

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

216 EAST 29TH STREET TRUST,

Plaintiff,

v.

CITY OF NEW YORK ET AL.,

Defendants.

Case No. 1:24-cv-595 (ER)

**MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT SAFE
HORIZON, INC.'S MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Date: June 12, 2024

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The Court should deny Plaintiff 216 East 29th Street Trust’s (“the Trust’s”) motion for summary judgment for the same reasons that it should grant Safe Horizon, Inc.’s motion to dismiss: the Trust has not alleged any plausible Fourth Amendment injury, does not have standing to raise its highly conjectural claims, and has not alleged any plausible conflict between the New York City Human Rights Law’s (“NYCHRL’s”) source of income protections and federal law. Indeed, the Trust has failed to plead, let alone establish, that it will be subject to a warrantless or otherwise unreasonable search by virtue of its compelled participation in the Section 8 Voucher Program and signing of the program’s Housing Assistance Payments (“HAP”) contract. The Trust fails to state a plausible claim, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and certainly is not entitled to judgment as a matter of law, Fed. R. Civ. P. 56(a).

I. **The Trust has not alleged or proven any injury to privacy interests protected by the Fourth Amendment.**

Whether its complaint is considered as a facial or as applied challenge, the Trust has not just failed to allege that there is “no set of circumstances . . . under which the challenged law would be valid,” *Cnty. Hous. Improvement Program v. City of New York*, 59 F.4th 540, 548 (2d Cir. 2023)—it has not plausibly alleged or established any injury. Simply put, the compelled signing of the HAP contract does not impair any interest protected by the Fourth Amendment.

As explained in Safe Horizon’s motion to dismiss, the Fourth Amendment dictates that a person may not face penalties for failing to permit a search without first having had the opportunity to have a neutral decisionmaker review the search demand. (This opportunity is known as “precompliance review.”) *See, e.g., City of Los Angeles v. Patel*, 576 U.S. 409, 419, 421 (2015); *Camara v. Municipal Court*, 387 U.S. 523, 538-39 (1967). The reason courts have invalidated some rental permit inspection ordinances is that the ordinances gave property owners no opportunity to exercise their Fourth Amendment rights: to obtain the permit needed to rent

their units, they had to allow an inspector (without a warrant) onto their private property. *See, e.g., Sokolov v. Vill. of Freeport*, 420 N.E.2d 55, 56 (N.Y. 1981). The owner's consent to the warrantless inspection was the only way that the inspection could occur and that penalties could be avoided. *See, e.g., id.*¹ Similarly, the ordinance in *Patel* required the hotel owners to show police officers their registry on the spot or face criminal penalties, 576 U.S. at 421, while the ordinance in *Camara* required the tenant to immediately open his home to the inspector or face a similar criminal consequence, 387 U.S. at 530. In all of these cases, there was a direct, definite, and actual or imminent request for a search, and a direct, definite, and immediate punitive consequence if the search was not permitted. Here, there is neither a similar search request nor a similar consequence, as any future search related to the HAP contract will offer precompliance review.

The Trust makes two primary claims about why signing the HAP contract impairs its Fourth Amendment rights. First, the "consent" provided in the HAP contract gives the government free rein to perform otherwise unreasonable and unconstitutional searches, such as a search of the trustee's smart phone without a warrant. Second, the relevant government agencies cannot perform searches related to the HAP contract in a way that provides precompliance review. Neither contention has factual or legal support.

A. *The HAP contract does not waive the Trust's Fourth Amendment rights.*

To the extent that the Trust (or any other owner) consents to searches by signing the HAP contract, it is only consenting to searches that are reasonable within the meaning of the Fourth Amendment. *See United States v. Harris Methodist Ft. Worth*, 970 F.2d 94, 100-101 (5th Cir.

¹ Conversely, where there is a means for the municipality to obtain a warrant to perform the inspection, the property owner and municipality can take this path to accomplish the inspection required for the permit, and there is no constitutional issue. *See, e.g., Paschow v. Town of Babylon*, 53 N.Y.2d 687, 688 (N.Y. 1981).

1992) (“We reject the government’s assertion that Fourth Amendment reasonableness standards do not apply when an administrative search is conducted pursuant to consent.”); *First Alabama Bank, N.A. v. Donovan*, 692 F.2d 714, 719-20 (11th Cir. 1983). The Second Circuit has taken a similar approach to evaluating the scope of advance written consent. *See Anobile v. Pelligrino*, 303 F.3d 107, 112, 124 (2d Cir. 2001) (rejecting effectiveness of a signed waiver of the “right to object to any search” with respect to a search of employees’ dormitory rooms).² Determining the validity and scope of consent to a search is a fact-intensive inquiry that requires an evaluation of the surrounding circumstances and the expressed object of the search. *See, e.g., Florida v. Jimeno*, 500 U.S. 248, 250-51 (1991); *Anobile*, 303 F.3d at 124 (2d Cir. 2001) (quoting *United States v. Garcia*, 56 F.3d 418, 422 (2d Cir. 1995)). At the time of the contract’s signing, it is unknown what form a future search demand may take. This distinguishes advance contractual consent from the inspection cases discussed above, where a direct and immediate search demand was made. Because it is not reasonable or lawful to obtain blanket consent to any and all searches in advance,³ logically, the contract must have a limiting principle, and the Constitution supplies one. The HAP contract does not obviate or alter the Fourth Amendment’s requirements.

This approach to evaluating the scope of advance contractual consent is not only constitutionally sound—it is a basic application of contract doctrine. The HAP contract includes a reasonableness limitation: “[t]he owner must provide any information pertinent to the HAP contract that the PHA [Public Housing Agency] or HUD [Department of Housing and Urban

² The consent given in the HAP contract is much more general than the waiver in *Anobile* and does not explicitly negate any right held by the owner, including Fourth Amendment rights. Also, contrary to the Trust’s assertion, *Anobile*’s holding did not have the effect of invalidating the applicable regulation, which only referred to the inspection of rooms in the racetrack and did not explicitly permit the inspection of employees’ homes on site. *See* 303 F.3d at 116. Instead, the court found that the search of the dormitory rooms was unconstitutional based on the particular facts of that case.

³ An extreme case would be an “early morning mass raid.” *See Wyman v. James*, 400 U.S. 309, 326 (1971).

Development] may reasonably require.” *See* ECF No. 21, Amended Compl., Ex. A, part B, para. 11(a). As paragraph 11 of the HAP contract relates to government searches, it incorporates the Fourth Amendment’s reasonableness requirements. *See, e.g., Primax Recoveries v. Carey*, 242 F. Supp. 337, 343 n.7 (S.D.N.Y. 2022) (stating that contract terms are interpreted against the “background of common-sense understandings and legal principles that the parties may not have bothered to incorporate expressly but that operate as default rules to govern in the absence of a clear expression of the parties’ intent that they do not govern” (quoting *Wal-Mart Stores v. Wells*, 213 F.3d 398, 402 (7th Cir. 2002))).

The Trust does not cite any cases to the contrary. The contract in *Abateco Services, Inc. v. Bell*, involving the heavily regulated asbestos removal industry, explicitly stated that inspectors would be granted access without first obtaining a search warrant. 477 S.E.2d 795, 799-800 (Va. Ct. App. 1996). The Court need not determine whether such a term would be valid because it is not present here. Further, the Trust cites *Abateco Services, Inc.* for the proposition that, once it signs the HAP contract, it will not be able to revoke any consent given in the contract. ECF No. 33 at 25. There is no need for the Trust to withdraw its consent before exercising its Fourth Amendment rights because, by signing the HAP contract, it will only have consented to reasonable searches.⁴ *See Harris Methodist Ft. Worth*, 970 F.2d at 100-01 (permitting hospital to challenge reasonableness of search despite advance written consent). Similarly inapposite is *Crook v. City of Madison*, where the court invalidated a rental inspection ordinance because its warrant provision incorporated a standard less than probable cause. 168 So. 3d 930, 938-39

⁴ As noted in Safe Horizon’s motion to dismiss, paragraph 11 permits the PHA to exercise its contractual rights if an owner obstructs reasonable searches.

(Miss. 2015). The HAP contract does not purport to set any standards for the issuance of a warrant or subpoena.⁵

B. *The relevant government agencies have constitutional means to perform the searches contemplated by the HAP contract.*

After signing the HAP contract, the Trust retains its Fourth Amendment rights—namely, the right to demand that a neutral decisionmaker review the reasonableness of a search related to the contract. This opportunity for precompliance review is required in conjunction with a specific search demand and does not need to take any particular form. *Patel*, 576 U.S. at 421-23. Because signing the HAP contract does not waive an owner’s Fourth Amendment rights, the relevant agencies for the Section 8 program (the PHA, HUD, and the Comptroller General) must comply with general Fourth Amendment principles. And as presented in Safe Horizon’s motion to dismiss, the relevant agencies in New York City have numerous mechanisms available to meet *Patel*’s demands. ECF No. 27-3, Safe Horizon Mem. of Law, at 14-18. Most importantly, the HAP contract itself provides a precompliance review process. *Id.* at 16-18. The Trust does not raise a serious objection to these mechanisms.

The Section 8 regulations⁶ do not contain procedures for warrants and subpoenas, both because the regulations intentionally leave space for the operation of state and local law, *see*,

⁵ *Evans v. Lucas Metropolitan Housing Authority*, also cited by the Trust, is in tension with *Anobile*, *see Cox v. Dawson*, No. 3:18-cv-578 (JBA), 2020 U.S. Dist. LEXIS 4826, at *17 (D. Conn. Jan. 10, 2020), but in *Evans*, the entry occurred after the tenant requested repairs to her unit, No. 3:15 CV 389, 2016 U.S. Dist. LEXIS 177354, at *15 (N.D. Ohio Dec. 22, 2016). *Poulos v. Pfizer, Inc.* only analogizes to Fourth Amendment jurisprudence and involves consent to a particular drug test, not advance consent. 711 A.2d 688, 691-93 (Conn. 1998). Fourth Amendment jurisprudence has developed considerably since 1971, but the holding in *Sellers v. Contino* was merely that there was “insufficient evidence in this record” to justify class action relief based on Fourth Amendment violations, partially because only one lease (relied on as having provided consent to the search) was offered as an exhibit and there was no showing that the lease was a contract of adhesion. 327 F. Supp. 230, 234-35 (E.D. Pa. 1971).

⁶ The Section 8 “inspection scheme” predates Congress’s repeal of the “take one, take all” policy for Section 8, which the Trust interprets as having established the Section 8 program’s “voluntary” nature. *See, e.g.*, Section 8 Certificate and Voucher Programs Conforming Rule, 60 Fed. Reg. 34,660, 34,703

e.g., *Barrientos v. 1801-1825 Morton LLC*, 583 F.3d 1197, 1213-14 (9th Cir. 2009), and because the statutes establishing the subpoena power for HUD and the Comptroller General apply to the entire agencies, not just the Section 8 program, *see* 5 U.S.C. §§ 401, 402, 406(4); 31 U.S.C. § 716(c)(1).⁷ Neither the Section 8 regulations nor the HAP contract mandates warrantless inspections, and of course, neither could override constitutional requirements in any event. Instead, the regulations and HAP contract allow local procedures to be used.

These local procedures provide precompliance review. The Department of Housing Preservation and Development (“HPD”) is one of the PHAs that administer Section 8 vouchers in New York City. ECF No. 27-3 at 2. NYC Administrative Code Section 27-2123(a) permits HPD to request a warrant to obtain access to any “premises or part thereof, whenever an inspection of any premises or part thereof is required or authorized by any state or local law or regulation.” Additionally, NYC Charter Section 398 authorizes the Corporation Counsel to make a warrant application on behalf of any City agency when a “location or premises to be inspected pursuant to an agency's powers and duties is not gained on consent.” The Charter provision’s statement that it is not intended to affect any agency’s power under law to enter a location without a warrant, NYC Charter § 398, merely recognizes that no warrant is required in some situations.⁸

(Jul. 3, 1995) (to be codified at 24 C.R.R. pts. 882, 887, 982, and 983); *Salute v. Stratford Greens Garden Apts.*, 136 F.3d 293, 297 (2d Cir. 1998).

⁷ The Trust concedes that physical inspections of the rental units pose no concerns and that it is primarily concerned with searches of its books and records, which are partially stored on the trustee and trust beneficiary’s personal devices and in their homes. ECF Doc. No. 33, Pl. Mem. of Law, at 29. To the extent that agencies request access to records, they primarily do so by subpoena. *See, e.g., Patel*, 576 U.S. at 421-22.

⁸ For example, after the Trust signs a lease with a tenant in conjunction with the HAP contract, the Trust will have no reasonable expectation of privacy in the rental unit or the common areas of the building and no Fourth Amendment rights with respect to these spaces. *See, e.g., United States v. Holland*, 755 F.2d 253, 255 (2d Cir. 1985); *Mangino v. Inc. Vill. of Patchogue*, 739 F. Supp. 2d 205, 234 (E.D.N.Y. 2010).

The New York City Housing Authority’s (“NYCHA”) Administrative Plan principally concerns NYCHA’s policies with respect to applicants and participants. *See generally* New York City Hous. Auth., *Housing Choice Voucher Administrative Plan* (Oct. 1, 2023).⁹ The Trust has not alleged that NYCHA has a policy of performing warrantless inspections or searches without the owner’s consent (plainly, no such policy is contained in the plan) and has not identified one instance where NYCHA has performed such a warrantless inspection or search. Investigations regarding NYCHA and HPD are led by Inspectors General within the New York City Department of Investigations. *See, e.g.*, NYC Dep’t Investigations, *Inspectors General*.¹⁰ The Department of Investigation has the power to obtain administrative warrants and to issue administrative subpoenas. *See* NYC Charter §§ 398, 803(b), (f).

Finally, Safe Horizon disagrees that Homes and Community Renewal (“HCR”), the third PHA operating within New York City, does not have a constitutional mechanism available to perform property or records inspections. *E.g.*, ECF No. 27-3 at 16-17. However, HCR is not relevant to the Trust’s facial challenge. Given the obvious sufficiency of HPD and NYCHA’s procedures, the Trust has failed to allege and prove that there is “no set of circumstances” where the portion of the law that it targets with its facial challenge—the NYCHRL’s prohibition on source of income discrimination against Section 8 voucher holders—is valid. *See Cmty. Hous. Improvement Program*, 59 F.4th at 548. And HCR is not relevant to the Trust’s as-applied challenge because the Trust does not allege that a prospective tenant has ever attempted to use a Section 8 voucher issued by HCR at its property.

For Housing Quality Standards inspections performed after the HAP contract is signed, with the tenant’s consent, the PHA would not need to obtain a warrant via NYC Administrative Code Section 27-2123(a), NYC Charter Section 398, or any other law to have the right to inspect.

⁹ Available at <https://www.nyc.gov/assets/nycha/downloads/pdf/hcpvadministrative.pdf>.

¹⁰ Available at <https://www.nyc.gov/site/doi/contact/contact-inspectors-general.page> (last visited May 31, 2024).

In sum, the Trust has failed to identify any injury to its Fourth Amendment rights. Neither an owner's compelled signing of the HAP contract nor its compelled participation in the Section 8 program results in the unreasonable invasion of its privacy interests. The Trust raises the specter of a government agent, HAP contract in hand, demanding entry to the trustee's home to search his personal computer. It presents no evidence that this has ever happened. But even if this wildly implausible scenario did occur, the Trust ignores that it would not have consented to this particular search in the HAP contract. The trustee could decline entry without suffering any direct penalty—forcing the agent to pursue a warrant, subpoena, or other means that provides precompliance review to obtain the records. And the Trust does not articulate any standard for precompliance review that the available procedures fail to satisfy.

II. The Trust does not have standing to raise its claims.

Having not alleged any impairment to its Fourth Amendment rights, the Trust has clearly not alleged the actual or imminent concrete and particularized injury required to meet standing requirements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The test for standing for a challenge to an inspection ordinance found in *Wirth v. City of Rochester* is a straightforward application of the *Lujan* standard. No. 17-CV-6347-FPG, 2020 U.S. Dist. LEXIS 180289, at *10-11 (W.D.N.Y. Sept. 30, 2020) (stating that “plaintiff needs to present allegations or evidence that the government has actually conducted a warrantless search of plaintiff’s property pursuant to the inspection ordinance or has imminent plans to do so”). Without an actual or imminent inspection, there is no actual or imminent injury. Without a warrantless inspection, there is no concrete and particularized injury.

The Trust repeatedly claims that after signing the HAP contract, “inspections will take place without warrants.” *E.g.*, ECF No. 33 at 23. But it does not allege or provide evidence of even one instance where this has happened. All the Trust has is a speculative fear that a

warrantless inspection will take place in the future. This speculation is not sufficient to confer standing or to present a ripe claim. *Clapper v. Amnesty Int'l*, 568 U.S. 398, 409 (2013); *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 688 (2d Cir. 2013).

The Trust's discussion of the enforcement of the NYCHRL misses the mark. ECF No. 33 at 25-26. Undoubtedly, the NYCHRL compels some owners to sign HAP contracts. But as explained above, the signing of a HAP contract presents no Fourth Amendment issue. Any searches that may occur afterward would be judged on their own merits.

III. Federal law does not preempt the NYCHRL's prohibition on source of income discrimination.

The Trust does not undermine the robust preemption analysis performed by the many courts to address this issue, all of which found that federal law does not preempt state or local source of income protections. *See, e.g., Austin Apt. Ass'n v. City of Austin*, 89 F. Supp. 3d 886, 894-96 (W.D. Tex. 2015);¹¹ *Comm'n on Human Rights & Opportunities v. Sullivan Assocs.*, 739 A.D.2d 238, 245-46 (Conn. 1999). The purpose of the Section 8 program is to aid "low-income families in obtaining a decent place to live" and to promote "economically mixed housing." 42 U.S.C. § 1437f(a). Requiring owners to accept Section 8 furthers both of these purposes. *Sullivan Assocs.*, 739 A.D.2d at 246. *Mother Zion Tenant Ass'n v. Donovan* is not relevant to this preemption analysis, as that case involved a local law's interference with an owner's right to prepay a subsidized mortgage and exit the *project-based* Section 8 program. 865 N.Y.S.2d 64, 65-66 (N.Y. App. Div. 2008); *see also id.* at 68 (distinguishing cases involving anti-discrimination laws).

¹¹ "Congress's decision to repeal the 'take one, take all' and 'endless lease' provisions provides no support for a conflict preemption argument. The provisions in question were repealed in order to encourage landlords to participate in the voucher program such that more housing would be available to voucher holders, not to protect landlords from being required to rent to voucher holders." *Austin Apt. Ass'n*, 89 F. Supp. 3d at 895 (citing *Franklin Tower One, L.L.C. v. N.M.*, 725 A.2d 1104, 1113 (N.J. 1999)).

The Trust attempts to conjure up a conflict by repeating that the Section 8 program is “voluntary.” At the federal level, the Section 8 program is “voluntary” to the extent that federal law does not obligate owners to participate, but neither does federal law prohibit states and localities from making participation mandatory. *Franklin Tower One, L.L.C.*, 725 A.2d at 1109. To the contrary, HUD has explicitly stated that states and localities may make participation mandatory. 24 C.F.R. § 982.53(d). There is no obstacle conflict preemption.

The subset of owners who are either automatically ineligible to accept Section 8 vouchers or have been excluded by HUD or a PHA is quite small. 24 C.F.R. §§ 982.161, .306. These exclusions do not create an “impossibility” conflict, as federal law and the NYCHRL are easily reconciled. First, an owner who has actually been barred from participation can simply inform a prospective tenant that they would be willing to accept Section 8 but that the PHA will not approve the rental. Second, the regulations state that the PHA may not “approve the rental” due to the owner’s actions in certain situations, meaning that it is the PHA, not the owner, that would inform the tenant that a voucher cannot be used to rent a particular unit on this basis. *Id.* § 982.306. Finally, if an owner committed an act with the intent to be debarred, suspended, or to motivate HUD or a PHA to disapprove a voucher holder’s tenancy, the owner could simultaneously be liable for the act (such as fraud) and for source of income discrimination. That would not be an absurd result, but a straightforward application of the principle that a single act can cause injury to separate legally protected interests. *Cf. Jacobus v. Colgate*, 111 N.E. 837, 841 (N.Y. 1916). There is no impossibility conflict preemption, and the Trust does not allege that it fits within any of the excluded categories in any case.

IV. Conclusion

For the foregoing reasons, the Court should grant Safe Horizon’s motion to dismiss the Trust’s complaint and deny the Trust’s motion for summary judgment.

Dated: June 12, 2024
New York, NY

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Evan Henley, hereby certify that I filed the foregoing document via the Court's Electronic Case Filing system on June 12, 2024, which will provide electronic service on all counsel of record.

/s/ Evan Henley

Evan Henley

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

216 EAST 29TH STREET TRUST,

Plaintiff,

-against-

Case No. 24-cv-595 (ER)

CITY OF NEW YORK ET AL.,

Defendants.

-----x

**DEFENDANT-INTERVENOR SAFE HORIZON, INC.'S RULE 56.1
COUNTERSTATEMENT**

Date: June 12, 2024

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Defendant-Intervenor Safe Horizon, Inc., by and through its counsel, submits the following response to the Plaintiff's¹ Statement of Undisputed Material Facts (ECF Doc. No. 33-7) pursuant to Local Rule 56.1.

1. Marcus Sakow is trustee of the Trust. (Declaration of Marcus Sakow in Support of Cross-Motion for Summary Judgment dated May 15, 2024 ("M. Sakow Dec.") at ¶ 1.)

Undisputed.²

2. Shana Sakow, Marcus's sister, is the beneficiary of the Trust. (M. Sakow Dec. at ¶ 2; S. Sakow Dec. at ¶ 2.)

Undisputed.

3. Ms. Sakow enjoys the income from the trust during the life of her mother and will own the Trust's real property personally upon her mother's death. (M. Sakow Dec. at ¶ 2; S. Sakow Dec. at ¶ 2.)

Undisputed.

4. The Trust owns a 48-unit apartment building located at 216 East 29th Street, New York, NY 10016. (M. Sakow Dec. at ¶ 5.)

Undisputed.

5. The Trust's day-to-day operations are managed by Motley Management, LLC which does business as Homefront Management. (M. Sakow Dec. at ¶ 6; S. Sakow Dec. at ¶ 3.)

¹ Plaintiff 216 East 29th Street Trust is referred to as "the Trust."

² Where Safe Horizon does not dispute facts asserted by the Plaintiff, those facts are undisputed only for the purposes of this motion. *See* Local Rule 56.1(c); *Vasconcellos v. City of New York*, 12 Civ. 8445 (CM)(HBP), 2015 U.S. Dist. LEXIS 121572, at *2-3 (S.D.N.Y. Sept. 9, 2015) ("[T]his court's Local Rule 56.1 expressly provides that any admissions made in a Rule 56.1 statement are deemed admitted for purposes of the motion only. That means a party can 'admit' facts that it intends to dispute at trial without suffering any prejudice — the 'admission' is for the limited purpose of [the motion], so it neither binds the party going forward if the motion is denied nor can be admitted in evidence at trial."). Safe Horizon reserves all rights to dispute Plaintiff's factual assertions in the future and to seek discovery as to their veracity.

Undisputed. Safe Horizon notes, however, that there is no entity registered with the New York Department of State under the name “Motley Management, LLC.”

6. The Trust maintains business records on the personal computers and devices of Marcus and Shana Sakow both at their homes and in offices located at 202 East 29th Street, New York, NY 10016. (M. Sakow Dec. at ¶¶ 6 and 12; S. Sakow Dec. at ¶ 5.)

Undisputed.

7. The Trust has never had a tenant with a Housing Choice Voucher program (Section 8) voucher. (M. Sakow Dec. at ¶ 7.)

Undisputed.

8. The Trust is willing to accept other forms of government assistance on behalf of tenants. (M. Sakow Dec. at ¶ 8.)

Undisputed.

9. The Trust and its trustee, Marcus Sakow, will not enter into a Housing Assistance Payment (“HAP”) contract because he and Trust beneficiary do not wish to Fourth Amendment rights, and thus the Trust will not comply with New York City Admin. Code §§ 8-102 and 8-107. (M. Sakow Dec. at ¶ 9; S. Sakow Dec. at ¶ 4.)

Safe Horizon does not dispute that the Trust and its trustee, Marcus Sakow, will not enter into a Housing Assistance Payment (“HAP”) contract. Safe Horizon neither disputes nor admits the remainder of this factual assertion because it is incomprehensible as written.

10. The copy of a form HAP contract attached to the M. Sakow declaration is a true and correct copy of the form HAP contract required by HUD to be executed by landlords in connection with their participation in Section 8. (M. Sakow Dec. at Ex. A.)

Disputed. The version of the HAP contract annexed to Mr. Sokolow’s declaration is dated April 2015 and states on the first page that it expired on April 30, 2018 (ECF. Doc. No. 33-2 (“Exp. 04/30/2018”). A true and correct copy of the current HAP contract (“Current HAP Contract”) is available on HUD’s website, at <https://www.hud.gov/sites/dfiles/OCHCO/documents/52641ENG.pdf>, and is also attached as Exhibit A to the Declaration of Evan Henley, dated June 12, 2024. Safe Horizon does not dispute that the provisions of the Current HAP Contract are substantively the same as the expired version filed by the Trust.

11. The form HAP contract contains provisions permitting and consenting to administrative searches by public housing authorities, HUD and the Comptroller General of the United States. (M. Sakow Dec. at Ex. A.)

Disputed to the extent this paragraph rests on legal conclusions regarding consent and/or the interpretation of the HAP contract. Safe Horizon refers the Court to the full text of the Current HAP Contract.

12. Paragraph 3 of the HAP contract allows public housing authorities such as the New York City Housing Authority to “inspect the contract unit and premises at such times as the PHA determines necessary to ensure the unit is in accordance with HQS.” Paragraph 11 states:

11. PHA and HUD Access to Premises and Owner’s Records

a. The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require.

b. The PHA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the

owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.

c. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.

Undisputed.

13. The Trust received an inquiry from a potential Section 8 voucher holder, Dmitri Derodel, on July 26, 2023. Mr. Derodel contacted Homefront Management seeking to rent an apartment in the Trust's building. (M. Sakow Dec. at ¶ 16; S. Sakow Dec. at ¶ 10.)

Undisputed.

14. Mr. Derodel told Homefront Management that he had an Emergency Housing Voucher ("EHV") and wanted to use it toward his rent. (M. Sakow Dec. at ¶ 17; S. Sakow Dec. at ¶ 10.)

Undisputed.

15. Because Homefront Management had never been asked about its acceptance of EHV's before, and because its employees were unfamiliar with NYC law purporting to compel acceptance of Section 8 vouchers, Mr. Derodel was initially told that the Trust did not accept vouchers. (M. Sakow Dec. at ¶ 18; S. Sakow Dec. at ¶ 11.)

Undisputed.

16. Thereafter, Mr. Derodel reached out to the New York City Commission on Human Rights to seek its assistance in enforcing its law precluding the Trust from refusing to rent to him based on his status as a voucher holder. (M. Sakow Dec. at ¶ 19; S. Sakow Dec. at ¶ 12.)

Undisputed.

17. The Commission contacted Homefront Management and explained that refusal to rent to Mr. Derodel because he had a voucher was housing discrimination. (M. Sakow Dec. at ¶ 20; S. Sakow Dec. at ¶ 12.)

Undisputed.

18. Homefront Management's employees were concerned about violating the law, so without consulting me they initially acquiesced to renting to Mr. Derodel. (M. Sakow Dec. at ¶ 21; S. Sakow Dec. at ¶ 13.)

Disputed. It is unclear who "me" refers to in this factual assertion.

19. Homefront Management completed documentation provided by NYCHA to accept Mr. Derodel as a tenant, but NYCHA rejected the application because Homefront Management is not the titled owner of the property. (M. Sakow Dec. at ¶ 22; S. Sakow Dec. at ¶ 14.)

Disputed. NYCHA did not "reject" the application, but rather requested that the owner provide information and signatures required from owners who rent to Section 8 recipients (ECF Doc. No. 10-1, at para. 5).

20. NYCHA asked Marcus Sakow to execute the application documents on behalf of the Trust, at which point he discovered that the EHV was a Section 8 voucher. (M. Sakow Dec. at ¶ 23; S. Sakow Dec. at ¶ 15.)

Undisputed.

21. Mr. Sakow researched Section 8 vouchers and discovered that participation in Section 8 required consent to searches by the government. He was troubled by the idea of granting the government broad consent to search facilities and devices containing Trust records, and for that reason he decided the Trust would not participate in Section 8. (M. Sakow Dec. at ¶ 24; S. Sakow Dec. at ¶ 16.)

Disputed to the extent that this factual assertion incorporates Mr. Sakow’s beliefs and legal conclusions regarding consent and the constitutionality of searches. Section 8 does not require unconstitutional searches.

22. The Commission of Human Rights assisted Mr. Derodel in drafting and filing a complaint against Marcus and Shana Sakow, the Trust, Motley Management employee Debu Lama and two other entities that contain the name “Homefront Management” but are not responsible for the management of the Trust’s property at 216 East 29th Street. (M. Sakow Dec. at ¶ 25 and Ex. B; S. Sakow Dec. at ¶ 18.).

Undisputed.

23. There has not yet been any finding of probable cause by the Commission on Human Rights, and the Commission has not contacted me or my counsel to discuss the case since answers were served. It has not withdrawn the case based on my assertion and the Trust’s assertion of Fourth Amendment protections either. (M. Sakow Dec. at ¶ 26.)

Undisputed.

24. New York City adopted Local Law 10 of 2008 which amended Title 8 of its administrative code.

<https://www.nyc.gov/assets/cchr/downloads/pdf/amendments/ammend2008.pdf>.)

Undisputed.

25. The New York City Council stated as part of its legislative intent that “[t]his bill would make it illegal to discriminate on [the] basis” of Section 8 vouchers. (*Id.*)

Undisputed.

26. Local Law 10 amended § 8-102 of the Administrative Code to add the term “lawful source of income” and define it to include “any form of federal, state or local public assistance including section 8 vouchers.” (*Id.*)

Undisputed. Safe Horizon notes that Section 8-102, including the text quoted by the Trust above, has been amended since 2008. The full definition of “lawful source of income” under the current version of the law is: “The term ‘lawful source of income’ includes, but is not limited to, child support, alimony, foster care subsidies, income derived from social security, or any form of federal, state, or local public assistance including, but not limited to, section 8 vouchers, whether or not such income or credit is paid or attributed directly to the landlord.” NYC Admin. Code § 8-102.

27. Local Law 10 amended § 8-107 of the Administrative Code to add to subsection (5)(c) language making it illegal discrimination “[t]o refuse to sell, rent or lease any housing accommodation . . . to any person or group of persons . . . because of any lawful source of income of such person or persons . . . or to represent that any housing accommodation . . . is not available for inspection, sale, rental or lease when it is in fact so available . . . because of any lawful source of income of such person or persons.” (*Id.*)

Undisputed, except to note that, as relevant here, Local Law 10 amended subsections (5)(a)(1), (5)(a)(2), and (5)(a)(3) of Section 8-107.

28. Local Law 10 went on to make it unlawful discrimination to “declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication . . . which expresses, directly or indirectly, any limitation, specification or discrimination as to . . . any lawful source of income.” (*Id.*)

Undisputed.

29. The New York City Commission on Human Rights has the power to seek pre-litigation injunctions compelling compliance with the Administrative Code's anti-discrimination provisions. NYC Admin. Code § 8-122.

Disputed. Section 8-122 provides that the Commission may, in some instances, seek an injunction in a special proceeding in New York Supreme Court, in accordance with Article 63 of the New York Civil Practice Law and Rules.

30. After a hearing, the Commission can assess penalties against a noncompliant landlord of up to \$125,000, and where the landlord's non-compliance is found to be willful those fines can increase to \$250,000. NYC Admin. Code § 8-126.

Undisputed. Such fines, if imposed, may be challenged in court pursuant to Article 78 of the New York Practice Law and Rules.

31. In addition to assessing fines, the Commission has the power to compel the landlord to participate in Section 8, pay compensatory damages, submit reports regarding the manner of compliance, and pay a complainant's attorneys' fees. NYC Admin. Code § 8-120.

Disputed. The Commission does not have the power to “compel [a] landlord to participate in Section 8.” Rather, the Commission has the power to prohibit a landlord from discriminating against prospective tenants based on their lawful source of income. In some instances, enjoining such discrimination will result in a landlord renting to a Section 8 tenant. In some instances, it will not. Depending on a landlord's particular circumstances—including how much it charges for rent—a landlord could both not discriminate against Section 8 voucher holders and also not actually rent to any Section 8 voucher holders.

32. If a landlord refuses to comply with an order requiring it to consent to searches by participating in Section 8, it can be subject to a further fine up to \$50,000 plus \$100 per day and can be prosecuted criminally for commission of a misdemeanor, subjecting the landlord to up to a year in jail and additional \$10,000 fine. NYC Admin. Code §§ 8-124 and 8-129.

Disputed. Sections 8-124 and 8-129 authorize penalties for violations of orders of the Commission on Human Rights. The Commission on Human Rights does not issue “order[s] requiring [landlords] to consent to searches.”

33. The Housing Choice Voucher program (“Section 8”) was enacted in 1974 through an amendment to the U.S. Housing Act of 1937. 42 U.S.C. § 1437f.

Undisputed.

34. Section 8 is governed by a complex set of federal regulations that determine landlord and tenant eligibility, limit the types of properties that can participate in the program, govern the role of the landlord, tenant and Public Housing Authority (“PHA”), require the landlord to enter into a separate contract with the PHA in connection with each unit leased, set limits on the rent that landlords can charge, provide for governmental inspection of properties and financial records and more. 24 C.F.R. Part 982.

Disputed because, among other things, the regulations do not “determine” eligibility and they do not provide for government inspection of landlords’ financial records. Cf. 24 C.F.R. § 982.207 (PHAs make eligibility and admission decisions based on federal criteria as well as local preferences); 24 C.F.R. § 982.158 (providing for HUD and Comptroller General access to PHA records, not landlord records). Safe Horizon refers the Court to the full text of 24 C.F.R. Part 982.

35. “In the HUD Housing Choice Voucher (HCV) program HUD pays rental subsidies to eligible families can afford decent, safe, and sanitary housing.” 24 C.F.R. § 982.1(a)(1).

Undisputed.

36. “Families select and rent units that meet program housing quality standards.” 24 C.F.R § 982.1(a)(2).

Undisputed.

37. The PHA enters into a separate contract, the Housing Assistance Payment (“HAP”) contract, with the landlord to make payments on the family’s behalf. 24 C.F.R § 982.1(a)(2).

Undisputed.

38. Not every housing unit is eligible for participation in Section 8. Eligibility is based on meeting Housing Quality Standards (“HQS”) and price requirements. Before a PHA can approve a tenant and landlord for participation in Section 8, the PHA must inspect the unit to confirm that it satisfies Housing Quality Standards. 24 C.F.R. § 982.305(b).

Undisputed.

39. Housing Quality Standards are many and include certain key aspects such as “(A) Sanitary facilities; (B) Food preparation and refuse disposal; (C) Space and security; (D) Thermal environment; (E) Illumination and electricity; (F) Structure and materials; (G) Interior air quality; (H) Water supply; (I) Lead-based paint; (J) Access; (K) Site and neighborhood; (L) Sanitary condition; and (M) Smoke detectors. *Id.* at § 982.401(a)(2)(ii). The sanitary facility requirement means each eligible unit must have an in-unit bathroom. 24 C.F.R § 982.401(b).

Disputed to the extent that the full text of 24 C.F.R. § 982.401 reads, “As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703, including any variations approved by HUD for the PHA under 24 CFR

5.705(a)(3).” Also disputed to the extent that this statement ignores that Public Housing Agencies have the discretion to approve the use of Section 8 vouchers in “special housing types,” each of which has its own list of Housing Quality Standards that vary from the general Housing Quality Standards. For example, an eligible single room occupancy unit does not need to have its own bathroom. See 24 C.F.R. §§ 982.601-.618.

40. Units must also have their own kitchens including an oven, stove/range and refrigerator of appropriate size for a family, kitchen sink, countertop space and garbage cans. 24 C.F.R § 982.401(c).

Disputed to the extent that the full text of 24 C.F.R. § 982.401 reads, “As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).” Also disputed to the extent that this statement ignores that Public Housing Agencies have the discretion to approve the use of Section 8 vouchers in “special housing types,” each of which has its own list of Housing Quality Standards that vary from the general Housing Quality Standards. For example, an eligible congregate housing unit does not need to have its own kitchen. See 24 C.F.R. §§ 982.601-.618.

41. Units must have a living room, kitchen area and bathroom in addition to at least one bedroom for each two persons. 24 C.F.R § 982.401(d)(2)(i) and (ii).

Disputed to the extent that the full text of 24 C.F.R. § 982.401 reads, “As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).” Also disputed to the extent that this statement ignores that Public Housing Agencies have the discretion to approve the use of Section 8 vouchers in “special housing

types,” each of which has its own list of Housing Quality Standards that vary from the general Housing Quality Standards. *See* 24 C.F.R. §§ 982.601-.618.

42. Units must also have windows that access the outdoors on either a ground floor or with a fire escape. 24 C.F.R. § 982.401(d)(2)(iii).

Disputed to the extent that the full text of 24 C.F.R. § 982.401 reads, “As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).” Also disputed to the extent that this statement implies that Section 8 can only be used to rent units that are either on the ground floor or are located in buildings with fire escapes. *See generally* 24 C.F.R. § 5.703.

43. Certain types of housing are not eligible for Section 8, including public housing, project housing, nursing homes, college dormitories and owner-occupied units. 24 C.F.R. § 982.352(a).

Undisputed.

44. The PHA must inspect each unit for compliance with HQS, looking for adequate heating, locks, lighting and electricity, structural soundness, working elevators, air ventilation, water supply, lead-based paint compliance, neighborhood quality, absence of rodents and insects and the presence of smoke detectors. 24 C.F.R. §§ 982.401 and 982.405. There is both an initial and periodic inspection. *Id.* at § 982.405(a). Landlords are required to permit government inspectors, or their agents, into buildings for these inspections, and the inspection is not limited to the unit being negotiated, but covers the building and premises the unit is in. (M. Sakow Dec. at Ex. A, Part B, ¶ 11.)

Disputed to the extent that the full text of 24 C.F.R. § 982.401 reads, “As defined in § 982.4, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).” Also disputed to the extent that the Trust suggests, in the final sentence, that HQS inspections involve inspections of non-public areas of the building in which landlords have a constitutionally protected privacy interest. *See generally* 24 C.F.R. § 5.703.

45. Landlords and PHAs are required to use the HUD approved contracts, including the HAP contract between the PHA and property owner and a “tenancy addendum required by HUD (which is included in both the HAP contract and in the lease between the owner and the tenant).” 24 C.F.R. § 982.162.

Undisputed.

46. The HAP contract tracks the regulations and specifically provides that the landlord agrees that “[t]he PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with the HQS.” (M. Sakow Dec. at Ex. A at Part B, ¶ 3(e).)

Undisputed.

47. The HAP contract further mandates the landlord to consent to government review of books and records to determine reasonable rent, specifically stating that “[t]he owner must give the PHA any information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.” (M. Sakow Dec. at Ex. A at Part B, ¶ 6(d).)

Disputed. Safe Horizon refers the Court to the full text of paragraph 6 of the HAP contract (Current HAP Contract 6), which says nothing about “consent to government review of books and records.”

48. The HAP contract goes on to require the landlord's consent to entry and access to records by the PHA, HUD and the Comptroller General of the United States. (M. Sakow Dec. at Ex. A at Part B, ¶ 11.)

Disputed. Safe Horizon refers the Court to the full text of paragraph 11 of the HAP contract (Current HAP Contract 6), which provides that “PHA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract.”

49. Certain types of landlords are barred from participation in Section 8, including present and former members or officers of a PHA, employees of a PHA or any contractor or subcontractor of a PHA responsible for policy formation or decision making, public officials, members of state and local legislatures who exercise functions or responsibilities with respect to the programs and members of Congress. 24 C.F.R. § 982.161(a).

Undisputed. Safe Horizon notes, however, that this regulation expressly provides that “[t]he conflict of interest prohibition under this section may be waived by the HUD field office for good cause.” 24 CFR § 982.161(c).

50. Owners can also find themselves debarred, suspended or subject to a limited denial of participation. 24 C.F.R. § 982.306(a).

Undisputed.

51. Public housing authorities have discretion to disapprove landlords for various reasons including failure to terminate tenancies of tenants whose households or guests threaten the health or safety or right to peaceful enjoyment of the premises by other tenants or persons living near

the premises or who engage in drug-related or violent criminal activity. 42 U.S.C. § 1437f(o)(6)(C).

Undisputed.

52. Owners facing an administrative or judicial action for violation of the Fair Housing Act or other federal equal opportunity requirement (regardless of merit or stage of action) and owners found to have violated the FHA and other equal opportunity requirements are not eligible to receive Section 8 tenants. 24 C.F.R. § 982.306(b).

Disputed. Such owners are “not eligible” to receive Section 8 tenants only if HUD directs the PHA not to approve them. Safe Horizon refers the Court to the full text of 24 C.F.R. § 982.306(b).

53. Owners that (1) violate a HAP contract, (2) commit fraud, bribery or another corrupt act in connection with a federal housing program, (3) engage in drug-related crimes, (4) have a history or practice of non-compliance with housing quality standards for units already leased under Section 8, (5) fail to evict tenants who violate terms of peaceful enjoyment including tenant-made or guest-made threats to the owner, PHA employees or other tenants or engage in drug-related activities, (6) have a history of violating state and local housing codes and (7) that do not pay real estate taxes, are all ineligible for participation in Section 8. 24 C.F.R. § 982.306(c).

Disputed. This regulation provides that the PHA *may*, in its discretion, deny such owners’ participation in Section 8. 24 C.F.R. § 982.306(c). The PHA retains authority to allow such owners to participate. *Id.*

54. HUD Section 8 regulations provide that in passing a non-discrimination law, state and local governments cannot “change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program.” 24 C.F.R. § 982.53(d).

Undisputed.

55. The New York City Housing Authority (“NYCHA”) is a public housing authority operating in New York City subject to an administrative plan.

(<https://www.nyc.gov/assets/nycha/downloads/pdf/hcpvadministrative.pdf>)

Undisputed.

56. The NYCHA administrative plan does not contain a precompliance review or warrant application procedure. (*Id.*)

Undisputed.

57. New York State Division of Homes and Community Renewal is another public housing authority operating in New York City. (<https://hcr.ny.gov/section-8-housing-choice-voucher-hcv-program>)

Undisputed.

58. The New York State Division of Homes and Community Renewal recently accepted the logic and authority of *People v. Commons West, LLC* when it amended its administrative plan for operations in Tompkins County in an attempt to work around the decision. (Declaration of Curtis A. Johnson in Support of Motion for Summary Judgment (“Johnson Dec.”) at Ex. A.)

Disputed. As noted in its Notice of Appeal and accompanying filings, the State contends that *People v. Commons West, LLC* was wrongly decided on at least two grounds: (1) the landlord’s Fourth Amendment argument is unripe because the landlord had not signed a HAP contract and was not subjected to any inspections, and (2) in any event, the

State law prohibiting discrimination against Section 8 voucher holders does not violate the Fourth Amendment (State's Informational Statement in *People v. Commons West, LLC*, Index No. EF2022-0558, NYSCEF Doc. No. 69 (July 10, 2023), available at <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=a0tjxAHEvO9ZT3bwFOb/5w==>).

Dated: New York, New York
June 12, 2024

Respectfully submitted,

/s/ Evan Henley

Evan Henley
Edward Josephson
The Legal Aid Society
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New York, NY 10013
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ewhenley@legal-aid.org

CERTIFICATE OF SERVICE

I, Evan Henley, hereby certify that I filed the foregoing document via the Court's Electronic Case Filing system on June 12, 2024, which will provide electronic service on all counsel of record.

/s/ Evan Henley

Evan Henley

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

216 EAST 29TH STREET TRUST,

Plaintiff,

Case No. 24-cv-595 (ER)

-against-

CITY OF NEW YORK ET AL.,

Defendants.

**DECLARATION OF EVAN
HENLEY**

-----x

I, Evan Henley, hereby declare the following under the penalty of perjury:

1. A true and correct copy of the current version of the Section 8 program Housing Assistance Payments (“HAP”) contract is attached as Exhibit A.
2. I downloaded the HAP contract from the Department of Housing and Urban Development’s website at <https://www.hud.gov/sites/dfiles/OCHCO/documents/52641ENG.pdf> on June 4, 2024.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 12, 2024
New York, NY

/s/ Evan Henley

Evan Henley

CERTIFICATE OF SERVICE

I, Evan Henley, hereby certify that I filed the foregoing document via the Court's Electronic Case Filing system on June 12, 2024, which will provide electronic service on all counsel of record.

/s/ Evan Henley

Evan Henley

EXHIBIT A

Housing Assistance Payments (HAP) Contract
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program

OMB Approval No. 2577-0169
 exp. 4/30/2026

OMB Burden Statement. The public reporting burden for this information collection is estimated to be up to 0.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This collection of information is required to establish the terms between a private market owner and a PHA for participating in the program, including whether the tenant or owner pays for utilities and services. Assurances of confidentiality are not provided under this collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Office of Public and Indian Housing, US. Department of Housing and Urban Development, Washington, DC 20410. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Privacy Notice. The Department of Housing and Urban Development (HUD) is authorized to collect the information on this form by 24 CFR § 982.451. The information is used to provide Section 8 tenant-based assistance under the Housing Choice Voucher program in the form of housing assistance payments. The Personally Identifiable Information (PII) data collected on this form are not stored or retrieved within a system of record.

Instructions for use of HAP Contract

This form of Housing Assistance Payments Contract (HAP contract) is used to provide Section 8 tenant-based assistance under the housing choice voucher program (voucher program) of the U.S. Department of Housing and Urban Development (HUD). The main regulation for this program is 24 Code of Federal Regulations Part 982.

The local voucher program is administered by a public housing agency (PHA). The HAP contract is an agreement between the PHA and the owner of a unit occupied by an assisted family. The HAP contract has three parts:

Part A Contract information (fill-ins).

See section by section instructions.

Part B Body of contract

Part C Tenancy addendum

Use of this form

Use of this HAP contract is required by HUD. Modification of the HAP contract is not permitted. The HAP contract must be word-for-word in the form prescribed by HUD.

However, the PHA may choose to add the following:

Language that prohibits the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Such a prohibition must be added to Part A of the HAP contract.

Language that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner). Such language must be added to Part A of the HAP contract.

To prepare the HAP contract, fill in all contract information in Part A of the contract. Part A must then be executed by the owner and the PHA.

Use for special housing types

In addition to use for the basic Section 8 voucher program, this form must also be used for the following “special housing types” which are voucher program variants for special needs (see 24 CFR Part 982, Subpart M): (1) single room occupancy (SRO) housing; (2) congregate housing; (3) group home; (4) shared housing; and (5) manufactured home rental by a family that leases the manufactured home and space. When this form is used for a special housing type, the special housing type shall be specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: (Insert Name of Special Housing type).”

However, this form may not be used for the following special housing types: (1) manufactured home space rental by a family that owns the manufactured home and leases only the space; (2)

cooperative housing; and (3) the homeownership option under Section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)).

How to fill in Part A

Section by Section Instructions

Section 2: Tenant

Enter full name of tenant.

Section 3: Contract Unit

Enter address of unit, including apartment number, if any.

Section 4: Household Members

Enter full names of all PHA-approved household members. Specify if any such person is a live-in aide, which is a person approved by the PHA to reside in the unit to provide supportive services for a family member who is a person with disabilities

Section 5: Initial Lease Term

Enter first date and last date of initial lease term.

The initial lease term must be for at least one year. However, the PHA may approve a shorter initial lease term if the PHA determines that:

- Such shorter term would improve housing opportunities for the tenant, and
- Such shorter term is the prevailing local market practice.

Section 6: Initial Rent to Owner

Enter the amount of the monthly rent to owner during the initial lease term. The PHA must determine that the rent to owner is reasonable in comparison to rent for other comparable unassisted units. During the initial lease term, the owner may not raise the rent to owner.

Section 7: Housing Assistance Payment

Enter the initial amount of the monthly housing assistance payment.

Section 8: Utilities and Appliances.

The lease and the HAP contract must specify what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the tenant. Fill in section 8 to show who is responsible to provide or pay for utilities and appliances.

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

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

Part A of the HAP Contract: Contract Information

(To prepare the contract, fill out all contract information in Part A.)

1. Contents of Contract

This HAP contract has three parts:

Part A: Contract Information

Part B: Body of Contract

Part C: Tenancy Addendum

2. Tenant

3. Contract Unit

4. Household

The following persons may reside in the unit. Other persons may not be added to the household without prior written approval of the owner and the PHA.

5. Initial Lease Term

The initial lease term begins on (mm/dd/yyyy): _____

The initial lease term ends on (mm/dd/yyyy): _____

6. Initial Rent to Owner

The initial rent to owner is: \$ _____

During the initial lease term, the owner may not raise the rent to owner.

7. Initial Housing Assistance Payment

The HAP contract term commences on the first day of the initial lease term. At the beginning of the HAP contract term, the amount of the housing assistance payment by the PHA to the owner is \$ _____ per month.

The amount of the monthly housing assistance payment by the PHA to the owner is subject to change during the HAP contract term in accordance with HUD requirements.

8. Utilities and Appliances

The owner shall provide or pay for the utilities/appliances indicated below by an “O”. The tenant shall provide or pay for the utilities/appliances indicated below by a “T”. Unless otherwise specified below, the owner shall pay for all utilities and provide the refrigerator and range/microwave.

Item	Specify fuel type	Paid by
Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottled gas <input type="checkbox"/> Electric <input type="checkbox"/> Heat Pump <input type="checkbox"/> Oil <input type="checkbox"/> Other	
Cooking	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottled gas <input type="checkbox"/> Electric <input type="checkbox"/> Other	
Water Heating	<input type="checkbox"/> Natural gas <input type="checkbox"/> Bottled gas <input type="checkbox"/> Electric <input type="checkbox"/> Oil <input type="checkbox"/> Other	
Other Electric		
Water		
Sewer		
Trash Collection		
Air Conditioning		
Other (specify)		
Refrigerator		
Range/Microwave		

Signatures

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. 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; U.S.C. § 3729, 3802).

Public Housing Agency

Owner

Print or Type Name of PHA

Print or Type Name of Owner

Signature

Signature

Print or Type Name and Title of Signatory

Print or Type Name and Title of Signatory

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Mail payments to:

Name

Address (street, city, state, zip code)

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

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

Part B of HAP Contract: Body of Contract

1. Purpose

- a. This is a HAP contract between the PHA and the owner. The HAP contract is entered to provide assistance for the family under the Section 8 voucher program (see HUD program regulations at 24 Code of Federal Regulations Part 982).
- b. The HAP contract only applies to the household and contract unit specified in Part A of the HAP contract.
- c. During the HAP contract term, the PHA will pay housing assistance payments to the owner in accordance with the HAP contract.
- d. The family will reside in the contract unit with assistance under the Section 8 voucher program. The housing assistance payments by the PHA assist the tenant to lease the contract unit from the owner for occupancy by the family.

2. Lease of Contract Unit

- a. The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Section 8 voucher program.
- b. The PHA has approved leasing of the unit in accordance with requirements of the Section 8 voucher program.
- c. The lease for the contract unit must include word-for-word all provisions of the tenancy addendum required by HUD (Part C of the HAP contract).
- d. The owner certifies that:
 - (1) The owner and the tenant have entered into a lease of the contract unit that includes all provisions of the tenancy addendum.
 - (2) The lease is in a standard form that is used in the locality by the owner and that is generally used for other unassisted tenants in the premises.
 - (3) The lease is consistent with State and local law.
- e. The owner is responsible for screening the family's behavior or suitability for tenancy. The PHA is not responsible for such screening. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy.

3. Maintenance, Utilities, and Other Services

- a. The owner must maintain the contract unit and premises in accordance with the housing quality standards (HQS).
- b. The owner must provide all utilities needed to comply with the HQS.

- c. If the owner does not maintain the contract unit in accordance with the HQS, or fails to provide all utilities needed to comply with the HQS, the PHA may exercise any available remedies. PHA remedies for such breach include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract. The PHA may not exercise such remedies against the owner because of an HQS breach for which the family is responsible, and that is not caused by the owner.
- d. The PHA shall not make any housing assistance payments if the contract unit does not meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA 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 the period specified by the PHA.
- e. The PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with the HQS.
- f. The PHA must notify the owner of any HQS defects shown by the inspection.
- g. The owner must provide all housing services as agreed to in the lease.

4. Term of HAP Contract

- a. Relation to lease term. The term of the HAP contract begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease (including the initial lease term and any extensions).
- b. When HAP contract terminates.
 - (1) The HAP contract terminates automatically if the lease is terminated by the owner or the tenant.
 - (2) The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the HAP contract terminates automatically.
 - (3) If the family moves from the contract unit, the HAP contract terminates automatically.
 - (4) The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
 - (5) The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.

- (6) The HAP contract terminates automatically upon the death of a single member household, including single member households with a live-in aide.
- (7) The PHA may terminate the HAP contract if the PHA determines that the contract unit does not provide adequate space in accordance with the HQS because of an increase in family size or a change in family composition.
- (8) If the family breaks up, the PHA may terminate the HAP contract, or may continue housing assistance payments on behalf of family members who remain in the contract unit.
- (9) The PHA may terminate the HAP contract if the PHA determines that the unit does not meet all requirements of the HQS, or determines that the owner has otherwise breached the HAP contract.

5. Provision and Payment for Utilities and Appliances

- a. The lease must specify what utilities are to be provided or paid by the owner or the tenant.
- b. The lease must specify what appliances are to be provided or paid by the owner or the tenant.
- c. Part A of the HAP contract specifies what utilities and appliances are to be provided or paid by the owner or the tenant. The lease shall be consistent with the HAP contract.

6. Rent to Owner: Reasonable Rent

- a. During the HAP contract term, the rent to owner may at no time exceed the reasonable rent for the contract unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.
- b. The PHA must determine whether the rent to owner is reasonable in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:
 - (1) The location, quality, size, unit type, and age of the contract unit; and
 - (2) Any amenities, housing services, maintenance and utilities provided and paid by the owner.
- c. The PHA must redetermine the reasonable rent when required in accordance with HUD requirements. The PHA may redetermine the reasonable rent at any time.
- d. During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA any information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

7. PHA Payment to Owner

- a. When paid
 - (1) During the term of the HAP contract, the PHA must make monthly housing assistance

payments to the owner on behalf of the family at the beginning of each month.

- (2) The PHA must pay housing assistance payments promptly when due to the owner.
 - (3) If housing assistance payments are not paid promptly when due after the first two calendar months of the HAP contract term, the PHA shall pay the owner penalties if all of the following circumstances apply: (i) Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant; (ii) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and (iii) The owner also charges such penalties against the tenant for late payment of family rent to owner. However, the PHA shall not be obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. Moreover, the PHA shall not be obligated to pay any late payment penalty if housing assistance payments by the PHA are delayed or denied as a remedy for owner breach of the HAP contract (including any of the following PHA remedies: recovery of overpayments, suspension of housing assistance payments, abatement or reduction of housing assistance payments, termination of housing assistance payments and termination of the contract).
 - (4) Housing assistance payments shall only be paid to the owner while the family is residing in the contract unit during the term of the HAP contract. The PHA shall not pay a housing assistance payment to the owner for any month after the month when the family moves out.
- b. **Owner compliance with HAP contract** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract.
 - c. **Amount of PHA payment to owner**
 - (1) The amount of the monthly PHA housing assistance payment to the owner shall be determined by the PHA in accordance with HUD requirements for a tenancy under the voucher program.
 - (2) The amount of the PHA housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements. The PHA must notify the family and the owner of any changes in the amount of the housing assistance payment.
 - (3) The housing assistance payment for the first month of the HAP contract term shall be prorated for a partial month.
 - d. **Application of payment** The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.

e. **Limit of PHA responsibility**

- (1) The PHA is only responsible for making housing assistance payments to the owner in accordance with the HAP contract and HUD requirements for a tenancy under the voucher program.
- (2) The PHA shall not pay any portion of the rent to owner in excess of the housing assistance payment. The PHA shall not pay any other claim by the owner against the family.

f. **Overpayment to owner** If the PHA determines that the owner is not entitled to the housing assistance payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract).

- b. The owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.
- c. Violence Against Women Act. The owner must comply with the Violence Against Women Act, as amended, and HUD's implementing regulation at 24 CFR part 5, Subpart L, and program regulations.

10. Owner's Breach of HAP Contract

- a. Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:
 - (1) If the owner has violated any obligation under the HAP contract, including the owner's obligation to maintain the unit in accordance with the HQS.
 - (2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8.
 - (3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
 - (4) For projects with mortgages insured by HUD or loans made by HUD, if 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 if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.
 - (5) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.
- b. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. The PHA shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the PHA to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice.
- c. The PHA's rights and remedies for owner breach of the HAP contract include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
- d. The PHA may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief or order for damages.
- e. Even if the family continues to live in the contract unit, the PHA may exercise any rights and remedies for owner breach of the HAP contract.
- f. The PHA's exercise or non-exercise of any right or remedy for owner breach of the HAP contract is not a

8. Owner Certification

During the term of this contract, the owner certifies that:

- a. The owner is maintaining the contract unit and premises in accordance with the HQS.
- b. The contract unit is leased to the tenant. The lease includes the tenancy addendum (Part C of the HAP contract), and is in accordance with the HAP contract and program requirements. The owner has provided the lease to the PHA, including any revisions of the lease.
- c. The rent to owner does not exceed rents charged by the owner for rental of comparable unassisted units in the premises.
- d. Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit during the HAP contract term.
- e. The family does not own or have any interest in the contract unit.
- f. To the best of the owner's knowledge, the members of the family reside in the contract unit, and the unit is the family's only residence.
- g. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

9. Prohibition of Discrimination. In accordance with applicable nondiscrimination and equal opportunity laws, statutes, Executive Orders, and regulations.

- a. The owner must not discriminate against any person because of race, color, religion, sex (including sexual orientation and gender identity), national origin, age, familial status, or disability in connection with the HAP contract. Eligibility for HUD's programs must be made without regard to actual or perceived sexual orientation, gender identity, or marital status.

waiver of the right to exercise that or any other right or remedy at any time.

11. PHA and HUD Access to Premises and Owner's Records

- a. The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require.
- b. The PHA, HUD and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.
- c. The owner must grant such access to computerized or other electronic records, and to any computers, equipment or facilities containing such records, and must provide any information or assistance needed to access the records.

12. Exclusion of Third Party Rights

- a. The family is not a party to or third party beneficiary of Part B of the HAP contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or PHA under Part B.
- b. The tenant or the PHA may enforce the tenancy addendum (Part C of the HAP contract) against the owner, and may exercise any right or remedy against the owner under the tenancy addendum.
- c. The PHA does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with management of the contract unit or the premises or with implementation of the HAP contract, or as a result of any other action or failure to act by the owner.
- d. The owner is not the agent of the PHA, and the HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with management of the contract unit or the premises or with implementation of the HAP contract.

13. Conflict of Interest

- a. "Covered individual" means a person or entity who is a member of any of the following classes:
 - (1) Any present or former member or officer of the PHA (except a PHA commissioner who is a participant in the program);
 - (2) Any employee of the PHA, or any contractor, sub-contractor or agent of the PHA, who formulates policy or who influences decisions with respect to the program;
 - (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or
 - (4) Any member of the Congress of the United States.

- b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.
- c. "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.
- d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.
- e. If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.
- f. The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.
- g. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.

14. Assignment of the HAP Contract

- a. The owner may not assign the HAP contract to a new owner without the prior written consent of the PHA.
- b. If the owner requests PHA consent to assign the HAP contract to a new owner, the owner shall supply any information as required by the PHA pertinent to the proposed assignment.
- c. The HAP contract may not be assigned to a new owner that is debarred, suspended or subject to a limited denial of participation under HUD regulations (see 24 Code of Federal Regulations Part 24).
- d. The HAP contract may not be assigned to a new owner if HUD has prohibited such assignment because:
 - (1) The Federal government has instituted an administrative or judicial action against the owner or proposed new owner for violation of the Fair Housing Act or other Federal equal opportunity requirements, and such action is pending; or
 - (2) A court or administrative agency has determined that the owner or proposed new owner violated the Fair Housing Act or other Federal equal opportunity requirements.
- e. The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the family of such determination) that approving the assignment, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

- f. The PHA may deny approval to assign the HAP contract if the owner or proposed new owner (including a principal or other interested party):
- (1) Has violated obligations under a housing assistance payments contract under Section 8;
 - (2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program;
 - (3) Has engaged in any drug-related criminal activity or any violent criminal activity;
 - (4) Has a history or practice of non-compliance with the HQS for units leased under the Section 8 tenant-based programs, or non-compliance with applicable housing standards for units leased with project-based Section 8 assistance or for units leased under any other Federal housing program;
 - (5) Has a history or practice of failing to terminate tenancy of tenants assisted under any Federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
 - (a) Threatens the right to peaceful enjoyment of the premises by other residents;
 - (b) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;
 - (c) Threatens the health or safety of, or the right to peaceful enjoyment of their residents by, persons residing in the immediate vicinity of the premises; or
 - (d) Is drug-related criminal activity or violent criminal activity;
 - (6) Has a history or practice of renting units that fail to meet State or local housing codes; or
 - (7) Has not paid State or local real estate taxes, fines or assessments.
- g. The new owner must agree to be bound by and comply with the HAP contract. The agreement must be in writing, and in a form acceptable to the PHA. The new owner must give the PHA a copy of the executed agreement.
- b The HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including the HUD program regulations at 24 Code of Federal Regulations Part 982.

15. Foreclosure. In the case of any foreclosure, the immediate successor in interest in the property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the HAP contract between the prior owner and the PHA for the occupied unit. This provision does not affect any State or local law that provides longer time periods or other additional protections for tenants.

16. Written Notices Any notice by the PHA or the owner in connection with this contract must be in writing.

17. Entire Agreement: Interpretation

- a. The HAP contract contains the entire agreement between the owner and the PHA.

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant-Based Assistance
Housing Choice Voucher Program**

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

Part C of HAP Contract: Tenancy Addendum

1. Section 8 Voucher Program

- a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2. Lease

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3. Use of Contract Unit

- a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profit making activities incidental to primary use of the unit for residence by members of the family.
- d. The tenant may not sublease or let the unit.
- e. The tenant may not assign the lease or transfer the unit.

4. Rent to Owner

- a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:

- (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
- (2) Rent charged by the owner for comparable unassisted units in the premises.

5. Family Payment to Owner

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.
- f. The owner must immediately return any excess rent payment to the tenant.

6. Other Fees and Charges

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

7. Maintenance, Utilities, and Other Services

- a. **Maintenance**
 - (1) The owner must maintain the unit and premises in accordance with the HQS.
 - (2) Maintenance and replacement (including redecoration) must be in accordance with the

standard practice for the building concerned as established by the owner.

b. **Utilities and appliances**

- (1) The owner must provide all utilities needed to comply with the HQS.
- (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
 - (a) Pay for any utilities that are to be paid by the tenant.
 - (b) Provide and maintain any appliances that are to be provided by the tenant.

c. **Family damage.** The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.

d. **Housing services.** The owner must provide all housing services as agreed to in the lease.

8. Termination of Tenancy by Owner

a. **Requirements.** The owner may only terminate the tenancy in accordance with the lease and HUD requirements.

b. **Grounds.** During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

- (1) Serious or repeated violation of the lease;
- (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
- (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
- (4) Other good cause (as provided in paragraph d).

c. **Criminal activity or alcohol abuse.**

- (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
 - (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
 - (b) Any criminal activity that threatens the health, or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
 - (c) Any violent criminal activity on or near the premises; or
 - (d) Any drug-related criminal activity on or near the premises.
- (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:
 - (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from

which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

- (b) Violating a condition of probation or parole under Federal or State law.
- (3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.
- (4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

d. **Other good cause for termination of tenancy**

- (1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.
- (2) During the initial lease term or during any extension term, other good cause may include:
 - (a) Disturbance of neighbors,
 - (b) Destruction of property, or
 - (c) Living or housekeeping habits that cause damage to the unit or premises.
- (3) After the initial lease term, such good cause may include:
 - (a) The tenant's failure to accept the owner's offer of a new lease or revision;
 - (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
 - (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).
- (4) The examples of other good cause in this paragraph do not preempt any State or local laws to the contrary.
- (5) In the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease, requiring the tenant to vacate the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner:
 - (a) Will occupy the unit as a primary residence; and
 - (b) Has provided the tenant a notice to vacate at least 90 days before the effective date of such notice. This provision shall not affect any State or local law that provides for longer time periods or additional protections for tenants.

9. Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

- a. **Purpose:** This section incorporates the protections for victims of domestic violence, dating violence, sexual assault, or stalking in accordance with subtitle N of the Violence Against Women Act of 1994, as amended (codified as amended at 42 U.S.C. 14043e et seq.) (VAWA) and implementing regulations at 24 CFR part 5, subpart L.
- b. **Conflict with other Provisions:** In the event of any conflict between this provision and any other provisions included in Part C of the HAP contract, this provision shall prevail.
- c. **Effect on Other Protections:** Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.
- d. **Definition:** As used in this Section, the terms “actual and imminent threat,” “affiliated individual”, “bifurcate”, “dating violence,” “domestic violence,” “sexual assault,” and “stalking” are defined in HUD’s regulations at 24 CFR part 5, subpart L. The terms “Household” and “Other Person Under the Tenant’s Control” are defined at 24 CFR part 5, subpart A.
- e. **VAWA Notice and Certification Form:** The PHA shall provide the tenant with the “Notice of Occupancy Rights under VAWA and the certification form described under 24 CFR 5.2005(a)(1) and (2).
- f. **Protection for victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking:**
- (1) The landlord or the PHA will not deny admission to, deny assistance under, terminate from participation in, or evict the Tenant on the basis of or as a direct result of the fact that the Tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the Tenant otherwise qualifies for admission, assistance, participation, or occupancy. 24 CFR 5.2005(b)(1).
 - (2) The tenant shall not be denied tenancy or occupancy rights solely on the basis of criminal activity engaged in by a member of the Tenant’s Household or any guest or Other Person Under the Tenant’s Control, if the criminal activity is directly related to domestic violence, dating violence, sexual assault, or stalking, and the Tenant or an Affiliated Individual of the Tenant is the victim or the threatened victim of domestic violence, dating violence, sexual assault, or stalking. 24 CFR 5.2005(b)(2).
 - (3) An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated violations of the lease by the victim or threatened victim of the incident. Nor shall it not be construed as other “good cause” for termination of the lease, tenancy, or occupancy rights of such a victim or threatened victim. 24 CFR 5.2005(c)(1) and (c)(2).
- g. **Compliance with Court Orders:** Nothing in this Addendum will limit the authority of the landlord, when notified by a court order, to comply with the court order with respect to the rights of access or control of property

(including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking) or with respect to the distribution or possession of property among members of the Tenant’s Household. 24 CFR 5.2005(d)(1).

- h. **Violations Not Premised on Domestic Violence, Dating Violence, Sexual Assault, or Stalking:** Nothing in this section shall be construed to limit any otherwise available authority of the Landlord to evict or the public housing authority to terminate the assistance of a Tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the Tenant or an Affiliated Individual of the Tenant. However, the Landlord or the PHA will not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance. 24 CFR 5.2005(d)(2).
- i. **Actual and Imminent Threats:**
- (1) Nothing in this section will be construed to limit the authority of the Landlord to evict the Tenant if the Landlord can demonstrate that an “actual and imminent threat” to other tenants or those employed at or providing service to the property would be present if the Tenant or lawful occupant is not evicted. In this context, words, gestures, actions, or other indicators will be construed as an actual and imminent threat if they meet the following standards for an actual and imminent threat: “Actual and imminent threat” refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. 24 CFR 5.2005(d)(3).
 - (2) If an actual and imminent threat is demonstrated, eviction should be used only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence, developing other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. 24 CFR 5.2005(d)(4).
- j. **Emergency Transfer:** A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking may request an emergency transfer in accordance with the PHA’s emergency transfer plan. 24 CFR 5.2005(e). The PHA’s emergency transfer plan must be made available upon request, and incorporate strict confidentiality measures to ensure that the PHA does not disclose a tenant’s dwelling unit location to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant;

For transfers in which the tenant would not be considered a new applicant, the PHA must ensure that a request for an emergency transfer receives, at a minimum, any applicable additional priority that is already provided to other types of emergency transfer requests. For transfers in which the tenant would be considered a new applicant, the plan must include policies for assisting a tenant with this transfer.

- k. **Bifurcation:** Subject to any lease termination requirements or procedures prescribed by Federal, State, or local law, if any member of the Tenant's Household engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, the Landlord may "bifurcate" the Lease, or remove that Household member from the Lease, without regard to whether that Household member is a signatory to the Lease, in order to evict, remove, or terminate the occupancy rights of that Household member without evicting, removing, or otherwise penalizing the victim of the criminal activity who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the housing choice voucher program. 24 CFR 5.2009(a).

If the Landlord bifurcates the Lease to evict, remove, or terminate assistance to a household member, and that household member is the sole tenant eligible to receive assistance, the landlord shall provide any remaining tenants or residents a period of 30 calendar days from the date of bifurcation of the lease to:

- (1) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease;
 - (2) Establish eligibility under another covered housing program; or
 - (3) Find alternative housing.
- l. **Family Break-up:** If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA must ensure that the victim retains assistance. 24 CFR 982.315.
- m. **Move with Continued Assistance:** The public housing agency may not terminate assistance to a family or member of the family that moves out of a unit in violation of the lease, with or without prior notification to the public housing agency if such a move occurred to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking; and who reasonably believed they were imminently threatened by harm from further violence if they remained in the dwelling unit, or if any family member has been the victim of sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.
- (1) The move is needed to protect the health or safety of the family or family member who is or has been a victim of domestic violence dating violence, sexual assault or stalking; and
 - (2) The family or member of the family reasonably believes that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. However, any family member that has been the victim of a sexual assault that occurred on the premises during the

90-calendar day period preceding the family's move or request to move is not required to believe that he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit. 24 CFR 982.354

n. **Confidentiality.**

- (1) The Landlord shall maintain in strict confidence any information the Tenant (or someone acting on behalf of the Tenant) submits to the Landlord concerning incidents of domestic violence, dating violence, sexual assault or stalking, including the fact that the tenant is a victim of domestic violence, dating violence, sexual assault, or stalking.
- (2) The Landlord shall not allow any individual administering assistance on its behalf, or any persons within its employ, to have access to confidential information unless explicitly authorized by the Landlord for reasons that specifically call for these individuals to have access to the information pursuant to applicable Federal, State, or local law.
- (3) The Landlord shall not enter confidential information into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is requested or consented to in writing by the individual in a time-limited release; required for use in an eviction proceeding; or is required by applicable law.

10. Eviction by court action

The owner may only evict the tenant by a court action.

11. Owner notice of grounds

- (1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
- (2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
- (3) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

12. Lease: Relation to HAP Contract

If the HAP contract terminates for any reason, the lease terminates automatically.

13. PHA Termination of Assistance

The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

14. Family Move Out

The tenant must notify the PHA and the owner before the family moves out of the unit.

15. Security Deposit

- a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)

- b. 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, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.
- c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.
- d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

16. Prohibition of Discrimination

In accordance with applicable nondiscrimination and equal opportunity laws, statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex (including sexual orientation and gender identity), national origin, age, familial status or disability in connection with the lease. Eligibility for HUD's programs must be made without regard to actual or perceived sexual orientation, gender identity, or marital status.

17. Conflict with Other Provisions of Lease

- a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
- b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

18. Changes in Lease or Rent

- a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
- b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:
 - (1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
 - (2) If there are any changes in lease provisions governing the term of the lease;
 - (3) If the family moves to a new unit, even if the unit is in the same building or complex.
- c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed

changes in the lease other than as specified in paragraph b.

- d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

19. Notices

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

20. Definitions

Contract unit. The housing unit rented by the tenant with assistance under the program.

Family. The persons who may reside in the unit with assistance under the program.

HAP contract. The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

Household. The persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

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

HUD requirements. HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Lease. The written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

PHA. Public Housing Agency.

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

Program. The Section 8 housing choice voucher program.

Rent to owner. The total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

Section 8. Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant. The family member (or members) who leases the unit from the owner.

Voucher program. The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.