

Section 18 Non-RAD PBV Rider to RAD Use Agreement

U.S. Department of Housing
and Urban Development

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This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in Notice H-2019-09 PIH-2019-23 (HA) and subsequent notices. The information will be used to set out affordability and use restrictions for projects approved through Section 18 in conjunction with RAD and that will be preserved with project-based assistance. There are no assurances of confidentiality.

Section 18 Non-RAD PBV Rider to the Rental Assistance Demonstration (“RAD”) Use Agreement

Whereas, this Section 18 Non-RAD PBV Rider to RAD Use Agreement is part of the RAD Use Agreement to which it is appended, and capitalized terms shall have the meaning ascribed to them in the RAD Use Agreement.

Whereas, _____ (the “PHA”) owned and operated _____ (____) dwelling units at _____ [common name of property], more particularly described in Exhibit A to the RAD Use Agreement (the “**Disposition Property**”);

Whereas, the PHA owned and operated the Disposition Property as low-rent public housing with financial assistance provided by HUD under the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 et. seq. (the “**Act**”);

Whereas, construction and/or operation of the Disposition Property was financed in part by HUD under the Act;

Whereas, the PHA requested HUD approval of the conveyance of the Disposition Property in accordance with RAD and Section 18 of the Act, and specifically based on Section 3) A.2.e of PIH Notice 2021-07: “Blending Section 18 Disposition Approvals with Rental Assistance Demonstration (RAD) Conversion” as amended or replaced from time to time. Specifically, the PHA is converting a portion of the public housing units at the Disposition Property under RAD and is replacing the units proposed for disposition under Section 18 of the Act with Section 8 project-based voucher (“**PBV**”) assistance in accordance with 24 CFR part 983. The aggregate number of replacement units (RAD and PBVs) meets the RAD “substantial conversion of assistance” requirements.

Whereas, as part of the RAD conversion, the Project Owner will own and operate the Project containing a total of _____ () dwelling units, of which _____ () dwelling units (the “**RAD Units**”) will be subject to the RAD HAP Contract and _____ () dwelling units (the “**Non-RAD PBV Units**”) will be subject to a non-RAD Section 8 PBV Housing Assistance Payments contract in accordance with HUD’s disposition approval under Section 18 of the Act.

Now Therefore, in consideration of the foregoing and other good and valuable consideration, the parties hereby agree as follows:

1. **Applicability of RAD Use Agreement.** Except as noted or clarified in this Rider, all terms and conditions of the RAD Use Agreement applicable to the Project, the Project Owner and the Assisted Units also apply to the Non-RAD PBV Units.

2. **Section 18 Disposition Approval Use Restriction.** In accordance with the terms and conditions of HUD’s approval of the conveyance of the Non-RAD PBV Units for below fair market value based on a finding of commensurate public benefit pursuant to 24 CFR 970.19, the Non-RAD PBV Units must be used exclusively as housing for low-income families under the Section 8 PBV program for a period of not less than 40 years. For purposes of this Rider, the term "low-income families" is defined at Section 3(b)(2) of the Act and means families with incomes at or below 80% of median income for the area.

3. **Term.**

- a. Section 2 of the RAD Use Agreement regarding the Term is modified to specify that the following excerpt does not apply to the Non-RAD PBV Units:

It is the intention of the parties that this Agreement shall remain in effect for a term not less than the stated term of the RAD HAP Contract, including the initial term of the RAD HAP Contract and any subsequent renewal terms of the RAD HAP Contract or any replacement HAP contracts. The term of this Agreement shall not be affected by the premature termination of the RAD HAP Contract (by way of illustration and not limitation, for breach or non-compliance) prior to its stated term (whether the initial term, any renewal term, or the term of any replacement HAP contracts). In furtherance of the foregoing, unless otherwise approved by HUD this Agreement shall remain in effect until and unless released by HUD and such release is recorded as contemplated by Section 8 of this Agreement. Such release shall be the evidence of the determination not to execute a replacement HAP contract and of the termination of this Agreement. The RAD Statute and RAD Notice require that, upon expiration of the initial RAD HAP Contract and each renewal RAD HAP Contract or any replacement HAP contracts, the Secretary shall offer and the owner of the property shall accept renewal of the HAP contract.

- b. The applicability of this Rider shall extend for any periods that are coterminous with any extended HAP contract applicable to the Non-RAD PBV Units. The parties intend to

exercise the rights to extend the HAP contract to the maximum extent as may be permitted by section 8(o)(13)(G) of the Act, as amended; 24 CFR part 983, as amended; and 82 Fed. Reg. 5458, 5468, as such requirements may be amended from time to time.

4. **Transfers.** Non-RAD PBV Units are not subject to any of the provisions set forth in the RAD Notice which allow and govern a transfer of assistance. Section 7 of the RAD Use Agreement regarding restrictions on transfer is modified to specify that the following excerpt does not apply to the Non-RAD PBV Units:

In the event of a default under the RAD HAP Contract including, without limitation, upon any transfer of the Property or Project without HUD consent, upon expiration of any applicable notice and/or cure periods, HUD may terminate the Owner's interest in the RAD HAP Contract, including all of the Owner's rights and obligations therein, and transfer the RAD HAP Contract to another "Owner," as defined in section 8(f)(1) of the United States Housing Act of 1937, to ensure the continuation of rental assistance, as authorized under the RAD HAP Contract.

[End of Rider to RAD Use Agreement]