

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**  
**OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

1. REQUISITION NUMBER

PAGE 1 OF  
 117

2. CONTRACT NO.

3. AWARD/EFFECTIVE DATE

4. ORDER NUMBER

5. SOLICITATION NUMBER  
 R-DEN-02270

6. SOLICITATION ISSUE DATE  
 7/29/2008

7. FOR SOLICITATION INFORMATION CALL: >

a. NAME  
 Rudy L. Julao

b. TELEPHONE NUMBER (No collect calls)  
 (415) 489-6713

8. OFFER DUE DATE/LOCAL TIME  
 8/27/2008-1:00pm (local)

9. ISSUED BY CODE NFWR  
 U.S. Dept of Hsg & Urban Development  
 Western Field Contracting Operations  
 600 Harrison Street, 3<sup>rd</sup> Floor  
 San Francisco, CA 94107-1387

10. THIS ACQUISITION IS  
 UNRESTRICTED  
 SET ASIDE 100 % FOR  
 SMALL BUSINESS  
 HUBZONE SMALL BUSINESS  
 8(A)  
 NAICS: 541191  
 SIZE STANDARD: 6.5

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  
 SEE SCHEDULE  
 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15CFR 700)  
 13b. RATING  
 14. METHOD OF SOLICITATION  
 RFQ  IFB  RFP

12. DISCOUNT TERMS  
 N/A

15. DELIVER TO CODE

16. ADMINISTERED BY CODE NFWR  
 Same as Block #9 above

17a. CONTRACTOR/OFFEROR CODE FACILITY CODE  
 TELEPHONE NO.

18a. PAYMENT WILL BE MADE BY CODE  
 E.F. Kearney  
 2777-B Heartland Rd.  
 Falls Church, VA 22043

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18 b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED  
 SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
CLIN 0001	Closing Agent Services - State of Arizona  "Insert prices on page 3"  Bids due by: 8/27/2008 at 1:00 PM (local)  <i>(Attach Additional Sheets as Necessary)</i>	600	each		

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT (For Govt. Use Only)

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED.  
 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN  
 TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

29. AWARD OF CONTRACT: REFERENCE OFFER.  
 DATED YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR

31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)

30c. DATE SIGNED

31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)

31c. DATE SIGNED

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN  
 RECEIVED     INSPECTED     ACCEPTED AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NO. OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NO.	40. PAID BY
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41a. I CERTIFY THIS AMOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY ( <i>Print</i> )
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
	42b. RECEIVED AT ( <i>Location</i> )
	42c. DATE REC'D (YY/MM/DD)
	42d. TOTAL CONTAINERS

**1.0 SOLICITATION DESCRIPTION**

This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in Subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; Invitation For Bids (IFB) are being requested and a written solicitation will not be issued. The solicitation documents and incorporated provisions and clauses are those in effect through Federal Acquisition Circular 2005-24 (March 31, 2008). This solicitation is Set-Asides for Small Businesses. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

1.1 R-DEN-02270 is issued as an Invitation For Bids (IFB). (Note: the words Bidder(s), Bid(s), Offeror(s), and proposal(s) are inter-changeable, see definitions Attachment 2.

1.2 The NAICS code is 541191 and the size standard for a small business concern is \$6.5 million.

1.3 This contract has a base period of one year with 2 one-year options, and a 3<sup>rd</sup> option of 9 months.

**1.4 SERVICES**

1.4.1 The Contractor shall provide closing services for the U.S. Department of Housing and Urban Development (HUD) on HUD-owned single-family properties, located in the geographic areas under the jurisdiction of the Santa Ana Homeownership Center (SAHOC).

1.4.2 This is a Fixed Price Award Fee, Requirements contract as defined at Subpart 16.503 of the Federal Acquisition Regulation, and in Clause 52.216-21, Requirements, herein (Full-Text see Attachment 1). Services provided by the contractor under this contract shall be obtained as stated in the Ordering Procedures (FAR 52.216-18 Ordering (Full-Text see Attachment 1).

**1.4.3 Geographic Area of Coverage: State of Arizona**

1.5 HUD reserves the rights to unilaterally increase, decrease, or selectively assign closings in geographic areas, or to administratively revise the geographic areas in accordance with the changes clause of the contract, if such action is determined to be in the best interest of the government.

1.6 HUD may procure the services of additional Contractors, if such action is determined to be in the best interest of the Government.

1.7 HUD is under no obligation to assign properties exceeding the maximum quantities set forth herein.

**2.0 PRICE SCHEDULE**

The unit price per closing specified herein shall be inclusive of all costs, including the cost of phones, postage, shipping, delivery costs, courier costs, preliminary title, express mail, wire transfer fees, notary fees, faxing, document reproducing, insurance, and all other office requirements as referenced in this contract. The purchaser, lender and/or seller shall pay no other costs for closing services.

**2.1 HUDAR 2452-216-77 ESTIMATED QUANTITIES – REQUIREMENTS CONTRACTS (FEB 2006)**

2.1.1. In accordance with FAR 52.216-21(a), the Government provides the following estimates:

2.1.1.1. The estimated quantity or amount of supplies or services the Government may order during the ordering period of this contract is 600 for the base year and each option year period.

2.1.1.2. The estimated maximum quantity or amount of supplies or services the Government may order during the ordering period of this contract is 1,200 for the base year and each option year period. Maximum quantity of cases that may be closed under this contract, per year is 1,200.

2.1.1.3. The quantities delineated above represent closed actions only. The maximum quantities do not include aborted closings or cancellations.

- 2.2 Prices. The offeror shall insert the base price and award fee to perform all services in the schedule below. The offeror shall add the Base Price and Award Fee together, and multiply by the Estimated Quantity to obtain the Estimated Value for each performance period.

<b>REGULAR CLOSINGS</b>						
<b>CONTRACT LINE ITEM NUMBER</b>	<b>PERFORMANCE PERIOD</b>	<b>UNIT</b>	<b>ESTIMATED QUANTITY</b>	<b>BASE PRICE</b>	<b>AWARD FEE</b>	<b>ESTIMATED VALUE</b>
CLIN 0001	BASE YEAR	EA.	600	\$	\$	\$
CLIN 0002	OPTION YEAR 1	EA.	600	\$	\$	\$
CLIN 0003	OPTION YEAR 2	EA.	600	\$	\$	\$
CLIN 0004	OPTION Period 3 (9 months)	EA.	500	\$	\$	\$
ESTIMATED TOTAL VALUE OF ALL YEARS						\$

- 2.3 The description of requirements is in items 4.0 through 6.1.3 below.

- 2.4 Delivery and acceptance

Acceptance site is:

U.S. Department of Housing and Urban Development  
 Santa Ana Federal Building, Room 7015  
 34 Civic Center Plaza  
 Santa Ana, CA 92701-4003

- 2.5 FAR Provision 52.212-1 Instructions to Offerors-Commercial (Nov 2007), applies to this acquisition (Full-Text see Attachment 1).

- 2.6 Evaluation and Award

- 2.6.1 Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).
- 2.6.2 A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award
- 2.6.3 Evaluation of Pricing. The purpose of a performance-based contract and the award fee is to encourage the contractor to perform to the performance standards of the contract and to tie the contractor's compensation to those standards. HUD wishes to encourage offerors to put more of their compensation in the award fee and less in the Base Price. The pricing submitted by offerors for the Base Price and Award Fee will be evaluated by giving the Award Fee a lower "evaluated value" than Base Price and then adding the evaluated Award Fee to the Base Price to obtain the Evaluated Price. Using an example of a factor of .7 to adjust the Award Fee, Offeror A

submits a price of \$300 Base Price and \$200 Award Fee would receive an evaluated price of \$440 ( $\$300 + [\$200 \times .7]$ ). If Offeror B submits a Base Price of \$400 and an Award Fee of \$100, while they would appear to both be offering a price of \$500 per closing, Offeror B would actually be evaluated at \$470 ( $\$400 + [\$100 \times .7]$ ). Therefore, Offeror A would receive the more favorable “evaluated price.”

- 2.6.4 Award will be made to the offeror whose offer is the most advantageous to the Government, considering only price and related factors included in the IFB.

## 2.7 AS 1302 POSTAWARD CONFERENCE

The contractor shall be required to attend a post-award conference. The conference will be held at To be determined upon contract award. The Contracting Officer or designee will notify the contractor of the date and time of the conference.

## 3 REPRESENTATIONS AND CERTIFICATIONS (Attachment 7)

- 3.1 Offerors are advised to include a completed copy of the FAR provision 52.212-3, Offeror Representations and Certifications-Commercial Items (Nov 2007), with their offers or state whether the annual representation and certifications electronically completed via ORCA Website at <http://orca.bpn.gov>.
- 3.2 FAR Clause 52.217-8, Option to Extend Services (NOV 1999), applies to this acquisition.
- 3.3 FAR Clause 52.212-4, Contract Terms and Conditions-Commercial Items (Feb 2007), applies to this acquisition (Full-text see Attachment 1).
- 3.4 FAR Clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (Feb 2008), applies to this acquisition. The additional FAR clauses cited in FAR clause 52.212-5 that are applicable to this acquisition are set forth in **Attachment 1**.
- 3.5 Below are solicitation provisions applicable to the Invitation For Bids (IFB). Full text are in Attachment 1)
- 3.5.1 FAR 52.214-3 Amendments to Invitation For Bids (Dec 1989)
- 3.5.2 FAR 52.214-4 False Statements in Bids (Apr 1984)
- 3.5.3 FAR 52.214-5 Submission of Bids (Mar 1997)
- 3.5.4 FAR 52.214-6 Explanation to Prospective Bidders (Apr 1984)
- 3.5.5 FAR 52.214-7 Late Submission, Modification, and Withdrawal of Bids (Nov 1999)
- 3.5.6 FAR 52.214-10 Contract Award – Sealed Bidding (July 1990)
- 3.5.7 FAR 52.214-26 Audit and Records – Sealed Bidding (Oct 1997)
- 3.6 Below are additional contract requirement(s) or terms and conditions determined by the Contracting Officer to be necessary for this acquisition and consistent with customary commercial practices:
- 3.6.1 FAR 52.217-9 Option to Extend The Term of the Contract (MAR 2000)
- (a) The Government may extend the term of this contract by written notice to the Contractor within 15 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 44 months.
- 3.6.2 HUDAR 2452.203-70 Prohibition Against the Use of Federal Employees (FEB 2006)
- 3.6.3 HUDAR 2452.209-72 Organizational Conflicts of Interest (Feb 2000)
- 3.6.4 HUDAR 2452.216-73 Performance Evaluation Plan (OCT 1999)

- (a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor 10 days before the start of the first evaluation period.
- (b) The Government may unilaterally change the award fee plan prior to the beginning of subsequent evaluation periods. The Contracting Officer will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period.

3.6.5 HUDAR 2452.216-74 Distribution of Award Fee (FEB 2006)

- (a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Each Calendar Quarter Evaluation Period: (To be determined at time of award).

- (b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official as designated in the contract.

3.6.6 HUDAR 2452.222-70 Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities (FEB 2006)

3.6.7 AI-05-02 Non-Disclosure Agreements for Contractor Employees

All contractor employees shall complete the non-disclosure form in Attachment 11 and submit to the Contracting Officer prior to access to protected information or upon contract award.

3.6.8 HUDAR 2452.237-70 Key Personnel (FEB 2006)

The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The Schedule may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate. *(List key personnel and/or positions, and tasks, percentage of effort, number of hours, etc., for which they are responsible, as applicable)*

**\*KEY PERSONNEL**

<u>Name</u>	<u>Position</u>	<u>Task or Function &amp; % of Effort</u>	<u>Telephone/Email address</u>

**\* Note: Key Personnel – Contractor must complete the above. (Add more lines if needed)**

3.6.9 HUDAR 2452.237-73 Conduct of Work and Technical Guidance (Feb 2006)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is Mr. Charles S. Rainwater or a successor designated by the Contracting Officer. The Contracting Officer will notify the contractor in writing of any change to the current GTR’s status or the designation of a successor GTR.

(b) The GTR will provide guidance to the contractor on the technical performance of the contract. Such guidance shall not be of a nature which:

- (1) Causes the Contractor to perform work outside the scope of the contract;
- (2) Constitutes a change as defined in FAR 52.243-1; Changes-Fixed-Price (Aug 1987)
- (3) Causes an increase or decrease in the cost of the contract:

- (4) Alters the period of performance or delivery dates; or,  
 (5) Changes any of the other express terms or conditions of the contract.  
 (c) The GTR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five calendar days after oral issuance. The GTR may issue such guidance via telephone facsimile or electronic mail.
- 3.6.10 The Government Technical Monitor (GTM) for this contract is Albert Sanchez. The GTM is considered a subject matter expert for HUD, responsible for serving as a technical advisor to the GTR, and may perform any of the GTR's duties and responsibilities delegated to him/her by the GTR. The GTM is constrained by the same limitations identified in paragraph 3.7.8 above.
- 3.6.11 Payment will be made by  
 E.F. Kearney Ltd.  
 2777-B Heartland Rd  
 Falls Church, VA 22043
- 3.6.12 Following the procedures found in FAR Clause 52.212-4, the contractor may submit monthly invoices for closings that occurred that did not have sufficient monies available to pay the contractor in the preceding month and shall submit an original invoice and three copies.

Original and two copies shall be submitted to: GTR

U.S. Department of Housing and Urban Development  
 Attn: Charles S. Rainwater  
 Santa Ana Federal Building, Room 7015  
 34 Civic Center Plaza  
 Santa Ana, CA 92701-4003

One copy to: Contract Specialist

U.S. Department of Housing and Urban Development  
 ATTN: Rudy L. Julao, Contract Specialist  
 Western Field Contracting Operations (NFW)  
 San Francisco Office  
 600 Harrison Street, 3<sup>rd</sup> Floor  
 San Francisco, CA 94107-1387

- 3.6.13 A copy of all invoices, without supporting documentations, shall be submitted to the Contract Specialist. The final invoice shall not be paid prior to certification by the Contracting Officer that all work has been completed and accepted.
- 3.6.14 **Bidders must submit one hard copy of the proposal with original signatures and 4 duplicate copies. Bids are due:**  
 By the Date of: August 27, 2008  
 By the Time of 1:00 PM (PST-local)  
 To the Place of :  
 U.S. Department of Housing and Urban Development  
 Western Field Contracting Operations (NFW)  
 San Francisco Office - Attn: Rudy L. Julao, Contract Specialist  
 600 Harrison Street, 3<sup>rd</sup> Floor  
 San Francisco, CA 94107-1387

**NOTICE TO BIDDERS:**

On the LOWER left corner of the envelope or bid envelope, complete as follows-

**Mail Room – DO NOT OPEN****Solicitation No. : R-DEN-02270****Date For Receipt of Bids: August 27, 2008****Time For Receipt of Bids: 1:00 P.M. (local)****Office Designated to Receive Bids:** same as the above address (see 3.6.14 above)**4 GENERAL INFORMATION**

- 4.1 **Background :Single Family Mortgage Insurance Program.** The Federal Housing Administration (FHA), an agency of the United States Department of Housing and Urban Development (HUD), administers the Single Family Mortgage Insurance Program. Upon default and foreclosure of an FHA insured loan, the lender files a claim for insurance benefits. In exchange for payment of a claim, a lender conveys a foreclosed property to HUD. HUD, through its Management and Marketing (M&M) Contractor, sells a sizable inventory of single family homes in a manner that promotes home ownership, preserves communities and maximizes return to the FHA insurance fund. To complete the sales of properties, HUD requires the services of closing agent Contractors (referred to as “Contractor” hereafter) to perform all necessary closing activities on its behalf.
- 4.2 **Interaction/Impact.** Performance under this contract will involve interaction with homebuyers, real estate professionals, mortgage lenders, non-profit agencies, local units of government, staff from HUD’s Homeownership Center (HOC), and other service providers under contract to HUD such as the M&M Contractors. Additionally, this contract may be impacted by changes in government regulation, legislation or housing policy initiatives.
- 4.3 **Purpose and Objectives. The primary objectives of this contract are:**
- 4.3.1 Closings are completed and reconciled in the shortest time frame possible, but no later than the date specified in the sales contract or an approved extension that is not a result of closing agent delays.
  - 4.3.2 Sales proceeds are accurately and timely wired to the United States Treasury.
  - 4.3.3 Deeds and Sales Documents are timely and accurately recorded.
  - 4.3.4 Closings are accomplished with error-free closing documents, minimizing complaints, and eliminating post-closing issues and demands.
  - 4.3.5 HUD only pays their “fair share” of closing expenses.
  - 4.3.6 The image of HUD, and its programs are positively represented at all times.
- 4.4 **Outcomes. The Contractors performance under this contract shall ensure that:**
- 4.4.1 Sales proceeds of each sale are accurately wire transferred and received in HUD's account with the U.S. Treasury day of closing or no later than the next banking day.
  - 4.4.2 Complete and accurate closing packages are submitted to the M&M Contractor within 2 business days of closing.
  - 4.4.3 World class customer service is extended to HUD and its clients at all times, that the overall image of HUD’s Real Estate Owned (REO) Sales Program is positive, and that complaints and post closing issues and demands are minimal.
  - 4.4.4 The integrity of the HUD Trust Account and sales proceeds are maintained at all times.
  - 4.4.5 The quality control plan that will meet the requirements of this contract.
  - 4.4.6 Expediency and accuracy of all closing and loan documentation is expedient and accurate, and appropriate payment of all closing disbursements are paid appropriately.
- 4.5 **Scope of Requirements**
- 4.5.1 **Commercial Escrow Closing Services:** The services provided under this contract are considered to be essentially commercial in nature, with the exception of some HUD-specific requirements identified in the Statement of Work. The Contractor understands that time is of the essence, and shall work pro-actively with the current HUD Marketing & Management Contractor to conduct closings in the least amount of time possible. This contract reflects the fixed unit price for closing agent services, a price which includes all costs of services included within the statement of work. Any additional charges from the Contractor to the buyer require prior approval (written or e-mail) from the GTR/GTM.
  - 4.5.2 **RESPA Regulations** – All closings will comply with the current version of the Real Estate Settlement Procedures Act (RESPA).

- 4.5.3 **State/Local Licensing/Regulatory Requirements** – All closings will comply with current state/local licensing/regulatory requirements in the geographic area of the closing. The Contractor shall be fully functional, licensed, and able to close escrow within 60 days after contract award and upon the effective date of this contract.
- 4.5.4 **Table Funding** – The Contractor shall ensure that lenders fund the closing so that the funds are available at the time of closing.
- 4.5.5 **Standard Local Practice** – All closings will comply with HUD contract requirements except in instances where HUD contract requirements conflict with standard local processes or state requirements. The Contractor shall seek guidance from the GTR prior to closing on cases where HUD contract requirements are not in compliance with standard local processes or state requirements.
- 4.5.6 **Third Party Closings** – Third party closings are prohibited under this contract. Subcontracting closings in accordance with the Contractor’s approved closing plan incorporated into this contract, wherein the prime is responsible for all aspects of the closing, should not be confused with third party closings.
- 4.5.7 **Prohibited Fees/Signing Fees** –The Contractor shall not charge any party a fee for document signing services except as noted below. The Contractor may charge a signing fee if the buyer specifically requests the signing take place in the buyer’s home or in another location in lieu of the Contractor’s specified location and with documented written authorization from the buyer that the signing is strictly for the buyer’s convenience and the buyer fully understands that they may choose to sign in the Contractor’s offices at no charge. The Contractor shall not unduly influence a buyer to purchase a title policy in order for the Contractor to seek compensation for these services.
- 4.5.8 **Definitions, and Applicable Documents/Publications**
- 4.5.8.1 Definitions are in **Attachment 2**.
- 4.5.9 **Applicable Documents:**
- 4.5.9.1 HUD Notices
- 4.5.9.2 HUD Handbooks
- 4.5.9.3 HUD Mortgagee Letters
- 4.5.10 **Government Furnished Items and Services**  
There are no Government furnished items or services provided in this requirement.
- 4.5.11 **Contractor Furnished Items and Services**
- 4.5.11.1 The Contractor shall provide a fully staffed and equipped office in the geographic area for the awarded contract and shall furnish the necessary satellite offices, services, personnel, training of personnel, materials, equipment, facilities and transportation to perform all closing services at no additional cost to HUD or the buyer.
- 4.5.11.2 The Contractor shall recruit, hire, train, and supervise qualified employees. The Contractor shall ensure that all employees/subcontractors have all required licenses/certifications and have performed FHA closings for at least one full year within the past three years. The contracting officer shall have the authority to restrict the assignment of any individual as an employee under this contract, or any subcontracts, who is identified as a potential threat to the health, safety, security, general well being or mission of the Department, or its staff. The Contractor’s employees shall maintain a professional demeanor at all times.
- 4.5.11.3 Closing documents may be signed at the Contractor’s satellite offices for the convenience of the purchaser, at no additional cost to the purchaser; however, all files and records shall be maintained at the Contractor’s primary office. The Contractor shall not change the office location(s) without the written approval of the GTR and Contracting Officer.

## 5.0 DESCRIPTION OF SERVICES

### 5.1 HUD Trust Account

- 5.1.1 The Contractor shall establish, at Contractor’s expense, a separate non-interest bearing escrow account (unless state law requires an interest bearing account, in which case, documentation to verify this distinction must be provided to the GTR and Contracting Officer) for all sales proceeds, including earnest money deposits, loan proceeds, and purchaser’s funds presented at closing, in the name of the Contractor with the restriction: “As Trustee for the U.S. Department of Housing and Urban Development.”

- 5.1.2 The escrow account shall be established in a bank that gives credit for the deposited funds immediately, upon clearance shall issue a receipt for the deposit, and which has the capacity to transmit all of the required wire transfer information
- 5.1.3 Sales closing proceeds shall be wired directly to the U.S. Treasury from the selected bank and the Contractor shall obtain a wiring confirmation in the form and format of a printout provided by the Federal Reserve System.
- 5.1.4 The Contractor shall only use this escrow account for purposes of this contract and, in the event the Contractor has multiple contracts with HUD, shall ensure that a separate account is maintained for each contract area and shall not commingle funds among areas.
- 5.1.5 If at any time the Contractor is unable to comply with these requirements, the Contractor shall immediately notify the GTR and the Contracting Officer in writing. Such notification shall describe the efforts exerted by the Contractor to comply, and shall include proposed actions to achieve compliance.
- 5.1.6 The Contractor shall submit on a monthly basis to the GTR or their designee 1.) a copy of the reconciled monthly bank statement, no later than ten business days following statement ending date; and 2.) a letter affirming the statement has been reconciled. The letter shall also include the number and amount of each check that has been outstanding for longer than 60 days and shall describe the efforts put forth by the Contractor to clear these checks.
- 5.1.7 The Contractor shall fully reconcile the escrow closing no later than 180 days from date of closing. At no time should checks or escrow funds remain un-reconciled or outstanding for a period longer than 180 days from the date of closing. Therefore, all escrow instructions must contain the following language:  
**“The closing agent is responsible for ensuring timely reconciliation of each escrow account. All parties agree that any unclaimed escrow funds or outstanding checks for amounts paid directly or indirectly by HUD, will be returned to the seller after a period of 180 days from the date of the closing.”**
- 5.1.8 As soon as possible following termination or expiration of this contract, but no later than 90 days following such termination or expiration, the Contractor shall close the escrow account and remit the balance of the account to HUD. Within 30 days following closing of the account, but no later than 120 days following the termination or expiration of the contract, the Contractor shall provide HUD with an appropriate reconciliation of all remaining funds, inclusive of those which were remitted to HUD, including a copy of the final bank statement showing a zero balance in the account.
- 5.1.9 The Contractor shall retain all its bank statements for three years after the contract expiration date.

## 5.2 Quality Control (QC)

- 5.2.1 Contractor shall establish and maintain a complete Q.C. plan to ensure requirements of this contract are met. The plan shall include:
  - 5.2.1.1 A detailed description of the resources and processes the Contractor will use to insure all required timeframes in the contract are met.
  - 5.2.1.2 A QC review system covering all of the service requirements listed on the Performance Requirements Summary. It shall specify the requirements to be reviewed on either a scheduled or unscheduled basis, how often reviews will be accomplished, and the title of the individual(s) who will perform the reviews. It shall also specify that written records of reviews conducted by Contractor / sub/Contractor personnel will be maintained, including documentation of corrective action taken when reviews reveal discrepancies, and provided to HUD upon request throughout the term of the contract.
  - 5.2.1.3 The methods for selecting responsible sub/Contractors and monitoring their performance to ensure that only quality work is received. Contractor shall include copies of actual or proposed subcontract agreements.
  - 5.2.1.4 A detailed description of internal control measures to ensure that:
    - 5.2.1.4.1 Errors in processing are timely identified and corrected;
    - 5.2.1.4.2 Files and file documents are managed and controlled to prevent any loss of documents.
    - 5.2.1.4.3 Delays and backlogs are adequately addressed.
    - 5.2.1.4.4 Costs paid by HUD are reasonable and customary for the area,
    - 5.2.1.4.5 HUD only pays their “fair share of closing charges.
    - 5.2.1.4.6 Funds received and paid out are properly and timely managed and escrows are timely balanced.
    - 5.2.1.4.7 Integrity and proprietary usage of the HUD Trust Account is preserved at all times

- 5.2.1.4.8 Identify of Interest, and potential Conflict of Interest are adequately identified and addressed.
- 5.2.1.4.9 Timely reconciliation of HUD Trust Account is reconciled in timely manner.
- 5.2.1.4.10 Contractor shall provide the GTR with the Quality Control plan within 15 days after contract award.

### 5.3 Escrow Coordination

- 5.3.1 Contractor shall coordinate escrow with all appropriate parties to assure timely and accurate closings.
- 5.3.2 Buyers choosing to purchase title insurance have absolute control over the selection of the title insurer. The Contractor may inform the buyer of suggested title insurers but shall not attempt to compel the buyer to select a specific insurer. Selection of title insurer is solely the choice of the buyer. The contractor shall not unduly influence the buyer's selection of the title insurer.
- 5.3.3 Escrow is considered open upon receipt of the opening package from the Marketing and Management Contractor and receipt of the required earnest money deposit or written notification of selling broker's receipt of earnest money deposit in those states requiring broker retention of the earnest money deposit.
- 5.3.4 The Contractor shall process and handle any and all loan documents the lender requires for a customary HUD escrow closing. In closing a loan, to ensure there are no delays, the Contractor shall provide timely processing and delivery of the signed loan documents to the lender.

### 5.4 Deed and Closing/Escrow Instructions

- 5.4.1 Prepare Deed and Escrow Instructions, and forward same, with a copy of the Earnest Money check to the M&M within ten (10) business days of initial assignment. Pursuant to the Contractor's Title / Tax / Encumbrance Search, include advice on any title or tax problem found in the search. HUD holds the Contractor responsible for accurate preparation of the deed and escrow instructions.
- 5.4.2 Notify the M&M five (5) business days prior to the anticipated closing so the deed can be executed and returned to the Contractor prior to the scheduled sales closing. In addition, the Contractor shall submit an estimated HUD1 for review and concurrence by the M&M in sufficient time to not delay the closing.
- 5.4.3 **The M&M is prohibited from executing deeds earlier than five (5) business days prior to the actual date of closing. If the closing does not take place within five (5) business days of the deeds execution by the M&M, the deed is to be immediately returned to the M&M, no later than the next business day after the expiration of that time period, unless the Contractor is in possession of written instructions (specific to each individual deed) from the M&M or GTR, which would authorize the Contractor to hold the deed beyond that time.**

### 5.5 Extension Requests

- 5.5.1 The Contractor shall administer requests by brokers for extensions of the sales closing date. No extension may be granted without the express written approval from the M&M. The M&M has full authority to waive any extension fee.
- 5.5.2 Upon receipt of an extension request:
  - 5.5.2.1 Requests shall be made in writing via the Closing Extension Request Form, which includes supporting documentation. The Contractor shall collect the full non-refundable extension fee, in the form of cash, cashier's or certified check, or money order, and shall deposit the funds into the Escrow Trust Account and hold for closing. Upon receipt of both the Closing Extension Request Form and the full amount of extension fees, transmit the request to the M&M.
  - 5.5.2.2 In accordance with the disincentive clause, if an extension to close is required due to the Contractor's actions, or lack of actions, as determined by the GTR or GTM, the Contractor shall pay the extension fee.
  - 5.5.2.3 If the request is denied by the M&M, the Contractor shall advise both the buyer and broker of the denial, with instructions that the sale must close by previously scheduled date.
  - 5.5.2.4 Include the full amount of the extension fee collected on lines 104 and 404 of the HUD-1. In such cases, the purchaser is to be credited with any unused portion of the fee, prorated on a calendar day basis.
  - 5.5.2.5 If the purchaser is credited with any portion of the extension fee, include the credited amount on lines 206 and 506 of the HUD-1.

## 5.6 Aborted Closings

- 5.6.1 The Contractor shall electronically notify the M&M of escrows that have properly opened and failed to close on or before the sales contract expiration date, within one (1) business day after the failed closing. A copy of this electronic notice shall be placed in the file.
- 5.6.2 Within two (2) business days after the cancelled or failed closing, the Contractor shall return any unpaid tax, municipal utility, or Homeowner's Association bills, which were forwarded to, or otherwise obtained by, the Contractor for payment at closing, to the M&M for prompt payment. The Contractor shall be held financially responsible if HUD incurs penalties due to its failure to comply with this provision.
- 5.6.3 The Contractor shall return the signed deed to the M&M no later than two (2) business days after a cancelled or failed closing.
- 5.6.4 Upon receipt of a contract cancellation notification from the M&M, the Contractor shall disburse the earnest money deposit and extension fees (if applicable) within five (5) business days in accordance with the disposition instructions provided by the M&M. In states requiring broker retention of the earnest money deposit, the Contractor shall immediately inform the broker of the disposition instructions provided by the M&M.

## 5.7 HUD-1 Completion

Accurate preparation of the HUD-1 is critical to timely processing. If the Contractor proposes to use software, the software must be programmable to the extent that it will accommodate all of HUD's specific requirements (which may be modified from time-to-time by the GTR) for the completion of HUD-1's and all other provisions of this contract. The Contractor shall prepare the HUD-1 to facilitate a full and complete closing. The Contractor shall ensure that HUD pays only its fair share of costs in the transaction in accordance with HUD guidelines, notices, regulations, and handbook guidance.

## 5.8 Closing Activities

- 5.8.1 The Contractor shall conduct all closings in accordance with the approved escrow closing plan. The Contractor may not deviate from that plan unless they have obtained written approval by the GTR and Contracting Officer.
- 5.8.2 Third Party Closings are prohibited under this contract. The Contractor, its subcontractor or its approved agent, shall be present at every closing and will explain all closing papers and documents to the purchaser.
- 5.8.3 The Contractor is responsible for the deed recordation and under no circumstances shall the recording of the deed be left to the purchaser.
- 5.8.4 From HUD's sales proceeds, the contractor shall pay from HUD's sales proceeds any allowable expenses identified in HUD NOTICE: H 2004-05 (or subsequent revision) that are due and payable at the time of closing.
- 5.8.5 Provide buyers with the HUD Homeowner Satisfaction Survey (**Attachment 3**) and actively encourage completion of the survey. HUD Provide Real Estate Broker Satisfaction Survey (**Attachment 4**) to the broker and actively encourage completion of the survey, the contractor must also provide. Forward all completed surveys weekly to the GTR.

## 5.9 Special Programs

### 5.9.1 Good Neighbor Next Door Program (GNND)

- 5.9.1.1 To qualify to purchase a home through the Good Neighbor Next Door Program (GNND), the law enforcement officer, teacher, or firefighter/emergency medical technician must agree to execute a second mortgage (Deed of Trust) and subordinate note in the name of HUD. (See HUD notice 99-30 and subsequent updates.) The Contractor shall accurately prepare and provide for all GNND Closings a Second Mortgage (Second Deed of Trust) and Subordinate Note in accordance with specific written instructions provided by the GTR, which must be executed by the GNND purchaser at closing. The Contractor shall ensure that the HUD case number is reflected on both the Second Mortgage (Second Deed of Trust) and Subordinate Note. The Second Mortgage (Second Deed of Trust) and Subordinate Note shall conform to all state requirements. No later than the next business day following closing, the Contractor shall be responsible for the recording of all the Second Mortgage (Deed of Trust) for all OND/TND closings.

5.9.1.2 The Contractor shall indicate the current M&M Contractor's office on all recording instructions on Second Mortgages (Second Deed of Trust). The GTR will provide the name and address of the M&M contractor to the Contractor at the time of contract award and will provide periodical updates as warranted.

5.9.1.3 **Record and Return:**

Michaelson, Connor, and Boul  
6908 East Thomas Road, Ste 200 & 201  
Scottsdale, AZ 85251  
Telephone: (408) 941-8737  
Facsimile: (408) 941-9855

5.9.1.4 For all OND/TND closing, no later than two business days after closing, the Contractor shall include with their original closing package, two copies of these additional documents:

5.9.1.4.1 Original, executed Subordinate Note

5.9.1.4.2 Copy of the Second Deed of Trust/Mortgage

5.9.1.4.3 Written certification of the filing of the Deed of Trust/Mortgage

5.9.1.4.4 Copy of the Sales Contract with OND/TND Certification Addenda

5.9.1.4.5 Copy of the signed HUD-1.

5.9.1.5 Note: The Contractor must retain a copy of this entire package in their escrow file along with all other closing documentation.

5.9.2 **Asset Control Area (ACA)**

For properties covered under an ACA Agreement, the terms of the closing shall be governed by the local ACA agreement. The Contractor may be required to attend ACA implementation meetings in order to brief the Contractor on the ACA contents and ascertain additional closing requirements, if any. Following any such meeting, the Contractor shall advise the GTR, in writing within 5 business days, the unique ACA processing requirements. The GTR will review the Contractor's submission to determine those items that could require contract modification.

5.9.3 **Auction/Bulk Sales**

In addition to all other closing requirements set forth in this contract, on the day of closing, the Contractor shall complete the bulk sale form that was provided by the M & M with the sales package, and identify the net proceeds for each property. The completed form shall be faxed to the Single Family Real Property Branch, Attn: Florido Buenafe (202) 619-8133. A copy of this completed form shall also be forwarded to the GTR and M & M.

5.9.4 **\$1 Sales**

In accordance with the provisions set forth in HUD Notice H-2003-09, there may be properties that are sold to local units of government for \$1.00. Participants in this program agree, that due to the nominal sales price, the seller pays no expenses at closing other than the closing agent's fee. The GTR will provide specific instruction to the Contractor to accurately prepare the HUD1. The Contractor shall bill HUD for their closing fee less the \$1.00, and shall not wire any proceeds for these sales.

5.9.5 **Non Profit Discounted Sales**

Under HUD's discounted sales program, nonprofits may receive a discount on the sales price. The Contractor shall ensure that the discount denoted on the HUD sales contract is appropriately applied at closing. The GTR will provide specific instruction to the Contractor on the accurate preparation of the HUD1. In addition, for all 30% discount sales, the deed will need to be modified to include the following deed restriction language:

(insert language here) – Will be provided upon contract award

5.10 **Closing Package:**

5.10.1 Closing Package shall include:

5.10.1.1 Original HUD-1 with HUD-1 Certification.

- 5.10.1.2 HUD-1 Addendum.
- 5.10.1.3 Copy of bank's dated wire transfer confirmation (which shall contain all of the required SAMS 1103 information and be in the form and format of a printout provided by the Federal Reserve system) .
- 5.10.1.4 Copy of the deed and evidence that it was sent for recordation.
- 5.10.1.5 Copy of all applicable invoices or receipts of disbursements, and the Contractor's disbursement log.
- 5.10.1.6 Contractor's certification that all payments/deductions from the closing (including the Contractor's fee) have been paid from the funds deposited in the account containing the closing proceeds.
- 5.10.1.7 **NOTE: In addition to the above, see section entitled "Special HUD Programs" for additional closing package requirements.**

5.11 **Post-Closing Activities.** The Contractor shall perform all necessary post-closing activities, including those below, to ensure HUD is able to accurately and timely reconcile the closing.

- 5.11.1 **Verification of Closing.** The same day that the closing takes place, notify the M & M of the closing.
- 5.11.2 **Wire Deposit of Proceeds.** Not later than one banking day after the closing, the Contractor shall wire the net sales proceeds to the U.S. Treasury using utilizing the SAMS form 1103 or direct electronic wire which includes all information required on the SAMS form 1103.
- 5.11.3 **Deed Filing.** Not later than one business day after the closing has taken place, the Contractor shall deliver the deed for recordation, and provide written notification of the filing to the M & M, any and all taxing authorities, and the Homeowners Association (if applicable). In those states where table funding is in conflict with state escrow processes, the Contractor must complete the closing and record the deed no later than two (2) business days from their receipt of the escrow funds to close.
- 5.11.4 **Deliver Closing Package to M & M.** Deliver the complete and accurate closing package to the M & M within 2 business days of the closing. Delivery to the M & M shall be by a method whereby the Contractor can verify the date the M & M received the package.
- 5.11.5 **Post Closings Adjustments.** No later than two business days after notification, the Contractor shall make any post closing adjustments to correct any errors. The same day the corrections are made, the Contractor shall provide a copy of any corrected documents to the M & M.
  - 5.11.5.1 Under-wire of closing funds requires the Contractor to wire the additional sale proceeds in the U.S. Treasury in accordance with the wiring provisions of this contract.
  - 5.11.5.2 Over-wire of closing funds requires the Contractor to submit to the GTR, within one (1) banking day of original wire, a completed SAMS 1106 for reimbursement of the over wire to be credited to the HUD's Trust Account.
  - 5.11.5.3 Reimbursement of post-closing disbursement shall be submitted to the M & M for approval. The closing agent shall complete a SAMS 1106 for each request for reimbursement. The request for reimbursement package shall include an invoice on the Contractor's letterhead describing why the payment after closing is required along with substantiating documentation.
  - 5.11.5.4 The closing agent shall ensure that the HUD1 and the wire transfer are in total agreement. The closing agent shall make no changes to the final HUD-1 unless directed by the GTR/GTM or M&M Contractor.

## 5.12 Reporting.

- 5.12.1 **Closing Status Report.** By noon on the first business day of each week, the Contractor shall electronically provide to the GTR, designated GTM, Contracting Officer and M&M a report of all cases currently assigned. The report shall contain the FHA case number, property address, buyers name, date assigned by M&M, and the sales contract closing date for each record contained within the report, The report shall be divided into the following 5 categories, each on a separate worksheet within one (1) Excel workbook
  - 5.12.1.1 Active cases (closing date not yet exceeded)
  - 5.12.1.2 Escrows scheduled for closing
  - 5.12.1.3 Delinquent escrows (no closing date established)
  - 5.12.1.4 The "Delinquent Escrow" worksheet shall include the following 3 additional categories of information
    - 5.12.1.4.1 Reason closing did not occur
    - 5.12.1.4.2 Status of extension
    - 5.12.1.4.3 Extended closing date
  - 5.12.1.5 Closed Escrows for the previous week. The "Closed Escrow" worksheet shall include the date of closing and the following three additional categories of information:
    - 5.12.1.5.1 Tax penalties and interest paid through closing

- 5.12.1.5.2 Homeowners Association penalties, fines, interest, and collection costs paid through closing
- 5.12.1.5.3 Municipal utility payments paid through closing
- 5.12.1.6 Cases cancelled the previous week including the disposition of the EM funds and date the deed was returned to the M&M.

5.12.2 **Closing Performance Report.** By close of business no later than the seventh (7<sup>th</sup>) business day of each month, provide an electronic monthly summary report to HUD's Contracting Officer with a copy to the GTR and any GTR-designated GTMs that summarizes closing activity for the prior month. This report shall serve as a confirming task order of the Contractor's assignments for the prior month, and will be used by HUD's Contracting Officer to track assignments and cost. The summary report shall include the following:

- 5.12.2.1 Total number of assignments received;
- 5.12.2.2 Total number of closings completed;
- 5.12.2.3 Total number of aborted closings for which Contractor submitted an 1106, and the amount claimed on each 1106. Total payments received from HUD for aborted closings;
- 5.12.2.4 Total dollar amount of all closing agent fees paid to Contractor from HUD –1 proceeds or separate invoice.
- 5.12.2.5 Monthly Reconciliation. Contractor shall provide GTR, GTMs, and HUD Contracting Officer with a copy of HUD trust account monthly reconciliation as delineated in Section 5.1.6.

### 5.13 Maintenance of Records.

#### 5.13.1 File maintenance. At a minimum, files shall include the following:

- 5.13.1.1 Proof of deposits for HUD's trust account and reconciled bank statements
- 5.13.1.2 Wire confirmation from the Federal Reserve as proof of transfer of sales proceeds to the U.S. Treasury
- 5.13.1.3 All checks drawn on HUD's trust account (Each check shall include the property address, FHA case number, and notation of type of expense.)
- 5.13.1.4 A log of all payments, recorded in case number order, reflecting FHA case number, date, amount, purpose, and if payment was made at closing or outside of closing
- 5.13.1.5 Copies of each document related to the closing performed
- 5.13.1.6 Cancelled and voided checks

5.13.2 **Record storage.** The Contractor shall maintain, at their own expense, all records and all escrow files as required by the government and shall provide access and specific answers to questions asked regarding the operation of the contract for a period of three (3) years from the date of final payment. These files shall be considered the property of HUD; however, after the three (3) year period, these files revert to the Contractor and the Contractor is responsible for disposal of the files in accordance with state law. At a minimum, accounting records shall include all cash receipts and cash disbursement register. This register shall be reconciled monthly to the bank account. The Contractor shall maintain a system of records, including records of storage and destruction, that will ensure access to all files and records to the GTR/GTM, and contracting officer or authorized representative at all times throughout the life of the contract and the three years following expiration of the contract.

### 5.14 Special Services

HUD Buybacks. Should HUD find it necessary to buy back a property previously closed by the Contractor under this contract, the Contractor shall receive fifty per cent (50 %) of its usual closing fee for said property buyback process. This is considered the same as reversing the escrow or revocation of previous sale. In addition, the Contractor's fee for this service excludes eligibility for CLIN02.

## 6.0 HUD'S PERFORMANCE ASSESSMENT

### 6.1 Methods of Assessment.

- 6.1.1 HUD will assess Contractor's performance using methods specified in HUD Handbook 4310.5 Rev. 2, Chapter 11, paragraph 11-20 and Appendix 72.
- 6.1.2 Performance Meetings. Contractor's Contract Manager may be required to attend performance meetings on a quarterly basis (monthly during the first 3 months of the contract) with the GTR/GTM and HUD Contracting

Officer. If performance warrants, HUD's Contracting Officer may determine to hold meetings more or less frequently.

- 6.1.3 Semiannual Workshops with GTR/GTM. Contractor may be required to attend workshops with GTR/GTM, HUD's Marketing and Management Contractor, and other real estate industry personnel.

ATTACHMENT 1

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders- Commercial Items (APR 2006)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

52.233-3, Protest after Award (Aug 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

X 52.212-1 Instructions to Offerors—Commercial Items (Nov 2007).

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet ([SF 1449](#)). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](#), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation.

(5) Price;

(6) “Remit to” address, if different than mailing address;

(7) A completed copy of the representations and certifications at FAR [52.212-3](#) (see FAR [52.212-3](#)(l) for those representations and certifications that the offeror shall complete electronically);

(8) Acknowledgment of Solicitation Amendments;

(9) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the [SF 1449](#), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for **120** calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(e) Data Universal Numbering System (DUNS) Number. (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR [Subpart 32.11](#)) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.

(f) Central Contractor Registration. Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

#### 52.212-4 Contract Terms and Conditions—Commercial Items (Feb 2007)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and two copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Name and address of official to whom payment is to be sent;

(vi) Name, title, and phone number of person to notify in event of defective invoice; and

(vii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(viii) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(h) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(i) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall

be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(j) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(k) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(l) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(m) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(n) Compliance with laws unique to Government contracts. The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. 3701](#), et seq., Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) relating to procurement integrity.

(o) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at [52.212-5](#).

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(p) Central Contractor Registration (CCR).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims). Assignees

shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

**X 52.214-3 Amendments to Invitations for Bids.** (Dec 1989)

(A) IF THIS SOLICITATION IS AMENDED, THEN ALL TERMS AND CONDITIONS WHICH ARE NOT MODIFIED REMAIN UNCHANGED.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

**X 52.214-4 False Statements in Bids.** (Apr 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in [18 U.S.C. 1001](#).

(End of provision)

**X 52.214-5 Submission of Bids.** (Mar 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means)—

(1) Addressed to the office specified in the solicitation; and

(2) Showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

**X 52.214-6 Explanation to Prospective Bidders.** (Apr 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

**X 52.214-7 Late Submissions, Modifications, and Withdrawals of Bids. (Nov 1999)**

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government’s control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at [52.214-31](#), Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

**X 52.214-10 Contract Award—Sealed Bidding. (Jul 1990)**

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may—

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

**X 52.214-26 Audit and Records—Sealed Bidding (Oct 1997)**

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in [Subpart 4.7](#) of the Federal Acquisition Regulation (FAR). FAR [Subpart 4.7](#), Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR [15.403-4](#)(a)(1) for submission of cost or pricing data.

(End of clause)

**X (2) 52.216-18 Ordering (Oct 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from award date through contract expiration.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule. (End of clause)

**X (2) 52.216-21 REQUIREMENTS (OCT 1995)**

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government’s requirements do not result in orders in the quantities described as “estimated” or “maximum” in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after contract expiration.

(End of clause)

- (3) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
- (4) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- (5)(i) 52.219-5, Very Small Business Set-Aside (June 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
- (ii) Alternate I (Mar 1999) of 52.219-5.
- (iii) Alternate II (June 2003) of 52.219-5.
- (6)(i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).
- (ii) Alternate I (Oct 1995) of 52.219-6.
- (iii) Alternate II (Mar 2004) of 52.219-6.
- (7)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
- (ii) Alternate I (Oct 1995) of 52.219-7.
- (iii) Alternate II (Mar 2004) of 52.219-7.
- (8) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
- (9)(i) 52.219-9, Small Business Subcontracting Plan (July 2005) (15 U.S.C. 637(d)(4)).
- (ii) Alternate I (Oct 2001) of 52.219-9.
- (iii) Alternate II (Oct 2001) of 52.219-9.
- (10) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- (11)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (ii) Alternate I (June 2003) of 52.219-23.
- (12) 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (13) 52.219-26, Small Disadvantaged Business Participation Program-Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (14) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).
- (15) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- (16) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).
- (17) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- (18) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (19) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
- (20) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- (21) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
- (22)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
- (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- (23) 52.225-1, Buy American Act-Supplies (June 2003) (41 U.S.C. 10a-10d).
- (24)(i) 52.225-3, Buy American Act-Free Trade Agreements-Israeli Trade Act (Jan 2004) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78).
- (ii) Alternate I (Jan 2004) of 52.225-3.
- (iii) Alternate II (Jan 2004) of 52.225-3.
- (25) 52.225-5, Trade Agreements (June 2004) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

X (26) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).  
\_\_\_ (27) 52.225-15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).  
\_\_\_ (28) 52.225-16, Sanctioned European Union Country Services (Feb 2000) (E.O. 12849).  
\_\_\_ (29) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).  
X (30) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).  
X (31) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).  
\_\_\_ (32) 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).  
\_\_\_ (33) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).  
\_\_\_ (34) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).  
\_\_\_ (35)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).  
\_\_\_ (ii) Alternate I (Apr 1984) of 52.247-64.  
(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:  
[Contracting Officer check as appropriate.]

\_\_\_ (1) 52.222-41, Service Contract Act of 1965, as Amended (May 1989) (41 U.S.C. 351, et seq.).  
\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).  
\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).  
\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, et seq.).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

X 52.222-50 Combating Trafficking in Persons (Apr 2006)

(a) Definitions. As used in this clause—

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract, including all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means a Contractor that has no more than one employee including the Contractor.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) Policy. The United States Government has adopted a zero tolerance policy regarding Contractors and Contractor employees that engage in or support severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor. During the performance of this contract, the Contractor shall ensure that its employees do not violate this policy.

(c) Contractor requirements. The Contractor, if other than an individual, shall establish policies and procedures for ensuring that its employees do not engage in or support severe forms of trafficking in persons, procure commercial sex acts, or use forced labor in the performance of this contract. At a minimum, the Contractor shall—

- (1) Publish a statement notifying its employees of the United States Government's zero tolerance policy described in paragraph (b) of this clause and specifying the actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment;
- (2) Establish an awareness program to inform employees about—
  - (i) The Contractor's policy of ensuring that employees do not engage in severe forms of trafficking in persons, procure commercial sex acts, or use forced labor;
  - (ii) The actions that will be taken against employees for violation of such policy;
  - (iii) Regulations applying to conduct if performance of the contract is outside the U.S., including—
    - (A) All host country Government laws and regulations relating to severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor; and
    - (B) All United States laws and regulations on severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor which may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 ([18 U.S.C. 3261-3267](#)), and [18 U.S.C. 3271](#), Trafficking in Persons Offenses Committed by Persons Employed by or Accompanying the Federal Government Outside the United States;

(3) Provide all employees directly engaged in performance of the contract with a copy of the statement required by paragraph (c)(1) of this clause and obtain written agreement from the employee that the employee shall abide by the terms of the statement; and

(4) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification. The Contractor shall inform the contracting officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a contract employee has engaged in conduct that violates this policy; and

(2) Any actions taken against employees pursuant to this clause.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c) or (d) of this clause may render the Contractor subject to—

(1) Required removal of a Contractor employee or employees from the performance of the contract;

(2) Required subcontractor termination;

(3) Suspension of contract payments;

(4) Loss of award fee for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts for the acquisition of services.

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End of Clause

## ATTACHMENT 2

### DEFINITIONS/ACRONYMS

“ABORTED CLOSING” - A sales transaction that is cancelled after both the closing assignment and earnest money have been received by Contractor.

“ASSET CONTROL AREA (ACA)” – The geographic boundaries described in an agreement between HUD and a city, counties or state governments or approved nonprofit organization to purchase HUD-owned properties acquired by HUD within the defined boundaries.

“BUSINESS DAY” – Monday through Friday of each week, except federal holidays.

“CASE NUMBER” – HUD’s unique numbering system used to identify each individual property owned by HUD.

“CANCELLED CLOSING” – The written notification from either buyer or seller to closing agent that either party elects to terminate the sales contract and / or escrow instructions.

“CLOSING” or “SALES CLOSING” – The process by which ownership of real estate is transferred, which includes the investigation made on behalf of HUD to determine proper execution, acknowledgement, and delivery of all conveyances, mortgage papers, and other title instruments which may be necessary to the consummation of the sales transaction. This includes but is not limited to any proration of costs between Buyer and HUD, the passing of consideration, the proper disbursement of all proceeds, and all necessary papers being properly filed of record.

“CLOSING ASSIGNMENT” – A sales transaction for which the Contractor has received a delivery order from the M&M.

“CLOSING DATE” – The date that is denoted on the HUD 1 no later than the date established in the accepted HUD Sales Contract 9548 or in an approved Extension Agreement.

“CONTRACT” – A written, mutually binding legal relationship obligating the seller to furnish the supplies or services and the purchaser to pay for them.

“CONTRACTOR” – Synonymous with “closing agent” and may be used interchangeably in this contract.

“CONTRACTING OFFICER” – A person who has the authority to enter into, administer, modifies and/or terminate contracts, and make related determinations and findings.

“COTR” – Contracting Officer Technical Representative.

“DAY” – Unless otherwise specified in this contract, a calendar day.

“EARNEST MONEY” – The amount of the deposit which HUD’s sales contract requires Buyer(s) to remit to Closing Agent in order to open the escrow and begin the closing process. Also known as “Good Faith Funds”.

“ESCROW” – The function performed by Closing Agent in effecting the sale of real estate, acting as an independent third party to process sales closings, including ancillary mortgage processing.

“FHA” – The Federal Housing Administration.

“GTM” – The Government Technical Monitor.

“GTR” – The Government Technical Representative.

“HOA” – Homeowner Association.

“HOC” – Homeownership Center.

“HUD” – The U.S. Department of Housing and Urban Development. The terms “Department of Housing and Urban Development,” “Department,” “HUD,” “Seller,” and “Government” shall be synonymous and may be used interchangeably in this contract.

“HUD DISCOUNT SALES” – Includes Officer Next Door / Teacher Next Door, \$1.00 Homes Sales, Nonprofit Sales, ACA, and other programs promulgated by HUD.

“IDENTITY OF INTEREST” – An individual, corporation, partnership, joint venture, limited liability company, or other entity directly or indirectly controlling or controlled by or under the direct or indirect common control with the Contractor. This includes one in which the owners, managers, principal officers, or staff have any familial relationship with the owners, managers, principal officers, or staff of the Contractor.

“Joint Venture – Any teaming arrangement or partnering agreement

“KEY PERSONNEL” – For this contract, are defined as the on-site contract manager, alternate contract manager who has full authority to act in the absence of the contract manager, and any person responsible for performing or overseeing document preparation, funds, quality control or closings. Additionally, the person responsible for the contract and anyone who may make decisions on his/her behalf (i.e. President, Legal Assistant, Comptroller, etc.) will be considered key personnel.

“MANAGEMENT AND MARKETING CONTRACTOR (M&M)” – The Company under contract with HUD responsible for the management and marketing of single-family properties owned by, or in the custody of HUD. The M&M handles all day-to-day activities concerning the HUD REO inventory and will generally be the party designated to act under a Power of Attorney on behalf of HUD, with regard to all sales closings. Therefore, where the contract specifies “HUD/HUD’s Designee,” it is the current M&M for the geographic area(s) covered by the contract who will serve as HUD’s Designee. The Closing Agent shall coordinate all escrow closing activities with the M&M unless otherwise instructed in writing by the GTR/GTM.

“METHOD OF ASSESSMENT” – The primary inspection and review methods HUD will use to evaluate the Contractor’s performance in meeting contract requirements.

“OFFER or OFFEROR(s) and BID or BIDDERS(s)” – are interchangeable

“PRORATIONS” – The research of all outstanding bills against the property, and the calculation that determines the amount of each bill due by the buyer or seller to be paid at closing.

“RECORDING” – The act of filing documentation relative to the sale and purchase of real property with the County and/or local governmental entity responsible for the maintenance of public records within their respective jurisdiction.

“RECORDING FEE” – The fee charged by the local recording entity whenever a document is recorded.

“REO” – Real Estate Owned – A Division within the HOC that is responsible for the oversight of the management, marketing and closing of single-family properties owned by HUD.

“SAMS” – Acronym for Single Family Acquired Asset Management System, which is the computer system REO uses to track its properties.

“SIGNING” – The in-person meeting with buyers where closing documents, mortgage papers, and ancillary documents related to the closing are explained to the buyer, signed and notarized.

“SUBCONTRACTOR” – A supplier, distributor, vendor, agent or firm that furnishes supplies or services to or for Contractor or another subcontractor in the performance of this contract.

“TABLE FUNDED” – Lenders are required to table fund all closings, so that the funds are available and transferred to HUD at the time of closing. Table Funding is defined as obtaining from the purchaser the amount due to close the sale and disbursing the proceeds at time of closing. Closing Agents shall not schedule or hold a closing unless the closing can be table funded by the Lender.

“ Third Party Closing” – Any closing conducted by a company or individual not under contract with HUD, or a subcontract arrangement with the prime Contractor to perform closings. Subcontracting closings in accordance with the Contractor’s approved closing plan incorporated into this contract, wherein the prime is responsible for all aspects of the closing, should not be confused with third party closings”

“TITLE / TAX / ENCUMBRANCE SEARCH” – The process of verifying the legal ownership, liens, and encumbrances of a property by conducting a thorough review of public records

“Utility (Municipal)” – A municipal entity providing a community service (sometimes sewer or water), and only those public entities that additionally have real property lien right.

ATTACHMENT 3

OMB Approval No.  
(Expiration 00/00/0000)



**Homeowner Satisfaction Survey**

FHA Case No.: \_\_\_\_\_

Property Address: \_\_\_\_\_

Real Estate Company Name: \_\_\_\_\_ Agent's Name: \_\_\_\_\_

Date Closed: \_\_\_\_\_

1. Please indicate one of the following:  First-time Homebuyer  Owner Occupant  Investor  
 Nonprofit Agency  Officer Next Door/Teacher Next Door  
 Governmental Agency

2. How did you learn about a HUD home?  Referral  Website  Sign  Agent  Other

3. Did your real estate agent explain:

- The bidding process and the required forms for the transaction?  Y  N
- The earnest money deposit and forfeiture policy?  Y  N
- The closing process (including the timeline and associated costs)?  Y  N
- The different types of financing that were available?  Y  N
- The process to obtain a home inspection?  Y  N

4. Did your real estate agent accompany you each time you visited the property?  Y  N

5. If you contacted the Management & Marketing Company, was your inquiry responded to within 24 hours?  Y  N

**On a scale of 1 to 5, with 5 being excellent and 1 being poor, please grade your overall satisfaction in each of the following areas:**

6. Please rate how helpful and informative your real estate agent was throughout your buying process?

7. Was the Management and Marketing Company helpful and courteous if you had to contact them? \_\_\_\_\_

8. Condition of the property at the times you visited. \_\_\_\_\_

9. Your overall satisfaction on your closing agents' level of customer service. \_\_\_\_\_

10. Your overall satisfaction with the way the closing agent explained all relative closing documents to you prior to your signature. \_\_\_\_\_

11. Considering all events, how would you rate your overall experience in purchasing a HUD home? \_\_\_\_\_

Comments:

***THANK YOU FOR PARTICIPATING IN OUR SURVEY!***

***U. S. Department of Housing and Urban Development  
Offices of Housing  
Federal Housing Commissioner***

**Public reporting Burden for this collection of information is estimated to average 15 minutes to complete, which includes the time for completing and reviewing the collection of information. The information collection is prepared by participating Homeowners. This information is required to obtain benefits and it is voluntary. You are not required to complete this form, unless it displays a currently valid OMB control number. The current valid OMB number is 0000-0000.**

**ATTACHMENT 4**

OMB Approval No.  
(Expiration 00/00/0000)



**Real Estate Broker Satisfaction Survey**

Broker Name: \_\_\_\_\_ Broker NAID: \_\_\_\_\_

Agent Name: \_\_\_\_\_

Business Phone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Property Address: \_\_\_\_\_

Date Closed: \_\_\_\_\_ FHA Case No.: \_\_\_\_\_

1. Was the Management & Marketing (M&M) contractor's website informative, and did it contain the necessary information to assist your buyer in submitting an offer to purchase a HUD home?  
\_\_ Yes \_\_ No
2. If you had any post closing issues or concerns, did the M&M contractor provide the necessary information to you, and/or work with you to resolve them? \_\_ Yes \_\_ No
3. If you had any post closing issues or concerns, did the Closing Agent provide the necessary information to you, and/or work with you to resolve them? \_\_ Yes \_\_ No

**On a scale of 1 to 5, with 5 being excellent and 1 being poor, please grade your overall satisfaction in each of the following areas:**

4. Property accessibility. \_\_\_\_\_

5. Condition of the property at the times you visited it? \_\_\_\_\_

6. Level of satisfaction with the helpfulness and courtesy of the Management & Marketing staff.  
\_\_\_\_\_

7. Your communication with the Management & Marketing staff- promptness and accuracy of information? \_\_\_\_\_
8. The overall cooperation of the Management & Marketing contractor. The level of helpfulness in assisting you with the preparation of the HUD Sales Contract and Addendums? \_\_\_\_\_
9. Level of satisfaction with the outreach, educational opportunities and training materials available to you from the Management & Marketing sufficient enough to enable you to properly represent your buyer? \_\_\_\_\_
10. The level of satisfaction in working with HUD's Closing Agent. \_\_\_\_\_
11. Level of satisfaction with the overall cooperation of the Closing Agent in assisting you to facilitate the closing? \_\_\_\_\_
12. Considering all events, how would you rate your overall experience in selling a HUD home? \_\_\_\_\_

Comments:

***THANK YOU FOR PARTICIPATING IN OUR SURVEY!***

***U. S. Department of Housing and Urban Development  
Offices of Housing  
Federal Housing Commissioner***

**Public reporting Burden for this collection of information is estimated to average 15 minutes to complete, which includes the time for completing and reviewing the collection of information. The information collection is prepared by participating Homeowners. This information is required to obtain benefits and it is voluntary. You are not required to complete this form, unless it displays a currently valid OMB control number. The current valid OMB number is 0000-0000.**

**ATTACHMENT 5**

**SAMPLE ACA AGREEMENT  
ASSET CONTROL AREA AGREEMENT  
BETWEEN  
THE SECRETARY OF  
HOUSING AND URBAN DEVELOPMENT  
AND  
ENTERPRISE HOME OWNERSHIP PARTNERS, INC.**

## ASSET CONTROL AREA AGREEMENT

**THIS ASSET CONTROL AREA AGREEMENT** (the "Agreement") is entered into this \_\_\_\_ day October, 2003, between the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** (the Seller) and **ENTERPRISE HOME OWNERSHIP PARTNERS, INC.** (the Purchaser ).

### RECITALS.

1) **Purchaser, a corporation organized under the laws of the State of California, is also an IRS section 501(c)(3) nonprofit organization, and has been prequalified by Seller, pursuant to HUD Mortgage Letter 2002-01 and 24 CFR 291.210(a), to participate in the "HUD Homes Nonprofit Discount Program."**

2) Seller presently owns approximately 16 Single Family Properties within the Asset Control Area (ACA), not currently under a contract of sale, and anticipates it will acquire an additional 584 Single Family Properties within the ACA during the next twenty-four (24) months.

3) These HUD-owned properties have the potential to be a community asset, provided that the properties are rehabilitated, where necessary, and sold to homeowners. Therefore, Purchaser and Seller desire to enter into this agreement whereby Seller will dispose of Single Family Properties to Purchaser who will create affordable homeownership opportunities for low and moderate income families and to revitalize neighborhoods by fighting deterioration and improving the housing stock.

4) To accomplish these objectives, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, all of Seller's right, title and interest in and to certain properties which Seller currently owns or will acquire.

5) Seller is authorized to enter into this Agreement pursuant to section 204(g) of the National Housing Act.

6) Purchaser is authorized to enter into this Agreement pursuant to a resolution of Purchaser's board of directors, dated January 21, 2003. A copy of this resolution is attached as Exhibit 2.

THEREFORE, in consideration of the agreements herein, and intending to be legally bound hereby, Seller and Purchaser agree as follows.

## **ARTICLE I**

### **DEFINITIONS**

Whenever used in this Agreement and capitalized, the following terms shall have the meanings set forth in this Article I and shall include the plural as well as the singular, unless otherwise defined herein or the context otherwise requires.

**Acquired Property**: A property acquired by Purchaser under this Agreement.

**Asset Control Areas (ACA)**: The area shown on the map and described by census block, both attached as Exhibit 1, subject to the addition or deletion of other areas as set forth in Section 2.2.

**ACA Business Plan**: The plan that presents a comprehensive two-year revitalization strategy submitted to the Seller by the Purchaser and accepted by Seller. The ACA Business Plan is attached as Exhibit 4 and includes a Home Ownership Plan.

**Acquisition Notice**: The notice sent by Seller to Purchaser under Section 3.13.

**Acquisition Period**: The period commencing on the date that is fifteen (15) Calendar Days after the date that this Agreement has been executed by both Purchaser and Seller, and ending on the earlier of 24 months after the commencement of the acquisition period or the date on which Purchaser has acquired the maximum number of properties specified in Section 2.1, subject to extensions as set forth in Section 7.1 (Extension of Acquisition Period).

**Agreement**: This Agreement, including all attachments and exhibits.

**Business Day**: any day other than a Saturday, Sunday, a federal holiday or other day on which law or executive order closes the Federal Government.

**Calendar Day**: Every day, including all weekdays, weekend days and holidays. If a time frame specified in this agreement requires action within a specified number of Calendar Days and the final day for action falls on a non-Business Day, then the final day for action shall be the next Business Day.

**Closing Agent**: Seller's independent contractor who will close the transfer of Designated Properties.

**Closing Date**: The date specified on a Closing Notice sent under Section 3.14.

**Designation Notice**: The notice sent by Seller to Purchaser under Section 3.2.

**Designated Property**: Each Subject Property listed in a Designation Notice that is provided to Purchaser pursuant to Sections 3.2 and 3.3.

**Eligible Buyers**: Individuals who have an income at or below 115% of the local area median income adjusted by family size, as defined by Seller for the fiscal year in which Purchaser is selling or leasing the Acquired Property.

**Eligible Expenses**: Expenses identified in Exhibit 8.

**Fair Market Value**: the value of the property as determined by a licensed appraiser on a date after which rehabilitation under Article IV has been completed and before the closing of the sale between Purchaser and an Officer, Teacher, or Eligible Buyer.

**Officer**: A person meeting the definition of 24 CFR 291.530. An Officer need not be an Eligible Buyer.

**Payment Due Date**: For properties for which Seller is providing acquisition financing, the Payment Due Date is the earlier of the date on which the Designated Property is conveyed by Purchaser to an Eligible Buyer, Officer, or Teacher, as

provided in Section 5.1 or the due date under the terms of acquisition financing provided by Seller under Section 3.18. For properties for which Seller is not providing acquisition financing, the Payment Due Date is the scheduled closing date under Section 3.14.

**Purchase Price:** The amount due from Purchaser for a Designated Property calculated under Section 3.12.

**Quality Control Plan:** Purchaser's plan, accepted by Seller, which fully details Purchaser's internal and external monitoring procedures, and additional documents required by Seller. The Quality Control Plan is attached hereto as Exhibit 5.

**Repair Report:** The report prepared by Purchaser, in accordance with Section 3.9.

**Resale Price:** The amount specified in Section 5.3.

**Section:** A section of this Agreement.

**Single Family Property:** A parcel of real estate which is developed with a structure containing one dwelling unit or vacant land and which is not a condominium or a mixed-use property.

**Subject Properties:** All unoccupied Single Family Properties located in the ACA, to which Seller has acquired, or will acquire, marketable title and possession as a result of foreclosure of an insured or Secretary-held mortgage under the National Housing Act. Subject Properties do not include any occupied property acquired by Seller for which the tenant has successfully exercised his or her right of first refusal to purchase.

**Teacher:** A person employed full-time by a public school, private school, or Federal, state, county, or municipal educational agency as a state-certified classroom teacher or administrator in grades K-12. A Teacher need not be an Eligible Buyer.

**Transfer Effective Date:** For each Designated Property, the date title passes to Purchaser as described in Section 3.16.

**Valuation Condition Form:** Form HUD-92564-VC, found in the FHA Appraisal Handbook 4150.02 (as amended). The term "Valuation Condition Form" shall mean the form itself and the references to the form in the FHA Appraisal Handbook, Section 3-6 (pages 3-6 to 3-15), Section 5-1, Part 2 (pages 5-2 to 5-4) and Appendix D. The Valuation Condition Form is provided in Exhibit 3.

## **ARTICLE II**

### **PURCHASE AND SALE**

#### **2.1 Agreement to Sell and Purchase.**

**Subject to this Agreement's terms and conditions, Seller agrees to sell, assign and transfer to Purchaser, and Purchaser hereby agrees to purchase and acquire from Seller, all of Seller's right, title and interest in and to all Subject Properties, not to exceed 600 properties. Purchaser shall repair and sell Acquired Properties in accordance with this Agreement.**

#### **2.2 Boundaries of the Asset Control Area**

The Asset Control Area consists of the geographic areas identified on Exhibit 1. Purchaser may request Seller to approve the addition of other geographic areas to this Agreement. Purchaser shall make such request in writing to Seller, specifying the additional areas by map or other description. Seller shall approve such requests in its sole discretion, in which case the additional areas shall be treated as additional phase-in areas.

Seller shall give Purchaser written notice in the event any geographic area no longer meets the eligibility criteria for revitalization areas after Seller conducts its annual review of revitalization areas. The geographic areas identified in such notice shall cease to be a part of the ACA and properties located in such areas will no longer be sold to Purchaser.

The Purchaser is phasing in the areas that will be covered by this Agreement in two phases. Phase one and Phase two are identified on Exhibit 1. Phase One will commence on the same date as the commencement of the Acquisition Period. Phase Two shall commence on the date specified by mutual agreement of the parties.

### **2.3 Conflicts of Interest; Prohibited Transfers; Nondiscrimination**

A. Purchaser and their agents, board of directors, principal staff and contractors shall avoid any and all conflicts of interest and self-dealing.

B. Purchaser shall not employ staff who also work for and receive a financial benefit from any entity that is providing the Purchaser with services related to the ACA Program.

C. Unless approved in writing by Seller, Purchaser shall not transfer, lease, or permit the occupancy of any property to: 1) any director, officer, employee, elected official, or appointed official connected with Purchaser or their agents and contractors; or 2) to anyone related by consanguinity or affinity within the third degree as determined under state law or legally married to any individual identified in the previous clause.

D. Purchaser shall not transfer, lease, or permit the occupancy of any property to 1) Seller's employees or to any member of or delegate to Congress, or 2) to anyone related by consanguinity or affinity within the third degree as determined under state law or legally married to any individual identified in the previous clause.

E. Purchaser shall not transfer, lease, or permit the occupancy of any property to the former mortgagor of an FHA-insured mortgage formerly securing such property, in cases where Seller paid an insurance claim relating to the mortgagor's default on the mortgage formerly securing such property.

F. As required by the Fair Housing Act, 42 USC 3601 et seq., Purchaser shall not discriminate based on race, color, religion, sex, national origin, familial status, age or disability when selling properties. Purchaser shall also comply with any applicable state or local nondiscrimination statutes.

### **2.4 Parties Bound Notwithstanding Lack of Information Regarding Subject Properties.**

Purchaser and Seller are entering into this Agreement with limited or no information regarding the Subject Properties, including, without limitation, information regarding: (1) the number of Subject Properties; (2) the specific location of the Subject Properties (other than Subject Properties will be in an ACA); (3) the appraised value or Purchase Price of the Subject Properties; or (4) the condition of the Subject Properties. The lack or limitation of any information shall not affect in any way the liabilities or obligations of the parties under this Agreement.

### **2.5 ACA Business Plan**

Seller has accepted the Purchaser's ACA Business Plan attached hereto as Exhibit 4, and it is incorporated herein by reference and made a part of this Agreement. If there is any conflict between the ACA Business Plan and any of the terms and conditions of this Agreement, this Agreement shall control.

### **2.6 Quality Control Plan**

Seller has accepted the Purchaser's ACA Quality Control Plan attached hereto as Exhibit 5, and it is incorporated herein by reference and made a part of this Agreement. If there is any conflict between the Quality Control Plan and any of the terms and conditions of this Agreement, this Agreement shall control.

### **2.7 Seller's Contractors**

Seller may engage the services of contractors to accomplish this Agreement. All references in this Agreement to "Seller" shall mean Seller or its contractors, as applicable. Purchaser and shall comply with contractor's directions as if the directions came directly from Seller.

### **ARTICLE III**

#### **TRANSFER OF PROPERTIES**

##### **3.1 Basic Structure of Transaction**

This Section provides, for informational purposes only, an overview of the general procedures for transferring properties:

1. Seller obtains ownership and possession of the properties;
2. Seller sends Purchaser a Designation Notice, which lists the address of each property acquired by Seller and, if available, the appraised value of each property;
3. Seller orders appraisals from an FHA Roster appraiser, for properties not previously appraised;
4. Purchaser prepares the repair report and sends to Seller;
5. Seller sets the Purchase Price based on the appraisal and applicable discount;
6. Seller send Purchaser the Acquisition Notice containing the purchase price, and copies of the appraisals;
7. Purchaser has an opportunity to challenge the appraisal;
8. Reappraisal is completed if applicable;
9. Closing Agent notifies Purchaser of closing via the Closing Notice;
10. Closing Agent conducts closing;
11. Purchaser pays Seller the Purchase Price by Payment Due Date;
12. Purchaser performs all repairs identified in the Repair Report previously submitted by Purchaser;
13. Purchaser sells property to Eligible Buyer; and
14. Purchaser provides monthly, quarterly, and annual reports to Seller.

##### **3.2 First Designation Notice for each Phase-in Area**

At the commencement of each phase-in area, Seller shall provide Purchaser with a Designation Notice, in substantially the same form as Exhibit 6, listing all Subject Properties in such phase-in area to which Seller has acquired marketable title and possession before the commencement of each phase-in under Section 2.2, and which either A) have not been listed for sale at the commencement of the phase-in, or B) have been listed for sale for 45 Calendar Days or more before the commencement of the phase-in but are not under a contract of sale as of the commencement of the phase-in. Notwithstanding the foregoing, Seller will not designate more than the maximum number of properties specified in Section 2.1.

##### **3.3 Subsequent Designation Notices for each Phase-in Area**

After sending the first Designation Notice under Section 3.2 for each phase-in area, Seller shall thereafter provide Purchaser on a weekly basis with subsequent Designation Notices listing 1) all additional Subject Properties in such phase-in Area to which Seller has acquired marketable title and possession since the commencement of the phase-in, and those which had been listed for sale for less than 45 Calendar Days before the commencement of the phase-in, but were not under a contract of sale after being listed for 45 days. Notwithstanding the foregoing, Seller will not designate more than the maximum number of properties specified in Section 2.1.

##### **3.4 Contents of Designation Notices**

All Designation Notices shall contain the following information for each Designated Property:

- 1) The FHA case number,
- 2) The address and tax parcel identification number (where known),
- 3) The appraised value if available;
- 4) Notification of Seller's decision not to demolish the property,
- 5) A copy of each appraisal, if available, and
- 6) The date on which the utilities will be turned on so Purchaser can complete the Repair Report.

### 3.5 The Appraisal

Seller shall have Subject Properties appraised by an FHA Roster appraiser based on the as-is value of the property in its present physical condition considering: 1) the age and condition of major mechanical and structural systems; and 2) the property's value for homeownership. In the case of a property, which Seller has demolished under Section 3.11, Seller will appraise the property as vacant land. Appraisals will be provided on the standard URAR appraisal form 1004 along with the Exhibit-3 Valuation Condition Form, Form HUD-92564-VC. If a property is damaged after initial appraisal and before the Transfer Effective Date, the property will be reappraised. If the appraisal obtained by Seller is more than one year old at the time of the Designation Notice, Seller will obtain a new appraisal at its expense.

### 3.6 Appraisal Appeals

Purchaser may request a new appraisal for any property by submitting a written request to HUD REO (at the address provided in Section 12.2) within ten (10) Calendar Days of Purchaser's receipt of the original appraisal. Upon receipt of a timely request, Seller shall obtain a new appraisal from another FHA Roster appraiser within 10 Calendar Days of receipt of such request. When a new appraisal is performed, the appraised value stated by the new appraisal shall be final and shall be used in setting the Purchase Price. Purchaser shall have no further right of review. If the new appraisal deviates by 20% or more from the original appraisal, Seller shall pay for the new appraisal. If the new appraisal deviates by less than 20% from the original appraisal, Purchaser shall pay for the new appraisal. Such payment shall be due at the closing for that property. Purchaser's failure to submit written objection to the original appraisal within the 10-day appeal period specified herein shall constitute Purchaser's acceptance of the appraisal.

### 3.7 Appraiser Quality Control

Seller may perform a sampling review of appraisals. Seller currently performs a sampling review of REO appraisals. ACA appraisals will be included in this sampling review. This sampling review is solely for Seller's benefit, and Purchase Prices shall not be adjusted based on this sampling review. If the individual-appraisal-review process or the sampling-review process reveals the presence of erroneous appraisals, Seller shall take steps to remedy the problem.

### 3.8 Repair Report - Procedure

Within 15 Calendar Days after the later of a) receipt of a Designation Notice or b) the date Seller turns on the utilities, Purchaser shall obtain at Purchaser's expense, a Repair Report for each Designated Property and shall provide those reports to Seller, except that Repair Reports shall not be required in the case of Designated Properties that are vacant land at the time of transfer to Purchaser. Purchaser shall obtain the Repair Reports from a qualified consultant from FHA's 203(k) qualified consultant list under 24 CFR part 200 subpart F or a property inspector with similar qualifications, as outlined in HUD Mortgage Letters 1995-40, 2000-25. The Repair Report shall contain the information specified in Section 3.9.

Seller has the right to review the Repair Reports and supporting documentation. All such reviews and inspections are solely for Seller's benefit to ensure that the Repair Reports are reasonable and consistent with the ACA Business Plan.

### 3.9 Repair Report - Contents

The Repair Report shall consist of the following:

- 1) A completed Valuation Condition Form in accordance with Section 3.5.
- 2) A list of all repairs required to fix deficiencies noted on the Valuation Condition Form (except those listed in VC-1)
- 3) A list of all other repairs required to bring the property into compliance with the repair requirements specified in Section 4.1.
- 4) Representative photographs of the exterior and interior and individual photographs of all deficiencies estimated to cost \$2,000 or more to repair;
- 5) A certification from the person preparing the report that the person is a qualified consultant from FHA's 203(k) qualified consultant list under 24 CFR part 200 subpart F or a property inspector with similar qualifications and that the information contained in the report is true and correct.

### **3.10 Purchaser's Right of Entry**

A. After receiving the Designation Notice, Purchaser and their agents or contractors may enter a property identified on a Designation Notice solely for the purpose of inspecting and preparing the Repair Report.

B. Purchaser and its agents/contractors must comply with all of Seller's procedures for entering and inspecting a property, including signing the visitors log at the property for each visit.

C. Purchaser and its agents and contractors assume all risks associated with entering or inspecting the properties. Seller has no responsibility or liability related to such entry or inspection. Purchaser, and its agents and contractors agree to hold Seller harmless and to defend and indemnify Seller for any injury, claim, loss or lawsuit that is asserted based on such entry and inspection.

D. Purchaser may not perform any rehabilitation or other activity on any Designated Property until the Transfer Effective Date.

### **3.11 Demolitions**

Seller, in its sole discretion, may demolish the improvements on any property that has an appraised value of \$10,000 or less, before conveying such properties to Purchaser. If Seller decides not to demolish the improvements on a property with appraised value of \$10,000 or less, the Purchaser will have the option of accepting or rejecting purchase of the property. Purchaser must notify Seller of Purchaser's decision to reject purchase of the property within ten (10) Calendar Days after receiving notice from Seller of Seller's decision not to demolish, or Purchaser shall presume to have accepted the property and shall be obligated to purchase such property.

Purchaser may, after acquiring a property acquired from Seller, and at its own expense, demolish the improvements on the property, upon written permission of Seller.

### **3.12 Determination of Purchase Price**

The Purchase Price for Designated Properties shall be the appraised value, as determined in Section 3.5 or 3.6, minus the applicable discount specified below.

1. Minimal Discount: Designated Properties with an appraised value greater than \$50,000 shall receive a fifty percent (50%) discount of the appraised value of the property.
2. Standard Discount: A discount of \$25,000 shall be applied to all Designated Properties with an appraised value greater than \$25,000 and less than or equal to \$50,000.
3. Deep Discount: Designated Properties with an appraised value of \$25,000 or less shall be sold for One Dollar (\$1.00)

### **3.13 Acquisition Notice**

Once the Seller sets the Purchase Price in accordance with Section 3.12 for each Designated Property, Seller shall provide Purchaser on a weekly basis with an Acquisition Notice in substantially the same form as Exhibit 7. The Acquisition Notice shall provide the following information for each Designated Property:

- a. The FHA case number;
- b. The address and tax parcel identification number (where known);
- c. Notification of Seller's decision not to demolish the property, if not previously provided;
- d. The appraised value, as may be determined from a new appraisal in accordance with Section 3.6;
- e. The amount of the discount;

- f. The Purchase Price amount; and
- g. A copy of the appraisal for each property

### **3.14 Closing Notice**

Weekly, at least 7 Calendar Days before the Closing Date, during each Acquisition Period, Closing Agent shall provide Purchaser with a Closing Notice. The Closing Notice shall provide the closing date and the list of properties to be conveyed on that Date. The Closing Notice shall also provide the following information for each property:

- a. The address and tax parcel identification number (if known);
- b. The Purchase Price, as may be adjusted by a new appraisal in accordance with Section 3.6;
- c. Estimated Closing Costs, prorated taxes and other applicable charges;
- d. A draft HUD-1 settlement statement for each property; and
- e. Any outstanding appraisal costs, pursuant to Section 3.6;

### **3.15 Seller's Responsibility for Maintenance, Security and Debris Removal**

A. Until the Transfer Effective Date, Seller shall secure and maintain the designated properties under its property maintenance program, as stated in HUD's Mortgage Letter 2002-10, 2002 Preservation and Protection Cost Schedule and Policy Updates, or its equivalent re-issuance, as interpreted by Seller in its sole discretion. Seller shall remove debris from Designated Properties before transferring a Designated Property to Purchaser.

B. Seller has no obligation to perform any repairs to the Designated Properties, except for emergency repairs needed to protect the public or property from an imminent threat to health or safety, as interpreted by Seller, prior to the Transfer Effective Date.

C. All properties shall be unoccupied and free of tenancy at the time of transfer to the Purchaser.

### **3.16 Closings**

Purchaser may close the sale at the Closing Agent's office ("Office Closing") or by document exchange ("Document Closing"). Purchaser shall, within 5 Calendar Days of receiving the Closing Notice, notify the Closing Agent whether there will be an Office Closing or a Document Closing. For an Office Closing, the Transfer Effective Date shall be the date of the actual closing. For a Document Closing, Purchaser shall sign all required documents and ensure Closing Agent receives all required documents on or before the scheduled closing date. Upon receipt of Closing Costs and Purchase Price (to the extent acquisition financing is not being used), and upon receipt of Purchaser's signed closing documents, Seller will ensure that Closing Agent records the executed deed. For a Document Closing, the Transfer Effective Date shall be the date the deed is recorded. The parties shall sign an HUD-1 settlement statement for each property. All assessments, taxes, utilities, and ground rents, if any, shall be prorated as of the Transfer Effective Date.

### **3.17 Closing Deadlines**

For each Acquisition Notice, Seller shall schedule, and Purchaser shall be prepared to close on, eighty-five percent (85%) (Rounded down to the nearest whole number) of the properties listed on the Acquisition Notice within forty-five Calendar Days of receipt of the Acquisition Notice, and one hundred percent (100%) of the listed properties within sixty Calendar Days.

### **3.18 Acquisition Financing**

Seller will make available secured interest-free financing to Purchaser on the purchase of Designated Properties for 89 Calendar Days in any case where Purchase Price is equal to or greater than \$5,000. If Purchaser meets Seller's underwriting criteria, and subject to the availability of appropriations, secured financing will be available for an additional 91 Calendar Days, at an interest rate of four (4) percentage points above the weekly average yield on United States Treasury Securities adjusted to a constant maturity of 6 months in effect the week before the execution of the note evidencing the financing (this rate may be found on Federal Reserve Statistical Release H.15), for a total financing term of 180 Calendar Days.

If acquisition financing is being used, Purchaser shall execute a promissory note in the amount of the financing, secured by a purchase money mortgage. Seller shall pay all costs associated with the recordation and release of the mortgage. Failure to timely repay the acquisition financing as provided in the promissory note(s) constitutes a breach of this Agreement. The Note and Mortgage for such acquisition financing shall be in substantially the same form as provided in Exhibit 11.

### **3.19 ACA Purchaser Compliance Note and Mortgage**

In addition to any acquisition financing note and mortgage, in order to secure the promises made by Purchaser in this Agreement, Purchaser shall execute an ACA Purchaser Compliance Note to Seller for each property in the principal amount of the difference between the appraised value of the property as determined in Section 3.5 and the Purchase Price as determined in Section 3.12. Each such note shall be secured by an ACA Purchaser Compliance Mortgage. Such Note and Mortgage shall be in substantially the same form as provided in Exhibit 12. Seller agrees to subordinate such Note and Mortgage to ACA Purchaser's Purchase Money Mortgage and any construction financing. The ACA Purchaser Compliance Note and Mortgage shall be released upon resale of the property to an eligible homebuyer and in accordance with Section 5.5 of this Agreement.

### **3.20 Payment**

Purchaser must pay the Purchase Price for each property on or before the Payment Due Date. Purchaser shall pay any amounts owed as shown on the HUD-1 settlement statement (except for amounts for which Seller has provided acquisition financing), by wire transfer from immediately available funds or by certified check to the Closing Agent. Purchaser shall pay to Seller the entire amount owed without deduction or set off for any charge, cost, expense, or claim.

### **3.21 Closing Costs**

Except as otherwise set forth in this Agreement, Purchaser shall be solely responsible for all costs and expenses in connection with the purchase of each Designated Property. This includes, where applicable, and without limitation: all recording and filing fees; transfer taxes and fees payable to any government agency; notary fees; costs of obtaining or transferring any required certificates of occupancy; costs of title searches, commitments and insurance policies; survey costs; and engineering and environmental reports obtained by Purchaser. Seller will be responsible for Closing Agent's fee.

### **3.22 Title Warranty**

A. Seller warrants that title to each Designated Property as of its Transfer Effective Date will be good and marketable, subject to the following:

- 1) Covenants, conditions, restrictions, rights of way, easements and like matters of public record;
- 2) Any state of facts or other matters which would be shown by an accurate survey;
- 3) Any and all present and future laws, ordinances, restrictions, requirements, resolutions, orders, rules and regulations of any governmental authority, as now or hereafter existing or enforced (including, without limitation, those related to environmental, zoning, and land use matters);
- 4) Any title condition exceptions caused by Purchaser, its agents, representatives or employees;
- 5) Other matters, including those described in 24 CFR §203.389, to which like properties are commonly subject which do not materially interfere with the use of the Designated Property as a Single Family Property.

B. Purchaser is responsible for examining title and obtaining such title opinions or insurance that it deems necessary.

C. Purchaser may examine title before the Closing Date. If Purchaser discovers a title issue that does not conform to the warranty of title in this Section, Purchaser may so inform Seller, providing sufficient title information to allow Seller to review the title issue. If Seller agrees there is a title issue, the closing for that property shall be postponed until Seller resolves the title issue.

D. If Purchaser decides not to examine title before the Closing Date, the property shall, nonetheless, be conveyed to Purchaser pursuant to Section 3.16. In such cases: 1) Purchaser acknowledges that title to such Designated Properties may be

subject to liens or encumbrances not permitted hereby and agrees to accept conveyance of the property notwithstanding such liens or encumbrances.

**E. Seller shall convey properties by a quitclaim deed. The deeds will contain no representations or warranties by Seller.**

F. The title warranty of this Section shall not survive the execution, delivery and recording of the deed.

**3.23 Responsibilities of Ownership.**

A. Purchaser assumes all risks, responsibilities, liabilities and obligations of ownership for each Designated Property from and after the Transfer Effective Date for such Designated Property. Seller shall not be liable to Purchaser or any third party for any loss, costs, damage, harm, claim or lawsuit connected with the property for claims arising after the Transfer Effective Date. Purchaser shall indemnify, defend and hold Seller harmless with respect to any such harm or claim asserted against Seller after the Transfer Effective Date.

B. Without limiting the protection afforded Seller under Paragraph "A" above, Purchaser shall indemnify, defend and hold Seller harmless with respect to claims asserted against Seller by reason of Seller's holding record title to any Designated Property during the period from the Transfer Effective Date through the date that the deed is recorded.

C. Until Purchaser conveys a property to a subsequent owner, Purchaser shall ensure the property is secured and maintained, including ensuring the yard areas are clean, mowed (if there is a lawn) and safe.

D. After the Transfer Effective Date, Purchaser is responsible for the risk of loss due to fire, casualty or other cause. If a property is damaged or destroyed by fire or other casualty after the Transfer Effective Date, Purchaser remains responsible for repairing all damage and for repaying Seller by the Payment Due Date. If Purchaser obtains insurance to cover this risk, Purchaser shall name Seller as a loss payee until payment of the Purchase Price.

E. If any improvement on the Property is located within a special flood hazard area, Purchaser shall obtain flood insurance covering all improvements on the property, whether now in existence or subsequently erected, in an amount equal to (a) the greater of (i) the ACA appraised value under Section 3.5, less estimated land cost, or (ii) the total of the outstanding principal balances of the ACA Purchaser Compliance Mortgage and any purchase money mortgage, or (b) the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less. Upon resale to an eligible homebuyer, Purchaser shall require that flood insurance be maintained during the life of the property, regardless of transfer of ownership of the property.

**3.24 Notification.**

Upon closing, Purchaser shall notify all taxing authorities, utility companies, condominium association, homeowner associations, or other such entities to which Purchaser is responsible for the property and all associated costs.

**3.25 Environmental Issues**

**Hazardous Substances.** Seller shall comply with section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) (CERCLA) when it transfers property to the Purchaser. For purposes of this Section, the meaning of the terms "hazardous substances," "storage," "release," and "disposal" are defined at 40 CFR 373.4.

- A. **Records Search.** Prior to sending a Designation Notice for a property, Seller shall conduct a search of departmental files to determine, to the extent such information is available therein, whether any hazardous substance was stored for one year or more, or known to have been released or disposed of, on the property.
- B. **Hazardous Substance Notice.** If the search of departmental files reveals a record of the storage for one year or more, release, or disposal of a hazardous substance on a property in a quantity specified in 40 CFR 373.2, Seller shall include as an attachment to the Designation Notice for such property the information required by 42 U.S.C. § 9620(h) and 40 CFR Part 373, which as of the execution of this Agreement includes the following:

1. The following prominently displayed statement: **The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or “Superfund”) 42 U.S.C. section 9620(h).**
  2. For each hazardous substance,
    - a. the name of the hazardous substance;
    - b. the Chemical Abstracts Services Registry Number (CASRN), where applicable;
    - c. the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable;
    - d. the Resource Conservation and Recovery Act (RCRA) hazardous waste number specified in 40 CFR 261.30, where applicable;
    - e. the quantity in kilograms and pounds of the hazardous substance; and
    - f. the date(s) that the storage, release, or disposal of the hazardous substance took place.
- C. **Purchaser Inspections.** Purchaser acknowledges there are, or may be, environmental issues and/or risks with respect to properties now or hereafter conveyed pursuant to this Agreement. Purchaser may test and inspect any Designated Property prior to the Closing Date for such property. Purchaser shall bear the cost of all tests and inspections it obtains. If Purchaser discovers evidence of the presence of a hazardous substance that was not included in Seller’s prior notice of hazardous substances, Purchaser shall notify Seller in writing of the discovery within five (5) business days of discovery and provide Seller with copies of any environmental assessments, studies, or documents evidencing the hazards.
- D. **Remediation.** If Seller, in its sole discretion, determines a hazardous substance was stored for one year or more, released, or disposed of on the Designated Property, then, except as provided herein, Seller shall remediate the hazardous substance prior to transferring the property to Purchaser and, upon a finding by Seller that it has fulfilled its obligations under CERCLA, Purchaser shall purchase such property. Seller shall have no obligation to perform remedial action when the Purchaser is a potentially responsible party with respect to the hazardous substances on the Designated Property. Seller and Purchaser may mutually agree to the pre-remediation transfer to Purchaser of a Designated Property with hazardous substances if Seller obtains authorization under 42 U.S.C. § 9620 (h)(3)(C) to defer remediation. If the remediation to comply with CERCLA occurs prior to the transfer to Purchaser of the Designated Property, then Seller may obtain another appraisal of the Designated Property and the Purchase Price will be adjusted accordingly.
- E. **Deed Provisions.** Except as provided in Paragraph D of this Section, if the search of departmental files reveals a record of the storage, release, or disposal of hazardous substances on the property, Seller shall remediate prior to conveying the property to Purchaser and include in the deed conveying such property the information, covenants, and clauses required by 42 USC 9620(h).
- F. **Other Substances.** If Purchaser is concerned about the presence on a Designated Property of any substance that is not defined as a hazardous substance under CERCLA or about the presence on a neighboring property of any substance, then Purchaser may deliver to Seller a written notice providing sufficient information to allow Seller to review Purchaser’s concerns. Seller may, in its sole discretion, elect to offer Purchaser one or more of the following options: (1) Seller shall remediate the substance and delay the Closing Date until remediation is completed, (2) Seller shall adjust the purchase price in exchange for Purchaser’s agreement to remediate the substance and release and indemnify Seller from any future claims, (3) Seller shall demolish the property or permit Purchaser to demolish the property, pursuant to Section 3.11, or (4) Seller shall terminate Purchaser’s obligation to purchase such Designated Property. The rights and obligations of Seller and Purchaser under this Paragraph F shall not apply to lead-based paint, asbestos, mold, or radon.

**ARTICLE IV**  
**REPAIR OBLIGATION**

**4.1 Repair Requirement**

A. **Non-vacant land.** Except as provided in Paragraph B of this Section, Purchaser shall repair all Acquired Properties to conform to the highest of the following standards (if the properties do not already meet such standards at the time of conveyance from Seller):

1. HUD “General Acceptability Criteria” as specified in HUD Handbooks 4905.1 and 4150.2 (except items covered under VC-1 of the Valuation Condition Form - Exhibit-3);

2. Applicable state or local building codes,

3. The rehabilitation standards identified in the Home Ownership Plan component of Purchaser’s ACA Business Plan in Exhibit 4.

B. **Vacant land.** For all Acquired Properties purchased which are vacant land prior to transfer, or for which Seller has given Purchaser permission to demolish after transfer, Purchaser must either use such properties for community purposes or must build a 1-to-4-family residence on the property which meets the standards in paragraph A of this Section.

**4.2 Cost, Conduct, and Permits**

All costs incurred on the properties, including repair and rehabilitation costs, are Purchaser’s responsibility. Seller has no liability for such costs. All work performed on Acquired Properties shall be consistent with industry standards. Purchaser is solely responsible for obtaining all permits and approvals for all work. Purchaser will perform all repair and rehabilitation in accordance with all applicable federal, state and local, laws, statutes, ordinances, codes, regulations and requirements.

**4.3 Inspections**

Seller shall be given reasonable access to the property and may inspect properties to ensure compliance with this Agreement. Purchaser grants Seller and its contractors access to the Acquired Properties to inspect and determine if the required work has been completed. All inspections are solely for Seller’s benefit to ensure compliance with this Agreement. The inspections are not for the benefit of Purchaser or any subsequent owner. Seller or its contractors may, from time to time, on its behalf, and, at its expense, review, inspect and verify the expenditures for the rehabilitation work.

**ARTICLE V**

**RESALE OF TRANSFERRED PROPERTIES; PERFORMANCE MEASURES**

**5.1 Marketing of Properties**

Purchaser may not market any Designated Property prior to its Transfer Effective Date. After the Transfer Effective Date for each Acquired Property, Purchaser may begin to generally market and offer the Acquired Property for sale. The marketing materials provided to prospective homebuyers must describe the repair standards set forth in Section 4.1. Purchaser may enter into a contract of sale for an Acquired Property before rehabilitation is complete only if the contract of sale describes the specific repairs remaining to be made for that property, as are required in Section 4.1, and if the contract of sale provides that it is contingent on such repairs being made. Otherwise, Purchaser may enter into a contract of sale for an Acquired Property only after rehabilitation in accordance with Section 4.1 is complete (except for vacant properties being used for community purposes under Section 4.1B).

**5.2 Resale Requirements**

A. For all one-unit Acquired Properties, Purchaser must offer the property for sale first to Officers and Teachers for five Calendar Days, in accordance with the Officer/Teacher Marketing and Outreach Plan component of the Home Ownership Plan portion of Purchaser's ACA Business Plan.

B. In the case of one-unit acquired properties, if no Officer or Teacher submits an acceptable offer within the five Calendar Day period under paragraph, or in the case of multiple-unit or mixed-used properties, Purchaser shall offer the property for sale to Eligible Buyers.

C. The income limits stated in this Agreement defining Eligible Buyers are the maximum income limits allowed by this Agreement. This Agreement does not supercede income requirements required by funding sources or other housing programs. Purchaser must comply with income limits imposed by other programs administered by Seller.

D. Purchaser shall, in accordance with the ACA Business Plan, provide pre-purchase housing counseling by a HUD-approved housing counseling agency to all Eligible Buyers, Officers, or Teachers who purchase Acquired Properties. Purchaser must maintain records verifying the housing counseling provided by Purchaser. At closing, Purchaser shall credit the successful resale buyer with the cost, if any, of such counseling.

E. Purchaser shall require and maintain from any Eligible Buyer who will own or occupy a Acquired Property sufficient income documentation to verify income eligibility.

### 5.3 Resale Price.

A. Purchaser shall not sell an Acquired Property for a Resale Price of more than the lesser of 1) Fair Market Value of the property at the time of resale, or 2) 115% of the Eligible Expenses as defined in Exhibit 8, attached to this Agreement. The Resale Price for this purpose is defined as the total compensation paid by the resale buyer to Purchaser (including the amount of any financing provided by Purchaser, whether repayable or not) but not including the amount of the Resale Homebuyer Enforcement Note, if any, required under Section 5.5. The Fair Market Value of the property at the time of resale shall be determined by the appraisal obtained by resale buyer's lender, or if there is no resale buyer's lender, by an FHA Roster appraiser hired by Purchaser. For marketing, recording, settlement, or related purposes, Purchaser may advertise the property or report the transaction as if the resale price were the sum of the Resale Price plus the amount of the Homebuyer Enforcement Note.

B. All Eligible Expenses must be substantiated with copies of paid invoices or receipts and copies of reports generated by Purchaser that include all required information on an individual property basis.

### 5.4 Resale Deadline

Except as provided in Section 12.1, for each closing between Seller and Purchaser, Purchaser must 1) convey by deed to Eligible Buyers, Officers, or Teachers; or, 2) pursuant to section 4.1B, reuse for community purposes, seventy-five percent (75%) (rounded down to the nearest whole number) of the properties acquired from Seller at that closing within twelve months after the Transfer Effective Date, and one hundred percent (100%) of the properties within eighteen months after the Transfer Effective Date.

### 5.5 Resale Homebuyer Enforcement Note and Mortgage

In conjunction with the resale of a Acquired Property to an Eligible Buyer, Officer, or Teacher, Seller will release the ACA Purchaser Compliance Note and Mortgage pursuant to the following procedure:

a) Purchaser will provide notification to First Madison, 2 Corporate Drive, Suite 350, Attn: Sue Munson, Shelton, CT 06484, with a copy to HUD REO at the address provided in Section 12.2 of the anticipated resale no later than 10 days after the later of the completion of repairs under Article IV or execution of the resale contract, using the form provided in Exhibit 15, in which Purchaser shall certify that Purchaser has complied with all of the repair and resale requirements of this Agreement.

b) Seller will, within 5 days after receiving the notification provided in paragraph (a) of this Section shall prepare a release of the ACA Purchaser Compliance Note and Mortgage and provide it to the closing agent handling the resale of the property with instructions to deliver and/or record the release to Purchaser in exchange for the execution and delivery to Seller

of a Homebuyer Enforcement Note and Mortgage –See Exhibit 13. The Homebuyer Enforcement Note shall be in an amount equal to the difference between the Resale Price and the Fair Market Value of the property at the time of resale. Such Note shall be in substantially the same form as provided in Exhibit 13 and prepared by Purchaser to comply with state and local law. If the difference between the Resale Price and the Fair Market Value of the property is less than \$5,000, the Homebuyer Enforcement Note shall not be required.

c) If a Homebuyer Enforcement Note is required under paragraph (b), the Enforcement Mortgage securing such Note, which shall require the Eligible Buyer to occupy the property for at least three years, or, in the case of Officers or Teachers, one year, shall be in substantially the same form as provided in Exhibit 13 and prepared by Purchaser to comply with state and local law. Seller agrees to subordinate the Homebuyer Enforcement Mortgage to any purchase mortgage money financing taken by the resale buyer (including any financing provided by a state or local government or nonprofit organization for the purpose of assisting low- or moderate-income homebuyers to purchase homes).

## **5.6 Homeowner Warranties**

Upon the resale of each Acquired Property to an Eligible Buyer, Officer, or Teacher, Purchaser shall warrant to the resale buyer that the repairs performed by Purchaser will be free from defects in workmanship for a period of one year from the date of closing of the resale purchase.

## **ARTICLE VI**

### **REPORTING REQUIREMENTS AND RECORDS**

#### **6.1 Reporting Requirements of Purchaser**

Purchaser must report all ACA activity to Seller on a monthly, quarterly, and annual basis as described in this Article and must certify the underlying data represented in such reports. Purchaser shall submit the required reports in writing and by electronic format as instructed by Seller. The reports shall segregate, or be able to segregate, properties based on their location such as by zip code or census tract. Purchaser must also report any additional information requested by Seller.

##### **6.2 Monthly and Quarterly Reports**

A. Purchaser shall submit to Seller quarterly reports, within 30 Calendar Days of the last day of each 3-month period, commencing with the execution of this Agreement. Monthly reports shall be submitted by the 15<sup>th</sup> of each consecutive month.

B. The monthly and quarterly reports shall consist of two sections: 1) an inventory list; and 2) a disposition list.

C. The inventory list shall include a list of all ACA properties not yet sold by Purchaser. For each such property, the report shall state:

- 1) the property address;
- 2) the Transfer Effective Date;
- 3) the status of the repair and rehabilitation work with an anticipated completion date; and
- 4) the marketing status with an anticipated resale date.

D. The disposition list shall, for each Acquired Property sold by Purchaser within the previous three-month period, state:

- 1) the property address;
- 2) the acquisition date and Purchase Price;
- 3) the total repair and rehabilitation costs, with a separate itemization of costs incurred to complete the work in the Repair Report;
- 4) the marketing and sales costs;
- 5) the date the property was sold by the Purchaser to an Eligible Buyer, Officer, or Teacher;

- 6) the sales price; and
- 7) the buyer's name and percentage of median income.

### **6.3 Annual Report**

Purchaser shall submit audited financial statements pursuant to the requirements of the Single Audit Act of 1984, as amended, and under Office of Management and Budget Circular A-133.

### **6.4 Records**

Purchaser shall maintain the required reports and records supporting the reports for three years after the end of the Acquisition Period, including any extensions. Purchaser shall permit Seller to inspect the records at any time during normal business hours. Seller may conduct periodic operational and compliance reviews and audits at Seller's discretion.

### **6.5 Compliance Audits**

Purchaser is required to fully cooperate with Seller and/or its designated contractor at such time that an annual compliance review/audit is conducted.

## **ARTICLE VII**

### **EXTENSION OF ACQUISITION PERIOD; ADJUSTING ASSET CONTROL AREAS**

#### **7.1 Extension of Acquisition Period**

A. Purchaser may request extensions of the Acquisition Period. Such requests must be made at least forty-five (45) Calendar Days before the Acquisition Period would otherwise expire. Purchaser may only make such a request if, at the time of such request, there are no uncured defaults by Purchaser under this Agreement. Purchaser may also request an increase in the maximum number of properties set out in Section 2.1.

B. The Seller has the sole discretion to decide whether to approve such requests.

C. If Seller approves such requests, the terms and conditions of this Agreement shall apply to all Designated Properties acquired by Purchaser pursuant to such approval.

## **ARTICLE VIII**

### **NO REPRESENTATIONS OR WARRANTIES BY SELLER AS TO THE CONDITION OF PROPERTIES; LEAD-BASED PAINT**

#### **8.1 Designated Properties Sold As Is**

Purchaser specifically acknowledges and agrees that Seller shall sell and Purchaser shall purchase each Designated Property as-is, where-is and with all defects. Purchaser is not relying on any representations or warranties of any kind whatsoever, whether oral or written, express or implied, statutory or otherwise, from Seller, or any officer, employee, consultant, appraiser, attorney, agent or broker of seller, as to any matter, concerning the condition of designated properties, including without limitation: mechanical systems, dry basement, foundation, structural or compliance with code, zoning or building requirements. Seller does not guarantee or warrant that the property is free of visible or hidden structural defects, termite damage, hazardous or toxic materials or substances, lack of water supply or sewer, inadequate soil conditions, radon, asbestos, lead-based paint, mold, or any other condition that may render the property uninhabitable or otherwise unusable.

#### **8.2 Release**

Without limiting the foregoing provisions, Purchaser, for itself and any successors and assigns of Purchaser, waives its right to recover from, and forever releases and discharges, and covenants not to sue, Seller, or any officer, employee, attorney, consultant, appraiser, agent or broker of Seller with respect to any and all claims, whether direct or indirect, known or

unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with any Subject Property including, without limitation, the physical, environmental and structural condition of any Subject Property or any law or regulation applicable thereto, including, without limitation, any claim or matter relating to the use, presence, discharge or release of hazardous materials on, under, in, above or about any Subject Property.

**8.3 Lead-Based Paint**

Purchaser has received Seller's disclosures about lead-based paint in Exhibit 9.

**8.4 Lead Pamphlet**

Purchaser has received the pamphlet "Protect Your Family from Lead in Your Home," provided in Exhibit 10.

**8.5 Lead Policy on Resales**

Purchaser agrees to comply with all of the requirements of the Lead-Based Paint Disclosure Rule (title 24 of the Code of Federal Regulations, part 35 subpart A) upon resale of any pre-1978 property purchased under this Agreement. These requirements include, but are not limited to, providing the EPA-approved lead hazard information pamphlet, "Protect Your Family From Lead in Your Home," to purchasers and renters; disclosing known lead-based paint and/or lead-based paint hazards; and providing purchasers a 10-day opportunity (or a mutually agreed upon period, or allowing them to waive the opportunity) to conduct an inspection or risk assessment for the presence of lead-based paint and/or lead-based paint hazards.

**ARTICLE IX**

**SELLER'S AND PURCHASER'S REPRESENTATIONS AND WARRANTIES**

**9.1 Seller's Representation and Warranty.**

Seller hereby represents and warrants to Purchaser that Seller has the power and authority to execute, deliver and perform this Agreement and all of the transactions contemplated hereby.

**9.2 Purchaser's Representation and Warranty.**

Purchaser hereby represents and warrants to Seller that Purchaser has the power and authority to execute, deliver and perform this Agreement and all of the transactions contemplated hereby.

**ARTICLE X**

**DEFAULT BY SELLER**

**10.1 Failure By Seller To Complete Sale of Subject Properties.**

In the event that Seller shall fail to complete the sale of any Subject Property to Purchaser, Purchaser's sole and exclusive remedy shall be to terminate its obligation thereafter to purchase any further Subject Properties from Seller. No such termination shall affect Purchaser's obligations under this Agreement with respect to those Designated Properties previously acquired by Purchaser, including, without limitation, Purchaser's payment, repair, resale, and reporting obligations under Articles III, IV, V, and VI of this Agreement. Without limiting the generality of the foregoing, Purchaser hereby waives and releases any claim for damages and any right to seek specific performance or other equitable relief against Seller.

**ARTICLE XI**

**DEFAULT BY PURCHASER; PURCHASER'S INDEMNIFICATION**

11.1 Seller's Remedies.

In the event that Purchaser shall fail to perform any of its obligations under this Agreement, Seller will provide Purchaser with a notice to cure the default within 30 days. If the default is not timely cured, Seller may exercise any one or more of the following remedies:

- 1) **Recover from Purchaser any amounts which are due to Seller;**
- 2) **Terminate any or all of Purchaser's rights and/or Seller's obligations under this Agreement, including, without limitation, Seller's obligation to sell any Subject Properties to Purchaser thereafter;**
- 3) **Unilaterally amend this Agreement by redrawing the boundary of the ACA area;**
  - 4) Negotiate with a new participant for the forfeited territory;
  - 5) Initiate foreclosure of any delinquent financing or compliance mortgage provided to Purchaser by Seller for Designated Properties;
  - 6) Terminate approval for Purchaser to participate in the ACA Program and, if applicable, approval to participate in HUD Homes Nonprofit Discount Program;
  - 7) Seek debarment or other administrative or legal remedies available at law; and
  - 8) Suspend additional property sales and conveyances

11.2 Remedies Not Exclusive.

No right or remedy herein conferred upon or reserved to Seller is intended to be exclusive of any other right or remedy herein or by law, equity or statute provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

11.3 Indemnification By Purchaser.

Purchaser agrees to indemnify Seller and hold Seller harmless against any loss, damage, cost or expense that may be incurred by Seller as a result of:

- A. Purchaser's failure to perform any of the obligations of Purchaser set forth in this Agreement, including, without limitation, failure to make the rehabilitation repairs required under Article IV (Repair Obligations) in accordance with all applicable federal, state, and local laws, statutes, ordinances, codes, regulations and requirements; and**
- B. Seller being the record titleholder of a Designated Property during the period from the Transfer Effective Date through the date the deed is recorded.**

**ARTICLE XII**

**MISCELLANEOUS**

12.1 Casualty or Condemnation.

**A. Each Designated Property is being conveyed to Purchaser in its condition as of the Transfer Effective Date, as the same may be affected by condemnation or casualty loss. The initiation of any eminent domain proceedings with**

respect to a Subject Property or the occurrence of a fire or other casualty which damages or destroys any portion of the Subject Property shall not affect the obligations of the parties with respect to such Subject Property and Purchaser shall pay the Purchase Price to Seller without adjustment of any kind, except as provided in paragraph B of this Section. In no event shall Seller have any obligation to repair or restore the Subject Property or any portion thereof.

B. Notwithstanding the foregoing, if a fire or other casualty occurs after the date that the Appraisal has been completed but before the Transfer Effective Date, Seller shall cause a new Appraisal to be made at its expense, reflecting the "as is" value of the Designated Property after the casualty, and the Purchase Price shall be adjusted accordingly. In the event of the initiation of condemnation or eminent domain proceedings after the date that the Appraisal has been completed, the Purchase Price will be based upon the then-existing Appraisal, and no new Appraisal will be required; however, Seller will assign to Purchaser Seller's rights in any condemnation award with respect to the Subject Property. The Resale Deadline for any property that is subject to the condemnation or eminent domain proceedings shall be tolled until such proceedings have been terminated. For any property for which Purchaser obtains casualty insurance, and which suffers casualty damage occurring after the Transfer Effective Date and exceeding \$20,000, the Resale Deadline shall be tolled until Purchaser has recovered insurance proceeds from its insurer, which recovery Purchaser shall diligently pursue.

12.2 Notices.

A. Except as otherwise indicated in this Agreement, all notices, requests, demands, reports, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be sent (except as otherwise expressly provided herein) by hand delivery, overnight courier, registered or certified mail, return receipt requested, postage prepaid or telecopier (with the original sent within twenty-four (24) hours of such facsimile by hand-delivery, overnight courier or by registered or certified mail, return receipt requested, postage prepaid):

If to Seller, to:

General Deputy Assistant Secretary  
Office of Housing  
451 Seventh Street, SW  
Room 9100  
Washington, DC 20410  
Fax Number: (202) 708-2580

with copies to:

Joseph McCloskey  
Director, Single Family Asset Management Division  
Office of Insured Single Family Housing  
451 Seventh Street, SW  
Room 9178  
Washington, DC 20410  
Fax Number: (202) 708-5966

If to HUD REO:

Kristin Johnsen  
US Dept. of HUD  
Santa Ana HOC  
1600 North Broadway, Ste. 100  
Santa Ana, CA 92706

If to Purchaser, to:

Ann Sewill,  
President,  
Enterprise Home Ownership Partners, Inc.  
315 West 9th Street, Suite 801

Los Angeles, CA 90015

**B. All such notices, requests, demands and other communications shall be effective upon the actual delivery thereof to the address identified pursuant to this Section (or the refusal thereof by the addressee at the address identified pursuant to this Section). Either party to this Agreement may change such party's address for purposes of this Section by sending to the other party to this Agreement written notice of the new address in the manner specified in this Section.**

**C. Seller reserves the right upon notice to Purchaser to change or add notice parties hereto, including designating agents to perform obligations and receive deliveries of and for Seller hereunder.**

12.3 Survival of Representations, Warranties and Covenants of Purchaser.

Except as otherwise specifically provided, the representations, warranties, covenants and agreements of Seller and Purchaser set forth in this Agreement shall survive the execution, delivery and recording of the deed for each Designated Property, the payment of the Purchase Price for each Designated Property, and the expiration of the Acquisition Period.

12.4 No Third Party Beneficiaries.

This Agreement does not create, and shall not be deemed to create, a relationship between any party hereto and any third party in the nature of a third party beneficiary relationship.

12.5 Governing Law; Waiver of Jury Trial; Venue.

**A. This agreement shall be governed by and construed in accordance with the laws of the United States of America and, to the extent there is no applicable federal law, the laws of the State of California.**

B. Purchaser and Seller hereby waive any right to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise arising out of, related to, or in connection with this agreement, or any transaction contemplated thereby. Instead, any dispute resolved in court will be resolved in a bench trial without a jury.

C. Purchaser hereby irrevocably and unconditionally (i) agrees that any suit, action or proceeding against it arising out of or relating to or in connection with this Agreement may be instituted, and that any suit, action or proceeding by it against Seller arising out of or relating to or in connection with this Agreement shall be instituted only, in the U.S. District Court for the District of Columbia or the U.S. Court of Claims (and appellate courts from either of the foregoing); (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it, and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law; (iv) waives any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to or in connection with this Agreement brought in any court; (v) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum; and (vi) agrees not to plead or claim either of the foregoing.

12.6 Entire Agreement; Amendments.

This Agreement, and the documents and instruments to be executed and delivered pursuant to this Agreement, constitute the entire agreement between the parties hereto with respect to the subject of the transactions contemplated hereby and supersede all prior agreements and understandings with respect thereto, if any. This Agreement may not be changed or modified or amended, nor may any provision hereof be waived, except by an agreement in writing signed by the parties hereto.

12.7 No Limitation on Seller's Ability to Administer and Enforce Laws.

Nothing in this Agreement shall in any way be construed to affect Seller's administration or enforcement of laws, regulations and policies pertaining to the Designated Properties, or otherwise.

12.8 Time of Essence; Time.

Time is of the essence with respect to all of Purchaser's and Seller's obligations under this Agreement. All references in this Agreement to a specific time of day shall be deemed to refer to Eastern Standard Time or Daylight Savings Time, whichever is then applicable in Washington, D.C.

**12.9 Severability.**

If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

**12.10 Further Assurances.**

Each party shall, whenever and as often as it shall be requested to do so by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such other documents and do any and all other acts as may be necessary to carry out the intent and purpose of this Agreement.

**12.11 Parties.**

Purchaser shall not assign in whole or in part its rights or obligation under this Agreement. Purchaser and Seller agree that this contract shall be binding upon their respective successors or assigns.

**12.12 Termination**

Notwithstanding any other provision of the Agreement, either party may, without cause, terminate the Agreement upon 30 days notice to the other party. No such termination shall affect Purchaser's obligations under this Agreement with respect to those Designated Properties previously acquired by Purchaser, including, without limitation, Purchaser's payment, repair, resale, and reporting obligations under Articles III, IV, V, and VI of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered in their names as of the date first above written.

**SELLER:**

**SECRETARY OF HOUSING AND URBAN  
DEVELOPMENT**

By: \_\_\_\_\_  
Authorized Agent

**PURCHASER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibits:**

1. ACA Map
2. Copy of corporate resolution authorizing Purchaser to enter into the Agreement
3. Valuation Condition Form
4. ACA Business Plan
5. ACA Quality Control Plan
6. Model Designation Notice
7. Model Acquisition Notice
8. Eligible Expenses
9. Lead-based Paint Disclosures
10. Lead-based Paint Pamphlet
11. Acquisition financing note and mortgage model forms
12. ACA Purchaser Compliance note and mortgage model forms
13. Homebuyer Enforcement note and mortgage model forms
- 14. Omitted**
15. Form of Notification of Anticipated Resale, Certification, and request for release of ACA Purchaser Compliance Note and Mortgage

**EXHIBIT 1**

Attach ACA Map [show Phases One and Two]

**EXHIBIT 2**

**Corporate Resolution**

**EXHIBIT 3**

**Valuation condition form**

**EXHIBIT 4**

Insert ACA Business Plan accepted by HUD. The plan must contain the Home Ownership Plan, which in turn must contain the following: 1) Purchaser's rehabilitation standards (i.e., the ones that Purchaser is choosing to use on top of HUD's standards and state/local codes), 2) Purchaser's plan for providing housing counseling to resale buyers, and 3) the Officer/Teacher Marketing and Outreach Plan.

**EXHIBIT 5**

ACA Quality Control Plan accepted by HUD.

**EXHIBIT 6**

**MODEL**  
**DESIGNATION NOTICE**

**To:** \_\_\_\_\_ (Purchaser)

**From:** United States Department of Housing and Urban Development (Seller)

Pursuant to Section 3.4 of the Asset Control Area Agreement between Seller and Purchaser dated \_\_\_\_\_ (the Agreement), this is to notify Purchaser of the properties listed below that will be conveyed by Seller to Purchaser.

<b>File Number</b>	<b>Property Address AND tax parcel ID if known, and appraised value, if available,</b>

1) For properties not already appraised, Seller will now have these properties appraised. For properties already appraised, copies of those appraisals are attached.

2) Pursuant to the Agreement, Purchaser shall prepare a Repair Report for each property listed above and submit it to Seller within 15 Calendar Days of receiving this Designation Notice.

3) The following properties valued at less than \$10,000 were not demolished. If you wish to reject these properties from purchase, you must do so by written notice to Seller within 10 days of your receipt of this Notice. Otherwise you will be required to purchase these properties.

4) Pursuant to Agreement Section 3.4, the utilities will be turned on only during the following period:  
\_\_\_\_\_. Purchaser shall schedule its Repair Report inspection during this period.

5) If seller finds a record of hazardous substances on a property, add "Seller conducted a search of its files to determine, to the extent such information is available, whether any hazardous substance was stored for one year or more, or known to have been released or disposed of, on the properties listed in this Notice. Seller did find a record of the storage, release, or disposal of hazardous substances on the properties listed on the attachment. For purposes of this Notice, the meaning of the terms "hazardous substances," "storage", "release," and "disposal" are defined at 40 CFR § 373.4.

Dated: \_\_\_\_\_

Attachment: any lead-based paint records and reports arising after Exhibit 9 was originally prepared and any record of CERCLA hazardous substances.

**EXHIBIT 7**

**MODEL ACQUISITION NOTICE**

**To:** \_\_\_\_\_ (Purchaser)

**From:** United States Department of Housing and Urban Development (Seller)

Pursuant to Section 3.13 of the Asset Control Area Agreement between Seller and Purchaser dated \_\_\_\_\_ (the Agreement), this is to notify Purchaser of the properties listed below that will be conveyed by Seller to Purchaser.

<b>File Number</b>	<b>Address</b>	<b>Tax Parcel</b>	<b>Appraised Value</b>		<b>Discount</b>	<b>Purchase Price</b>

The Seller's closing agent, \_\_\_\_\_ *[insert name and address of closing agent]*, shall notify the Purchaser of the closing date.

An appraisal is attached for each property listed above, if not already provided in the Designation Notice.

**[For properties where this notification was not previously provided]** The following properties valued at less than \$10,000 were not demolished. If you wish to reject these properties from purchase, you must do so within 10 days of receipt of this Notice. Otherwise you will be required to purchase these properties.

Dated: \_\_\_\_\_

**EXHIBIT 8**  
**ELIGIBLE EXPENSES**

Only the costs specifically included in the following list, within the prescribed limitations and/or conditions, may be included in calculating the Net Development Cost/Eligible Expenses.

1. Discounted purchase price paid to Seller
2. Upon the purchase of the property from Seller, financing and closing costs actually incurred, which must be reasonable and customary for the area in which the property is located, limited to the following:
  - a. The actual loan origination fee, not to exceed one percent
  - b. Supplemental loan origination fee (mortgages only)
  - c. Credit report fee
  - d. Net tax and insurance escrow deposit
  - e. Settlement fee (buyer's portion, if any)
  - f. Discount points
  - g. Hazard insurance premiums
  - h. Lender's title insurance policy premium
  - i. Owner's title insurance policy premium
  - j. Notary fees
  - k. Recording fees
  - l. Appraisal fee
  - m. Courier fees
  - n. Document preparation fees
  - o. Attorney or escrow fees for services performed in connection with the loan closing, such as review of abstract or preparation of closing documents
  - p. Flood plan certification and fee for determination of flood zone
3. For the time period the Purchaser holds title, the following costs, limited to amounts that are reasonable and customary for the area in which the property is located:
  - a. Fees paid to an approved 203(k) consultant or a property inspector with similar qualifications for work write-ups, cost estimates, and inspections only. See Mortgagee Letter 95-40 for allowable fees.
  - b. Property management, but only if related to periodic inspection and/or minor maintenance of the property.
  - c. Architectural fees, but only if the services are provided by a licensed architectural firm or individual architect.
  - d. Rehabilitation costs, which are the total verifiable contractor and vendor expenditures incurred in the actual reconstruction, repair, restoration and physical improvement of the property. Rehabilitation costs are limited to the actual price paid to the contractor for completing each repair or improvement, and may also include expenditures for mechanical systems inspections, sewer and well inspections, repair inspections, foundation certifications for manufactured homes obtained from a licensed engineer, and roof inspections from a licensed contractor. Seller may require canceled checks and corresponding receipts as proof of rehabilitation costs.
  - e. Cost of public and municipal services and/or utilities and real property taxes for the subject premises, except for delinquent interest or penalty charges incurred as a result of failure of purchaser to pay these expenses in a timely manner.
  - f. Cost of termite, lead, and environmental inspections, and extermination services.
  - g. Homeowners Association fees or Condo Association fees.
  - h. Permits and other fees paid to units of state and local governments that are required by rule, law, regulation or other legally binding mandate that must be paid before initiating or completing the rehabilitation or property improvement.
  - i. Survey costs.
  - j. Hazard and liability insurance premiums.
  - k. Interest paid on acquisition or rehabilitation financing.
  - l. Costs for security for the property, not to exceed \$2,500 per property.
  - m. Cost of abatement or treatment of environmental conditions including lead-based paint.
  - n. Cost of clearance inspection after the abatement or stabilization of lead-based paint, not to exceed \$250.

4. Upon the resale of the property to a new purchaser, only the following seller closing costs that are actually incurred, limited to amounts that are reasonable and customary for the area in which the property is located:

- a. 1/2 of closing agent-fee (sellers portion)
- b. Electronic wiring fees
- c. Courier and mailing fees (seller's documents only)
- d. Title insurance premium (owners policy only)
- e. State, county, or city tax stamps, if local law requires the seller to pay these costs
- f. Homeowners warranty premium
- g. Environmental hazard certification
- h. Document preparation fee (seller's documents only)
- i. Recording (deed only) and reconveyance fees
- j. Sales commissions for real estate broker/agent services
- k. Condominium transfer fee

5. Costs not listed above are ineligible and cannot be included in the Net Development Cost calculation. Ineligible costs include, but are not limited to:

- a. Purchaser's general overhead.
- b. Housing developer fees and/or real estate consultant fees.
- c. Sales bonuses and sales incentives (other than sales commissions) for selling or listing real estate brokers/agents.
- d. Gifts to the eventual purchasers for down payment, financing or closing costs, and any other purchaser-related expenses associated with their purchase of the property.
- e. Development, maintenance, and management costs related to other properties in Purchaser's inventory.
- f. Delinquent property tax penalties and interest.
- g. Mortgage payment late fees, pre-payment penalties, pay-off quote fees, and fax charges.
- h. Any development costs that are paid from local, state, or Federal grant funds (including, but not limited to, HOME or CDBG funds).

**EXHIBIT 9**

**Lead-Based Paint Warning Statement.**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure**

Seller has no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the properties currently owned by Seller. Any additional records or reports coming into Seller's possession will be attached as an exhibit to each Designation Notice.

**Waiver**

Purchaser has waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**EXHIBIT 10**

Attach lead-based paint pamphlet.

**EXHIBIT 11**

Purchase Money Note & Mortgage

State of \_\_\_\_\_

**NOTE**

Date:

Property Address:

1. PARTIES

"Borrower" means **[insert name of ACA participant]**, a **[state in which ACA participant is organized]****[type of entity of ACA participant]**, **having an office at [address]** and its successors and assigns. "Lender" means the Secretary of Housing and Urban Development and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of \_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from **[insert date that is 90 days after the date of the note]**, at the rate of **[insert rate that is 4 percentage points above the weekly average yield on United States Treasury Securities adjusted to a constant maturity of 6 months for ACAs in effect the week before the date of the Note. This rate may be found on Federal Reserve release H.15.]** percent (\_\_\_\_%) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust, or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses that might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall pay the principal plus interest on or before **[insert date that is 180 days after the date of the note]**, which is called the maturity date.

(B) Place

Payment shall be made at **[insert address]** or at such place as Lender may designate in writing by notice to Borrower.

5. BORROWER'S RIGHT TO REPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty.

6. DEFAULT

(A) Default

If Borrower defaults by failing to perform any obligations contained in the Security Instrument, then Lender may, in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payment, Lender does not waive its rights with respect to subsequent events.

(B) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney's fees for enforcing this Note. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 5(B) or at a different address if Borrower is given a notice of that different address.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_Space Above This Line for Recording Data\_\_\_\_\_

DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on \_\_\_\_\_,  
19\_\_\_\_. The Trustor is \_\_\_\_\_ whose  
address is \_\_\_\_\_ ("Borrower").  
The Beneficiary is the Secretary of Housing and Urban Development, whose address is \_\_\_\_\_  
("Lender"). The trustee is \_\_\_\_\_ ("Trustee"). Borrower owes Lender the principal sum of \_\_\_\_\_  
Dollars (U.S. \$\_\_\_\_\_) . This debt is evidenced by Borrower's note dated the same date as this Security Instrument  
("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
\_\_\_\_\_. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced  
by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with  
interest, advanced under Paragraph 6 to protect the security of this Security Instrument; and (c) the performance of Borrower's  
covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and  
conveys to Trust, in trust, with power of sale the following described property located in \_\_\_\_\_  
County, [State]:

which has the address of \_\_\_\_\_[Street] \_\_\_\_\_  
[City], \_\_\_\_\_[State] \_\_\_\_\_ [Zip Code],  
("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property,  
and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also  
be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that borrower is lawfully seized of the estate hereby  
conveyed and has the right to grant, transfer, and assign the Property and that the Property is unencumbered, except for  
encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands,  
subject to any encumbrances or record.

THIS SECURITY INSTRUMENT combines uniform covenants for national  
use and non-uniform covenants with limited variations by jurisdiction to  
constitute a uniform security instrument covering real property.

Borrower and Lender covenant agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note.
2. **Taxes, Insurance, and Other Charges.** Borrower shall promptly pay (a) taxes and special assessments levied or to be levied against the Property, and (b) leasehold payments or ground rents on the Property.
3. **Flood Insurance.** If any improvement on the Property is located within a special flood hazard area, Borrower shall obtain flood insurance covering all improvements on the Property, whether now in existence or subsequently erected, in an amount equal to (a) the total of the outstanding principal balances of the Note and of the Compliance Note executed by Borrower or (b) the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is

less. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the Maturity Date of the Note. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

4. **Preservation, Maintenance and Protection of the Property; Leaseholds.** Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

5. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the Indebtedness under the Note and this Security Instrument. Any application of the proceeds to the principal shall not extend or postpone the Maturity Date of the Note. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

6. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity, which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear Interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument, unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lenders opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

7. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may require immediate payment in full of all sums secured by this Security Instrument if Borrower defaults by failing, for a period of thirty days, to perform any obligations contained in this Security Instrument.

(b) **Sale Without Approval.** Lender shall require immediate payment in full of all sums secured by this Security Instrument if all or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

8. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if (i) reinstatement will preclude foreclosure on different grounds in the future, or (ii) restatement will adversely affect the priority of the lien created by this Security Instrument.

9. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time of payment of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower. Borrowers covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent.

11. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

12. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

13. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

14. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any Investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 14, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 14, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**15. Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 15.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

**16. Foreclosure Procedure.** If Lender requires immediate payment in full under Paragraph 7, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 16, including, but not limited to, reasonable attorney's fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 7, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 16 or applicable law.

**17. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

**18. Substitute of Trustee.** Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

**19. Request for Notices.** Borrower requests that copies of the notices of default and sale be sent to Borrower's address which is the Property Address.

**20. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

21. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

Condominium Rider  Planned Unit Development Rider  Other [Specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
Borrower (SEAL)  
\_\_\_\_\_  
Borrower (SEAL)  
\_\_\_\_\_[Space Below This Line for Acknowledgement]\_\_\_\_\_

**EXHIBIT 12**

**COMPLIANCE NOTE**

\$ \_\_\_\_\_, 20\_\_\_\_

[Property Address]

[insert identifying number for administrative tracking of note]

1. **Parties.** “Borrower” means \_\_\_\_\_ [ACA-Participant], a \_\_\_\_\_ [State of Organization of ACA Participant] \_\_\_\_\_ [Type of Entity of ACA Participant] having an office at \_\_\_\_\_ [Street], \_\_\_\_\_ [City], \_\_\_\_\_ [State] \_\_\_\_\_ [Zip code]. “Lender” means the United States Department of Housing and Urban Development, which is organized and existing under the laws of the United States, having its principal office at 451 Seventh Street, S.W., Washington, D.C., 20410, and its successors and assigns.

2. **Borrower’s Promise to Pay.** Borrower hereby acknowledges (1) that this note (Note) is given in accordance with, and as required by, the terms and conditions of the asset control area agreement (ACA Agreement) between the parties dated \_\_\_\_\_, 20\_\_\_\_; (2) that Lender conveyed the Property to Borrower for less than the appraised value of the Property; (3) that the principal sum of this Note represents an amount intending to equal the difference between the appraised value of the Property at the time Lender conveyed the Property to Borrower and the consideration (other than this Note) for which Lender conveyed the Property to Borrower; (4) that Lender’s conveyance of the Property to Borrower at less than the appraised value represented financial assistance for the funding of the rehabilitation and/or construction of the improvements on the Property; (5) that Lender provided such assistance to Borrower in reliance upon Borrower’s promise to either repay such assistance or provide Lender with a note and mortgage equal to at least the unpaid portion of such assistance; and (6) that in consideration of such assistance Borrower agrees to repay the assistance as provided in this Note. In return for this financial assistance, Borrower promises to pay the principal sum of \_\_\_\_\_ and \_\_\_\_/100 Dollars (U.S. \$ \_\_\_\_ . \_\_\_\_), plus any interest, to the order of Lender.

3. **Interest.** This Note shall not bear interest unless there is an Event of Default. If there is an Event of Default, the principal sum advanced shall bear interest from the date of the Event of Default at the rate of the current value of funds to the United States Treasury in effect on the date of the Event of Default. The current value of funds rate is prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins

4. **Mortgage.** This Note is secured by a compliance mortgage, deed of trust, or similar security instrument of even date herewith between Borrower and Lender (Security Instrument). The Security Instrument encumbers certain real property located at the above Property Address and more fully described in the Security Instrument (Property). The Security Instrument protects Lender from losses which may result if Borrower defaults under this Note. Borrower shall rehabilitate the Property and convey the Property to a Resale Buyer, as such term is defined in the Security Instrument. The terms of the ACA Agreement with respect to the Property are incorporated herein by reference as though set forth herein.

5. **Payment.**

(a) No regular monthly payments are due under this Note.

(b) This Note is a contingent liability. The principal balance of this Note, together with any interest thereon and all other sums which may or shall become due under this Note and the Security Instrument, shall be due and payable on \_\_\_\_\_, 20\_\_\_\_ (Maturity Date) if (1) not otherwise satisfied in accordance with the provisions of the Security Instrument, or (2) there is an Event of Default (defined hereafter). [insert a date no later than a total of 540 calendar days] The Maturity Date may be extended in the event of casualty or condemnation, pursuant to Section 12.1 of the ACA Agreement.

(c) Payment shall be made at \_\_\_\_\_ [insert address] or at such place as Lender may designate in writing by notice to Borrower.

6. [Omitted]

7. **Prepayment.** Borrower shall not have the right to prepay this Note, in whole or part, except as provided in the Security Instrument or with Lender's prior written approval.

8. **Default.** The term "Event of Default" shall mean the violation of any term of this Note, the Security Instrument, or the ACA Agreement with respect to the Property. The terms of the Security Instrument and the ACA Agreement are incorporated herein by reference as though set forth herein.

9. **Acceleration.** Upon the occurrence of any Event of Default, Lender may declare, without notice, the principal balance of this Note, together with any interest thereon and all other sums which may or shall become due under this Note and the Security Instrument, immediately due and payable.

10. **Payment of Lender's Costs and Expenses.** If Lender has required immediate payment in full, as describe above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney's fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as applicable to the principal of this Note.

11. **Modifications.** This Note shall not be modified, amended, changed, discharged, or terminated orally. This Note may only be modified, amended, changed, discharged, or terminated by an agreement in writing signed by the party against whom enforcement of such modification, amendment, change, discharge, or termination is sought.

12. **Notices.** All notices which are required or permitted to be given under this Note shall be in writing and shall be sent (except as otherwise expressly provided herein or as required by applicable law) by hand delivery, overnight courier, registered or certified mail, return receipt requested, postage prepaid or telecopier (with the original sent within twenty-four (24) hours of such facsimile by hand-delivery, overnight courier or by registered or certified mail, return receipt requested, postage prepaid):

If to Lender, to:

[insert name, address, & fax number]

with copies to:

[insert name, address, & fax number]

If to Purchaser, to:

[insert name, address, & fax number]

with copies to:

[insert name, address, & fax number]

13. **Time of the Essence.** Time is of the essence as to all dates set forth herein.

14. **Waivers.** Borrower and all endorsers, sureties and guarantors jointly and severally waive presentation for payment, demand for payment, notice of nonpayment, notice of protest, notice of dishonor, protest, notice of protest, and any and all lack of diligence or delays in collection or enforcement of this Note.

15. **Successors and Assigns Bound.** The covenants and agreements of this Note shall bind and benefit the successors and assigns of Lender and Borrower. The covenants and agreements of Borrower under this Note are not assignable without the prior written consent of Lender.

16. **Governing Law; Severability.** This Note shall be governed by Federal law. In the event that any provision or clause of this Note or the Security Instrument conflicts with applicable law, such conflict shall not affect other provisions of this Note or the Security Instrument which can be given effect without the conflicting provision. To this end the provisions of this Note and the Security Instrument are declared to be severable.

17. **Authority to Execute.** The representative of Borrower executing this Note represents that he/she has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

**After Recording Return To:**

**[Insert where to return recorded document]**

\_\_\_\_\_ **[Space Above This Line For Recording Data]** \_\_\_\_\_

**[insert identifying number for administrative tracking of mortgage]**

**Compliance Deed of Trust**

THIS DEED OF TRUST (Security Instrument) is given on \_\_\_\_\_, 20\_\_\_\_. The Trustor is \_\_\_\_\_ [ACA Participant], a \_\_\_\_\_ [State of Organization of ACA Participant] \_\_\_\_\_ [Type of Entity of ACA Participant] having an office at \_\_\_\_\_ [Street], \_\_\_\_\_ [City], \_\_\_\_\_ [State] \_\_\_\_\_ [Zip code] (Borrower). The trustee is \_\_\_\_\_ (“Trustee”). This Security Instrument is given to the United States Department of Housing and Urban Development, which is organized and existing under the laws of the United States, having its principal office at 451 Seventh Street, S.W., Washington, D.C., 20410 (“Lender”). Borrower owes Lender the principal sum of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (U.S. \$ \_\_\_\_\_). This debt is evidenced by Borrower's note dated the same date as this Security Instrument (Note). Borrower promises to pay the principal balance of the Note, together with any interest thereon and all other sums which may or shall become due under this Security Instrument or the Note, no later than \_\_\_\_\_, 20\_\_\_\_ (Maturity Date), if (1) not otherwise satisfied in accordance with the provisions of this Security Instrument, or (2) there is an Event of Default (defined hereafter). **[insert a date no later than a total of 540 calendar days]** The Maturity Date may be extended in the event of casualty or condemnation, pursuant to Section 12.1 of the ACA Agreement.

This Security Instrument secures (a) the repayment of the debt evidenced by the Note; (b) the performance of Borrower's promises and agreements under the asset control area agreement, dated \_\_\_\_\_, 20\_\_\_\_, between Borrower and Lender (ACA Agreement), this Security Instrument, and the Note. For this purpose, Borrower hereby warrants, grants, transfers and assigns to Lender, with power of sale, the following described property located in \_\_\_\_\_ County, \_\_\_\_\_ [State]:  
[Insert legal description of property],  
which has the address of \_\_\_\_\_ [Street], \_\_\_\_\_ [City], \_\_\_\_\_ [State] \_\_\_\_\_ [Zip code], (Property Address):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the “Property.”

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, transfer, and assign the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. Borrower and Lender covenant agree as follows:

**UNIFORM COVENANTS**

- 1. Payment of Principal and Interest.** Borrower shall pay, when due, the principal of, and interest on, the debt evidenced by the Note.
- 2. Payment of Taxes, Insurance, and Other Charges.** Borrower shall pay all (a) taxes and special assessments levied or to be levied against the Property; (b) leasehold payments or ground rents on the Property; (c) Community

Association Dues, Fees, and Assessments, (c) governmental or municipal charges, fines, and impositions; (d) other items which can attain priority over this Security Instrument as a or on the Property. The phrase "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization. Borrower shall pay these obligations on time directly to the entity owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments, fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation, or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes and hazard insurance.

Any amounts disbursed by Lender under this Paragraph 2 shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear Interest from the date of disbursement at the Note rate and, at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless the lien has priority as provided in Paragraph 9 or Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lenders opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien that may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above.

3. **Flood Insurance.** If any improvement is located within the special flood hazard area, Borrower shall obtain flood insurance covering all improvements on the property, whether now in existence or subsequently erected, in an amount equal to (a) the total of the outstanding principal balances of the Compliance Note and of any other Note executed by Borrower in favor of Lender and secured by the Property, or (b) the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less. If any improvement on the Property is located within a special flood hazard area, Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by law. The insurance policies and any renewals, regardless of whether such policies and renewals are required by Lender, shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. After applying the insurance proceeds as required by any secured lender with a lien superior to Lender's Security Instrument, all or any part of the remaining insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts on any taxes, special assessments, leasehold payments, or ground rents, second to any interest due under the Note, and third to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto. In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

4. **Preservation, Maintenance and Protection of Property.** Borrower shall not commit, or permit, any waste on, destruction to, or damage to the Property. Borrower shall not allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall, at all times, maintain the Property. Borrower shall comply with all applicable Federal, state, and local statutes, ordinances, codes, regulations, requirements, and restrictive covenants, if any, upon the use of the Property. Borrower shall, to the satisfaction of Lender, promptly repair or replace any of the Property damaged by fire or other casualty. Lender and its representatives shall have the right to inspect the Property from time to time at any reasonable hour.

5. **Rehabilitation and/or Construction Requirement.** Borrower shall cause the Permitted Alterations to be performed in accordance with the terms of the ACA Agreement, prosecute such performance with due diligence to completion no later than the Maturity Date, and comply with the covenants made by it in the ACA Agreement. If the rehabilitation or construction is not properly completed, not performed with due diligence, or is discontinued at any time except for strikes or lockouts, Lender is vested with full authority to take the necessary steps to protect the improvements and the land from harm, continue existing contracts, or enter into necessary contracts to complete the Permitted Alterations. All sums advanced for such protection shall be added to the principal balance of the Note, secured by the Deed of Trust, and due and payable on demand with interest. The term "Permitted Alterations" means the construction of and/or rehabilitation to the improvements contemplated to be performed in accordance with the ACA Agreement.

6. **Sale of Property.** Borrower shall convey the Property to a Resale Buyer no later than 540 calendar days from the date of this Security Instrument. Borrower shall not resell the Property for a Resale Price of more than the lesser of the Fair Market Value of the property at the time of resale or 115% of the Eligible Expenses Costs as defined in the ACA Agreement. The Resale Price for this purpose is defined as the total compensation paid by the resale buyer to Purchaser (including the amount of any financing provided by Purchaser, whether repayable or not) but not including the amount of the Resale Homebuyer Enforcement Note, if any. The term "Resale Buyer" means one of the following persons who agrees to occupy the Property for a specified period of time: (1) a person who has an income at or below 115% of the local area median income, adjusted by family size, (2) a person meeting the definition of 24 CFR 291.530, or (3) a person employed full-time by a public school, private school, or Federal, state, county, or municipal educational agency as a state-certified classroom teacher or administrator in grades K-12.

7. **Prepayment; Release of Security Instrument.** Borrower shall not have the right to prepay this Note, in whole or part, except as provided herein or with Lender's prior written approval. The Note shall be considered satisfied and this Security Instrument shall be released only upon satisfaction of the conditions in Paragraph 6 for sale of the Property and this Paragraph 7 for release of the Security Instrument. Simultaneously with the conveyance of the Property to a Resale Buyer, Borrower shall be entitled to a release of the Property from the lien of this Security Instrument if no uncured Event of Default shall have occurred, and upon

(a) Borrower's certification to Lender that the requirements of paragraph 6 have been met;

(b) If the difference between the Resale Price (as defined in the ACA Agreement) and the Fair Market Value of the property at the time of resale is equal to or greater than \$5,000, Resale Buyer's delivery of an enforcement note executed by Resale Buyer, in a form acceptable to Lender in an amount equal to the difference between the Resale Price and the Fair Market Value of the property at the time of resale, to Lender or an escrow holder acceptable to Lender with instructions to deliver the executed note to Lender upon closing;

(c) If an enforcement note is required under paragraph (b), Resale Buyer's delivery of an enforcement Deed of Trust securing such note and executed by Resale Buyer to an escrow holder acceptable to Lender with instructions to record upon closing and return a copy of the recorded Deed of Trust to Lender; and

Borrower shall do whatever shall be necessary to obtain a release of the Property from any other secured financing, including, without limitation, paying a release fee hereunder. Borrower shall pay the recording and other fees for recording the release of the Property;

8. **Compliance with ACA Agreement.** The terms of the ACA Agreement with respect to the Property are incorporated herein by reference as though set forth herein.

9. **Priorities.** Notwithstanding any other provision to the contrary, this Security Instrument is superior to all liens on the property, other than encumbrances of record as of the date hereof and a Deed of Trust dated \_\_\_\_\_, 19\_\_\_\_, and given by Borrower to \_\_\_\_\_ to secure a note in the principal amount of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (U.S. \$ \_\_\_\_\_ . \_\_\_\_). [Add description of superior liens, which should be those liens for acquisition of the property or rehabilitation/construction of improvements]

10. **Fees.** Lender may collect fees and charges authorized by this Security Instrument or the Note.

11. **Default.** The term “Event of Default” shall mean the occurrence of any one or more of the following:
- (a) Failure by Borrower to complete the Permitted Alterations on or before the Maturity Date;
  - (b) Failure by Borrower to resell the Property to a Resale Buyer in accordance with Paragraph 6;
  - (c) A transfer, or agreement to transfer, by Borrower of all or part of the Property, or a beneficial interest in a trust owning all or part of the Property, except as provided in Paragraphs 6 or 7;
  - (d) A false certification by Borrower to Lender;
  - (e) A failure by Borrower to provide any certification required by Lender;
  - (f) Any materially false or inaccurate information on any form or report submitted to Lender;
  - (g) A failure to provide any material information on any form or report submitted to Lender;
  - (h) A default under any security instrument (other than this Security Instrument) that encumbers the Property;
  - (i) Accepting or using any Federal Low Income Tax Credits related to the improvements on the Property without the prior written consent of Lender;
  - (j) A failure to perform any other obligations in this Security Instrument;
  - (k) A failure to perform any obligations under the Note; or
  - (l) A failure to perform any obligations under the ACA Agreement with respect to the Property.
12. **Grounds for Acceleration of Debt.** Upon the occurrence of any Event of Default, Lender may declare, without notice, immediately due and payable the principal balance of the Note, together with any interest thereon and all other sums which may or shall become due under this Security Instrument or the Note. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.
13. **[Omitted]**
14. **Time of the Essence.** Time is of the essence as to all dates set forth herein.
15. **Waivers.** Borrower and all endorsers, sureties and guarantors jointly and severally waive presentation for payment, demand for payment, notice of nonpayment, notice of protest, notice of dishonor, protest, notice of protest, and any and all lack of diligence or delays in collection or enforcement of this Security Instrument
16. **Successors and Assigns Bound.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower. The covenants and agreements of Borrower under this Note are not assignable without the prior written consent of Lender.
17. **Modifications.** This Security Instrument shall not be modified, amended, changed, discharged, or terminated orally. This Security Instrument may only be modified, amended, changed, discharged, or terminated by an agreement in writing signed by the party against whom enforcement of such modification, amendment, change, discharge, or termination is sought.

**18. Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if (i) reinstatement will preclude foreclosure on different grounds in the future, or (ii) restatement will adversely affect the priority of the lien created by this Security Instrument.

**19. Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time of payment of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**20. Notices.** All notices which are required or permitted to be given under this Security Instrument shall be in writing and shall be sent (except as otherwise expressly provided herein or as required by applicable law) by hand delivery, overnight courier, registered or certified mail, return receipt requested, postage prepaid or telecopier (with the original sent within twenty-four (24) hours of such facsimile by hand-delivery, overnight courier or by registered or certified mail, return receipt requested, postage prepaid):

If to Lender, to:

[insert name, address, & fax number]

with copies to:

[insert name, address, & fax number]

If to Purchaser, to:

[insert name, address, & fax number]

with copies to:

[insert name, address, & fax number]

**21. Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**22. Copy of Deed of Trust.** Borrower acknowledges that it has received a true copy of this Security Instrument, read this Security Instrument, and executed this Security Instrument as of the date at the top of the first page.

**23. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law

of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 23, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 23, "Environmental Law" means Federal law and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

**24. Authority to Execute.** The representative of Borrower executing this Note represents that he/she has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**25. Assignment of Rents.** This Paragraph 25 applies to the extent the rents and revenues of the Property are not assigned to a lender with a lien superior to this Security Instrument. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 25.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

**26. Foreclosure Procedure.** If Lender requires immediate payment in full under Paragraph 12, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 26, including, but not limited to, reasonable attorney's fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notices as prescribed by applicable law to Borrower and to be other persons prescribed in Paragraph 18. After the time required by applicable law, Trustee without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser the Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not

limited to, reasonable Trustee's and attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or person(s) legally entitle to it.

If the Lender's interest in this Security Instrument is held by the Secretary of Housing and Urban Development (the Secretary) and the Secretary requires immediate payment in full under Paragraph 12, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph or applicable law.

**25. Reconveyances.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by the Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

**26. Substitution of Trustee.** Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded, and the name and address of the successor trustee. Without conveyance of the Property the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

**27. Riders to this Security Instrument.** The following Riders are to be executed by Borrower [check box as applicable] and the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument:

Other [specify]: \_\_\_\_\_

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_(SEAL)  
Borrower

\_\_\_\_\_  
\_\_\_\_\_(SEAL)  
Borrower

\_\_\_\_\_[Space Below This Line for Acknowledgement]\_\_\_\_\_

**EXHIBIT 13**

Homebuyer Enforcement note and mortgage models

**ASSET CONTROL AREA HOMEBUYER ENFORCEMENT NOTE**

**1. Borrower's Promise To Pay**

- (a) In return for a discount in the purchase price of the Property (such amount shall be hereinafter referred to herein as the "Loan") that I have received, I promise to pay U.S. \$\_\_\_\_\_ (this amount is called "principal"), plus interest, to the order of the Lender. The initial principal balance under this Note is the greater of i) the difference between the actual purchase price of the Property and the Fair Market Value of the property at the time of sale, or ii) \$5,000.
- (b) The "Lender" is the Secretary of Housing and Urban Development. I understand that the "Lender" may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. Interest**

I will have no obligation to pay interest on the principal of this Note unless I am in default under paragraph 5, in which case I will pay interest on the unpaid principal at the United States Treasury's Current Value of Funds Rate in effect on the date upon which I am in default until the full amount of principal has been paid.

**3. Payments**

- (a) No regular monthly payments will be due under this Note.
- (b) **[For Eligible Buyers:]** The principal balance of the loan will be automatically reduced over the three-year owner-occupancy period, commencing on [insert 30 days after execution date] , according to the following schedule:
  - (i) On any date after [insert date 30 days after execution date ] and before [insert one year after previous date], the principal balance of the Note shall be 90% of the initial principal balance.
  - (ii) On any date on or after [insert previous date] and before [insert one year after previous date], the principal balance of the Note shall be 60% of the initial principal balance.
  - (iii) On any date on or after [previous date ] and before [insert one year after previous date], the principal balance of the Note shall be 30% of the initial principal balance.
  - (iv) On [insert previous date], the principal balance of the Note shall be zero.
- [For Teachers and Officers:]** The principal balance of the Note shall be reduced to zero on [insert date that is one year plus 30 days after execution].
- (c) The principal balance of the Note will be due and payable after any default described in paragraph 5 of this Note.
- (d) I will send any amount that becomes due and payable under this Note to the Note Holder at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ **[address for payments],**

or at a different address, if I am given notice of that different address.

**4. Owner-Occupancy Term**

I agree to own and live in the Property as my sole residence for a term of at least [3/1 years], commencing on \_\_\_\_\_ [insert (30) calendar days after the date of execution of this Note].

If I am called to active military duty during this Owner-Occupancy Term, I must obtain a waiver from the HUD Homeownership Center in my jurisdiction to the [3 or 1] year term in order to be relieved of the owner-occupancy requirement, but only during my tour of active military duty.

**5. Borrower's Failure To Pay As Required - Default**

I will be in default if:

- (a) I cease to occupy the Property as my sole residence prior to the end of the owner-occupancy term referred to in paragraph 4 of this Note, unless the Note Holder expressly elects in writing to waive this requirement for a specified period based on an evaluation of the relevant facts and circumstances; or
- (b) The Property is sold or transferred prior to the owner-occupancy term referred to in paragraph 4 of this Note, without the prior written consent of the Note Holder; or
- (c) I violate any condition of the Deed of Trust securing this Note; or
- (d) I falsely certify or fail to certify that I am occupying or will occupy the Property as my sole place of residence for the owner-occupancy term.
- (e) I gave materially false or inaccurate information or statement to Lender (or failed to provide Lender with any material information) in connection with the Deed of Trust securing this Note or in connection with any other Deed of Trust securing the property, including but not limited to, representations concerning my occupancy of the Property as a sole residence.

**6. Notice of Default/Acceleration of Debt**

If I am in default under paragraph 5, the Note Holder may send me a written notice telling me that if I do not cure the default by a certain date, the Note Holder may require me to pay immediately the full amount of the outstanding principal balance due under this Note. The date of cure must be no later than 30 days after the date on which the notice is delivered or mailed to me.

**7. No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full and/or perform as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**8. Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full and/or perform as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note and its other rights to the extent not prohibited by applicable law. These expenses may include reasonable attorney's fees.

**9. Giving of Notices**

- (a) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property address above, or at a different address, if I give the Note Holder a written notice of my different address.
- (b) Any notice that may be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in paragraph 3(d) above or at a different address, if I am given notice of that different address.

**10. Obligations of Persons Under This Note**

If more than one person signs this Note, each person is fully obligated to keep all promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all people signing this Note together. This means that any one person who signs this Note may be required to pay all of the amounts owed under this Note.

**11. Waivers**

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other person that amounts due have not been paid.

**12. SECURED NOTE**

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note.

**13. Governing Law; Severability**

This Note shall be governed by Federal Law. In the event that any provision or clause of this Note or the Security Instrument conflicts with applicable law, such conflict shall not affect other provisions of this Note or the Security Instrument, which can be given effect without the conflicting provision. To this end the provisions of this Note and the Security Instrument are declared to be severable. If any provision of this Note, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Note and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

**WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.**

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

[Include any required or customary form of authentication.]

**HOMEBUYER ENFORCEMENT DEED OF TRUST**

THIS DEED OF TRUST ("Security Instrument") is given on: [date]. The Trustor(s) is/are \_\_\_\_\_, whose address is \_\_\_\_\_ ("Borrower"). The trustee is \_\_\_\_\_ ("Trustee") This Security Instrument is given to the Secretary of Housing and Urban Development whose address is \_\_\_\_\_ ("Lender"). Borrower owes Lender the principal sum of \_\_\_\_\_ Dollars (U.S.\$ \_\_\_\_\_). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for the circumstances under which the principal sum will become due and payable.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and in accordance with the terms of the Note, and (b) the performance of Borrower's promises and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby grant, transfer, and assign to the Lender, the following described property located in \_\_\_\_\_ County:

which has the address of \_\_\_\_\_ [Street], \_\_\_\_\_ [City], \_\_\_\_\_ [State] \_\_\_\_\_ [Zip Code]. (Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. This Security Instrument shall also cover all replacements and additions. All of the foregoing is referred to in this Security Instrument as the "Property":

BORROWER PROMISES that Borrower is lawfully seized of the estate hereby transferred and has the right to grant, transfer, and assign the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

- 1. Payment of Principal and Interest.** Borrower shall pay, when due and payable, the principal sum of the debt evidenced by the Note according to the terms of the Note.
- 2. Occupancy.** Borrower shall own and occupy, establish and use the Property as Borrower's sole residence and shall continue to occupy the Property as Borrower's sole residence for at least [3/1] year(s), commencing no later than **[insert date that is 30 calendar days after the date of execution of Security Instrument/Note]**.
- 3. Fees.** Lender may collect fees and charges authorized by the Note.
- 4. Grounds for Acceleration of Debt.** Lender may require immediate payment in full of all sums secured by this Security Instrument as evidenced by the Note after any default by the Borrower occurs as described in paragraph 5 of the Note.
- 5. Foreclosure Procedure.** If Lender requires immediate payment in full under Paragraph 4 above, and the Borrower fails to make payment within 30 days of receiving written notice from the Lender to the Borrower by certified or registered mail, the Lender may declare all sums secured hereby immediately due and payable by delivering to Trustee a written declaration of default and demand for sale, and written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and the Lender may foreclose this Security Instrument. Lender shall also deposit with Trustee this Security Instrument, the Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Borrower, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its Deed conveying the property so sold, but without a covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Borrower, Trustee, or Lender, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of (a) the expenses therein reasonable Trustee's fees or attorney's fees for conducting the

sale, and the actual cost of publishing. Recording, mailing and posting notice of the sale; (b) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (c) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in said Note; (d) all other sums then secured hereby; and (e) the remainder, if any, to the person or persons legally entitled thereto.

If the Secretary holds Lender's interest in this Security Instrument and the Secretary requires immediate payment in full under Paragraph 4, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act")(12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in this preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 5 or applicable law.

**6. Substitution of Trustee.** Lender may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Security Instrument. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Lender, containing reference to this Security Instrument and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

**7. Statute of Limitations.** The pleading of any statute of limitations as a defense to any and all obligations secured by this Security Instrument is hereby waived to the full extent permissible by law.

**8. Reconveyance of Security Instrument.** Upon written request of Lender stating that the full indebtedness secured hereby has been paid, and/or the performance of the covenants and agreements herein made by the Borrower have been satisfied, and upon surrender of this Security Instrument and said Note to Trustee for cancellation and retention upon payments of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

**9. Joint and Several Liability; Co-Signers.** Borrower's promises and agreements shall be joint and several. Any person who co-signs this Security Instrument is a Borrower under this Security Instrument and is fully and personally obligated to keep all promises and agreements made in this Security Instrument.

**10. Notices.** Any notice that must be given to Borrower under this Security Instrument will be given by delivering it or by mailing it by first class mail to Borrower at the Property Address above, or at a different address, if Borrower gives the Lender a written notice of a different address, in the case of Borrower's default.

Any notice that may be given to the Lender under this Security Instrument will be given by mailing it first class mail to the Lender at the address stated above or at a different address, if Borrower is given notice of that different address.

**11. Governing Law; Severability.** Federal law shall govern this Security Instrument. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**12. Borrower's Copy.** Borrower shall be given one conformed copy of this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms of this Security Instrument.

Witnesses:

Borrowers:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**EXHIBIT 14**  
Omitted

EXHIBIT 15

**Notification of Anticipated Resale, Certification, and request for release of ACA Purchaser Compliance Note and Mortgage**

1. Purchaser hereby requests release and satisfaction of the Asset Control Area (ACA) Purchaser Compliance Note and Mortgage held on the property located at (- the complete property address to include zip code). All repairs have been made and are complete as required under the ACA Agreement, and the property is now under contract of sale with an Eligible Buyer, Officer, or Teacher.
2. If property is being sold to an Eligible Buyer, the Eligible Buyer's annual income is (-\$ amount.)
3. The sales closing date is scheduled for (date) at the office of (closing attorney name, contact name(s), mailing address, phone & fax numbers.)
4. The Fair Market Value of the property at the time of resale, as determined by either the homebuyer's lender's appraiser or by an FHA-roster appraiser is (\$ amount.) The Net Development Cost is (\$ amount.) The contract sales price is (\$ amount.)
5. If required under the Agreement, a Homebuyer Enforcement Note will be prepared and executed in favor of the Secretary of Housing and Urban Development in the amount of (-\$ amount.) The original executed Homebuyer Enforcement Note will be submitted to HUD immediately following the closing.
6. If required under the Agreement, a Homebuyer Enforcement Mortgage will be prepared and executed in favor of the Secretary of Housing and Urban Development securing the above Note. A copy of the executed Mortgage will be sent to HUD immediately following the closing. The original executed Mortgage will be delivered for recording immediately following the closing, with instructions that it be returned directly to HUD after recordation.

**The undersigned certifies that the statements and information contained herein are true and correct.**

(Signature ACA Purchaser)

**ATTACHMENT 6**

**Contract Deliverable Requirements List (CDRL)**

CDR #	CONTRACT DELIVERABLE REQUIREMENT	PWS #	FREQUENCY	WHEN	TO
1	Monthly Bank Statement	5.1.6	Monthly	10 business days following the statement ending date	GTR or their designee
2	Remit balance of HUD's Trust Account	5.1.8	Following expiration or termination	NLT 90 Days following expiration or termination	GTR
3	Reconciliation of Trust Account to include copy of final bank statement showing zero balance	5.1.8	One time	Within 30 days following closing of the account, but NLT 120 days following termination or expiration	GTR
4	Deed and Closing Escrow Instructions	5.4.1	All closings	Within 10 business day of initial assignment	M&M Contractor
5	Notification to M&M	5.4.3	All closings	Within 5 business days prior to anticipated closing	M&M
6	E-mail notification of escrows opened but failed to close on or before sales contract expiration date	5.6.1	When applicable	Within one business day after failed closing	M&M – Place copy of notice in file.
7	Unpaid tax, utility, HOA bill,	5.6.2	When applicable	Within two business days after canceled, failed or aborted closing	M&M
8	Disbursement of earnest money & extension fees	5.6.4	When applicable	Within 5 business days of receipt of sale cancellation Notification.	Per instructions from M&M
9	HUD Homeowner Satisfaction Survey and HUD Real Estate Broker Satisfaction Survey	5.8.5	All closings	Weekly basis	GTR
10	OND/TND Closing Package with two copies of additional documents	5.9.1.4	All OND/TND Closings	NLT two business days after closings	M&M
11	List of additional ACA processing requirements	5.9.2	One time	Within five business days of ACA implementation meeting	GTR
12	Completed Bulk Sale Form	5.9.3	On Auction/Bulk sales	On day of Closing	Single Family Housing Management Branch & GTR & M&M
13	Notification of closing	5.11.1	All closings	Same day of closing	M&M
14	Wire Net Sales Proceeds	5.11.2 & 4.4.1	All closings	NLT one business day after closing	U.S. Treasury
15	Recording of the Deed and written notification of the filing	5.11.3	All Closings	NLT one business day after closing (See table funding conflict exception)	M&M, Taxing Authorities & Applicable HOA
16	Closing Package	5.11.4 & 4.4.2	All closings	Within 2 business days of the closing	M&M Contractor
17	Corrected closing documents	5.11.5	When applicable	NLT two business days after notification from M&M of post closing adjustments	M&M

18	Corrected wire transfer confirmation of under-wire.	5.11.5.1	When applicable	Within one banking day of notification or detection of error.	M&M
19	Completed SAMS 1106 for Over-wire	5.11.5.2	When applicable	Within one banking day of original wire, notification or detection of the error.	GTR
20	Closing Status Report	5.12.1	Weekly	1 <sup>st</sup> business day	CO,GTR,GTM & M&M
21	Closing Performance Report	5.12.2	Monthly	7 <sup>th</sup> business day	CO,GTR,GTM

## Attachment 7

## 52.212-3 Offeror Representations and Certifications—Commercial Items.

## OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (NOV 2007)

An offeror shall complete only paragraph (l) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (b) through (k) of this provision.

(a) Definitions. As used in this provision—

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) ([26 U.S.C. 6109](#), [31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\)](#) and 3325(d), reporting requirements of [26 U.S.C. 6041](#), 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) Taxpayer Identification Number (TIN).

- o TIN: \_\_\_\_\_.
- o TIN has been applied for.
- o TIN is not required because:
  - o Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
  - o Offeror is an agency or instrumentality of a foreign government;
  - o Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

- o Sole proprietorship;
- o Partnership;
- o Corporate entity (not tax-exempt);
- o Corporate entity (tax-exempt);
- o Government entity (Federal, State, or local);
- o Foreign government;
- o International organization per 26 CFR 1.6049-4;
- o Other \_\_\_\_\_.

(5) Common parent.

- o Offeror is not owned or controlled by a common parent;
- o Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it o is, o is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it o is, o is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it o is, o is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it o is, o is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it o is, o is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it o is a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:\_\_\_\_\_

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).] The offeror represents as part of its offer that it o is, o is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror’s number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror’s average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees Average Annual Gross Revenues

\_\_\_ 50 or fewer            \_\_\_ \$1 million or less

\_\_\_ 51–100                \_\_\_ \$1,000,001–\$2 million

\_\_\_ 101–250              \_\_\_ \$2,000,001–\$3.5 million

- |                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/> 251–500    | <input type="checkbox"/> \$3,500,001–\$5 million   |
| <input type="checkbox"/> 501–750    | <input type="checkbox"/> \$5,000,001–\$10 million  |
| <input type="checkbox"/> 751–1,000  | <input type="checkbox"/> \$10,000,001–\$17 million |
| <input type="checkbox"/> Over 1,000 | <input type="checkbox"/> Over \$17 million         |

(9) [Complete only if the solicitation contains the clause at FAR [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) General. The offeror represents that either—

(A) It o is, o is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It o has, o has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) o Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: \_\_\_\_\_.]

(10) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It o is, o is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It o is, o is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It o has, o has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It o has, o has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It o has developed and has on file, o has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 cfr parts 60-1 and 60-2), or

(ii) It o has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

Line Item No.      Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian or Moroccan end product,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act-Free Trade Agreements-Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian or Moroccan end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian or Moroccan End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#).

(2) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

Line Item No.

_____
_____
_____

[List as necessary]

(3) Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR [52.225-5](#), Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#). For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12689). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) o Are, o are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) o Have, o have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) o Are, o are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at [22.1503\(b\)](#).]

(1) Listed end products.

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1)  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2)  Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Act. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4\(c\)\(1\)](#). The offeror  does  does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4\(c\)\(2\)\(ii\)](#)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR [22.1003-4\(d\)\(1\)](#). The offeror  does  does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an

annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(1)(1) Annual Representations and Certifications. Any changes provided by the offeror in paragraph (1)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR [52.212-3](#), Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs \_\_\_\_\_.

[Offeror to identify the applicable paragraphs at (b) through (k) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]

(End of provision)

ATTACHMENT 8

AWARD FEE EVALUATION PLAN  
FOR  
CLOSING AGENT SERVICES

State of Arizona

US DEPT OF HUD  
SANTA ANA HOME OWNERSHIP CENTER

AWARD FEE EVALUATION PLAN

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**AWARD FEE EVALUATION PLAN  
FOR  
CLOSING AGENT SERVICES**

**1.0 Introduction**

This plan is for use by government personnel responsible for evaluating the performance of the Contractors who perform closing agent services in support of HUD's REO sales program. The primary objective of this plan is to assist government personnel in determining and ensuring that Contractor-provided services comply with the requirements of the contract.

**2.0 Background**

FHA, an agency of HUD, administers the Single Family Mortgage Insurance Program. Upon default and foreclosure of an FHA insured loan, the lender files a claim for insurance benefits. In exchange for payment of a claim, a lender conveys a foreclosed property to HUD. HUD, through a Management & Marketing (M&M) contractor, manages and sells a sizable inventory of single family homes in a manner that promotes home ownership, preserves communities and maximizes return to the FHA insurance fund. To complete the sales of properties, HUD requires the services of closing agent Contractors (referred to as "Contractor" hereafter) to perform all necessary closing activities on its behalf. Performance under this contract will involve interaction with homebuyers, real estate professionals, mortgage lenders, non-profit agencies, local units of government, homeowner associations, HUD's Homeownership Center (HOC) staff, and other service providers under contract to HUD, such as the M&M. Additionally, this contract may be impacted by changes in government regulation, legislation or housing policy initiatives.

**3.0 Organizational Structure and Procedures for Award Fee Administration**

A Performance Evaluation Board (PEB) will evaluate Contractor performance quarterly to determine the Contractor's award fee score. The PEB will consist of the GTR, GTM, and the REO Director/Designee. The PEB will meet no later than 30 days after the end of each quarter of the calendar year. Each PEB member will independently rate the contractor's performance. Any difference of more than 10 points on any factor must be discussed by the PEB. The final ratings will be calculated by adding the factor scores from each PEB member, dividing the total by 3, to obtain an average score for each factor. Each factor average score will be multiplied by the individual weighted factors. The weighted factor scores will be added together to obtain the final Total Quarterly Award Fee Score. The Total Quarterly Award Fee Score will be multiplied as a percentage by the total award fee possible for the period to ascertain the amount of award fee earned for the evaluation period.

#### **4.0 Evaluation Methods and Factors**

Evaluation of Contractor performance will be accomplished on an ongoing basis by the Government through direct observation of completion of contract tasks; detailed reviews of contract deliverables, HUD and Contractor generated reports, customer feedback, M&M feedback, daily interaction between government and Contractor personnel; and random or scheduled inspections.

The PEB will evaluate the Contractor on his performance in the following three areas:

1. Timeliness and Accuracy
2. Contract Compliance
3. Customer Service

A recommended award fee score will be determined by the PEB, using the Performance Areas and Evaluation Criteria defined in Attachment 1 of this packet herein, and will be submitted to the GTR. A sample Quarterly Award fee Evaluation Summary is provided as Attachment 2 of this packet herein. The Contractor shall be provided the preliminary ratings in writing and be given the opportunity to submit written supporting evidence (NTE 3 pages) of recommended changes to the award fee proposed for the evaluation period. The GTR may adjust the final score by as much as three points up or down to account for overall contract factors or actions by the Contractor that affected contract performance during the quarter. The final results will then be submitted to the Contracting Officer.

#### **5.0 Notification of Deficient Performance**

Contract performance discrepancies identified during the quarter will be brought to the immediate attention of the GTR. When Contractor performance in any area approaches or reaches a minimum acceptable level, or is not fully compliant with the requirements of the contract, the GTR will notify the Contractor manager of the discrepancy, in writing. The Contractor will then have two weeks to implement corrective action or appeal the finding and to explain the corrective action in writing to the GTR. If the Contractor's response resolves the problem, no further action will be taken. If the problem continues after implementation of corrective action, the GTR will submit a Performance Deficiency Report (PDR, see Attachment 3 herein) to the Contractor.

When a PDR is submitted by the GTR, the Contractor is required to prepare a formal reply delineating corrective action. If the reply satisfies the GTR, no further action will be taken. If replies are unsatisfactory and resolution cannot be obtained, the GTR will forward the Contractor's reply along with the recommended action to the CO to initiate formal action against the Contractor for unsatisfactory contract performance.

**EVALUATION FACTORS AND CRITERIA**

The three performance areas to be evaluated are Timeliness and Accuracy, Contract Compliance, and Customer Service. The evaluation criteria percentage breakdown is as follows:

Timeliness and Accuracy	50%
Contract Compliance:	35%
Customer Service	15%

---

I. TIMELINESS AND ACCURACY (Weighted 50%)

- A. Timeliness of Closing - Cases are closed as soon as possible and within the time allotted on the sales contract or approved extension. In order to be considered timely, extensions must not be required due to closing agent errors or delays.
- B. Accuracy of HUD-1: HUD-1's reflect current, accurate charges and information.
- C. Timeliness of Wire: Wiring of HUD proceeds to the U.S. Treasury is accomplished within 1 banking day after closing.
- D. Accuracy of Wire: The amount of the wire transfer accurately reflects the amount of proceeds from the HUD-1.
- E. Timeliness & Accuracy of Closing Package to the M&M Contractor: The closing package described in Performance Work Statement (PWS) paragraph 5.10 is delivered to the M&M Contractor within 2 business days after closing.
- F. Timeliness & Accuracy of Documents Prepared for Recordation: Deed is accurate and filed for recordation within 1 business day after closing. Other documents prepared for recordation are accurate.

II. CONTRACT COMPLIANCE (Weighted 35%)

- A. Management of HUD Trust Account: HUD Trust Account established and maintained in accordance with PWS paragraph 5.1.
  - B. File Maintenance: Files are up to date, accurate, and complete in accordance with PWS paragraph 5.13. Files are available for inspection in accordance with PWS paragraph 5.13.
  - C. Management of Extension Request Process: The extension request process in PWS paragraph 5.5 is strictly enforced and implemented.
  - D. Contract Reporting Requirements: Contract reports required in PWS paragraph 5.12 are submitted in the correct format, on time, are accurate, and complete.
  - E. Proper Licensing: State/Local licensing requirements described in PWS.
  - F. Minimal Post Closing Demands: The Contractor is diligent in obtaining demands prior to closing and satisfying the valid demands at closing, ensuring that post closing demands is extremely rare.
  - G. Quality Control: Effective administration and implementation of the Contractor's quality control plan, which is demonstrated by timely, accurate closings.
-

III. CUSTOMER SERVICE (Weighted 15%)

- A. Complaints: Number and severity of complaints are minimal and minor in nature. Valid complaints are resolved quickly and fairly.
  - B. Compliments: Contractor receives compliments from customers.
  - C. Treatment of Internal and External Customers: Positive feedback is received from internal and external customers. Contractor provides tools to employees that help to ensure their success.
  - D. Prompt return of buyers' funds: Buyers' funds are returned quickly after escrow cancellation in accordance with instructions received from the M&M.
  - E. Post closing issues are minimal and resolved timely by the Contractor.
-

**QUARTERLY SCORE CALCULATION**

1. TIMELINESS AND ACCURACY: Grading Score \_\_\_\_\_ x 0.50 = \_\_\_\_\_

2. CONTRACT COMPLIANCE: Grading Score \_\_\_\_\_ x 0.35 = \_\_\_\_\_

3. CUSTOMER SERVICE: Grading Score \_\_\_\_\_ x 0.15 = \_\_\_\_\_

4. TOTAL QUARTERLY AWARD FEE SCORE: \_\_\_\_\_  
(Sum of Lines 1 through 3 above)

5. TOTAL AWARD FEE EARNED: Award Fee Score X Award Fee Costs X # Closings = \_\_\_\_\_

**GRADING TABLE**  
 ("CONTRACT MANAGEMENT" CATEGORY)

Range of Performance:

<u>Grade</u>	<u>Points</u>	<u>Description</u>
Superior	100	Very effective performance; fully responsive to the requirements of the contract.
Excellent	90-99	Effective performance in meeting the requirements of the contract. Deficiencies typically minor, but with noticeable or measurable effect on overall contract performance. Appropriate corrective action taken to resolve or correct discrepancies
Satisfactory	70 - 89	Satisfactory performance; sufficiently compliant with contract requirements. Minor deficiencies that adversely effect completion of contract/operational requirements. Minimally effective remedial action to correct deficiencies.
Unsatisfactory	69 and below	Unacceptable performance resulting in a serious degradation of ability to meet contract/operational requirements. Significant deficiencies persist due to lack of, or ineffective, remedial action.

**Note: All scores must be supported by written comments. All deficiencies must be documented. Remedial action is required for a rating of Satisfactory or below. No Award Fee shall be earned when the evaluated total score for the period is less than 90 points.**

**SAMPLE  
QUARTERLY SCORE CALCULATION**

CONTRACT: C-DEN-XXXX CONTRACTOR: XYZ  
SITE: \_\_\_\_\_ QUARTER/FY: 1ST QUARTER 2006

1. TIMELINESS AND ACCURACY: Grading Score 96 x 0.50 = 48
2. CONTRACT COMPLIANCE: Grading Score 94 x 0.35 = 32.9
3. CUSTOMER SERVICE: Grading Score 95 x 0.15 = 14.25
4. **TOTAL QUARTERLY AWARD FEE SCORE:** 95.15  
(Sum of Lines 1 through 3 above)
5. **TOTAL AWARD FEE EARNED:** 95.15% X \$100 Award Fee X 100 Closings = \$9,515.00

**PERFORMANCE DISCREPANCY REPORT**

DATE AND TIME:
CONTRACT NUMBER: _____ CONTRACTOR: _____ SITE: _____
DESCRIPTION OF DEFICIENCY: (reference PWS/Directive)
DATE(S) OF VERBAL NOTIFICATION:
ORIGINATOR'S SIGNATURE:

*ABOVE PORTION OF FORM IS TO BE FILLED OUT BY GTR/GTM*

CONTRACTOR'S RESPONSE AS TO CAUSE, CORRECTIVE ACTION, AND ACTION(S) TO PREVENT RECURRENCE. CITE APPLICABLE QA PROGRAM PROCEDURES OR NEW QA PROCEDURES:
SIGNATURE OF CONTRACTOR REPRESENTATIVE:
DATE:

*ABOVE PORTION TO BE FILLED OUT BY CONTRACTOR*

GOVERNMENT EVALUATION (ACCEPTANCE, PARTIAL ACCEPTANCE, REJECTION):
--

*CLOSE OUT (TO BE FILLED OUT WHEN DISCREPANCY HAS BEEN SATISFACTORILY SOLVED)*

FUNCTION	NAME/TITLE	SIGNATURE	DATE
ORIGINATOR			
CONTRACTOR			

### Contract Deliverable Requirements List

CDR #	CONTRACT DELIVERABLE REQUIREMENT	PWS #	FREQUENCY	WHEN	TO
1	Closing Status Report	5.12.1	Weekly	1 <sup>st</sup> business day	CO, GTR, GTM & M&M
2	Closing Performance Report	5.12.2	Monthly	7 <sup>th</sup> business day	CO, GTR, GTM
3	Deed and Closing Escrow Instructions	5.4	All closings	10th business day after initial assignment	M&M Contractor
4	Closing Package	5.11.4	All closings	Within 2 business days of the closing	M&M Contractor
5	Monthly Bank Statement	5.1.6	Monthly	10 business days following the statement ending date	GTR or designee

Closing Agent Services: State of Arizona  
R-DEN-02270

Attachment 9

(Sample Contractor-Provided Letter Requesting Past Performance Evaluation)

Date:

Ms. Xxxxx Smith, Title  
Name of Agency or Firm  
1111 X Street, Ste. 1100  
City, State, 20000

FAX: \_\_\_\_\_

SUBJECT: Past Performance of XYZ Corporation on Contract

Dear Ms. Smith:

XYZ Corporation recently completed [or is currently engaged under] contract \_\_\_\_\_,  
in which we provided \_\_\_\_\_ services for your [Department/Firm].  
The requirements of this contract were similar to the requirements of a solicitation for which XYZ  
Corporation has submitted a proposal to the U.S. Department of Housing and Urban Development (HUD).

As part of the proposal evaluation, I ask that you evaluate our performance under the subject contract by  
completing the attached evaluation form and faxing it within five days of receipt to the HUD, Attn: Rudy  
L. Julao, Contract Specialist, fax: (415) 489-6711. The completed form will be marked and treated as  
“Source Selection Information” in accordance with Federal Acquisition Regulation 3.104, Procurement  
Integrity, and it will not be released except to Government personnel needing the information for source  
selection purposes and to XYZ Corporation for comments during source selection.

Your cooperation in this matter is greatly appreciated.

John Doe  
Vice President  
XYZ Corporation

Closing Agent Services: State of Arizona  
R-DEN-02270

### Attachment 10

#### Past Performance Evaluation Survey of Closing Agent Services

**FROM:**  
(Insert Name of Firm or Organization)

1. Name of Offeror: \_\_\_\_\_
2. Contract Number: \_\_\_\_\_ Total Value: \_\_\_\_\_
3. Contract Type: \_\_\_\_\_  
Award Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_  
GTR/Contact Name: \_\_\_\_\_  
GTR/Contact Title: \_\_\_\_\_  
GTR/Contact Phone: \_\_\_\_\_

Describe in detail the product or service provided by Offeror.

4. Please rate the following services, if provided by the Offeror, and explain, in detail, the reason for each rating in the Comments Section.

- a) **Timeliness of Wire Transfer of HUD proceeds.** Please provide specific examples in your comments.

\_\_\_ Excellent \_\_\_ Good \_\_\_ Fair \_\_\_ Poor \_\_\_ Unacceptable \_\_\_ N/A

Comments:

- b) **Timeliness of Closing Package delivery to M&M contractor.** Please provide specific examples in your comments.

\_\_\_ Excellent \_\_\_ Good \_\_\_ Fair \_\_\_ Poor \_\_\_ Unacceptable \_\_\_ N/A

Comments:

**5. Overall Quality of Product/Services**

Excellent  Good  Fair  Poor  Unsatisfactory  
Comments:

**6. Timeliness of Performance - Closings**

Excellent  Good  Fair  Poor  Unsatisfactory  
Comments:

**7. Business Relations**

Excellent  Good  Fair  Poor  Unsatisfactory  
Comments:

**8. Would you select this firm again?**

Yes  No

Explain:

**Preparer Name:** \_\_\_\_\_  
(Please Print)

**Preparer Phone Number:** \_\_\_\_\_

**Preparer Signature:** \_\_\_\_\_

Please return this survey to:

Rudy L. Julao, Contract Specialist  
Dept. of Housing and Urban Development  
Fax: (415) 489-6711

**ATTACHMENT 11**

**Contractor Employee's Non-disclosure Agreement**

I understand that, as part of my duties under Contract # \_\_\_\_\_ (the "Contract"), I may have access to, or be provided, Government procurement-sensitive information, proprietary business information provided to the Government by other parties (e.g., other contractors), and/or personal information protected by the Privacy Act (all of this information is defined as "Protected Information" in this Agreement). I understand that for the purpose of this Agreement, Protected Information includes, but is not limited to the following: procurement planning information, contract information contained in individual contracts and Government procurement databases, proposal evaluation plans and evaluation results, negotiation strategies, technical, cost and business information contained in proposals submitted by entities competing for Government contracts; and, personal information (e.g., Social Security Numbers). I also understand that Protected Information may exist in different physical media (e.g. paper, electronic file, audio or video disc), or be transmitted orally.

I, further agree that I will not disclose, publish, divulge, release, or make known in any manner or to any extent, to any individual, except as authorized by the contracting officer, any Protected Information provided to me or legitimately obtained by me in the pursuit of my assigned duties during the course of my employment under this contract. I will not disclose, publish, divulge, release, or make known, any Protected Information that, in the future, may be made part of the public domain without prior authorization of the contracting officer. This prohibition also covers information provided by the Government or a contractor whether or not in its original form or a derivative form (i.e. where the information has been included in a contractor-generated work or where it is discernible from materials incorporating or based upon such information).

I further agree that I will use Protected Information only for official purposes in the performance of the Contract and will disclose such information only to those individuals who have a specific need to know in performance of official Government duties. I specifically will not disclose any such information to employees of my company or any other contractor employee(s) who have not signed this agreement. I will take all reasonable precautions to prevent the unauthorized disclosure and use of such information.

I also understand that the prohibitions and requirements in this Agreement have no expiration date.

I hereby certify that I have read the non-disclosure Agreement described above and I am familiar with the directives and policies governing the disclosure of procurement-sensitive information. I agree that I will fully and completely observe these directives and will not disclose such information to any unauthorized person, or use any information that I have obtained or been provided for private use or gain at any time, including subsequent to the performance of duties under the Contract.

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name