the time prescribed by the CA in the notification, the CA may exercise any of its rights or remedies under this SPRAC, including reduction or suspension of SPRAC payments, even when the Family continues to occupy the unit. If, however, the Family wishes to be relocated to another dwelling unit with SPRAC assistance and the CA does not have another SPRAC unit available at the subject project, the CA may use the abated SPRAC payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit after the CA has reduced or suspended the SPRAC payments, it will do so in accordance with the terms of its lease in effect at the time of the reduction or suspension of SPRAC funds, including the termination date and amount of rent payable by the Family.

e. Notification of Abatement. Any reduction or suspension of SPRAC payments shall be effective as provided in written notification to the Owner by the CA. The Owner is required to promptly notify the Family of any such abatement.

f. Overcrowded and Underoccupied SPRAC 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 24 C.F.R § 891.650, except that 891.650(b) does not apply, or pursuant to any successor SPRAC regulations.

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g. Records. Owner agrees to maintain all records related to the administration of the SPRAC Units, including but not limited income examination and re-examination of an eligible Family, lease enforcement actions taken with respect to an Eligible Family, and all other matters related to the SPRAC Unit in accordance with 24 C.F.R. 891.410(f),

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or any successor SPRAC regulations. Owner agrees to comply with any civil rights and equal opportunity reporting requirements as set forth this SPRAC, 24 C.F.R 891.600(f), or any successor SPRAC regulations.

2.11 Financial Requirements.

a. Submission of Financial and Operating Statements. The Owner must submit to the CA:

i. Within 90 days after the end of each fiscal year of the project, financial statements for the project that have been audited by an Independent Public Accountant in the form required by HUD; and

ii. Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of this SPRAC and monitoring of project operations; and

iii. Owner shall comply with the Uniform Financial Reporting Standards, as promulgated in 24 C.F.R part 5, subpart H.

b. Replacement Reserve.

i. The Owner shall maintain a replacement reserve in accordance with the Section 202 Use Agreement in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with all applicable HUD regulations. The Owner must ensure that all SPRAC Units are covered by the Replacement Reserve.

1. The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of this SPRAC. The reserve must be 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.

2. All earnings including interest on the reserve must be added to the reserve.

3. Funds will be held by the mortgagee, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the prior written approval of, or as directed by, HUD.

ii. In the case of HUD-insured projects, the provisions of this paragraph (b) will apply instead of the otherwise applicable mortgage insurance requirements.

c. Limitation on Distributions.

i. Nonprofit owners are not entitled to distributions arising from project funds.

ii. For the life of this SPRAC, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of this SPRAC after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

1. If the Section 202 project is/will be owned by a for-profit limited partnership (meeting the statutory requirements in ABEO, as amended) and the Section 202 project has a Section 8 HAP contract that imposes a limitation on distributions, the Section 202 project Owner remains subject to the six percent annual distribution limitation. This distribution is authorized on FHA insured as well as conventional transactions. The maximum annual distribution from surplus cash is six percent of the total Owner's (purchaser's) equity that is paid at the refinancing of the project. Other government funds (i.e., HOME funds, CDBG funds, etc.) will not be considered Owner's equity. LIHTC equity is not considered other government funds. LIHTC equity may qualify as Owner's equity, even if 100% of the LIHTC equity is not paid into the transaction on the date of the prepayment. Developer Fee may qualify as Owner equity only if this Developer Fee is contributed as a source of funds for closing. No distributions will be permitted based on a deferred Developer Fee. For the purpose of determining the allowable distribution, an Owner's equity investment shall be computed in accordance with HUD regulations and requirements.

2. If the Section 202 project is/will be owned by a for-profit limited partnership (meeting the statutory requirements in ABEO, as amended) and the Section 202 project has a Section 8 HAP contract that imposes no

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percentage cap on distributions, then upon refinance/prepayment the for-profit limited partnership may continue receiving the benefit of not having a percentage cap on distributions.

3. HUD does not monitor or approve how the Owner uses the allowable distribution. HUD will not consider waivers of this calculation to allow unlimited distributions to Section 202 Owners.

4. Any short-fall in return may be made up from surplus project funds (see paragraph (b)(1)) in future years.

5. In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program regulations.

2.12. Nondiscrimination.

a. 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.

b. 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, this SPRAC 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.

c. 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 SPRACs executed in connection with this project a provision requiring compliance with rules and regulations issued pursuant to section 504.

d. Employees of Owner.

i. In carrying out the obligations under this SPRAC, 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.

ii. 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 SPRACs for project work, except SPRACs 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.

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[Approval v06/11/2024]

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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 conducting 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 fmancial 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.

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 SPRAC as reasonably may be required from time to time by the CA.

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 SPRAC, including the verification of information pertinent to this SPRAC payments.

2.17 Disputes.

a. Projects for which a PHA is the CA.

i. Any dispute concerning a question of fact arising under this SPRAC 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 rule as to how the dispute shall be resolved and furnish a written description of and justification for the decision to the Owner and the PHA.

ii. 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 this SPRAC and in accordance with the decision of the Field Office pending resolution of the appeal by HUD Headquarters. HUD's decision is fmal and is not subject to administrative appeal. Owner reserves its right to appeal through judicial action.

b. Projects for which HUD is the CA. Any dispute concerning a question of fact arising under this SPRAC 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 this SPRAC pending resolution of the dispute by HUD Headquarters. HUD's decision is final and is not subject to administrative appeal. Owner reserves its right to appeal through judicial action.

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 SPRAC or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter.

i. 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;

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ii. any employee of the PHA (where it is the CA or the Owner) who formulates policy or influences decisions with respect to the subject SPRAC project;

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iii. any other employee of the PHA (where 1 is the CA or the Owner), except where his or her interest is as a tenant;

iv. any member of the governing body or the executive officer of the locality (city or county) in which the subject SPRAC project is situated;

v. 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;

vi. any other State or local public official (including State legislators), who exercise any functions or responsibilities with respect to the subject SPRAC project;

vii. any PHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the subject SPRAC 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 subject SPRAC 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 202 program, or in a SPRAC project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the PHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the PHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to HUD Headquarters, with appropriate recommendations from the Field Office, for a determination of whether a waiver will be granted.

c. No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to a SPRAC executed, or to be executed, on his or her behalf, or with respect to a SPRAC to which this person is a party.

d. The Owner shall insert in all subcontracts, and arrangements entered into in connection with the subject SPRAC 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) of this section.

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 Members or Delegates 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 SPRAC or to any benefits which may arise from it.

2.20 Assignment, Sale, Foreclosure, or Deed In Lieu Of Foreclosure.

a. Sale, Assignment, Conveyance, or Transfer: The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion of this SPRAC or of any part of this SPRAC, or any of the Owner's interest in this SPRAC, 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 first approved the terms of the fmancing.

b. Notification: The Owner agrees to notify HUD (and the PHA where it is the CA) promptly of any proposed action covered by paragraph (a) of this section. The Owner further agrees to request the prior written consent of HUD for any such proposed action.

c. HUD Right to Condition Consent: The Owner agrees that HUD may condition any prior written consent required under section 2.20(a) of this SPRAC on any reasonable requirements related to the effective administration of this SPRAC, as determined by HUD.

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[Approval v06/11/2024]

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d. Meaning of Sale, Assignment, or Transfer. For purposes of this section:

i. A sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:

1. A transfer by the Owner, in whole or in part,

2. A transfer by a party having a substantial interest in the Owner,

3. Transfers by more than one party of interests aggregating a substantial interest in the Owner,

4. 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

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

i. 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.

ii. 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. SPRAC Remains in Effect: Unless disapproved in writing by HUD, this SPRAC shall remain in effect and SPRAC payments will continue in accordance with the terms of this SPRAC in the event:

i. Of assignment, sale, or other disposition of the subject SPRAC project or this SPRAC; or

ii. Of foreclosure, including foreclosure by HUD; or

iii. Of assignment of the mortgage or deed in lieu of foreclosure; or,

iv. HUD takes over possession, operation or ownership of the subject SPRAC project.

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 SPRAC.

i. Events of Default. The occurrence of any of the following events are deemed defaults:

1. If the PHA (where the CA is a PHA) fails to perform or observe any term or condition of this SPRAC;

2. If this SPRAC is held to be void, voidable, or ultra vires;

3. If the power or right of the PHA (where the CA is a PHA) to enter into this SPRAC is drawn into question in any legal proceeding; or

4. If the PHA (where the CA is a PHA) asserts or claims that this SPRAC is not binding upon the PHA for any such reason.

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

1. Notify HUD of the occurrence of the event;

2. Provide supporting evidence of the default and of the fact that the Owner is not in default; and

3. Request HUD to determine whether there has been a default.

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[Approval v06/11/2024]

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iii. 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 this SPRAC, including any funds. Until such time as this SPRAC may be assigned to the PHA by HUD, HUD shall continue to make SPRAC payments for SPRAC Units covered by this SPRAC in accordance with the ACC and this SPRAC. 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 applicable term of this SPRAC expires, whichever occurs sooner.

iv. 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 SPRAC.

i. Events of Default. A default by the Owner under this SPRAC shall result if:

1. The Owner has violated or failed to comply with any provision of, or obligation under, this SPRAC or HUD Lease, including failure to correct any deficiencies identified by the CA in connection with any annual or other inspection; or

2. The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this SPRAC or under HUD Lease; or

3. For projects with mortgages insured by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance 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.

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

1. The nature of the default;

2. 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

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

4. If the Owner and/or lender fail to respond or take action to the satisfaction of the CA (and HUD, here 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 SPRAC 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).

iii. 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:

1. 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 SPRAC until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this SPRAC. If the CA takes possession, SPRAC payments shall continue in accordance with this SPRAC.

2. 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

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under the note and mortgage or other loan documents.

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3. Apply to any court, State or Federal, for specific performance of this SPRAC, for an injunction against any violation of this SPRAC, for the appointment of a receiver to take over and operate the subject SPRAC project in accordance with this SPRAC, 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 SPRAC could be irreparable and the amount of damage would be difficult to ascertain.

4. Reduce or suspend SPRAC payments.

5. Recover any overpayments.

iv. HUD Rights. Notwithstanding any other provisions of this SPRAC, in the event HUD determines that the Owner is in default of its obligations under this SPRAC, 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) of this Section.

c. Remedies Not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this SPRAC shall not preclude the exercise of any other remedy 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 SPRAC payments under this SPRAC is not a party to or a third-party beneficiary of this SPRAC.

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

2.23 No Agency Relationship Between HUD and the PHA (Where The CA is a PHA).

If the CA is a PHA, the PHA is not the agent of HUD, and this SPRAC 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 this SPRAC under the ACC.

2.24 Uniform Relocation Assistance Act

Residents that move from real property as a direct result of acquisition, rehabilitation or demolition of a SPRAC-funded project may become eligible to receive relocation assistance and payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq).* However, an exception to such residents' eligibility may apply if the relocation does not exceed one year, residents' reasonable relocation-related out-of-pocket expenses are reimbursed, and residents are provided appropriate advisory services. Owners are responsible for complying with any applicable URA requirements. See 49 CFR part 24.

2.25 Privacy Act.

The Owner's collection, maintenance, use, and dissemination of Social Security Numbers (SSNs), Employee Identification Numbers (EINs) any information derived from SSNs and EINs, and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

2.26 Conflicts Clause.

Owner warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereto, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith. With respect to the SPRAC regulatory requirements that may be promulgated at a later date, in the event of conflict between the SPRAC and the SPRAC regulatory requirements, the term of the SPRAC terms control, unless otherwise directed by HUD.

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2.27 Definitions.

These defmitions apply Parts I and **II** of this SPRAC and any attachments thereto.

Annual Contributions Contract (ACC) shall mean the contract between HUD and the PHA with respect to the administration of certain HUD-assisted programs, such as Public Housing and Section 8.

Contract Administrator (CA) shall mean HUD or a Public Housing Authority, as may be designated by HUD to administer this SPRAC.

Disabled Family(ies) has the same meaning as the term "Disabled household" as defined in 24 C.F.R § 891.305, incorporating the definition of "Persons with Disabilities" as found also in 24 C.F.R § 891.305.

Family Rent shall mean the portion of the rent owed by the Family, consistent with the requirements of 24 C.F.R §§ 5.609 and 5.628 and any other applicable HUD requirements.

Family(ies) means an *Elderly Family* as defined by 24 C.F.R § 891.505, or any successor regulation promulgated by the Senior Preservation Rental Assistance program, and may include "Handicapped Families," as defmed in 24 C.F.R. § 891.505, depending on the terms of the original Section 202 Loan.

Low-Income Families has the same meaning as defined in 24 C.F.R § 5.603.

Operational Cost Adjustment Factor (OCAF) has the same meaning as defined in 24 C.F.R § 402.2(c), and as otherwise prescribed in HUD administrative guidance.

Public Housing Authority (PHA) means the term as defmed under Section 3 of the U.S. Housing Act of 1937, 42 U.S.C. 1437a(a)(b)(6).

Senior Preservation Rental Assistance SPRAC Units (SPRAC Units) means units assisted by Section 811 of the American Homeownership Economic Opportunity Act of 2000, as amended, and the Senior Preservation Rental Assistance requirements as may be promulgated.

Utility Allowance has the same meaning as defined in 24 C.F.R § 5.603.

Very Low-Income Families have the same meaning as defined in 24 C.F.R § 5.603.

2.28 Warning

Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802)."

2.29 Public Burden Reporting

The public reporting burden for this collection of information is estimated to average .25 hours 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. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to U.S. Department of Housing and Urban Development, Office of the Chief Data Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Do not send completed forms to this address. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. The Department of Housing & Urban Development is authorized to collect this information by Section 811 of the American Homeownership and Economic Opportunity (AHEO) Act of 2000, as amended by Section 202 Supportive Housing for the Elderly Act of 2010 Act, Public Law 111— 372, 12 U.S.C. 1701q note; and the Department of Housing and Urban Development Act, 42 U.S.C. 3531 et seq. This collection of information is required to receive Senior Preservation Rental Assistance payments. The information provided will be used by HUD to enter into a Senior Preservation Rental Assistance Contract. No assurances of confidentiality are provided for this information collection, but HUD will not disclose data on a specific project or tenant except as required by law.

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