

Subsidized



U. S. Department of Housing and Urban Development  
Multifamily Property Disposition  
307 W. 7th Street, Suite 1000  
Fort Worth, TX 76102

## FORECLOSURE SALE

The following property is offered for sale at foreclosure in the manner specified below:

Name: Las Golondrinas Senior Housing

Address: 77 Kentucky Place, San Jose, CA 95116

No. of Units/Type: 50 total units / Senior 62+

#Subsidized / # Unsubsidized Units: 49 subsidized units / 1 Unsubsidized unit

### **Use Restrictions/Conditions of Foreclosure Sale:**

Project Rental Assistance Contract (PRAC) Subsidy, covering 49 out of 50 units, must be accepted by potential Purchaser. The PRAC contains long-term restriction and obligations and will be serviced by the local HUD office. Use Restrictions, including affordability restrictions, apply and will be monitored by the local HUD office, and HUD Property Disposition Division as applicable. Affordable Senior Housing at 50% AMI for 50 years per Use Agreement restriction.

### **Special Conditions/Announcements Minimum Bid:**

Only non-profit entities are eligible to bid, purchase and own the property due to its affordability restrictions.  
Minimum Stated Bid: \$8,644,161

### **Sale Information:**

October 15, 2025

10:00 a.m. (local time)

Santa Clara Courthouse, at the Gated North Market Street entrance of the Courthouse

191 North First Street, San Jose, CA 95113

**Written bids** will be accepted no later than **two (2) business days** prior to the date of the Foreclosure Sale.

Mail bids to: Steven Linkon, 1100 Bellevue Way NE, #474, Bellevue, WA 98004

by October 13, 2025, at 10:00 a.m. (local time).

**Oral Bids** will be accepted **on the day** of the foreclosure. The Foreclosure Sale will commence promptly at: 10:00 a.m. (local time) on October 15, 2025, located at: Santa Clara Courthouse, at the Gated North Market Street entrance of the Courthouse, 191 North First Street, San Jose, CA 95113.

### **Realty Specialist Contact Information:**

Karen Davis Rabb

US Department of Housing and Urban Development (HUD)

Office of Asset Management, Property Disposition Division

307 W. 7th Street, Suite 1000, Fort Worth, Texas 76102

Office: 817-978-5604

Email: [Karen.D.DavisRabb@hud.gov](mailto:Karen.D.DavisRabb@hud.gov) (preferred)

## INVITATION TO BID

Consistent with and subject to the terms and conditions herein, there is an opportunity to make an offer to purchase the Project, more particularly described below. This document, titled Invitation to Bid, sometimes referred to herein as the “Invitation,” and commonly known as the “Bid Kit,” sets forth the terms and conditions for the submission of a bid to acquire the Project at the foreclosure sale of the Project. This Invitation also includes information concerning Previous Participation Certification requirements, terms, conditions, and a list of the forms necessary to submit a complete, responsive bid.

### DEFINITIONS

1. *Act*: The Multifamily Mortgage Foreclosure Act, 12 U.S.C. §3701-17, as amended.
2. *Acknowledgment*: The contract executed at the Foreclosure Sale by the High Bidder, obligation the High Bidder to the terms and conditions of the Foreclosure Sale. The form is attached to this Invitation as Attachment B.
3. *Affiliate*: An individual or entity as defined in 2 C.F.R. §180.905 - Affiliate. An individual or entity is an affiliate of each other if, directly or indirectly, when either one controls or has the power to control the other or a third person controls or has the power to control both. The ways HUD may determine control include, but are not limited to, (a) interlocking management or ownership; (b) identity of interests among family members; (c) shared facilities and equipment; (d) common use of employees; or (e) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person. Affiliates of the defaulting borrower are prohibited from being the High Bidder.
4. *Approved High Bidder*: The High Bidder who, after the Foreclosure Sale, submits the Post-Bid Documents, demonstrates its eligibility to purchase the Property, and is approved by HUD to proceed to Closing.
5. *Balance*: The amount of money the High Bidder must pay at Closing. Balance is calculated by taking the High Bid amount less the Earnest Money Deposit plus all initial deposits to escrows and/or reserve accounts HUD may require as a condition of sale, less the proration of any Extension Fees and any outstanding encumbrance that survived the Foreclosure. Funds shall be paid only in the form of certified funds or cashier’s check made payable to: **THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**.
6. *Bidder*: An individual or entity that meets the eligibility requirement of this Invitation and registers with the Foreclosure Commissioner.
7. *Bid*: A legal offer from a Bidder of a certain amount to purchase the Property, submitted to the Foreclosure Commissioner either; (1) in writing two business days prior to the sale, or (2) orally during the Foreclosure Sale. No offers submitted via email, facsimile, orally to HUD staff prior to, during, or after the Foreclosure Sale will be considered valid bids.
8. *Closing*: The date where the obligations of HUD and High Bidder in the Acknowledgment are completed, including the transfer of title to the Property and the personal property to the High Bidder, which shall take place at a time specified by HUD.
9. *Controlling Participants*: Any individual and entity HUD determines to exercise financial or operational control over the owner, operator, borrower, management agent, landlord,

- construction manager, and general contractor. See 24 CFR §200.212 and §200.216.
10. *Earnest Money Deposit*: The amount identified in Section III, Subsection 4, that a Bidder must provide during the Foreclosure Sale to be eligible to submit a Bid.
  11. *Electronic Registration*: Electronic Registration refers to the Business Partner Registration system HUD uses to register all new partners we do business with. Through this system, a partner can register to do business with HUD, submit their Form HUD 2530, and obtain a WASS User ID to enable the processing and receipt of subsidies, including Section 8 vouchers for relocations. Please refer to Section II (4), Section IV (1)(a) & (b), and Section V (5).
  12. *Extension Fees*: A fee HUD assesses when the High Bidder requests an Extension Period for Closing. If authorized, the Approved High Bidder must pay for the entire Extension Period, the amount of which HUD determines, consistent with current policies and procedures.
  13. *Extension Period*: An additional thirty (30) calendar day period that HUD may give for the Closing to occur.
  14. *Foreclosure Commissioner*: An individual or entity HUD designates to conduct the Foreclosure Sale, pursuant to 12 U.S.C. §3704 and 24 C.F.R. §27.10. A Foreclosure Commissioner is designated for each sale due to varying circumstances.
  15. *Foreclosure Deed*: A no warranty deed that gives the High Bidder title to the Property. Form of the deed must comply with the Act.
  16. *Foreclosure Sale*: Sale of the Property pursuant to 12 U.S.C. §3710.
  17. *High Bid*: The highest responsive bid amount received by the Foreclosure Commissioner at the Foreclosure Sale.
  18. *High Bidder*: The bidder at Foreclosure Sale that submits the highest responsive bid amount to the Foreclosure Commissioner.
  19. *Invitation*: This Invitation to Bid including all the accompanying exhibits, which sets forth the terms and conditions of the sale of the Property at the Foreclosure Sale and includes information about the documents and actions necessary to submit a complete and responsive bid and for HUD to approve a bidder as qualified.
  20. *Owner*: The individual or entity that owns the Property after Closing. The terms Owner, High Bidder, and Approved High Bidder often refer to the same individual or entity, but are used separately to designate the point of the Foreclosure Sale.
  21. *Project Rental Assistance Contract (PRAC)*: A PRAC is a type of subsidy contract assigned by HUD to the High Bidder setting forth the rights and duties of the parties with respect to the project and the subsidy payments under the PRAC.
  22. *Previous Participation Certification*: This Certification is often referred to its form number, Form HUD-2530 or e-2530, as required pursuant to HUD Notice H 2016-15 Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs' Participants. Any Controlling Participant who is engaged to do business with HUD is required to submit this form either electronically or a paper copy, and receive an approval prior to conducting business with HUD. The Previous Participation Certification form is part of an application, used to disclose current and previous property ownership and management experience to HUD.
  23. *Post-Bid Documents*: All documents, statements, and forms listed in the Invitation that must be submitted by the High Bidder and its principals and management company, if any, in order to be considered for HUD-approval.

24. *Post-Closing Repairs*: All HUD-required repair and/or rehabilitation work that the Approved High Bidder/Owner must perform after Closing in a workmanlike manner, and compliant with state and local codes, laws, ordinances, regulations, and HUD's Physical Condition Standards found in 24 C.F.R. § 5.703. If Post-Closing Repairs are required, this information will be disclosed in the attachments to this Invitation, with a list of HUD-required repairs on Form HUD-9552. HUD has estimated the cost of these repairs. Actual costs ultimately incurred by the Approved High Bidder/Owner may be more or less than the estimates.
25. *Principal*: (a) an officer, director, owner, partner, principal investigator, or other person within an entity with management or supervisory responsibilities related to a covered transaction; or (b) a consultant or other person, whether or not employed by the participant or paid with Federal funds, who (1) is in a position to handle Federal funds; (2) is in a position to influence or control the use of those funds; or, (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction; or (c) a person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. For a complete definition, see 2 C.F.R. §180.995 – Principal, as supplemented by 2 C.F.R. §2424.995.
26. *Property (aka Project)*: The multifamily housing property for sale in this Invitation and all real and personal property appurtenant thereto.
27. *Property Summary*: Attachment A to the Invitation that contains summarized information about the Property and contact information for the Realty Specialist. The information contained therein is intended to help Bidders perform due diligence and is the extent of information that HUD will give about the Property.
28. *Realty Specialist*: HUD staff member, identified on the cover page and the Property Summary, who can be contacted concerning the Property or the Foreclosure Sale.
29. *Second High Bidder*: The responsive Bidder with the second highest Bid at the Foreclosure Sale. If sale to the High Bidder is not completed, HUD may contact the Second High Bidder to accept its Bid.
30. *Use Agreement*: The Foreclosure Sale Use Agreement, if applicable, will be attached to this Invitation. The Approved High Bidder will execute at Closing, and which will run with the land to bind the Owner and any permitted successors and assigns, to purchase and/or manage the Property. This may be an addition to any Deed restrictions.

## **SECTION I: INTRODUCTIONS AND GENERAL INFORMATION**

1. *All Cash, As-Is Sale*: The Foreclosure Sale is an "All Cash, As-Is" sale. All Bidders are expected to perform their own due diligence to reach their own conclusions as to physical condition, number and occupancy of revenue producing units, estimates of operating costs, repair costs (where applicable), and any other factors bearing on the valuation of the Property. While HUD has exercised care to provide accurate information, all information provided herein is solely for interested Bidders to determine whether or not the Property is of such type and general character to purchase. HUD makes no warranty as to the accuracy of this information. A Bidder's failure to be fully informed as to the conditions of the Property, including its value, or any conditions of the Foreclosure Sale do not constitute ground for any claim or demand against HUD or the adjustment or withdrawal of any Bid,



including the High Bid. HUD shall consider all Bids to have been made with full knowledge of the terms, conditions, and requirements contained in this Invitation.

2. *Contingencies:* HUD will not consider Bids that are contingent upon a Bidder obtaining financing to purchase the Property or any other contingency. By signing the Acknowledgement, the High Bidder represents that its High Bid is assured.
3. *Modification to the Invitation:* Any oral modification by any HUD representative that changes or supplements this Invitation, or any conditions hereof, is unauthorized, unenforceable, and shall confer no right upon a Bidder, including the Approved High Bidder. All modifications to the Invitation will be in writing.
4. *Bid Acceptance or Rejection:* At any time prior to Closing and upon its sole discretion, HUD reserves the right to reject any and all Bids, to waive any informality in any received Bid, and to reject the Bid of any Bidder HUD determines is ineligible, lacks the experience, ability, or financial responsibility necessary to own and manage the Property in a manner acceptable to HUD.
5. *Cancellation of Sale:* HUD reserves the unconditional right to cancel this Invitation and reject any and all Bids at any time prior to Closing without recourse to HUD. HUD is not liable for any expenses incurred by a Bidder or its related parties.

## **SECTION II: PRIOR TO THE FORECLOSURE SALE**

1. *General:* In accordance with the intent of the National Housing Act, participants of HUD's housing programs must be responsible individuals and organizations who honor their legal, financial, and contractual obligations. HUD will review and approve the Previous Participation Certification of High Bidder's Controlling Participants before Closing.
2. *Due Diligence:* Interested parties, their agents, and advisors should carefully review the information in this Invitation and any additional information HUD makes available prior to the Foreclosure Sale. As a general policy, HUD will not release the most current financial information for the Property other than what has been disclosed in this Invitation and the Property Summary. Bidders should undertake their own investigation to evaluate the Property and independently assess the benefits and risks associated with the Property. Bidders should be confident in their Bid amount and be prepared to follow through Closing. HUD will not negotiate to reduce any Bid amount after accepted at the Foreclosure Sale.
3. *Bidders Pre-Foreclosure Sale Conference Call:* HUD may decide to hold a conference call for all interested parties prior to the Foreclosure Sale. If a call is scheduled, information will be found on the Property Disposition website. On the call, HUD will discuss the Invitation, review the rules of the Foreclosure Sale, provide updates on the Property, and answer any questions interest parties may have. Following the conference call, all questions and answers will be posted to the same website to ensure that all interested parties receive the same information.
4. *Site Visit:* To give interested parties additional information and view portions of the Property, HUD may choose to conduct an Open House or a Virtual Tour. If a tour is available, information will be found on the Property Disposition website. HUD is not always in a position to provide a tour prior to a Foreclosure Sale. If an in-person tour is scheduled, a HUD representative will be present to walk through the Property. HUD will establish the scope of the site visit. Not all areas of the Property may be available for viewing. HUD will not accept Bids, nor provide information outside of this bid kit, during a Site Visit.

5. *Electronic Registration:* Registration in HUD's Business Partner Registration prior to the Foreclosure Sale is not mandatory to submit a Bid. However, a Bidder may complete this step prior to the Foreclosure Sale to reduce the amount of time between the Foreclosure Sale and Closing. HUD can take up to two (2) weeks to process registration requests. While the High Bidder is the only Bidder required to complete the Previous Participation Certification (e-2530), every Bidder may register in the event they become the High Bidder.

a. If a Bidder **has not previously conducted business with HUD**, the Bidder must first register with HUD's Secure Systems before submitting a Previous Participation Certification (e-2530) application. The Bidder should follow these steps:

i. A Bidder accesses HUD's [Business Partner Registration](#) to register a new entity with HUD. Wait twenty-four (24) hours to access the Secure Systems [Coordinator or User Registration link](#) to complete the registration for the individual that will have access to Secure Systems. The applicant will receive a Coordinator/User ID within two (2) weeks. With these credentials, a Bidder can complete the required Previous Participation Certification (e-2530) in the next step.

ii. A Bidder then completes a Previous Participation Certification (e-2530) application in HUD's single sign-on page then select [Active Partners Performance System \(APPS\)](#).

b. Bidders that **have previously conducted business with HUD** can complete the Previous Participation Certification (e-2530) application prior to the Foreclosure Sale by accessing [Active Partners Performance System \(APPS\)](#).

6. *Questions:* Please direct questions related to this Invitation and the Foreclosure Sale to the Realty Specialist identified in the Property Summary, after you have read this packet in its entirety. The Realty Specialist cannot provide information other than information in this Bid Kit or information posted on the Property Disposition Website.

### **SECTION III: DURING THE FORECLOSURE SALE – REGISTERING AS A BIDDER AND SUBMITTING BIDS**

1. *General:* The Foreclosure Sale is an oral, open bid sale that takes place at the date, time, and place as shown on the cover of this Invitation. HUD designated a Foreclosure Commissioner to conduct the Foreclosure Sale. The Foreclosure Commissioner is empowered with the authority to conduct the Foreclosure Sale in an appropriate manner, using the rules and guidelines herein as the framework for the Foreclosure Sale.

2. *Bidder Eligibility:* Pursuant to 24 CFR §27.20, the defaulting mortgagor or any Principal, successor, Affiliate, or assignee thereof on the multifamily mortgage being foreclosed is not eligible to Bid or otherwise acquire the Property. Additionally, the FHA-lender or any Principal, successor, affiliate, or assignee thereof on the multifamily mortgage being foreclosed is not eligible to Bid or otherwise acquire the Property. To be eligible to bid, each Bidder must be a single-asset private nonprofit organization (as defined in 24 CFR 891.205). The High Bidder will receive, as a condition of sale, project rental assistance payments to operate supportive housing for the elderly as its legal owner. Bidders may be an instrumentality of a public body. The purposes of the Bidder must include the promotion of the welfare of the elderly. Bidders may not be controlled by or be under the direction of persons or firms seeking to derive profit or gain therefrom.

3. *Bidder Enrollment:* At the Foreclosure Sale and prior to the commencement of bidding, a Bidder must enroll with the Foreclosure Commissioner. The Foreclosure Commissioner will ask for the name of the Bidder, the name of the individual representing the Bidder, and the Bidder's address and contact information. The Foreclosure Commissioner will also collect the Bidder's Earnest Money Deposit and assign each enrolling Bidder a unique number. The unique number will be used to identify each Bidder during the Foreclosure Sale. Bidder must present valid evidence of nonprofit existence, including 1) a copy of a 501(c)(3) designation from the Internal Revenue Service, 2) a copy of filed articles of incorporation from the Bidder's state of incorporation, or 3) any other documentary evidence the Bidder is validly existing nonprofit entity. Failure to produce sufficient documentation of nonprofit status will result in the Foreclosure Commissioner not registering a Bidder. The Foreclosure Commissioner will commence the Foreclosure Sale when all Bidders in attendance are enrolled. Enrollment as a Bidder does not mean that Bidder is qualified to purchase the Property.
4. *Earnest Money Deposit:* The Foreclosure Commissioner must receive the Earnest Money Deposit before the Foreclosure Sale commences. The Earnest Money Deposit shall be paid only in the form of certified funds or cashier's check made payable to: **THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**. If a Bidder is a financial institution, the Earnest Money Deposit must be drawn from a different financial institution. Deposits will generally be set according to the following schedule:

Project Size	Earnest Money Deposit
200 units or more	\$100,000
100 to 199 units	\$75,000
50-99 units	\$50,000
25-49 units	\$25,000
5-24 units	\$10,000

5. *Bid Requirements:* A responsive Bid must meet all the terms of the Foreclosure Sale. Each Bid shall be firm, unconditional, fixed in an amount certain, and not in the alternative. Special conditions, alterations, or deletions will render a Bid non-responsive. A Bidder must submit a Bid in one of two ways:
- Written Bids:* HUD will only accept a written Bid if received in a sealed envelope and accompanied with the Earnest Money Deposit. The Foreclosure Commissioner must receive a written Bid at least two (2) business days prior to the Foreclosure Sale; the date is stated on the cover page of this Invitation. There is no guaranty written Bids received by the Foreclosure Commissioner less than two (2) business days before the Foreclosure Sale will be accepted, even if the bid has the appropriate postmark. No delay will warrant an exception. If a Bidder desires to modify or alter a written bid after the Foreclosure Commissioner accepts, the Bidder must do so in writing at least twelve (12) hours prior to the time the Foreclosure Sale commences.
  - Oral Bids:* At the Foreclosure Sale and using the assigned number provided, a Bidder orally states a Bid. Oral Bids can be modified orally up until the Foreclosure declares the High Bid.
  - Electronic Bids:* HUD will reject and will cause the Foreclosure Commissioner to reject Bids and Bid modifications received through e-mail, facsimile, or other electronic means. Electronic Bids are not valid Bids. All Bids must be submitted in accordance with this Invitation.

6. *Minimum Bid*: If HUD has a minimum Bid amount, HUD will disclose the amount on the cover page. If no minimum Bid is listed, HUD does not have a minimum Bid to purchase the Property.
7. *High Bidder at the Foreclosure Sale*: After reviewing all Bids, the Foreclosure Commissioner concludes the Foreclosure Sale and orally notifies the High Bidder and Second High Bidder of their respective bidding positions. The Property will be sold to the High Bidder. The Foreclosure Commissioner will retain the Earnest Money Deposit for the High Bidder and immediately cause the High Bidder to execute the Acknowledgment. All collected Earnest Money Deposits from the other Bidders will be returned before the Bidder leaves the Foreclosure Sale. The Foreclosure Commissioner will return the Earnest Money Deposits received for written Bids within seven (7) business days.
8. *Continuance of Offers*: Even though the Earnest Money Deposit is returned to unsuccessful Bidders, HUD considers all received Bids at the Foreclosure Sale as continuing offers until Closing. HUD will keep the contact information of the Second High Bidder in the event that Closing with the High Bidder does not occur. HUD may contact the Second High Bidder to accept the previously submitted Bid.

#### **SECTION IV: AFTER FORECLOSURE SALE AND LEADING UP TO CLOSING**

1. *Post-Bid Documents*: The High Bidder must submit the following items (“Post-Bid Documents”) to the Realty Specialist within **five (5) business** days of the Foreclosure Sale so HUD can timely complete its review and approval. The Post-Bid Documents must show the High Bidder’s capacity to own and operate the Property. Based on the required information and documents set forth below, as well as any additional information independently obtained and verified by HUD, in its sole discretion, HUD will determine whether the High Bidder is eligible, has the requisite experience, qualification, and financial capacity to purchase the Property.

#### **FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME MAY BE GROUNDS FOR HUD TO REJECT THE HIGH BID AND RETAIN THE HIGH BIDDER’S EARNEST MONEY DEPOSIT.**

- a. Previous Participation Certification (HUD 2530): Submit a Previous Participation Certification for the High Bidder and, if applicable, the intended Management Agent.
  - i. *Electronic Submission*: If the High Bidder already has access to Secure Systems, it can submit an electronic Previous Participation Form (e-2530) through APPS and provide proof of the electronic submission to the Realty Specialist. The High Bidder can print the signature page showing all participants listed, the required certifications, and electronic signatures. If the High Bidder has not previously registered, since there will be insufficient time to file electronically, the High Bidder must submit a paper Previous Participation Certification (HUD 2530).
  - ii. *Paper Submission*: The High Bidder will provide a completed paper [Previous Participation Certification \(HUD 2530\)](#) with original signatures for the High Bidder and its controlling participants. The intended ownership entity must have established a tax identification number (TIN) and each individual must list their social security number (SSN). Paper submissions must include:

1. Organizational chart: a visual chart for the ownership entity that shows each ownership tier, the roles of each controlling participant within the organization who retain more than 25% ownership interest.
2. Organizational documents including the following as applicable: Articles of Incorporation, Certificate of Incorporation, Operating Agreement, Partnership Agreement, Charter, By-Laws, Agent Certification, proof of TIN.

b. Management Agent Application:

- i. Resume for Controlling Participants.
- ii. Management Agent entity's organizational documents including the following,  
as applicable: Articles of Incorporation, Certificate of Incorporation, Operating Agreement, Partnership Agreement, Charter, By-Laws, Agent Certification, proof of TIN.
- iii. Management Agent Agreement.
- iv. Management Agent Entity Profile [Form HUD 9832](#)
- v. Project Owner's/Management Agent's Certification Form HUD [9839-A](#), [9839-B](#) or [9839-C](#), as applicable.

c. Affirmative Fair Housing Marketing Plan (AFHMP) Form HUD-935.2A: Please complete for all Section 8 HAP subsidized properties.

d. Certification of Substantial Compliance: The High Bidder must submit a complete and original Certification of Substantial Compliance, located in the attachments to this Invitation. If HUD determines that properties disclosed by the High Bidder are not in substantial compliance with federal regulations and state and local codes, HUD may reject the High Bidder as not qualified to purchase the Property. The High Bidder may forfeit the Earnest Money Deposit as a result of such determination by HUD.

e. Written Statement of Experience: The High Bidder must submit a written Statement of Experience that demonstrates at least five (5) years of experience successfully owning and managing properties similar to the Property. Please do not exceed five (5) pages per property and provide the following information for all properties owned by the High Bidder:

- i. The location of other owned multifamily properties.
- ii. The number of units and construction type (garden, walk-up, hi-rise, etc.) for each property.
- iii. The type of management for each property.
- iv. Whether the properties have government assistance (I.e., project-based or tenant-based assistance, tax-credit, municipal grants, etc.)
- v. The physical, economic, and social needs of each property and how the High Bidder has addressed them.

The High Bidder's plan to satisfy the conditions of the Foreclosure Sale; implement a sound financial and physical management program for the property; respond to the needs of the tenants; work cooperatively with resident organizations; provide organizational staff and financial resources; provide services, maintenance, and utilities to the Property.

- f. Personal Financial and Credit Statement: The High Bidder must submit [Form HUD-92417](#) for each proposed Principal of the High Bidder.
2. *Acceptance of High Bid*: HUD does not fully accept the High Bid until the High Bidder all submits Post-Bid Documents, HUD reviews the Post-Bid Documents, and HUD, in its sole discretion, determines the eligibility of the High Bidder. HUD will notify the High Bidder of its determination in writing. Upon HUD's determination that the High Bidder is qualified, the High Bidder will be confirmed as the Approved High Bidder.
3. *Rejection of High Bid*: After review of the Post-Bid Documents, HUD may determine that the High Bidder is not qualified to purchase the Property. HUD may reject the bid due to High Bidder's ineligibility, lack of qualifications, or failure to comply with the Invitation. HUD will notify the High Bidder of this determination in writing, as promptly as possible and generally within thirty (30) days after the Foreclosure Sale. HUD may then contact the Second High Bidder.
4. *Impact on Earnest Money Deposit*:
  - a. If HUD accepts the High Bid, the Approved High Bidder's Earnest Money Deposit will be credited toward the Purchase Price.
  - b. If HUD rejects the High Bid because the amount is unacceptable, HUD will refund Earnest Money Deposit will be refunded.
  - c. If HUD determines the High Bidder is not qualified to purchase the Property and the High Bidder has complied with the requirements of this Invitation, HUD will refund the Earnest Money Deposit.
  - d. If HUD finds that the High Bidder made misrepresentations or material omissions in its submission, or failed to comply with the Invitation, HUD will keep the Earnest Money Deposit.
5. *Extensions*: The Approved High Bidder may request an additional thirty (30) calendar day period to allow more time for the Closing to occur. A written request clearly stating the reason for the Approved High Bidder's inability to close the sale, by the scheduled Closing date or by the end of any Extension Period, must be received within ten (10) days prior to the Closing date or the end of any extension period.
6. *Post Bid Site Visit*: HUD will not grant any High Bidder request to tour, visit, or otherwise have access to the Property prior to closing. To this end, HUD encourages participation in the site visit before the Foreclosure Sale, if available.
7. *Closing Date*: The time and place for the Closing will be determined by HUD. The Closing date will occur within the time specified in the Acknowledgment. HUD reserves the right to extend the Closing date or revise the location.

## **SECTION V: CLOSING**

1. *Conveyance*: In accordance with the Act, HUD will convey the Property to the Approved High Bidder through a Foreclosure Deed. The Foreclosure Deed will not contain any warranties of title. The Foreclosure Deed is not subject to a redemption period by the defaulting owner of the Property. When the Invitation indicates, the Approved High Bidder and HUD will execute the Use Agreement and record as part of the Foreclosure Deed.
2. *Amounts Due at Closing*: The Foreclosure Sale is an all-cash sale. HUD is not offering financing to purchase the Property. At Closing, the Approved High Bidder will pay the



Balance. HUD will not proceed with the Closing without acceptable receipt of the Balance, which shall be paid only in the form of certified funds or cashier's check made payable to: **THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

3. *Closing Expenses:* HUD will pay all recordation fees for the Foreclosure Deed, and if applicable, the Use Agreement. Irrespective of local custom, the Approved High Bidder shall pay all remaining expenses including, but not limited to, all documentary stamp taxes, and any costs incurred in connection with a review of title or title insurance.
4. *Prorations:* Approved High Bidder is responsible for paying all taxes, assessments, liens, and utility bills including, but not limited to, water, sewer, gas, electric, and any other encumbrances not extinguished by the Foreclosure Sale. These amounts will not be prorated from the High Bid or attributed to the Balance. If HUD received any rental payments from tenants living in the Property on the day of Closing, those rental payments will not be prorated nor credited toward the High Bid or attributed to the Balance.
5. *Extension Fees:* If Approved High Bidder paid Extension Fees and the Closing occurs prior to the expiration of an Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period will be credited toward the Balance at Closing. This is the only amount HUD will prorate.
6. *PRAC Condition of Sale:* To maintain the PRAC at the Property, at Closing, HUD will assign a certain Project Rental Assistance Contract (PRAC) to the High Bidder and the High Bidder will accept the assignment. Additionally, HUD will assign all rights and duties under the existing Capital Advance Agreement. HUD will exercise its Attorney-in-Fact authority under both the PRAC and Capital Advance Agreement to assign them to the High Bidder. The form Assignment to be executed will be attached as Exhibit C.

## **EXHIBITS AND ATTACHMENTS**

- Exhibit 1: Legal Description
- Exhibit 2: Property Photos
- Exhibit 3: Assignment of PRAC and Capital Advance Agreement with attachments

Attachment A: Property Summary

Attachment B: Terms and Requirements of Foreclosure Sale Bidder Acknowledgment

Attachment C: Foreclosure Sale Use Agreement with riders

Attachment D: Owner's Physical Condition Standards Inspection and Certification

Attachment E: Post Closing Repair Requirements

Attachment F: Post Closing Repair Report

Attachment G: Certificate of Substantial Compliance

Attachment H: Reserved

Attachment I: Reserved

Attachment J: Reserved

Attachment K: DUNS/CCR Registration Certification

Attachment L: Reserved

Attachment M: Reserved



Exhibit 1  
**LEGAL DESCRIPTION**

LEGAL DESCRIPTIONS ARE PROVIDED AS INFORMATION ONLY. INTERESTED PARTIES MUST ASCERTAIN LEGAL DESCRIPTIONS THROUGH THEIR OWN DUE DILIGENCE.

Exhibit 2  
**Subject Photos**

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Street View – Kentucky Place – North Facing



Street View – Kentucky Place – South Facing



Exterior



Interior

*Additional photos are included in the Addenda*



## Subject Photographs



Parking Lot



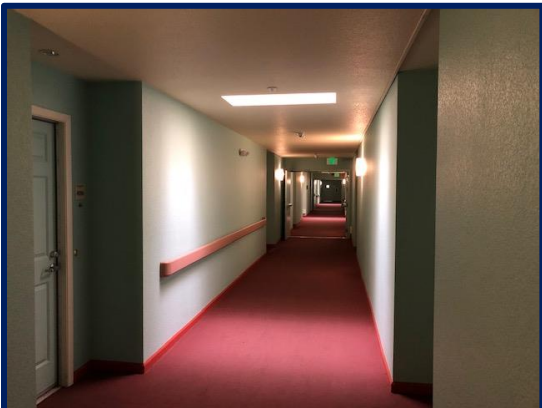
Elevator



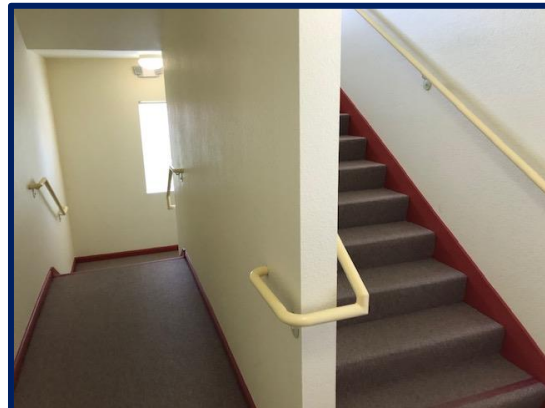
Mailboxes



Hallway



Hallway



Stairwell

LAS GOLONDRINAS SENIOR HOUSE  
ADDENDA



Kitchen



Bedroom



Balcony



Living Room



Shower



Lavatory

**EXHIBIT 3**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**PROJECT RENTAL ASSISTANCE CONTRACT**  
**AND CAPITAL ADVANCE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PROJECT RENTAL ASSISTANCE CONTRACT AND CAPITAL ADVANCE AGREEMENT (herein called the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by the United States of America, acting through Department of Housing and Urban Development (herein called "HUD") and \_\_\_\_\_, a California nonprofit corporation, (herein called "the Buyer").

**WHEREAS**, HUD and \_\_\_\_\_, a California nonprofit corporation (the "Prior Owner") pursuant to Section 202 of the Housing Act of 1959, 12 USC 1701q (the "Act"), entered into a Project Rental Assistance Contract (herein called the "PRAC") identified as PRAC Contract Number \_\_\_\_\_ for units in the \_\_\_\_\_ (herein called "the Property"), a copy of which is attached hereto as "Exhibit A";

**WHEREAS**, HUD and the "Prior Owner" pursuant to the Act, entered into a Capital Advance Agreement (herein called the "Capital Advance Agreement") identified as Project Number \_\_\_\_\_ for units in the Property, a copy of which is attached hereto as "Exhibit B";

**WHEREAS**, the Prior Owner default on both the PRAC and the Capital Advance Agreement, and under both agreements, HUD has the attorney-in-fact authority to

**WHEREAS**, HUD and Buyer have entered into a Contract of Sale, dated as of \_\_\_\_\_ 20\_\_, wherein HUD agrees to sell the Property and the Buyer agrees to purchase the Property, including, without limitation, the improvements situated thereon, and has agreed to accept the assignment of and assume all obligations under the PRAC and the Capital Advance Agreement;

**WHEREAS**, HUD and the Buyer mutually desire to assign the PRAC and Capital Advance Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the sum of Ten Dollars (\$10.00) in hand paid and other good consideration, the receipt of which is hereby acknowledged, and in order to comply with the requirements of the Secretary, the Act, and the regulations adopted pursuant thereto, the parties hereto agree as follows:

1. HUD, on behalf of the Prior Owner, hereby irrevocably assigns the PRAC and Capital Advance Agreement to the Buyer together with all rights and obligations in and under said contract.
2. Effective as of the date of this Agreement the Buyer agrees to assume and to be bound by said PRAC and Capital Advance Agreement as modified herein.'
3. Effective as of the date of this Agreement, the Prior Owner is released from any future obligations under the PRAC and the Capital Advance Agreement, excepting that the Prior Owner shall remain responsible for filing the AFS through the day before this Agreement.

Nothing in this Agreement shall waive, compromise, impair, or prejudice any right HUD may have against the Prior Owner for any violation of the PRAC that may have occurred prior to the date of this Agreement.

4. This Agreement shall be construed under the laws of the State of California and, to the extent inconsistent with the laws of the State of California, the laws of the United States of America. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
5. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.
6. HUD, by the signature of its authorized representative below, consents to assignment made hereby. Said consent shall be void *ab initio* if the Secretary determines that Buyer, or any principal or interested party of the Buyer, is debarred, suspended, or subject to a limited denial of participation under 24 CFR Part 24, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

**NOTHING** in this Agreement shall in anyway impair the PRAC or Capital Advance Agreement or alter, waive, annul, vary, or affect any provision, condition, or covenant therein, except as herein specifically provided, or affect or impair any rights, powers, or remedies under the PRAC or the Capital Advance Agreement, it being the intent of the parties hereto that the terms and conditions of the PRAC and Capital Advance Agreement shall continue in full force and effect.

**BUYER**

By

Signature of Buyer

Name of Buyer (print)

Signature of authorized representative

Name and title (print)

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

By

Signature of authorized representative

Name and title (print)



DOCUMENT 17255147

Pages: 14



\*0017255147\*

Fees....	46.00
Taxes...	
Copies..	
AMT PAID	46.00

Recording Requested By  
and When Recorded Mail To:

U.S. Department of Housing  
and Urban Development  
P. O. Box 36003  
450 Golden Gate Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94102

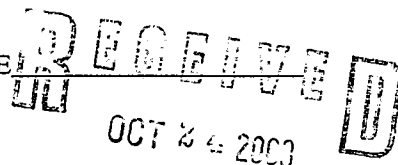
BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Alliance Title Company

RDE # 001  
8/07/2003  
2:21 PM

ATTN: Rosemarie Fernandez-Pifer, Office of Counsel

*Exempt from Recording Fee per Govt. Code 27383*

SPACE ABOVE THIS LINE FOR RECORDER'S USE



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

US Dept. HUD  
Assistant General Counsel  
Hawaii

**REGULATORY AGREEMENT  
HOUSING FOR THE ELDERLY OR HANDICAPPED  
(NONPROFIT)**

Section 202 of the Housing Act of 1959 or  
Section 811 of the National Affordable Housing Act

Project No. 121-EE138-NP-WAH

## Capital Advance Program

### Regulatory Agreement

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

Housing for the Elderly or Handicapped (Nonprofit)  
Section 202 of the Housing Act of 1959 or Section 811 of  
the National Affordable Housing Act.

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This agreement entered into this 1st day of August, 2003, between Las Golondrinas Housing Corporation, a California nonprofit public benefit corporation, whose address is 130 North Jackson Avenue, San Jose, California 95116, hereinafter called Mortgagor, and the undersigned Secretary of Housing and Urban development hereinafter called HUD.

In consideration of the making of the capital advance by HUD and the disbursement of any part thereof, and in order to comply with requirements of the Housing Act of 1959 or National Affordable Housing Act of 1990 and the Regulations adopted by the Secretary pursuant thereto, the Mortgagor agrees for itself, its successors and assigns, and any owner of the mortgaged property, that in connection with the mortgaged property and the project operated thereon and so long as the capital advance is outstanding:

1. The Note and Mortgage bear no interest and repayment is not required so long as the housing remains available for very low-income elderly persons or very low-income persons with disabilities (whichever is applicable).
2. Mortgagor will establish and maintain a special fund to be known as the revenue fund account in a bank which is a member of the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund, into which will be deposited all rentals, charges, income and revenue arising from the operation or ownership of the project. The bank in which this account is established shall provide collateral acceptable to HUD to equal the maximum amount in the account at any one time when such amount exceeds \$100,000. If the bank will not provide appropriate collateral in such instances, the Mortgagor will be required to establish accounts in two or more banks so that the total amount on deposit at any time does not exceed \$100,000 in any one bank. Expenditures shall be made from the revenue fund account only in accordance with the operating budget submitted to and approved by HUD.
3. Not later than 30 days prior to the beginning of each fiscal year, the Mortgagor shall submit an operating budget for that fiscal year to HUD. The budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incident to the operation of the project; and shall show the expected revenue to pay such expenses, including reserve fund deposits. The

expenses incurred and disbursements shall not exceed the reasonable and necessary amount thereof, and the Mortgagor will not expend any amount or incur any obligations in excess of the amounts approved in the annual operating budget except upon written certification by the Mortgagor to HUD that such expenses were unanticipated and are necessary and provided further, that nothing in this section shall limit the amount which the Mortgagor may expend from funds obtained from some other source than project revenues or other funds required of the Mortgagor pursuant to this Agreement of the Capital Advance Agreement.

4. As security for the Capital Advance for the required payments under this Agreement into the reserve fund for replacements, and for all other obligations of the Mortgagor under this Agreement, the Mortgagor hereby assigns, pledges and mortgages to HUD all its rights to the income and charges of whatever sort which it may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents or project income in the Mortgage referred to herein. Until a default occurs under this Agreement, however, permission is granted to Mortgagor to collect and retain under the provisions of this Agreement such rents, income, operating surplus and charges, but upon default this permission is terminated, as to all rents, income, operating surplus and charges due or collected thereafter.

5.

- (a) Mortgagor will establish and maintain a reserve fund for replacements in a separate account in a bank which is insured by the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Concurrently with the effective commencement of rental assistance payments under the Project Rental Assistance Contract, the Mortgagor will deposit an amount equal to \$2,439 per month unless a different date or amount is approved in writing by HUD.

Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be subject to the control of HUD. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project for any other purpose, may be made only after the consent in writing of HUD. In the event of a default in the terms of the mortgage, HUD may demand the full or partial application of the balance in such fund to be amount due on the mortgage debt.

- (b) Mortgagor will deposit the minimum capital investment with an escrow agent acceptable to HUD pursuant to Regulations.

- (c) Within 60 days after the end of each fiscal year, any residual receipts realized from the operation of the mortgaged property shall be deposited in a separate residual receipts account. Residual receipts shall be under the control of HUD and shall be disbursed only at the discretion of HUD for such purpose as it may determine to be necessary or appropriate.
- 6. The real property covered by the Mortgage and this Agreement is described in Schedule A attached hereto.
- 7. Mortgagor shall not without the written approval of the Secretary:
  - (a) Transfer, dispose of or encumber any of the mortgaged property. Any such transfer shall be only to a person or persons or corporation satisfactory to and approved by HUD, who shall, by legal and valid instrument in writing, to be recorded or filed in the same recording office in which conveyances of the property covered by the Mortgage are required to be filed or recorded, duly assume all obligations under this Agreement and under the Note and Mortgage;
  - (b) Assign, transfer, dispose of, or encumber any personal property, including rents or charges, and shall not disburse or pay out any funds except as provided herein and in the Capital Advance Agreement.
  - (c) Remodel, reconstruct, add to, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
  - (d) Pay any compensation or make any distribution of income or other assets to any of its officers, directors or stockholders;
  - (e) Enter into any contract or contracts for supervisory or managerial services;
  - (f) Require as a condition of occupancy or leasing of any unit or residential space in the project, any consideration or deposit other than a security deposit in an amount equal to one month's total tenant payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Mortgagor may collect the security deposit on an installment basis.

The security deposits must be placed in a segregated interest-bearing account. A record shall be maintained of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement, the Mortgagor shall allocate to the family's balance, the interest accrued on the balance during the year. Unless prohibited by State or local law, the Mortgagor may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance

for the year. The amount of the segregated, interest-bearing account maintained by the Mortgagor must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Mortgagor must comply with any applicable State and local laws concerning interest payments on security deposits.

The Mortgagor, subject to State and local law, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease in accordance with the Regulations.

- (g) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by HUD.
  - (h) Amend its articles of incorporation or by-laws other than as permitted under the terms of the articles of incorporation approved by HUD.
8. Mortgagor shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good and substantial repair and condition; provided that, in the event all or any of the buildings covered by the Mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the Mortgage.
9. Mortgagor shall not file any petition in bankruptcy or insolvency, or for a receiver, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors; or permit an adjudication in bankruptcy, or insolvency, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within 45 days.
10. Mortgagor shall from funds other than project income immediately satisfy or release any mechanic's lien, or any other lien which attaches to the mortgaged property or any personal property used in the operation of the project, and shall dismiss or have dismissed or vacated any receivership, or petition in bankruptcy or assignment for benefit of creditors, creditors bill or insolvency proceeding involving the project or the mortgaged property.
- 11.
- (a) If the Mortgagor has or comes to have any nonproject funds, all income and other funds of the mortgaged project shall be segregated from any such funds of the Mortgagor and segregated from any funds of any other corporations or persons. Income and other funds pledged to the mortgaged project shall be expended only for the purposes of the project.

- (b) Mortgagor shall provide for the management of the project satisfactory to HUD. Any management contract entered into by the Mortgagor involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by HUD addressed to the Mortgagor and the management agent. Upon receipt of such request the Mortgagor shall immediately move to terminate the contract within a period of not more than 60 days and shall make arrangements satisfactory to HUD for continuing proper management of the project.
- (c) Neither Mortgagor nor its agents shall make any payments for services, supplies or materials unless such services are actually rendered for the project or such supplies or materials are delivered to the project and are reasonably necessary for its operation. Payments for such services or materials shall not exceed the amount ordinarily paid for such services, supplies or materials in the area where the services are rendered or the supplies or materials furnished.
- (d) The mortgaged property, equipment, buildings, plans, offices, devices, books, apparatus, contracts, records, documents, and all other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD and its duly authorized agents. Mortgagor and its successors, assigns or its agents shall retain copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by HUD or its duly authorized agents.
- (e) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of HUD.
- (f) Within 60 days following the end of each fiscal year HUD shall be furnished with a complete annual financial report based upon an examination of the books and records of Mortgagor prepared in accordance with the requirements of HUD, certified to be an officer of the Mortgagor and, when required by HUD, prepared and certified by a Certified Public Accountant, or other person accepted to HUD.
- (g) At the request of HUD, its agents, employees or attorneys, the Mortgagor shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the Mortgage and any other information with respect to the Mortgagor or the mortgaged property and of the project which may be requested.
- (h) All receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the FDIC, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project. Any person receiving funds of the project shall immediately deposit such

funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any person receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.

- (i) Mortgagor shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect a license to operate the project from the State and/or other licensing authority. Mortgagor shall lease any portion of the project only on terms approved by HUD.
- (j) Mortgagor shall not collect from tenants or occupants or prospective tenants or occupants of the project any admission fee, founder's fee, life-care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.
- (k) No officer, director, trustee, member, stockholder nor authorized representative of the Mortgagor except for management by sponsor or non-profit affiliate, shall have any financial interest in any contractual arrangement entered into by the Mortgagor in connection with rendition of services, the provision of goods or supplies, management of the project, procurement of the site or other matters whatsoever.

12.

- (a) If project is funded under Section 202 of the Housing Act of 1959, as amended, Mortgagor will limit public occupancy of the project to elderly families and individuals as defined in Section 202 of the Housing Act of 1959, and applicable HUD Regulations. If project is funded under Section 811 of the National Affordable Housing Act of 1990, Mortgagor will limit public occupancy of the project to persons with disabilities as defined in Section 811 of the National Affordable Housing Act of 1990, and applicable HUD Regulations. The criteria governing eligibility of tenants for admission to Section 202 or Section 811 units and the conditions of continued occupancy shall be in accordance with the Project Rental Assistance Contract.
- (b) Except as provided in (d) below Mortgagor will make its dwelling accommodations and services available to eligible occupants at charges established in accordance with a schedule to be approved in writing by HUD. Such accommodations shall not be rented for a period less than 30 days. Commercial facilities, if any, shall be rented only in accordance with a schedule of charges fixed by the Mortgagor and approved in writing by HUD. Subleasing of dwelling accommodations or commercial facilities shall be permitted only upon the terms and conditions approved by HUD in writing.
- (c) Upon prior written approval by the Secretary, Mortgagor may charge to and receive from any tenant such amounts as from time to time may be mutually

agreed upon between the tenant and the Mortgagor for any facilities and/or services which may be furnished by the Mortgagor or others to such tenant upon request, in addition to the facilities and services included in the approved Project Rental Assistance Contract.

- (d) Nothing contained in this Agreement shall be construed to relieve the Mortgagor of any obligations under the Project Rental Assistance Contract.
- 13. Mortgagor will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, age, sex, handicap, familial status or national origin, including Title VI of the Civil Rights Act of 1964 (42U.S.C.2000d-1), the Fair Housing Act (42U.S.C.3601), Section 504 of the Rehabilitation Act of 1973 (29U.S.C.794), Age Discrimination Act of 1975 (42U.S.C.6101), Executive Orders 11063 and 11246, Section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24CFR part 200, subpart M.
- 14. Neither litigation seeking the recovery of a sum in excess of \$5,000 nor any action for specific performance or other equitable relief shall be instituted nor shall any claim for a sum in excess of \$5,000 be settled or compromised by the Mortgagor unless prior written consent thereto has been obtained from HUD. Such consent may be subject to such terms and conditions as HUD may prescribe.
- 15. Upon a violation of any of the above provisions of this Agreement by Mortgagor, HUD may give written notice, thereof, to Mortgagor, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to HUD, be designated by the Mortgagor as its legal business address. If such violation is not corrected to the satisfaction of HUD within 30 days after the date such notice is mailed or within such further time as HUD determines is necessary to correct the violation, without further notice HUD may declare a Default under this Agreement effective on the date of such declaration of default and such default HUD may:
  - (a) Take possession of the project, bring any action necessary to enforce any rights of the Mortgagor growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as HUD in its discretion determines that the Mortgagor is again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the Note and Mortgage, or require Power of Attorney from Mortgagor to effectuate transfer of the project to a HUD approved nonprofit corporation.



- (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Mortgagor's obligations under this Agreement and under the Note and Mortgage, and the necessary expenses of preserving the property and operating the project.
- (c) Declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage.
- (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the property in accordance with the terms of this Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
- (e) Require the Mortgagor to transfer all of its right title and interest in the project and to all project assets to a private nonprofit corporation designated by HUD and, for this purpose the Mortgagor hereby constitutes and appoints HUD its true and lawful attorney-in-fact, with full power of substitution in the premises, to transfer the project and all project assets to the private nonprofit corporation designated by HUD, if the Mortgagor fails or refuses to make such a transfer as required by HUD.

16.

- (a) Mortgagor has executed the Project Rental Assistance Contract. The terms of the Project Rental Assistance Contract, when executed, shall be incorporated by reference into this Regulatory Agreement.
- (b) A violation of the Project Rental Assistance Contract may be construed to constitute a default hereunder in the sole discretion of HUD.
- (c) In the event said Project Rental Assistance Contract expires or terminates before the expiration or termination of this Agreement, the provisions of this paragraph and any other reference to said Contract, and to assisted units contained herein shall be self-canceling and shall no longer be effective as of the date of the expiration or termination of the Project Rental Assistance Contract.

17. As used in this Agreement the term:

- (a) "Default" means a default declared by HUD when a violation of this Agreement is not corrected to its satisfaction within the time allowed by this Agreement or such further time as may be allowed by HUD after written notice;

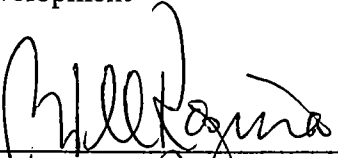
- (b) "Distribution" means any withdrawal or taking of cash or other assets of the project other than for payment of reasonable expenses incident to its construction, operation and maintenance;
- (c) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Declaration of Covenants" and any other security for the Note identified herein;
- (d) "Mortgaged Property" includes property, real, personal, or mixed, covered by the mortgage or mortgages securing the note held by HUD;
- (e) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (f) "Project" includes the mortgaged property and all its other assets or whatsoever situate, used in or owned by the business conducted on said mortgaged property;
- (g) "Residual Receipts" means any cash remaining after;
  - (1) The Payment of:
    - (i) All amounts required to be deposited in the reserve fund for replacements;
    - (ii) All obligations of the project other than the mortgage held by HUD unless funds for payment are set aside or deferment of payment has been approved by HUD; and
  - (2) The segregation of:
    - (i) An amount equal to the aggregate of all special funds required to be maintained by the project;
    - (ii) All tenant security deposit held.
- (h) "Assisted Units" refer to units assisted pursuant to Project Rental Assistance Contract.
- (i) "Assistance Contract" refers to a Project Rental Assistance Contract between the Mortgagor and HUD under Section 202 of the Housing Act of 1959 or between the Mortgagor and HUD under Section 811(d)(2) of the National Affordable Housing Act of 1990.

18. HUD shall not be liable for any of its actions hereunder except for arbitrary and capricious conduct.


19. This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns, and all owners of the mortgaged property, so long as the Mortgage is outstanding.
20. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
21. Mortgagor warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereto, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.
22. Mortgagor does not assume personal liability for payments due under the Note and mortgage or for payments to reserve for replacement fund. However, defaults or other failures to follow program requirements may result in limited denial of participation or debarment from HUD or other Federal programs.
23. Mortgagor shall have available necessary equipment or devices and make reasonable accommodations to meet the needs of persons with visual and/or hearing impairments in compliance with Section 504 of the Rehabilitation Act of 1973 (29U.S.C.794) and 24 CFR Part 8.

United States of America  
Secretary of Housing and Urban  
Development

Las Golondrinas Housing Corporation,  
a California nonprofit public benefit corporation

  
By (Name)  
BILL ROSINA  
Print Name

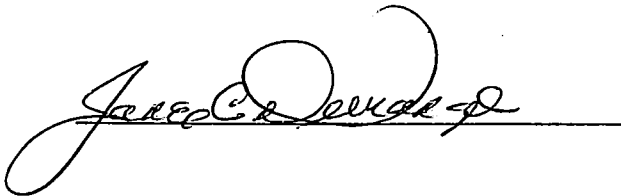
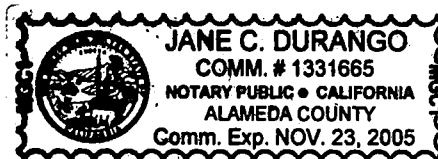
Official Title: Assistant Secretary  
Date: 8/7/03

  
By  
Esther Medina  
Print Name  
Its: Executive Director  
Date: 8/7/03

STATE OF CALIFORNIA                    )  
  )ss.  
COUNTY OF SAN FRANCISCO        )

On August 7 2003, before me, Jane C. Durango, the undersigned, a Notary Public, personally appeared Esther Medina, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

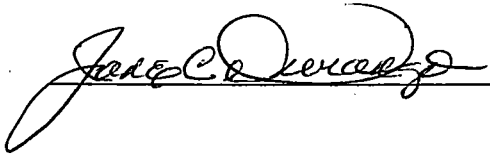
WITNESS my hand and official seal.

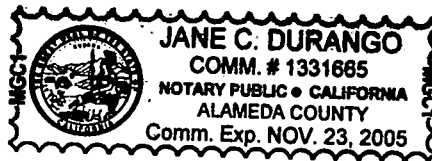
A handwritten signature in cursive script, appearing to read "Jane C. Durango", is written over a horizontal line.

STATE OF CALIFORNIA                    )  
  )ss.  
COUNTY OF SAN FRANCISCO        )

On August 7, 2003, before me, Jane C. Durango, the undersigned, a Notary Public, personally appeared Bill Rogina, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

#### Parcel One:

All that portion of land designated and delineated as "Parcel B" in the Lot Line Adjustment Permit filed for record in the office of the Recorder of the County of Santa Clara on August 24, 2001 under Recorder's Series No. 15841270, Official Records and being more particularly described as follows:

Parcel 3, as shown on that Parcel Map filed for record in the office of the Recorder of the County of Santa Clara, State of California on June 24, 1991 in Book 627 of Maps at Page 3 Santa Clara County Records.

And excepting therefrom the following area:

BEGINNING at the most Southerly corner of said parcel; said corner being also the most easterly corner of parcel 3 as shown on that Parcel Map filed for record in the office of the Recorder of the County of Santa Clara, State of California on June 24, 1991 in Book 627 of Maps at page 3, Santa Clara County Records; thence along the Southeasterly boundary line of said Parcel 3; South 59°20'00" West 32.50 feet; thence parallel with and distant 32.50 feet at right angles from the common line of the aforesaid Lot 7 and Parcel 3, North 30°40'00" West 210.00 feet; thence South 59°20'00" West 24.06 feet; thence along the arc of a non-tangent curve to the left with a radius of 39.00 feet; said curve having a radial bearing of South 78°01'55" West through a central angle of 80°17'26" an arc distance of 54.65 feet to a point of reverse curvature; thence along the arc of a curve to the right with a radius of 23.00 feet, through a central angle of 30°02'29", an arc length of 12.06 feet to a point on the common line of Parcels 2 and 3 as shown on the aforesaid Parcel Map; thence along said common line North 59°20'00" East 83.61 feet to the aforesaid common line of Lot 7 and Parcel 3; thence along said line South 30°40'00" West 265.00 feet to the point of BEGINNING.

EXCEPTING THEREFROM the underground water or rights thereto, with no right of surface entry, as granted to San Jose Water Company, a California corporation by instrument recorded July 15, 1991 in Book L 784, page 765, Official Records.

#### Parcel Two:

An easement for open space purposes, over that portion of land being more particularly described as follows:

Commencing at the most Southerly corner of Parcel 3 as shown on that certain Parcel Map recorded in Book 627 of Maps at page 3, Santa Clara County Records; thence along the Southwesterly line of said parcel North 30°40'00" West 95.40 feet to the True Point of Beginning; thence from said True Point of Beginning North 67°40'00" West 26.94 feet; thence North 22°20'00" East 20.30 feet to a point on said Southwesterly line; thence along said line South 30°40'00" East 33.73 feet to the True Point of Beginning.



**Part I of the  
Agreement to Enter into a  
Project Rental Assistance Contract**

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

For Use under Section 212 of the Housing Act of 1959  
or Section 811 of the National Affordable Housing Act

Type of Project: <input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Acquisition	PRAC Contract No.: <b>CA39-8001-009</b>	HUD Project No.: <b>121-EE138-NP-WAH</b>
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This Agreement to Enter into Project Rental Assistance Contract (Agreement) is entered into between the United States of America acting through the Department of Housing and Urban Development (HUD) and **LAS GOLONDRINAS HOUSING CORPORATION** (Owner). The Owner proposes to complete a housing project, as described in the approved Application. Upon the acceptable completion of the project, the Owner and HUD will enter into a Project Rental Assistance Contract (Contract) for the purpose of making assistance payments to enable eligible Very Low-Income Households (Households) to occupy units in the project.

**1.1 Significant Dates; Contents and Scope of Agreement.**

- (a) **Effective Date of Agreement:** AUG 07 2003
- (b) **Date of Commencement of Work.** The date for commencement of work (see section 2.1(a)) is not later than **FIFTEEN** calendar days after the effective date of this Agreement.
- (c) **Time for Completion of project.** The date for completion of the project (see section 2.1(b)) is not later than **420** calendar days after the date for commencement of work.
- (d) **Contents of Agreement.** This Agreement consists of Part I, Part II and the following exhibits:  
 Exhibit A: The Project Rental Assistance Contract (Contract) to be executed upon acceptable completion of the project, complete in all respects except for execution and effective date.  
 Exhibit B: The schedule of completion in stages, if applicable. (This exhibit should identify the units in each stage.)  
 Exhibit C: The schedule of Davis-Bacon wage rates, if applicable.  
 Additional Exhibits: (Specify additional exhibits, if any. If none, insert "None") **NONE**.
- (e) **Scope of Agreement.** This Agreement, including the exhibits, whether attached or incorporated by reference, comprises the entire agreement between the Owner and HUD with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Agreement, any applicable regulations, and agreements entered into in writing by the parties which are consistent with this Agreement. Nothing contained in this Agreement shall create or affect any relationship between HUD and any contractors or subcontractors employed by the Owner in the completion of the project.

**1.2 HUD Assurance.** The approval of this Agreement by HUD is an assurance by HUD to the Owner that:

- (a) The faith of the United States is solemnly pledged to the payment of project rental assistance payments pursuant to the Contract; and
- (b) HUD has obligated funds for these payments.

**1.3 Relocation Requirements.** (mark one)

- ☒ The Owner hereby certifies that the site of the project was without occupants eligible for relocation assistance under 24 CFR 889.215 (e) or 890.260 (e).
- ☐ The Owner agrees to provide any relocation benefits required under 24 CFR 889.265 (e) or 890.260 (e) and other HUD issuances.

United States of America  
Secretary of Housing and Urban Development

Signature:  
By:

Name:

**BILL ROGINA**

Official Title:

**SUPERVISORY PROJECT MANAGER**

Date:

**AUG 07 2003**

Owner: **LAS GOLONDRINAS HOUSING CORPORATION**

Signature:

By:

Name:

**ESTHER MEDINA**

Official Title:

**EXECUTIVE DIRECTOR**

Date:

**AUG 07 2003**



# Part I of the Project Rental Assistance Contract

Section 202 Supportive Housing for the Elderly  
Section 811 Supportive Housing for Persons with Disabilities

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

Type of Project: <input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Substantial Rehabilitation <input type="checkbox"/> Acquisition	PRAC Contract No.: <b>CA39-S001-009.</b>	HUD Project No.: <b>121-EE138-NP-WAH.</b>
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This Project Rental Assistance Contract (Contract) is entered into between the United States of America acting through the Department of Housing and Urban Development (HUD) and **LAS GOLONDRINAS HOUSING CORPORATION** (Owner) pursuant to

- ☐ Section 811 of the National Affordable Housing Act of 1990 or  
☒ Section 202 of the Housing Act of 1959.

The purpose of this Contract is to provide project rental assistance payments on behalf of Eligible Families leasing decent, safe and sanitary units from the Owner.

## 1.1 Significant Date and other Items; Contents and Scope of Contract.

- (a) **Effective Date of Contract:** OCT 01 2004.
- (b) **Fiscal Year.** The ending date of each Fiscal Year shall be 12/31 (insert March 31, June 30, September 30, or December 31, as approved by HUD). The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year which is not less than 12 months after the effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual project rental assistance payment in section 1.1(c) will be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.
- (c) **Maximum Annual Contract Commitment.** The maximum annual amount of the commitment for project rental assistance payments under this Contract (see section 2.3) is the amount of contract authority identified in Exhibit 2.
- (d) **Project Description.**
- (e) **Statement of Services, Maintenance and Utilities Provided by the Owner.**
- (1) Services and Maintenance:  
HOT and COLD WATER, TRASH REMOVAL.
- (2) Equipment:  
ELECTRIC RANGE, REFRIGERATOR, AC EQUIPMENT, BALCONY/PATIO, CARPET, SHADES, LAUNDRY FACILITY (coin), EXERCISE ROOM, COMMUNITY ROOM, PROJECT SECURITY SYSTEM-PROJECT SECURITY SWIPE.
- (3) Utilities:  
GAS.
- (4) Other:  
NONE.
- (f) **Contents of Contract.** This Contract consists of Part I, Part 11 and the following exhibits:  
Exhibit 1: The schedule showing the number of units by size and, in the case of group homes, residential spaces, (Contract Units) and their applicable operating expenses.  
Exhibit 2: The schedule showing contract and budget authority.  
Exhibit 3: The Affirmative Fair Housing Marketing Plan  
Additional exhibits: (Specify additional exhibits, if any, such as Special Conditions for Acceptance. If none, insert "None."): \_\_\_\_\_.
- (g) **Scope of Contract.** This Contract, including the exhibits, whether attached or incorporated by reference, comprises the entire agreement between the Owner and HUD with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Contract, any applicable regulations, and agreements entered into in writing by the parties, which are not inconsistent with this Contract.

## 1.2 Term of Contract: Obligation to Operate Project for Full Term.

- (a) **Term of Contract.** The initial term of this Contract for any unit shall be 5 years, beginning with the effective date of this Contract for such unit, commitments to extend expiring contracts during the year prior to the date of expiration. If the project is completed in stages, the term shall be separately related to the units in each stage. However, the total Contract term for all the stages, beginning with the effective date of the Contract for the first stage, shall not exceed 22 years.
- (b) **Obligation to Operate Project for Full Term.** The Owner agrees to continue operation of the project in accordance with this Contract for the full term specified in paragraph (a).



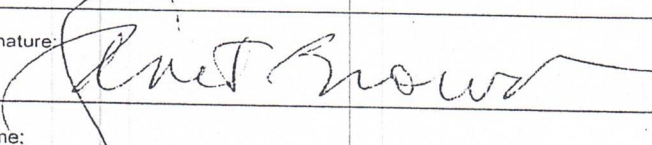
- 1.3 HUD Assurance. The execution of Contract by HUD is an assurance by HUD the Owner that:
- (a) The faith of the United States is solemnly pledged to the payment of project rental assistance payments pursuant to this Contract, and
  - (b) HUD has obligated funds for these payments.

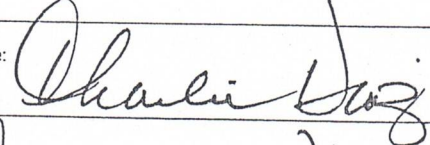
W- HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

United States of America  
Secretary of Housing and Urban Development

Owner:

LAS GOLONDRINAS HOUSING CORPORATION

Signature:   
By: \_\_\_\_\_  
Name: JANET BROWDER

Signature:   
By: \_\_\_\_\_  
Name: CHARLIE DIAZ

Official Title:  
DIRECTOR, SAN FRANCISCO MULTIFAMILY HUB

Official Title:  
BOARD CHAIRMAN

Date: DEC 27 2004

Date: 12/20/2004

If the project is to be completed and accepted in stages, execution of the contract with respect to the several stages appears on the following page of this contract.

**Execution of Contract with Respect to Contract Units Completed and Accepted in Stages**

This Contract is hereby executed with respect to the units described in Exhibit Ia.

**Effective Date:** The effective date of this Contract with respect to the units described in Exhibit Ia is \_\_\_\_\_.

United States of America  
Secretary of Housing and Urban Development

Signature:

By:

Name:

Official Title:

Date:

Owner:

Signature:

By:

Name:

Official Title:

Date:

Stage 2

**Execution of Contract with Respect to Contract Units Completed and Accepted in Stages**

This Contract is hereby executed with respect to the units described in Exhibit Ib.

**Effective Date:** The effective date of this Contract with respect to the units described in Exhibit Ib is \_\_\_\_\_.

United States of America  
Secretary of Housing and Urban Development

Signature:

By:

Name:

Official Title:

Date:

Owner:

Signature:

By:

Name:

Official Title:

Date:

Stage 3

**Execution of Contract with Respect to Contract Units Completed and Accepted in Stages**

This Contract is hereby executed with respect to the units described in Exhibit Ic.

**Effective Date:** The effective date of this Contract with respect to the units described in Exhibit Ic is \_\_\_\_\_.

United States of America  
Secretary of Housing and Urban Development

Signature:

By:

Owner:

Signature:

By:

Name:

Official Title:

Official Title:

Date:

Date:



**Exhibit 1**  
**Schedule of Contract Units and Operating Expense Amounts<sup>1</sup>**

Number of Bedrooms	Number of Units (or residential spaces in a group home)	Household Type (Elderly, Physically Handicapped, DDs or CMI's)	Operating Expense <sup>2</sup> Amount (\$)
<u>ONE.</u>	<u>49.</u>	<u>ELDERLY.</u>	<u>\$470</u>

<sup>1/</sup> This Exhibit must be completed and attached to the Contract at the time the Agreement is executed. It may, however, be amended in accordance with program rules before the Contract is executed. When Operating Expenses change, this format should be used.  
<sup>2/</sup> The monthly Operating Expense Amount shown herein is based on 100% of the applicable Operating Cost Standard in effect at the time of fund reservation. The total amount of the HUD estimate of monthly per unit operating expenses (including PBE) is \$507. (\$470 + PBE of \$37 = \$507).

**Exhibit 2**

This Exhibit shows the initial and subsequent amounts of contract and budget authority obligated for project number: 121-EE138-NP-WAH/CA39-S001-009.

**As of the Effective Date of Agreement**

	Contract Authority	Budget Authority
Effective Date of Agreement Amendment: _____ Show Increase or Decrease	\$ <u>223,700.00.</u>	\$ <u>1,118,500.00.</u>
Revised Total	\$ _____.	\$ _____.
Effective Date of Agreement Amendment: _____ Show Increase or Decrease	\$ _____.	\$ _____.
Revised Total	\$ _____.	\$ _____.

**As of the Effective Date of Contract<sup>3</sup>**

Effective Date of Contract Amendment: _____ Show Increase or Decrease	\$ _____.	\$ _____.
Revised Total	\$ _____.	\$ _____.
Effective Date of Contract Amendment: _____ Show Increase or Decrease	\$ _____.	\$ _____.
Revised Total	\$ _____.	\$ _____.

<sup>3/</sup> The amount of \$223,700 obligated for the project represents 75% of the total Operating Cost Standard (OCS) amount of \$298,267 as calculated using the applicable OCS in effect at the time of fund reservation. HUD will consider an increase in the Project Rental Assistance Contract and Budget Authority obligated for this project after one full year of project operation, subject to the availability of funds.

**Exhibit 3**

**Affirmative Fair Housing Marketing Plan**

This exhibit is the Affirmative Fair Housing Marketing Plan provided by the Multifamily Production Branch.

SEE ATTACHED.

**Additional Exhibits:** (Specify, such as: Special Conditions for Acceptance. If none, insert "None.")

Exhibit 4.: Project Legal Description.

# Part II of the Project Rental Assistance Contract

Section 202 Supportive Housing for the Elderly  
Section 811 Housing for Persons with Disabilities

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

Type of Project: <input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Substantial Rehabilitation <input type="checkbox"/> Acquisition	PRAC Contract No.  <b>CA39-S001-009</b>	HUD Project No.:  <b>121-EE138-NP-WAH</b>
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## 2.1 Owner's Warranties, Amendments.

- (a) Legal Capacity. The Owner warrants that it has the legal right to execute this Contract and to lease dwelling units covered by this Contract.
- (b) Completion of Work. The Owner warrants that the project as described in section 1.1 is in good and tenable condition and that the project has been completed in accordance with the terms and conditions of the Capital Advance Agreement (Agreement) or will be completed in accordance with the Special Conditions for Acceptance (see attached exhibit, where applicable). The Owner further warrants that it will remedy any defects or omissions covered by this warranty if called to its attention within 12 months of the effective date of this Contract. The Owner agrees that the continuation of this Contract shall be subject to the Owner meeting any Special Conditions for Acceptance.

## 2.2 Families To Be Housed.

- (a) Families To Be Housed. If a Section 811 project, the Contract Units are to be leased by the Owner to eligible Disabled Persons (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. If a Section 202 project, the Contract Units are to be leased to eligible elderly Persons or Households (Families) solely.
- (1) HUD hereby agrees to make project rental assistance payments on behalf of Families for the Contract Units, to enable the Families to lease Decent, Safe, and Sanitary housing pursuant to Section 202 or Section 811.
- (2) If there is a Utility Allowance and if the Allowance exceeds the tenant payment, the Owner shall pay the Family the amount of the excess. HUD will pay funds to the Owner in trust solely for the purpose of making this payment.

## 2.3 Maximum Project Rental Assistance Commitment: Project Account.

- (a) Maximum Annual Contract Commitment. Notwithstanding any other provisions of this Contract (other than paragraph (b)(2) of this section) or any provisions of any other contract between HUD and the Owner, HUD shall not be obligated to make and shall not make any project rental assistance payments under this Contract in excess of the amount identified in section 1.1(c). However, this amount may be reduced commensurately with any reduction in the number of Contract Units or in the Operating Expense Amount or pursuant to any other provisions of this Contract.
- (b) Project Account.
- (1) A project account will be established and maintained by HUD, as a specifically identified and segregated account for the project. The account will be established and maintained, in an amount determined by HUD, out of the amounts by which the Maximum Annual Contract Commitment under section 1.1(c) exceeds the amount actually paid out under the Contract each fiscal year. Payments will be made from the account for project rental assistance payments when needed to cover increases in Operating Expense Amounts or decreases in tenant

payments and for other costs specifically approved by the Secretary.

(2) Whenever a HUD-approved estimate of the required annual payments for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable period of time, take such additional steps as may be necessary to assure that payments under the Contract will be adequate to cover increases in Operating Expenses and decreases in tenant payments.

(3) Any amount remaining in the account after payment of the last project rental assistance payment with respect to the project shall be applied by HUD in accordance with law.

## 2.4 Project Rental Assistance Payments To Owners.

- (a) Project Rental Assistance Payments on Behalf of Families.
- (1) Project assistance payments shall be paid to the Owner for units (or residential space in a group home under Section 811) under lease for occupancy by Families in accordance with the Contract. The project rental assistance payment will cover the difference between the Operating Expenses and tenant payments as determined in accordance with the HUD-established schedules and criteria.
- (2) The amount of project rental assistance payment payable on behalf of a Family and the amount of tenant payment shall be subject to change by reason of changes in Family Income, Family composition, extent of exceptional medical or other unusual expenses or program rules in accordance with the HUD-established schedules and criteria; or by reason of a change in any applicable Utility Allowance approved or required by HUD. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease term.
- (b) Vacancies During Rent-up. If a Contract Unit (or residential space in a group home under Section 811), is not leased as of the effective date of the Contract, the Owner is entitled to assistance payments in the amount of 50 percent of the Operating Expense for the unit (or pro rata share of the Operating Expense for a group home) for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner: (1) commenced marketing and otherwise complied with section 2.2(d) of the Agreement; (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on its waiting list, if any, requesting appropriate sources to refer eligible applicants, and advertising the availability of the unit in a manner specifically designed to reach eligible families; and (3) has not rejected any eligible applicant except for good cause acceptable to HUD.
- (c) Vacancies After Rent-up. If an eligible family vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the Operating Expense (or pro rata share of the Operating Expense in a group home) for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the Contract, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to:

(i) market the vacant units or spaces in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan (AFHMP) and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, handicap, age, familial status, sex or national origin.

(ii) submits to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(iii) Has taken and continues to take all feasible actions to fill the vacancy; and

(iv) has not rejected any eligible applicant except for good cause acceptable to HUD.

(4) For any vacancy resulting from an Owner's eviction of an eligible family, certifies that it has complied with the provisions at 24 CFR Part 247 which apply to all decisions by an Owner to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

(d) Prohibition of Double Compensation for Vacancies. The owner is not entitled to payments for vacant units to the extent it collects for the vacancy from other sources (tenant payment, security deposits, reimbursements from HUD for unpaid operating expense amount, other amounts collected from the Family, and government payments under other programs). If the Owner collects any of the Family's share of the tenant payment for a vacancy period in an amount which, when added to the vacancy payment, results in more than the Operating Expense Amount, the excess must be reimbursed as HUD directs.

(e) HUD Not Obligated for Tenant Payments. HUD has not assumed any obligation for the amount of tenant payment or the satisfaction of any claim by the Owner against any Family other than in accordance with section 2.3(b) of this Contract.

The financial obligation of HUD is limited to making project rental assistance payments on behalf of Families in accordance with this Contract.

(f) Owner's Monthly Requests for Payments.

(1) The Owner shall submit monthly requests to HUD for Project rental assistance payments. Each request shall set forth;

(i) the name of each Family and the address and/or number of the unit (or residential space in a group home) leased by the Family;

(ii) the address and/or the number of each unit, if any, not leased to Families for which the Owner is claiming payments;

(iii) the Operating Expense Amount as set forth in Exhibit I for each unit for which the Owner is claiming payments;

(iv) the amount of tenant payment by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with section 2.2(a)(2); and

(v) the total amount of project rental assistance payments requested by the Owner. (The total amount of project rental assistance payments requested equal total HUD-approved operating expenses for the project minus the tenant payments received from all units (see (iv) above).)

(2) Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief

(i) the dwelling units are in Decent, Safe, and Sanitary condition,

(ii) all the other facts and data on which the request for funds is based are true and correct,

(iii) the amount requested has been calculated in accordance with the provisions of the Contract and is payable under the Contract,

(iv) none of the amount claimed has been previously claimed or paid under this Contract, and

(v) the Owner has not received and will not receive payments or other consideration from the Family, HUD or any other public or private source for the unit beyond that authorized in this Contract and the lease.

(3) If the Owner has received an excessive payment, HUD, in addition to any other rights to recovery, will deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for project rental assistance payments are subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

## 2.5 Maintenance, Operation And Inspection.

(a) Maintenance and Operation. The Owner agrees to maintain and operate the Contract Units and related facilities to provide decent, safe, and sanitary housing including the provision of all the services, maintenance and utilities set forth in section 1.1(e). If a Section 811 project, the Owner also agrees to comply with the lead-based paint regulations at 24 CFR Part 35 and 24 CFR Part 890. If HUD determines that the Owner is not meeting one or more of these obligations, HUD shall have the right to take action under section 2.24(a).

(b) Inspection. Prior to occupancy of any Contract Unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed or approved by HUD, that they have inspected the unit and have determined it to be decent, safe, and sanitary in accordance with the criteria provided in the forms. The Owner shall keep copies of these reports on file for at least three years.

(c) Units Not Decent, Safe and Sanitary. If HUD notifies the Owner that it has failed to maintain a dwelling unit in decent, safe, and sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the Contract, including reduction or suspension of project rental assistance payments, even if the Family continued to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with assistance and HUD does not have other funds for such purposes, HUD may use the abated project rental assistance payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of tenant payments.

(d) Notification of Abatement. Any reduction or suspension of project rental assistance payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Family of any such abatement.

(e) Overcrowded and Underoccupied Units. Where the Owner determines a unit is larger or smaller than appropriate for an eligible family, the Owner agrees, if possible, to offer the family an appropriate alternate unit as promptly as possible in

accordance with HUD regulations and requirements in effect at the time of the determination.

## **2.6 Financial Requirements.**

### **(a) Submission of Financial and Operating Statements.**

The Owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an Independent Public Accountant in, the form required by HUD, and

(2) Other statements as to project operation, financial condition and occupancy as HUD may require to administer this Contract and to monitor project operations.

### **(b) Use of Project Funds.**

(1) The Owner shall maintain a project fund account in a HUD-approved depository and shall deposit all tenant payments, charges, income and revenues arising from project operation or ownership in this account. Project funds must be used for the operation of the project (including required insurance coverage), to pay operating expenses, and to make required deposits to the replacement reserve in accordance with paragraph (c) of this section. To the extent HUD determines that project funds are more than needed for these purposes, the surplus project funds must be deposited with a HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only with the approval of HUD and for project purposes, including the reduction of project rental assistance payments. Upon termination of the Contract, any excess funds must be remitted to HUD.

### **(c) Replacement Reserve.**

(1) The Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations.

(i) The Owner shall make monthly deposits to the replacement reserve commencing on the effective date of the Contract. For staged projects, the deposits shall commence on a pro rata basis for units in each stage on the effective date of the Contract for that stage.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of monthly deposit to the reserve may be reduced with HUD approval.

(iii) Replacement reserve funds must be deposited with HUD or a HUD-approved depository in an interest-bearing account. All interest earnings must be added to the reserve.

(iv) Funds may be withdrawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

### **(d) The Owner is not entitled to distributions of project funds.**

## **2.7 Operating Expense Adjustments.**

### **(a) Funding of Adjustments.** Project rental assistance payments will be increased commensurate with adjustments in operating expenses under this section up to the maximum amount authorized under section 2.3(a) of this Contract. HUD will calculate operating expense adjustments based on the sum of the costs for operating the project (as approved by HUD) with adjustments for vacancies, the project's non-rental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of the information provided by the Owner on a form prescribed by HUD.

- (b) **Operating Expense Adjustments.** Operating Expenses shall be adjusted whenever HUD approves an increase in operating costs as provided under the Regulatory Agreement.
- (c) **Incorporation of Operating Expense Adjustment.** Any adjustment in Operating Expenses shall be incorporated into Exhibit 1 by a dated addendum to the exhibit establishing the effective date of the adjustment.
- (d) **Adjustment of Operating Expense Based on Cost Certification.** The Owner shall complete the cost certification requirements under 24 CFR part 889 (Section 202) or 24 CFR 890 (Section 811).
- (e) **Adjustment of Operating Expense Amounts Due to Tax Exemption.** The Operating Expense Amounts may be reduced to reflect real property tax exemption or similar savings where the initial operating expenses were approved on the assumption that the project would not receive the benefit of the tax abatement or similar savings. The Owner agrees to notify HUD in the event the project begins to receive such an exemption or similar savings so the Initial Operating Expense Amounts then in effect may be reduced.

## **2.8 Marketing And Leasing Of Units.**

### **(a) Compliance with Equal Opportunity Requirements.** Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan (if required), shown as an exhibit, and with all regulations relating to fair housing advertising. Projects shall be managed and operated without regard to race, color, religion, creed, age, sex, handicap, familial status or national origin, except housing provided under Section 202 must be limited to households where at least one person is 62 years of age or older.

### **(b) Security Deposits.** The Owner agrees to comply with applicable HUD regulations (24 CFR Part 889 or 890) and other requirements, as revised from time to time, regarding security deposits and to comply with all State and local law.

### **(c) Eligibility, Selection and Admission of Families.**

(1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, computation of the amount of project assistance payments on behalf of each selected Family and of total Family contributions and record keeping in accordance with applicable HUD regulations and requirements.

(2) The Owner shall not charge any applicant or assisted Family any amount in excess of the total Family contribution except as authorized by HUD.

(3) The Owner must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Both the Owner and the applicant family must sign the application for admission. On request, the Owner must forward to HUD copies of these applications for admission.

(4) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by HUD and must contain all of the required provisions and none of the prohibited provisions specified in HUD issuances. The term of the lease may not be less than one year.

(5)  
(i) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family at least every 12 months and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of



project rental assistance payments, all in accordance with applicable HUD regulations and requirements.

(ii) If a Family reports a change in income or other circumstances that would result in a decrease of total Family contribution between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the total Family contribution. The Owner may require in its lease that Families report increases in income or other changes between scheduled reexaminations.

(iii) A Family's eligibility for project rental assistance payments continues until its total Family contribution equals the total housing expense for the unit it occupies (or a pro rata share of the operating expense in a group home). The termination of subsidy eligibility at this point will not affect the Family's other rights under the lease nor preclude resumption of subsidy payments as a result of later changes in income or other circumstances during the term of this Contract.

(6) The Owner will maintain as confidential all information relating to applicants and assisted Families, the disclosure of which would constitute an unwarranted invasion of personal privacy.

- (d) Redetermination of Operating Expense after Adjustment in Utility Allowances. In the event that the Owner is notified of a HUD determination approving or requiring an adjustment in the Utility Allowance applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of tenant payment to be paid by the affected Families and the amount of project rental assistance payments.
- (e) Processing of Applications and Complaints. The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable HUD regulations and requirements and shall maintain records and furnish such copies or other information as may be required by HUD.
- (f) Reviews, incorrect Payments. In making project rental assistance payments to Owners, HUD will review the Owner's determinations under this section. If, as a result of this review or other reviews, audits or information received by HUD at any time, it is determined that the Owner has received improper or excessive assistance payments, HUD shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

## **2.9 Termination of Tenancy or Project Rental Assistance by the Owner.**

The Owner agrees not to terminate any tenancy of or assistance on behalf of an assisted Family except in accordance with all HUD regulations and other requirements in effect at the time of the termination, and any State and local law. Terminations of tenancy are subject to 24 CFR Part 247.

## **2.10 Nondiscrimination.**

The Owner shall comply with:

- (a) The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and its implementing regulations at 24 CFR Part 100; Executive Order No 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.;
- (b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the

prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.

- (c) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;
- (d) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR Part 135;
- (e) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women's Business Enterprises);
- (f) The affirmative fair housing marketing requirements of 24 CFR Part 200, Subpart M and the implementing regulations at 24 CFR Part 108;
- (g) The fair housing advertising and poster guidelines, 24 CFR Parts 109 and 110; and
- (h) The civil rights and Equal Opportunity reporting requirements at 24 CFR Part 885.940(f).

## **2.11 Cooperation in Equal Opportunity Reviews.**

The Owner agrees to cooperate with HUD in conducting monitoring and compliance reviews and complaint investigations pursuant to or permitted by all applicable civil rights statutes and regulations, Executive Orders, and civil rights related program requirements.

## **2.12 National Environmental Policy Act**

The Owner agrees to comply with all applicable requirements under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and HUD regulation 24 CFR Part 50 including the related environmental laws, Executive Orders and HUD standards in 24 CFR 50.4.

## **2.13 Flood Disaster Protection Act.**

If the Project is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that it will obtain coverage of the Project, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

## **2.14 Clean Air Act and Federal Water Pollution Control Act.**

In compliance with regulations issued by the Environmental Protection Agency (EPA), 40 CFR, Part 15, pursuant to the Clean Air Act as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11773, the Owner agrees:

- (a) Not to utilize any facility in the performance of this Contract or any nonexempt subcontractor which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list.
- (b) Promptly to notify HUD of the receipt of any communication from the EPA indicating that a facility to be utilized for this

Contract is under consideration to be listed on the EPA List of Violating Facilities;

- (c) To comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 308 of the Water Act, and all regulations and guidelines issued thereunder and
- (d) To include or cause to be included the provisions of this Contract in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

#### **2.15 Displacement and Relocation Assistance.**

The Owner agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Assistance Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 C.F.R. Part 24 which set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part.

#### **2.16 Lead-Based Paint.**

The Owner agrees to comply with requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulation at 24 C.F.R. Part 35 to the extent they are applicable to housing under the Contract.

#### **2.17 Lobbying.**

The Owner agrees to comply with the Prohibitions against lobbying the Executive or Legislative Branches of the Federal Government contained in Pub. L. 101-121 (31 USC 1352) and implementing regulations at 24 C.F.R. Part 87.

#### **2.18 Reports and Access to Premises and Records.**

- (a) The Owner shall furnish any information and reports pertinent to this Contract as reasonably may be required from time to time by HUD.
- (b) The Owner shall permit HUD or its duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to project rental assistance payments.

#### **2.19 Disputes.**

Any dispute concerning a question of fact arising under this Contract which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the HUD Secretary or a designee. Both parties shall proceed diligently with the performance of this Contract and in accordance with the Field Office's decision, pending resolution of the appeal.

#### **2.20 Conflicts of Interest.**

Officers, directors, stockholders and authorized representatives of the Owner may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site, or other matters related to development and operation of the project.

#### **2.21 Interest of Member of or Delegate to Congress.**

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise from it.

#### **2.22 Assignment, Sale or Foreclosure.**

- (a) The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Contract, the Agreement, or the project or any part of them or any of its interest in them, without the prior written consent of HUD.
- (b) The Owner agrees to notify HUD promptly of any proposed action covered by paragraph (a) of this section and further agrees to request HUD's prior written consent.
- (c) Except where otherwise approved by HUD, this Contract and the Agreement shall continue in effect and project rental assistance payments will continue in accordance with the terms of this Contract in the event:
  - (1) of assignment, sale or other disposition of the project, this Contract or the Agreement,
  - (2) of foreclosure, including foreclosure by HUD.
  - (3) of assignments of the mortgage or deed in lieu of foreclosure.
  - (4) HUD takes over possession, operation or ownership,
  - (5) of transfer to another nonprofit owner.

#### **2.23 Defaults by Owner.**

- (a) Rights of HUD if Owner Defaults under Contract.
  - (1) Events of Default. A default by the Owner under this Contract shall result if:
    - (i) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease, including failure to correct any deficiencies identified by HUD in connection with any annual or other inspection; or
    - (ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Contract or under any Lease; or
    - (iii) The Owner has violated or failed to comply with the regulations for the Section 202 or Section 811 program, with the HUD mortgage, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the capital advance.
  - (2) HUD Determination of Default. Upon a determination by HUD that a default has occurred, HUD shall notify the Owner of:
    - (i) The nature of the default,
    - (ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default), and
    - (iii) The time within which the Owner shall respond with a showing that all the required actions have been taken. If the Owner fails to respond or take action to the satisfaction of HUD, HUD shall have the right to take corrective action to achieve compliance in accordance with paragraph (3) of this section or to terminate this Contract, in whole or in part, or to

take other corrective action to achieve compliance in its discretion.

(3) Corrective Actions. Pursuant to paragraph (a)(2) of this section HUD, in its discretion may take the following corrective actions:

(i) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of this Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this Contract. If HUD takes possession, project rental assistance payments shall continue in accordance with this Contract.

(ii) Collect all tenant payments and charges in connection with the operation of the project and use these funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage or other capital advance documents.

(iii) Apply to any court, State or Federal, for specific performance of this Contract, for an injunction against any

violation of the Contract, for the appointment of a receiver to take over and operate the project in accordance with the Contract or for such other relief as may be appropriate. These remedies are appropriate since the injury to HUD arising from a default under any of the terms of this Contract could be irreparable and the amount of damage would be difficult to ascertain.

(iv) Reduce or suspend project rental assistance payments.

(v) Transfer to another nonprofit owner.

(vi) Recover any overpayments.

(b) Remedies Not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Contract, shall not preclude the exercise of any other remedy under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

Attachment A  
**Property Summary**

Property Name			
Address	City	State	Zip
County			
Resident Type			

**Rentable Square Footage**

Total Residential Units	Subsidized	No. Commercial Spaces
Revenue	Unsubsidized	Commercial Rentable Sqft
Non-Revenue		Total Rentable Sqft

**Building Site**

No. of Buildings	Approx. Site Acreage
Stories per Building	Foundation
Type of Building	Roof Type/Age
Elevator(s) per Building	Exterior
Year Built	Flooring
Rehabilitation Year	Type of Rehabilitation

<b>Mechanical Systems</b>	<b>Utilities</b>	<b>Parking</b>	
Heating	Water	Assigned	Self Park
Air Conditioning	Sewer	Covered	Off-site
Hot Water	Garbage	Garage	<b>Total</b>

<b>Apartment Features</b>	<b>Owner Expense</b>	<b>Resident Expense</b>	<b>Community Features</b>
Air Conditioning			Laundry Room
Dishwasher			Parking Type
Microwave			Exercise Room
Garbage Disposal			Picnic Area
Range/Oven			Playground Equipment
Refrigerator			Swimming Pool
Blinds/Drapes			Jacuzzi/Comm Whirlpool
Patio/Balcony			Dog Park
Washer/Dryer (in unit)			Business Center
W/D Connection			Community Space
Fireplace			Gated Entry/Security System
Other:			Other:

**Historical Occupancy (if available)**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg

**Historical Rents**

Type	No. of Units	Unit Sqft	Unit \$ Rent (per/mo)	Market Rent/Comps

**Historical Expenses**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg

**Use Restrictions (if applicable)****Subsidy Contract Information (if applicable)****Contact Information:****HUD Realty Specialist****Foreclosure Commissioner (for written bids only)**

<b>Name:</b>	<b>Name:</b>
<b>Address:</b>	<b>Address:</b>
<b>City/State/Zip:</b>	<b>City/State/Zip:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Email:</b>	<b>Email:</b>

Attachment B  
**Terms and Requirements of Foreclosure Sale  
Acknowledgement by Bidder**

I. TERMS OF BID

A. The undersigned, \_\_\_\_\_, (the "High Bidder") submitted a bid of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the "Bid") at the Foreclosure Sale to purchase \_\_\_\_\_ (the "Property") held at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ (AM/PM). The legal description for the Property is included as Exhibit A. The Bid shall be calculated as follows:

1. \_\_\_\_\_ EARNEST MONEY: \$ \_\_\_\_\_ in the form of a money order, certified funds, or cashier's check (the "Earnest Money Deposit") has been collected at the Foreclosure Sale by the Foreclosure Commissioner, and which shall not earn interest, and
2. BALANCE OF THE BID: The High Bidder will pay the difference between the Bid and the Earnest Money Deposit, a sum of \$ \_\_\_\_\_, (the "Balance") at Closing (as defined below), in the form of a money order, certified funds, or cashier's check as provided in the Acknowledgement.

II. HIGH BIDDER REPRESENTATIONS AND WARRANTIES: The High Bidder hereby represents and warrants to HUD, that as of the execution date of this Acknowledgement and as of the date of the Closing, the following:

- A. High Bidder has full knowledge of all the terms, conditions, and requirements of the Foreclosure Sale contained herein. High Bidder affirms that they are required to follow the terms of the Invitation, including by reference, which are incorporated by reference from the Invitation.
- B. High Bidder has the power and authority to execute, deliver and perform this Acknowledgement and all transactions contemplated herein. High Bidder has taken or will take all actions necessary to perform its obligations under this Acknowledgement and to consummate the Foreclosure Sale. This Acknowledgement and all of the other instruments and agreements executed and delivered by High Bidder in connection with the Foreclosure Sale prior to the Closing Date have been or will be duly executed and delivered by High Bidder to HUD and constitute or will constitute legal, valid and binding obligations of High Bidder. These terms are enforceable against High Bidder, except as such enforcement may be limited law and by general principles of equity (whether considered in a proceeding at law or in equity). The execution, delivery and performance of this Acknowledgement by High Bidder does not violate any provisions of any existing federal, state, or local law or regulation applicable to High Bidder, or violate or contravene any judgment, injunction or decree binding upon High Bidder, or violate, contravene or constitute a default under any provision of the organizational documents, if any, governing High Bidder, or of any agreement, contract or other instrument binding upon High Bidder.
- C. High Bidder will accept the Property "AS IS" and understands HUD makes no representations or warranties concerning the physical condition of the Property.

High Bidder acknowledges and agrees that, while HUD provided some information concerning the Property to all bidders for review prior to the Foreclosure Sale, such information may have been inaccurate or incomplete.

- D. High Bidder understands that the Foreclosure Sale of the Property is not contingent upon the High Bidder securing favorable financing terms. High Bidder acknowledges that, prior to Closing, HUD will not allow access to the Property for appraisal or any other reason.
- E. High Bidder's Bid is based on its own evaluation of the Property and not upon any representations by HUD. High Bidder's inability or failure to inspect or otherwise be fully informed as to any factor bearing upon the valuation of the Property shall not be a basis for termination of this Foreclosure Sale nor affect High Bidder's or HUD's liability, obligations, or duties.
- F. **BIDDER RESTRICTIONS AND ELIGIBILITY**

- 1. No member of or delegate to Congress, resident commissioner of the Property, or any local elected official (a "Restricted Party") will share in any part of this Foreclosure Sale, or to any benefit arising from owning the Property. This provision does not apply to the extent that the High Bidder is a corporation, and a Restricted Party is a shareholder of the corporation and the purchase of the Property is for the corporation's general benefit.
- 2. The High Bidder is not suspended, debarred, or temporarily denied from participating in HUD programs. If the High Bidder becomes suspended, debarred, or temporarily denied participation prior to Closing, the Foreclosure Sale will be terminated, and HUD will retain as liquidated damages the Earnest Money Deposit and any Extension Fees paid.
- 3. The High Bidder is not the defaulting mortgagor, or any Principal, successor, Affiliate, or assignee thereof, on the multifamily mortgage that is the subject of the Foreclosure Sale. The High Bidder will also ensure that the defaulting mortgage or any Principal, successor, Affiliate, or assignee thereof will not acquire the Property or any interest in the High Bidder.
- 4. The High Bidder is not the FHA Lender or an affiliate thereof that benefited from the FHA insurance claim associated with the mortgage HUD foreclosed upon as part of the Foreclosure Sale.
- 5. The High Bidder is a single asset private non-profit organization (as defined in 24 CFR 891.205). The purposes of the High Bidder include the promotion of the welfare of the specified population. The High Bidder is not controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.

- G. **ANTI-COLLUSION:** High Bidder confirms it arrived at the Bid independently and without any consultation, communication, or agreement with any other bidder at the Foreclosure Sale relating to the Bid, the intention to submit the Bid, or the methods and factors used in calculating the Bid. Further, the Bid was not knowingly disclosed, directly or indirectly, to any other bidder before or during the Foreclosure Sale, unless otherwise required by law. High Bidder did not induce or attempt to induce any other Foreclosure Sale Bidder to submit or not to submit a bid for any purpose of restricting competition.
- H. **REMEDIES FOR BREACH:** In the event of a breach by High Bidder of any representation or warranty, HUD has at its election, the right to terminate this



Acknowledgement and all further obligations of HUD hereunder and, in the event of such termination, the provisions of Section VIII of this Acknowledgment shall be applicable. If any representation or warranty set forth in this Acknowledgement is not true and accurate as of the Closing Date, High Bidder shall so advise HUD.

III. HUD REPRESENTATIONS AND WARRANTIES: HUD makes no representations and warranties concerning the physical condition of the Property. HUD does not represent or warrant the occupancy of revenue producing units or any other factor bearing upon the value of the Property.

IV. HIGH BIDDER OBLIGATIONS BEFORE CLOSING

A. Post Bid Document Submission **within Five (5) Days of Foreclosure Sale:** The High Bidder must submit the following items to HUD within the listed business days of the Foreclosure Sale in order for HUD to begin its review process. The following documents must illustrate the High Bidder's capacity to own and operate the Property.

1. Previous Participation Certification (HUD 2530). Submit one (1) HUD 2530 for the High Bidder and one (1) separate HUD 2530 for any Management Agent.

i. Electronic Filers: If the High Bidder has prior access to HUD's Secure Systems, after previously registering through HUD's Business Partner Registration as described in the Invitation, it should submit an electronic Previous Participation Form using the Active Partners System (APPS) and provide proof of the electronic submission to HUD.

ii. Paper Filers: If the High Bidder has not previously registered in APPS, the High Bidder should provide a completed paper HUD 2530 with original signatures. The High Bidder entity must have an established tax identification number (TIN) and each individual must list their social security number (SSN). High Bidder should transmit to HUD using an encrypted file. Additionally, High Bidder should include (1) an organizational chart for the ownership entity that shows each ownership tier, the roles of each controlling participant and each member with more than 25% ownership interest; and (2) the ownership entity's organizational documents, include Articles of Incorporation, Certificate of Incorporation, Operating Agreement, Partnership Agreement, Charter, Bylaws, Agent Certification, and proof of TIN, as applicable.

2. Certification of Substantial Compliance. The High Bidder must submit a complete and original Certification of Substantial Compliance, located in attachments to this Invitation. If HUD determines that properties disclosed by the High Bidder are not in substantial compliance with federal regulations and/or state and local codes, HUD may reject the High Bidder as not qualified to purchase the Property. The High Bidder may forfeit the Earnest Money Deposit as a result of such determination.

3. Written Statement of Experience. The High Bidder must submit a written State of Experience ("Statement"). The Statement must demonstrate approximately five (5) years of experience successfully owning and

managing properties similar to the Property and must address future management of the Property. High Bidder shall not exceed five (5) pages per property when providing the following information for each property:

- i. The location of other owned multifamily properties.
    - ii. The number of units and construction type (garden, walk-up, high-rise, etc.) for each property.
    - iii. Identify type of management for each property.
    - iv. Identify properties that have government assistance and type of assistance, i.e., project-based, tenant-based, etc.
    - v. Identify the initial physical needs of each property and how they were addressed.
    - vi. Identify the social needs of each property and how they were Addressed.
    - vii. Identify the economic needs of each property and how they were addressed.
    - viii. How, based on its experience, the High Bidder will satisfy conditions of the sale, i.e., Post-Closing Repairs, income and rent restrictions, etc.
    - ix. How High Bidder will implement a sound financial and physical management program for the Property.
    - x. How High Bidder plans to respond to the needs of the tenants and work cooperatively with resident organizations.
    - xi. How High Bidder will provide adequate organizational staff and financial resources to the Property.
    - xii. How High Bidder will provide serves, maintenance and utilities to the Property.
  4. Personal Financial and Credit Statement. The High Bidder must submit Form HUD-92417 for each of its controlling Principal(s).
  5. Previous Participation Certification for Management Agent, if applicable.
  6. Additional Documents Required for HUD Subsidized Properties:
    - i. Management Agent Resume
    - ii. Affirmative Fair Housing Marketing Plan (Form HUD-935.2A)
    - iii. Management Entity Profile (Form HUD-9832)
    - iv. Project Owner's/Management Agent's Certification Form HUD 9839-A, 9839-B or 9839-C. Must choose applicable version.
  - B. Changes within five (5) Days to the High Bidder or Management Agent. If the High Bidder, the Management Agent, or any controlling participant thereof changes, the individual or entity shall resubmit a corrected Previous Participation Certification within five (5) days of any such change.
  - C. The High Bidder shall ensure compliance with submissions as required herein. Failure to comply with all requirements may result in High Bidder declared ineligible to purchase the Property. In such case, the High Bidder shall forfeit the Earnest Money Deposit and Extension Fees paid.
- V. HUD'S REVIEW OF POST-BID SUBMISSION
- A. Before HUD can schedule the Closing, HUD must complete the review of the submitted documents and approve the High Bidder.

- B. HUD will provide a response to the High Bidder, and Management Agent if applicable, within fifteen (15) days of receipt.
- C. Acceptance of High Bid. HUD does not fully accept the High Bid until the High Bidder submits all Post-Bid Documents, HUD reviews the Post-Bid Documents, and HUD, in its sole discretion, determines the eligibility of the High Bidder. HUD will notify the High Bidder of its determination in writing. Upon HUD's determination that the High Bidder is qualified, the High Bidder will be confirmed as the Approved High Bidder.
- D. Rejection of High Bid. After review of the Post-Bid Documents, HUD may determine that the High Bidder is not qualified to purchase the Property. HUD may reject the bid due to High Bidder's ineligibility, lack of qualifications, or failure to comply with the Invitation. HUD will notify the High Bidder of this determination in writing, as promptly as possible and generally within thirty (30) days after the Foreclosure Sale. HUD may then contact the Second High Bidder.

## VI. CLOSING

- A. Time is of the essence.
- B. If HUD confirms the High Bidder is qualified to purchase the Property, HUD will notify the High Bidder in writing. The transfer of title to the Property (the "Closing") shall be within thirty (30) calendar days of approval unless the High Bidder requests and HUD grants an Extension Period.
- C. The Closing date and place will be determined by the Foreclosure Commissioner and/or HUD and will occur within thirty (30) days of HUD approval of the High Bidder. HUD and/or the Foreclosure Commissioner will notify the High Bidder of the Closing.
- D. At Closing, the High Bidder will shall assume all responsibilities and obligations as owner of the Property arising on or after the Closing. After the Closing, HUD shall have no further responsibilities or obligations with respect to the Property.
- E. High Bidder shall pay the Balance at Closing in the form of a money order, certified funds, or cashier's check made payable to: THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVLEOPMENT.
- F. CLOSING COSTS, DEPOSITS, REPAIR ESCROW: In addition to the Balance, the High Bidder will be required to pay all Closing costs, regardless of local custom, and, where applicable, fund deposits to reserve accounts and obtain any Letter(s) of Credit for the Repair Escrow. However, HUD will pay fees for recording the Foreclosure Deed and Use Agreement, if any.
- G. EXECUTION OF USE AGREEMENT: Without limiting the foregoing, at Closing, High Bidder will execute the Use Agreement and required exhibits as contained in the Invitation. The Use Agreement will control the use of the Property for the specified period, be recorded as part of the Foreclosure Deed, and will run with the land.
- H. EXTENSION OF CLOSING DATE
  - 1. High Bidder may request an additional thirty (30) calendar day period (the "Extension Period") for the Closing to occur. High Bidder must submit a written request, which clearly states the reason for the High Bidder's inability to close the sale on or before the Closing date, or within any Extension Period.

HUD must receive any extension request no less than ten (10) days prior to the Closing date. The request must be accompanied by the payment of the required Extension Fees and sent to the following address:

Multifamily Property Disposition  
ATTN: Jovanna M. Morales, Director  
307 W. 7<sup>th</sup> Street, Suite 1000  
Fort Worth, TX 76102

2. All payments for an Extension Period must be in the form of a cashier's check or certified check made payable to: The U.S. Department of Housing and Urban Development
3. HUD will notify the High Bidder in writing of all approved Extension Periods. HUD will grant an Extension in accordance with the following conditions:
  - i. Extension Fees shall be equal to \$ \_\_\_\_\_ per unit in the Project per calendar day, or one and one-half percent (1.5%) of the Bid, whichever even amount is greater.
  - ii. Extension Fees will not be credited against the Balance. However, if the Closing is held prior to the end of the Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period shall be credited toward the Balance.
  - iii. HUD shall not be obligated to grant any additional Extension Period because it has previously granted one or more Extension Period.
  - iv. If High Bidder does not submit any HUD-required submission within sufficient time for HUD's review, and such delay necessitates an Extension Period, Extension Fees shall be paid for this time.

- I. PROJECT RENTAL ASSISTANCE CONTRACT (PRAC): To maintain the rental subsidy payments at the property, at Closing, HUD intends to assign a certain Project Rental Assistance Contract (PRAC) to the Purchaser and Purchaser will accept the assignment. Additionally, HUD will assign all rights and duties under the existing Capital Advance Agreement. HUD will exercise its Attorney-in-Fact authority under both the PRAC and Capital Advance Agreement to assign them to the Purchaser. The form Assignment to be executed is attached to this bid kit.

## VII. PRORATIONS

- A. TAXES AND FEES: High Bidder is responsible for paying all taxes, assessments, liens, and utility bills including, but not limited to, water, sewer, gas, electric, and any other encumbrances not extinguished by the Foreclosure Sale. Any amounts paid will not be prorated to the Balance or used to offset the Bid amount in any way. HUD is responsible for payment of taxes before the closing date.
- B. PROPERTY RENTS: Regardless of the Closing Date, rent collected by HUD, if any, will not be prorated toward the Balance.
- C. EXTENSION FEE: In the event High Bidder pays Extension Fees, and the Closing occurs before the expiration of the Extension Period, a prorated amount of the unused portion of the Extension Fees shall be credited toward the Balance.

## VIII. BREACH

- A. The High Bidder agrees that any breach of these terms shall result in the forfeiture of the Earnest Money Deposit, and the payment of any expenses incurred HUD by

in managing the property, including taxes, and utilities, until transfer of ownership in a Closing, as liquidated damages, not a penalty.

1. Failure to pay these funds shall result in a debt to the federal government.
  2. Failure to pay these funds may result in the High Bidder being prevented from participation in future HUD foreclosure sales.
- B. Breach by the High Bidder includes withdrawing their bid after signing this document, and any other actions or inactions by the High Bidder that result in failure to close on the sale.
- C. If actions by HUD result in failure to close on the sale, High Bidder's sole remedy shall be the return of any amounts paid by High Bidder pursuant to this Agreement. Without limiting the generality of the foregoing, High Bidder hereby waives any claim for damages (other than amounts paid by High Bidder pursuant to this Agreement) and any right to seek specific performance or other equitable relief.
- D. Upon the failure or refusal of the High Bidder to comply with any of the requirements in this Acknowledgement, HUD may declare the High Bidder ineligible to purchase the Property, in which case the High Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.

#### IX. MISCELLANEOUS

- A. **RISK OF LOSS AND RIGHTS OF RECISSION:** In the event of any substantial damage to the Property prior to Closing by any cause, including but not limited to fire, flood, hurricane, earthquake, tornado, or significant vandalism, HUD, in its sole discretion, may renegotiate with the High Bidder for a reduction in the Bid corresponding to the estimated amount of damages. Such amount shall be added to the Post-Closing Repair amount, if applicable. If the Bid reduction cannot be negotiated or if the High Bidder and HUD are unable to agree on the amount by which the Bid should be reduced, or on the amendment to any Post-Closing Repair requirements, High Bidder may withdraw the Bid. In such case, HUD will retain the Earnest Money Deposit and any Extension Fees paid.
- B. **EXISTING SECURITY DEPOSITS:** Any security deposits collected from tenants and paid to HUD or in HUD's control prior to Closing shall be assigned to High Bidder within fifteen (15) business days of Closing. In no event shall HUD deliver security deposits forfeited by a tenant in accordance with the terms of the tenant's lease. Notwithstanding state and local law, HUD will not transfer any other security deposit collected from tenants. HUD has no other liability under state and local law with respect to security deposits. High Bidder agrees to assume all responsibility and liability under state and local law with respect to the collection, application, and return of tenant's security deposits.
- C. **SEVERABILITY:** If, for any reason, one or more of the provisions contained in the Invitation, including this Acknowledgment, the Use Agreement, or any other attachments or exhibits thereto, shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) of the Invitation, but the Invitation shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been included therein.
- D. **LIMITATION OF LIABILITY:** In no event shall HUD's liability exceed the Earnest Money Deposit and any Extension Fees paid.

- E. ASSIGNMENT: High Bidder may not assign its rights and responsibilities under this Acknowledgment without the prior written consent of HUD.
- F. CONFLICTING TERMS: If there are terms or conditions herein that conflict with the terms or conditions contained in the Invitation incorporated herein by reference, the terms or conditions of this Acknowledgment shall control.
- G. REQUIRED FORMS: The High Bidder acknowledge the receipt of the Use Agreement as a term and condition of the Foreclosure Sale and the inclusion of the riders attached to the Use Agreement in the Invitation.

By signature below, High Bidder acknowledges and agrees to the terms and conditions of this Foreclosure Sale. In the case where an agent or representative of the High Bidder submitted the Bid, the signatory attests to be duly authorized to submit the bid on behalf of the High Bidder and to execute this Acknowledgement.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this Foreclosure Sale. Penalties upon conviction can include a fine or imprisonment. See 18 U.S.C. 1001 and 1010.

Executed by the High Bidder on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness:\_\_\_\_\_

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Printed Name:\_\_\_\_\_

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

City, ST, ZIP: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email:\_\_\_\_\_



ATTACHMENT C  
**FORECLOSURE SALE USE AGREEMENT**

This Agreement is entered into by \_\_\_\_\_ ("Grantee") and the Secretary of Housing and Urban Development ("Secretary" or "HUD").

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. Sections 3701 et seq. (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, or pursuant to a judicial foreclosure the Secretary has elected to apply Section 367(b) of the Act, with respect to \_\_\_\_\_, HUD Project No. \_\_\_\_\_, (the "Project") a legal description of which is attached as Exhibit "A"; **and**

WHEREAS, pursuant to the Act and to provisions of 12 U.S.C. Section 1715z-11a, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the Project subject to a mortgage held by the Secretary that is sold at foreclosure to a purchaser other than HUD; **and**

WHEREAS, by Deed executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Project has been conveyed to the Grantee; **and**

NOW THEREFORE, in consideration of the mutual promises set forth herein and in further consideration of the sale of the Project to the Grantee, the parties agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for Fifty (50) years from the date of this Agreement (the "Restricted Period".) During the Restricted Period the Project must be maintained as rental housing.
2. **CONVEYANCE:** During the term of this Agreement, any Conveyance of the Project must have the prior written approval of HUD, or such Conveyance will be deemed to be null and void, and a default will exist under this Agreement. Conveyance is defined as any sale, assignment, transfer, creation of a leasehold estate in excess of one (1) year, or any other legal or equitable conveyance or transfer of the Project or an interest therein, or any legal or equitable transfer of an interest in the Grantee or any entities that may comprise the Grantee. Without limiting the foregoing and not intending to be all inclusive, a merger, conversion, share exchange, or exchange of corporate or partnership interests is deemed to be a Conveyance, which requires the prior written approval from HUD.

The preceding provisions shall be applicable and in full force and effect notwithstanding that any applicable statutory law or case decision provides that any such merger or conversion or share (or interest) exchange, or leasehold estate transaction or other type of Conveyance does not constitute or involve the occurrence of a "transfer" or "assignment" of the Project, any of the assets related thereto, or an interest in the Grantee

Any request for HUD's approval of Conveyance must include the entity and all principals obtaining Previous Participation Certification approval (clearance), submission of a signed Certification of Substantial Compliance, and a signed Agreement to Abide by Deed Restrictions. HUD's approval of a Conveyance will be based on information provided in written statements of how the Grantee, or any subsequent Grantee, in consideration of any and all existing use restrictions, will:

- a. Implement and/or continue to comply with all existing use restrictions;
- b. implement sound financial and physical management program;
- c. respond to the needs of the residents and work cooperatively with resident organizations;
- d. provide adequate organizational staff and resources to manage the Project; and
- e. provide evidence of a minimum of five (5) years substantive experience owning and managing multifamily rental properties of a similar size, type and complexity as the Project.

The approval of a Conveyance is within the sole discretion of HUD.

3. **CONDITION OF UNITS FOR RENTAL HOUSING:** The Grantee shall comply the Physical Condition Standards and inspection requirements of 24 CFR Part 5, Subpart G, including any changes in the regulation and related Directives. In addition, the Grantee shall comply with HUD's Physical Condition Standards of Multifamily Property of 24 CFR Part 200, Subpart P, including any changes in the regulation and related Directives.

4. **PROJECT MANAGEMENT:** HUD reserves the right to approve management for the Project during the term of this Agreement. Any proposed property manager must demonstrate a minimum of five (5) years substantive experience managing multifamily properties of similar size and complexity. If the Project has project-based Section 8 assistance, any proposed property manager must demonstrate a minimum of five (5) years experience managing multifamily properties with project-based Section 8 assistance.
6. **SUBJECT TO EXAMINATION:** The Project shall at all times:
  - a. Be maintained in decent, safe and sanitary condition and in good repair to the greatest extent possible,
  - b. Maintain full occupancy to the greatest extent possible,
  - c. Be maintained as rental housing for the term of this Agreement,
  - d. Be subjected to periodic HUD inspections or inspections under REAC protocol (24 C.F.R. parts 5 and 200).
  - e. The Owner will be obligated to provide audited annual financial statements to HUD (24 C.F.R. parts 5 and 200.)
  - f. At the request of the Secretary, Grantee must supply evidence by means of occupancy reports, physical condition reports, reports on operations, or any evidence as requested to ensure that the above requirements are being met.
7. **UNIT NUMBER OR USE CHANGE:** Changes to the use, number, size, or configuration of residential units in the Project, e.g., apartment units, beds in a care facility, from the use as of the date of this Agreement, must receive the written prior approval of HUD.
8. **NON-DISCRIMINATION REQUIREMENTS:** The Grantee will comply with the provisions of all federal, state, or local laws prohibiting discrimination in housing.
9. **HAZARD INSURANCE:** Hazard insurance shall be maintained in an amount to ensure that the Grantee is able to restore the Project so that it meets the rental housing requirements described in this Agreement after restoration.
10. **DESTRUCTION OF PROJECT:** In the event that any, or all, of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Project shall be applied to rebuild or replace the Project destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
11. **DEMOLITION OF PROJECT:** The Grantee will not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs), without the prior written approval of HUD.
12. **REMEDIES FOR NONCOMPLIANCE:** Upon any violation of any provision of this Agreement by the Grantee, HUD may give written notice thereof to the Grantee by registered or certified mail, to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary may be designated by the Grantee as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) calendar days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain. The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy available under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not be construed as a waiver of the right to exercise that or any other right or remedy at any time.

- 13. CONTRADICTORY AGREEMENTS:** The Grantee certifies that it has not, and agrees that it will not, execute any other Agreement with provisions contradictory of, or in opposition to, the provisions of this agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other provisions or requirements in conflict with this Agreement.
- 14. SEPARABILITY:** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
- 15. AMENDMENT:** This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.
- 16. RIDERS TO THE USE AGREEMENT:** The Riders initialed by the parties are attached to and incorporated into this Use Agreement and will be placed in the Deed to run with the land. Capitalized terms used but not defined in a Rider shall have the meaning ascribed to such term in this Agreement. The use of the term Grantee in a Rider shall be deemed to mean the Purchaser.
- 17. PRIORITY:** This Agreement shall be recorded against the Project in a superior position to any post foreclosure liens or mortgage debts.

IN WITNESS WHEREOF:

The Grantee has executed this Use Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

GRANTEE:

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

The U.S. Department of Housing and Urban Development (HUD) has executed this Use Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

FOR: The Secretary of the Department of  
Housing and Urban Development

\_\_\_\_\_  
Official's Signature

\_\_\_\_\_  
Official's Typed Name and Title

Rider 1 of 8  
PROTECTING TENANTS AT FORECLOSURE ACT

In the case of foreclosure involving any multifamily residential dwelling, the purchaser at foreclosure shall be subject to the following:

- 1 . Any bona fide tenant occupying a unit as of the date of the notice of foreclosure must be given 90 calendar days prior notice to vacate the unit
- . Any tenant retains all its rights as of the date of the notice of foreclosure. These rights include:
  - tenant who, on or after the date of the notice of foreclosure, is under a lease agreement entitling tenant to occupy the premises until the end of the remaining term of the lease, will continue to maintain his/her rights under the lease agreement, except that a purchaser at foreclosure who will occupy a unit as a primary residence may, terminate a tenant's lease for that unit, effective on the date of sale, by issuing notice of the termination of tenancy to the tenant at least 90 calendar days prior to the effective date of the notice.
  - ( ) Any tenant who is a tenant at will under state law or occupies the unit without a lease retains all of its rights regarding occupancy of the unit, except such tenant may be required by a purchaser at foreclosure to vacate the unit provided that the tenant is given 90 calendar days prior notice by the purchaser at foreclosure.
  - (c) Nothing contained in paragraphs 1 and 2 herein shall affect the requirements for termination of any federal or state subsidized tenancy or of any state or local law that provides longer time periods or additional protections for tenants, those rights will be retained by the tenant.
- . If the tenant holds a Section 8 voucher and has a lease agreement, the purchaser at foreclosure may terminate the tenancy effective as of the date of the transfer of ownership to the purchaser if (1) the purchaser will occupy the unit as a primary residence and (2) provides the tenant with a notice to vacate at least 90 calendar days before the effective date of the notice.
- . The purchaser at foreclosure will assume its interest in the property subject to: (1) the existing leases between the prior owner and the current tenants; and (2) the existing Housing Assistance Payments contract between the prior owner and the public housing agency for any occupied unit, except that requirements contained in this paragraph 4 and in paragraph 3 shall not affect any state or local law that provides longer time periods or other additional protections for tenants.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee

HUD

Rider 2 of 8  
24 CFR Part 5 Physical Conditions

Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair under 24 CFR § 5.703. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

- (a) Site. The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.
- (b) Building exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.
- (c) Building systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.
- (d) Dwelling units.
  - (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.
  - (2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).
  - (3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.
  - (4) The dwelling unit must include at least one battery-operated or hardwired smoke detector, in proper working condition, on each level of the unit.
- (e) Common areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.
- (f) Health and safety concerns. All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).
- (g) Compliance with state and local codes. The physical condition standards in this section do not supersede or preempt state and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee

HUD

RIDER 3 of 8  
NONDISCRIMINATION AGAINST SECTION 8  
CERTIFICATE HOLDERS AND VOUCHER HOLDERS

The Use Agreement shall contain the following provision:

1. In order to comply with Section 204 of the Housing and Community Development Amendments of 1978, 12 USC §1701z-12, as amended, the Grantee, for self, successors and assigns, shall not unreasonably refuse to lease a dwelling unit offered for rent, refuse to offer or sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC §1437f), or any successor legislation hereinafter referred to as "Section 8". This provision is limited in application, for tenants or applicants with Section 8 Certificates or Vouchers, to those units, which rent for an amount not greater than one-hundred and twenty percent (120% ) of the Section 8 fair market rent for a comparable unit in the area as determined by HUD.
2. This restriction shall bind the Grantee, any/all successors, assigns and Grantees for value, for a period equal to the Restricted Period, which is twenty (20) years from the date of this Use Agreement. In the event of a breach or a threatened breach of this covenant, HUD, any/all successors in office and/or one or more third-party beneficiaries, shall be entitled to institute legal action to enforce performance and observance of such covenant and to enjoin any acts which are in violation of such covenant. For the purposes of this restriction, a third-party beneficiary shall be any person who holds a Certificate of Family Participation or a Voucher under Section 8 or any equivalent document under successor legislation.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee

HUD



PROJECTS PRIMARILY OCCUPIED BY THE ELDERLY

The Use Agreement shall contain the following provision:

Grantee covenants that 49 of the units in the Project will be maintained as rental housing for elderly families and individuals for a period of fifty (50) years after the date of the Rider or such earlier time as HUD may specify in writing ("Restricted Period"). Any change in the number of units for the elderly must receive the prior written approval of HUD.

Grantee covenants that it will affirmatively market 49 of the units in the Project to families whose head, spouse, or sole member is 62 or older.

If the Grantee has made reasonable efforts to lease units to eligible families and is unable to achieve or maintain an adequate level of occupancy sufficient to operate the Project, the Grantee may request a waiver to allow tenants who are age 55 or older by submitting the request to, and obtaining written approval from, the HUD field office with jurisdiction where the property is located.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee

HUD

**RIDER 5 OF 8**  
**TWO-YEAR RENT PROTECTION FOR PRE-EXISTING VERY LOW-INCOME**  
**TENANTS**

The Use Agreement shall contain the following provision:

1. The Grantee agrees that, for any unassisted, very low-income (as defined in 24 CFR 5.603) family which is a pre-existing tenant of a project and who after the acquisition would be required to pay rent in an amount in excess of thirty percent (30%) of the adjusted income (as defined in 24 C.F.R. 5.611) of the family, the rent for the unit occupied by the family may not be increased above the rent charged immediately before the acquisition. The rent protection will be enforceable for a period of two (2) years beginning upon the date of acquisition of the Property by the Grantee.
2. On the date of acquisition, the Grantee must provide notice to all tenants residing in unassisted units that they may qualify for the two-year rent protection.
3. Grantee shall conduct an initial income certification for all tenants within thirty (30) calendar days of the acquisition.
4. For all tenants covered by these provisions, Grantee must include in the lease(s) the terms and conditions of the two (2) year rent protection including a provision for an initial tenant income certification and not more than one (1) tenant income certification a year, except upon reduction of tenant income or upon tenant request.
5. Grantee shall provide to HUD a list of all tenants who are covered by this provision within sixty (60) calendar days of the date of this Use Agreement. The list should include the name of the lease holder, unit type, number of family members residing in the unit, and the amount of rent paid by the tenant. If the income certification is not complete within the sixty (60) calendar days, Grantee must report the progress of the certifications and provide a completion date. Upon completion of the income certifications, Grantee must submit the report in the required format and continue to submit this report quarterly, for a period of two (2) years from the date of Closing, to show protection of the tenants has occurred for two (2) years.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_

HUD \_\_\_\_

## **AFFORDABILITY OF UNITS**

The Use Agreement shall contain the following provision:

### **Use Restriction**

1. The Grantee (Owner) shall maintain 49 of the 50 units at the property, as affordable rental housing for a period of fifty (50) years after the date of this Use Agreement or such earlier time as HUD may specify in writing ("Restricted Period").
2. Grantee shall submit a written request to HUD for any change to the number or configuration of residential units required to be maintained, as affordable rental housing.
3. The Grantee (Owner) shall not unreasonably refuse to lease units to, or otherwise discriminate against, very low-income families.

### **Income Eligibility Requirement**

The Grantee (Owner) shall affirmatively market all dwelling units to very low-income families with adjusted gross annual income that does not exceed fifty percent (50%) of the area median income, adjusted for family size.

If the Grantee (Owner) is temporarily unable to lease all of the dwelling units to very low-income families, one or more units may be leased to families who are low-income but not very low-income, only with HUD's prior written approval. In requesting such approval, the Grantee (Owner) must demonstrate that:

1. reasonable steps have been taken to attract very low-income families, including using marketing activities most likely to attract such eligible applicants, and
2. has leased or is making good-faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families, and
3. has not rejected any such applicants except for reasons acceptable to HUD.

In the event the Grantee (Owner) is unable to lease all of the specified number of dwelling units to income eligible families, one or more units may be leased to families who are not income eligible families, only with HUD's prior written approval. In requesting such approval, the Grantee (Owner) must demonstrate that:

1. reasonable steps have been taken to attract income eligible families, including using marketing activities most likely to attract such eligible applicants, and
2. has leased or is making good-faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families, and
3. has not rejected any such applicants except for reasons acceptable to HUD.

### **Affordability**

#### **Maintenance of Rents at Affordable Levels**

1. For current tenants, affordable means the least of:

- a. for the dwelling units occupied by a very low-income family, the unit rent does not exceed thirty percent (30%) of fifty percent (50%) of the area median income, not necessarily the income of the family, as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; or
  - b. RESERVED
  - c. the Section 8 Voucher Payment Standard less the utility allowance established by the voucher provider;
  - d. Market Rent in the immediate area established by a rent comparability study prepared, at the Grantee's (Owner's) expense, in accordance with HUD requirements.
2. For new, or turnover tenants, affordable means the least of:
- a. For dwelling units, the unit rent does not exceed thirty percent (30%) of fifty percent (50%) of the area median income (not necessarily the income of the family), as determined by HUD, with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; or
  - b. RESERVED
  - c. the Section 8 Voucher Payment Standard, less the utility allowance established by the voucher provider; or
  - d. market rent in the immediate area established by a rent comparability study prepared, at the Grantee's (Owner's) expense, in accordance with HUD requirements.

### **Annual Certification**

The Grantee (Owner) shall certify to HUD annually, in a manner acceptable to HUD, that the requirements in the above paragraphs have been fulfilled.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Purchaser

HUD

Rider 7 of 8  
**REQUIRED REPAIRS**

The Use Agreement shall contain the following provision:

1. **REQUIRED REPAIRS:** All property and property improvement must meet or surpass, at a minimum, all state and local codes and ordinances, Physical Condition Standards (pursuant to 24 CFR Part 5), the General Repair and Property Standards (listed below), the Post-Closing Repair Requirements (Exhibit B), and the Environmental Hazards provision (collectively the “Repairs”).
  - a. **General Repair and Property Standards**
    - i. **Exterior:**

Any trip hazards (deviations of ½ in or greater) on all surfaces of the property must be mitigated.

Repair and/or replace any loose, damaged or deteriorated facade, trim, posts, and cornice.

All exterior paint must be fully intact, mold and rust free.

All drainage, water diversion, roofing, and water proofing systems must be performing as originally intended to ensure positive drainage and minimize pooling.

All windows and exterior doors must be operable, lockable, draft free and water tight.
    - ii. **Interior/MEPs:**

All mechanical, plumbing, plumbing fixtures, electrical fixtures, electrical devices, appliances and HVAC must be in “Good” operating condition and hazard free.

All fire protection devices and systems must be working as originally intended.

All ventilation systems must be working as originally intended.

All interior painted surfaces and millwork must be fully intact, free of excessive grease and dirt.

All floor coverings must be fully attached, free of holes, chips, frays and excessive dirt.

All interior doors, locks, closures and stops must be operating as originally intended.
    - iii. **Workmanship and Materials:**

All work shall be performed in a workmanlike manner and in accordance with generally accepted practices and procedures.

Materials installed shall be of such kind and quality to ensure that the dwelling will provide acceptable durability for the duration of the Restricted Period.

All repair/rehabilitation work must be performed in a manner compliant with the essential and material requirements of all state codes, local codes, laws, ordinances, regulations, Physical Conditions Standards pursuant to 24 CFR Part 5.

All long and short lived building components must be performing as originally designed or intended.
  - b. **Post-Closing Repair Requirements (Exhibit B)** (if attached) describes additional, specific required Repairs. It is probable that not all units were surveyed. However, units not surveyed must also be rehabilitated to the same level as those units that were surveyed.
  - c. **All Repairs**, required by this provision, will not be considered complete until such time as HUD or its designee has inspected the Repairs and HUD has accepted the Repairs.

2. REPAIR PERIOD: The Repair Period begins at Closing and expires twenty-four (24) months from the date of this Deed. The Grantee covenants that the Repairs will be completed within Repair Period.
3. EXTENSION OF THE REPAIR PERIOD: If the Grantee cannot complete the Repairs within the Repair Period, Grantee shall submit a written request for an extension to HUD stating the reason(s) for Grantee's inability to complete the Repairs. Grantee's request must be received not less than thirty (30) calendar days prior to the expiration of the Repair Period.
  - a. In the event an extension for completion of repairs is granted, the Grantee shall extend expiration of the LOCs, or Payment and Performance Bonds accordingly,
  - b. Extensions of time to complete Repairs are within HUD's sole and absolute discretion, and
  - c. The granting of one or more extensions shall not obligate HUD to grant additional extensions.
4. REPAIR ESCROW: To ensure completion of the Repairs by the Grantee, at Closing the Grantee shall deliver to HUD:
  - a. Letter(s) of Credit (LOCs): A minimum of one (1), and a maximum of four (4) unconditional, irrevocable and non-documentary Letters of Credit (LOCs):
    - i. which total \$[25% of total cost Repairs], and
    - ii. which shall remain in effect and may be drawn on by HUD for at six (6) months beyond the Repair Period as stated above), **and**
    - iii. LOCs may be returned or amended as the Grantee completes Repairs and HUD has inspected and accepted the Repairs.
  - b. Payment and Performance Bond: **After Closing, and with prior approval by HUD**, the LOC may be replaced with a 100% Payment and Performance Bond:
    - i. Grantee must use HUD Form-92452 for the payment bond and a form for the performance bond that is acceptable to HUD. Evidence of the existence of payment and performance bonds each in the amount of \$ (the total cost of Repairs) must be provided to HUD.
    - ii. Provide HUD with a fully executed copy of the approved The Plans and Specifications and Construction Contract which specifically address items, quantities and timelines specified in paragraphs 1 and 2 of this provision, and the Use Agreement or Deed, as applicable to the sale of the Project prior to the release of the LOC.
    - iii. Grantee must ensure the bonds comply with the following requirements:
      - (a) The surety entity issuing the bonds must be included on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1 of each year;
      - (b) The payment and performance bonds must not exceed limits listed in the Circular;
      - (c) The payment and performance bonds must show HUD as an Obligee.
    - iv. This "Required Repairs" provision and Exhibit B must be attached to and referenced in article 9.1.7 of the construction contract (AIA A101).

This obligation will be deemed satisfied by the Letter(s) of Credit, or a 100% Payment and Performance Bonds provided by the Contractor to the Owner with HUD listed as Obligee, all in a form prescribed by HUD.

5. **REPORTING:** HUD will monitor the progress of the Repairs using reports from the Grantee and inspections performed by HUD or a designee.
- a. **Quarterly Reports:** Grantee must submit quarterly reports (Post-Closing Repair Report) to HUD on the status of Repairs. The first report is due 90 days after Closing and must include:
- i. the number and type of units completed,
  - ii. a list of major Repairs and percentage completed,
  - iii. a narrative describing:
    - (a) the status of the planned rehabilitation, i.e. are repairs ahead of, on schedule, or behind on the original rehabilitation schedule,
    - (b) any special circumstances which may, or have delayed the repairs.
- b. **Additional Reports:** Upon request, Grantee must submit reports, in addition to the Quarterly Reports, to HUD. The frequency and content of these reports will be provided to the Grantee by HUD.

HUD may perform periodic inspections to ascertain the status of the Repairs. If, at any time, HUD determines the Grantee is failing to make adequate progress toward completion of the required Repairs or that the Repairs completed are not acceptable to HUD, Grantee may be required to provide a plan with milestones to show that acceptable Repairs can be completed within the Repair Period. Failure to meet milestones without adequate justification is a reason for Noncompliance as explained below.

6. **RENTS:** The Grantee covenants not to increase the rent for any unit, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the requirements set forth in paragraph 1, above. Rents for units to be covered by a Housing Assistance Payment Contract may be increased only pursuant to and following execution of such Contract.
7. **RELOCATION:** If temporary or permanent relocation is necessary because of Repairs required under this provision, Grantee covenants to comply with the Relocation provision of this Deed.
8. **NONCOMPLIANCE:** If Grantee fails to complete the required Repairs within the Repair Period and no extension by written agreement has been granted by HUD, HUD and any/all successors in office, in its sole discretion, shall be entitled to:
- a. Enter and terminate the estate hereby conveyed, or
  - b. Cash any LOC or request performance under any payment and/or performance bond, and seek remedies provided in the Enforcement provision of this Deed, as HUD deems appropriate.

If HUD cashes the Grantee's LOC(s), HUD will NOT apply the funds to complete the Repairs. HUD will retain the funds as liquidated damages or for any other purposes as HUD deems appropriate. In the event that HUD cashes the Grantee's LOC(s) for failure to successfully complete the Repairs, the Grantee is still responsible for completion of the Repairs in order to prevent HUD from initiating further sanctions.

These rights and remedies may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Deed.



9. LENDER OR SECURITY INTEREST: If the Grantee fails to repair the Property in accordance with this Deed, HUD will not exercise the remedies as described in paragraph 8 above, if any lender holding a lien or security interest on the Property:
- a. Gives written notice to HUD within the period provided for repairs, that it intends to complete the repairs, and
  - b. Completes such repairs within thirty (30) calendar days of the notice or within such longer periods as HUD may approve in writing.

However, HUD is under no obligation to notify any lender or security interest of its intent to cash any LOCs.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Purchaser

HUD

\*Air filtration - Various testing has identified concerns with indoor air due to the ambient outdoor air conditions. HUD requires the installation of air filtration systems in each living unit to mitigate any air quality concerns. Additionally, an Operations and Maintenance Plan (O&M) must be developed for continued inspection and maintenance of such systems to ensure proper continuous operating order.

## RIDER 8 OF 8 ENVIRONMENTAL HAZARDS

The Use Agreement shall contain the following provision:

Grantee covenants to:

- 1 . Investigate and test the Property for substances, chemicals and waste (collectively "Hazardous Substances") and perform cleanup, remedial, removal or restoration work required by any governmental authority ("Inspect and Remediate Requirements").
- 2 . Certify to HUD, in a form acceptable to HUD, that the Inspect and Remediate Requirements have been performed in accordance with this provision.
- 3 . Indemnify, defend, and hold HUD harmless from any liability arising from Grantee's failure to satisfactorily perform the Inspect and Remediate Requirements. Grantee acknowledges that HUD's acceptance of the work is not a warranty that all Hazardous Substances have been eliminated from the Property and does not relieve Grantee of its ongoing responsibility to comply with appropriate governmental authorities.

Grantee shall comply with Inspect and Remediate Requirements checked and any additional Hazardous Substances it becomes aware of concerning:

ASBESTOS: 29 CFR 1926 and any subsequent regulations(s) including, but not limited to, all federal, state and local laws regarding detection, abatement, containment and removal of asbestos containing materials.

LEAD-BASED PAINT: 42 USC 4821-4886 and the regulations thereunder, 24 CFR Part 35. Grantee shall inspect, test and abate any lead-based paint. Grantee shall comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgment of Disclosure" of 24 CFR, Lead Based Paint Poisoning Prevention in Certain Residential Structures.

RADON: All federal, state and local laws, and EPA guidelines regarding detection and abatement of radon.

MOLD: All federal, state and local laws, and EPA guidelines regarding detection and abatement of mold.

TOXIC AND HAZARDOUS SUBSTANCES: 29 CFR 1926 subpart Z (where a list of applicable substances can be found).

Operations and Maintenance Plan:

1. Grantee shall develop and maintain on the site at all times an Operations and Maintenance Plan (O&M Plan) that complies with EPA guidelines for Operations and Maintenance Programs. The O&M Plan shall:
  - a. Identify areas where Hazards exist;
  - b. Establish guidelines for maintenance work and repairs and employee training;
  - c. Establish tenant notification systems; and
  - d. Establish monitoring, job-site controls, work practices, record keeping, and worker protection.
2. Grantee shall submit a copy of the O&M Plan for HUD review and approval within thirty (30) Calendar days after the date of this Use Agreement.

Remedies:

1. If Grantee fails to comply with this provision, HUD may exercise one or more of the remedies Listed below:
  - a. Enter and terminate the estate hereby conveyed,
  - b. Cash Grantee's LOC(s),
  - c. Request payment and performance under any Payment and Performance Bonds provided to HUD.
2. If HUD cashes the Grantee's LOC(s) or files a claim with the surety company as a remedy for the Grantee's default under this provision, HUD may apply the funds to perform the Inspect and Remediate Requirements, retain the funds as liquidated damages, or for such other project purposes as HUD deems appropriate.
3. HUD shall not exercise its available remedies if any lender holding a lien or security interest on the Property:
  - a. Gives written notice to HUD within the period provided for repairs, that it intends to complete the Inspect and Remediate Requirements, and
  - b. Completes the Inspect and Remediate Requirements within thirty (30) calendar days of the notice or within such extended period that HUD may approve in writing.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_\_

HUD \_\_\_\_\_

Attachment D  
**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION  
 AND CERTIFICATION (PCS INSPECTION CHECKLIST)**

Instructions: Owner must complete this report for each unit receiving Project-Based Section 8 funding. The report is to be received in the Property Disposition Center no later than ten (10) days prior to the date for the PCS inspection ordered by HUD. If the Owner chooses to have the unit(s) inspected by a Certified Property Inspector, a copy of the Inspector's certification must accompany the Owner's report.

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

Inspection Number: \_\_\_\_\_

Building Number:								
Unit Number:								
Number of Bedrooms:								
Number of Bathrooms:								
Occupied (O) or Vacant (V):								

**F=Fail P=Pass I=Inconclusive Y=Yes N= No N/A=Not applicable**

<b>Unit Number:</b>																		
<b>1. Living Room</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
1.1 Living Room Present (Y or N)																		
1.2 Electricity																		
1.3 Electrical Hazards																		
1.4 Security																		
1.5 Window Condition																		
1.6 Ceiling Condition																		
1.7 Wall Condition																		
1.8 Floor Condition																		
1.9 Lead-Based Paint Hazard																		
Additional Comments/Findings on separate page (Y/N)																		

<b>Unit Number:</b>																		
<b>2. Kitchen Area</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
2.1 Kitchen Area Present (Y or N)																		
2.2 Electricity																		
2.3 Electrical Hazards																		
2.4 Security																		
2.5 Window Condition																		
2.6 Ceiling Condition																		
2.7 Wall Condition																		
2.8 Floor Condition																		
2.9 Lead-Based Paint Hazard																		
2.10 Stove or Range w/Oven																		
2.11 Refrigerator																		
2.12 Sink																		
2.13 Food prepare/store/serve																		
Additional Comments/Findings on separate page (Y/N)																		

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
(PCS INSPECTION CHECKLIST)**

Unit Number:																		
3. Bathroom	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
3.1 Bathroom Present (Y or N)																		
3.2 Electricity																		
3.3 Electrical Hazards																		
3.4 Security																		
3.5 Window Condition																		
3.6 Ceiling Condition																		
3.7 Wall Condition																		
3.8 Floor Condition																		
3.9 Lead-Based Paint Hazard																		
3.10 Flush Toilet																		
3.11 Fixed Wash Basin/Lavatory																		
3.12 Tub or Shower																		
3.13 Ventilation																		
Additional Comments/Findings on separate page (Y/N)																		

**4. Other rooms used for living and halls: See Instructions under category 4.**

Unit Number:																		
4.1 Room Code	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
Location: (R)right, (L)left, (C)center																		
(f)Front (r)Rear (c)center of unit																		
Level: (#) floor or (B) basement																		
4.2 Electricity/Illumination																		
4.3 Electrical Hazards																		
4.4 Security																		
4.5 Window Condition																		
4.6 Ceiling Condition																		
4.7 Wall Condition																		
4.8 Floor Condition																		
4.9 Lead-based Paint Hazard																		
4.10 Smoke Detectors																		
Additional Comments/Findings on separate page (Y/N)																		

**4. Other rooms used for living and halls: See Instructions under category 4.**

Unit Number:																		
4.1 Room Code	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
Location: (R)right, (L)left, (C)center																		
(f)Front (r)Rear (c)center of unit																		
Level: (#) floor or (B) basement																		
4.2 Electricity/Illumination																		
4.3 Electrical Hazards																		
4.4 Security																		
4.5 Window Condition																		
4.6 Ceiling Condition																		

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
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4.7 Wall Condition																				
4.8 Floor Condition																				
4.9 Lead-based Paint Hazard																				
4.10 Smoke Detectors																				
Additional Comments/Findings on separate page (Y/N)																				

**5. All secondary rooms: not used for living: See instructions under Category 5.**

<b>Unit Number:</b>																					
<b>Description:</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
5.1 Security																					
5.2 Electrical Hazards																					
5.3 Other potential hazards																					
Additional Comments/Findings on separate page (Y/N)																					

<b>Unit Number:</b>																					
<b>6. Heating and Plumbing</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
6.1 Adequacy of Heating Equipment																					
6.2 Safety of Heating Equipment																					
6.3 Ventilation/Cooling System																					
6.4 Water Heater																					
6.5 Water Supply																					
6.6 Plumbing																					
6.7 Sewer Connections																					
Additional Comments/Findings on separate page (Y/N)																					

<b>Unit Number:</b>																					
<b>7. General Health and Safety</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
7.1 Access to Unit																					
7.2 Exits																					
7.3 Evidence of Infestation																					
7.4 Garbage and Debris																					
7.5 Refuse Removal																					
7.6 Interior Stairs/Common Halls																					
7.7 Other Interior Hazards																					
7.8 Interior Air Quality																					
Additional Comments/Findings on separate page (Y/N)																					

<b>Unit Number:</b>																					
<b>8. Decision of Inspector</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
Indicate Pass or Fail for each unit																					

**WARNING:** It is a crime to knowingly make false statement(s) to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U. S. Code, Section 1001 and Section 1010.

I, \_\_\_\_\_, the Owner of the Property, hereby certify that these units were inspected on this date of \_\_\_\_\_. Furthermore, I certify that the inspection was conducted according to the Instructions of this report by my signature below:

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Date

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
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I hereby certify, as the Inspector performing the PCS inspection, that this Property was inspected as indicated by my signature below. This Property ☐ Passes ☐ Fails the PCS inspection.

\_\_\_\_\_  
Signature of Individual Performing Inspection

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print name of Inspector)

\*Attach Inspector's Certification if performed by a third party.

**OWNER'S PCS INSPECTION INSTRUCTIONS:**

To ensure that each unit and inspection is correctly identified, please complete the top portion as follows:

**Property Name:** is the name of the apartment complex.

**Property Address:** is the physical location of the property, i.e., usually the site office address

**Number of Inspections:** the number of inspections as completed by the Owner. (This may not be the first PCS inspection, if so indicate the number of times an inspection of the physical conditions standards has been held for the property.

**Building Number:** is the building number for the units being inspected.

**Unit Number:** is the unit number, e.g., Unit 1. If the units are not numbered, but have separate identifying addresses, then use the address for the unit.

**Number of bedrooms:** self explanatory

**Number of baths:** self explanatory

**Unit is Occupied/Vacant:** self explanatory

**Grading:** The decision of the Inspector can be either: "Pass", "Fail", or "Inconclusive." You may use a check mark and an "x" to indicate your decision.

"N/A" may be used in for lead-based paint inspection. See Section 1.9 for more information.

"Yes" and/or "No" are used to indicate the presence of a room and the attachment of comments/findings.

**Comments/Findings:** In each Section, an area is provided to indicate if you have attachments which include comments or findings. If you encounter a condition that requires you to provide "comments/findings," indicate that you will be attaching additional pages to the inspection by entering a "Y" in the area provided (highlighted above in red.) Be sure to mark any comments/findings with the unit number or address of the unit to ensure that the reviewer understands to which unit the comments/findings apply. If there are no comments/findings to be attached, then indicate that by marking with "N." EXAMPLE:

Additional comments/findings on separate page (Y/N)	N						
---	---	--	--	--	--	--	--

**NOTE: HUD will allow vouchering for HAP payments only for occupied units covered under the HAP Contract. All HAP units must be inspected.**

**1. Living Room**

**1.1 Living Room Present**

**Is there a living room?**

Note: If the unit is an efficiency apartment, consider the living room present.

**1.2 Electricity**

**Are there at least two working outlets or one working outlet and one working light fixture?**

In order to qualify, the outlets must be present and properly installed in the baseboard, wall or floor of the room. Do not count a single duplex receptacle as two outlets, i.e., there must be **two** of these in the room, or **one** of these **plus a permanently installed ceiling or wall light fixture**. Both the outlets and/or the light must be working. Usually, a room will have sufficient lights or electrical appliances plugged into outlets to determine workability. Be sure light fixture does not fail just because the bulb is

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
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burned out. Do not count any of the following items or fixtures as outlets/fixtures: Table or floor lamps (these are **not** permanent light fixtures); ceiling lamps plugged into socket; extension cords. If the electric service to the unit has been temporarily turned off, enter "Inconclusive" and provide your comments/findings. Contact owner or manager after inspection to verify that electricity functions properly when service is turned on.

### **1.3 Electrical Hazards**

#### **Is the room free from electrical hazards?**

Examples of what this means: broken wiring; non-insulated wiring; frayed wiring; improper types of wiring, connections or insulation; wires lying in or located near standing water or other unsafe places; light fixture hanging from electric wiring without other firm support or fixture; missing cover plates on switches or outlets; badly cracked outlets; exposed fuse box connections; overloaded circuits evidenced by frequently "blown" fuses (ask the tenant). If you are uncertain about severity of the problem seek expert advice. Mark "Inconclusive" and provide your comments/findings.

### **1.4 Security**

#### **Are all windows and doors that are accessible from the outside lockable?**

"Accessible to outside" means: doors open to the outside or to a common public hall; windows accessible from the outside (e.g. basement and first floor); windows or doors leading onto a fire escape, porch or other outside place that can be reached from the ground. "Lockable" means: the window or door has a properly working lock, or is nailed shut, or the window is not designed to be opened. A storm window lock that is working properly is acceptable. Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

### **1.5 Window Condition**

#### **Is there at least one window, and are all windows free of signs of severe deterioration of missing or broken out panes?**

Rate the windows in the room (including windows in doors). "Severe deterioration" means that the window no longer has the capacity to keep out the wind and the rain or is a cutting hazard. Examples are: missing or broken-out panes; dangerously loose cracked panes; windows that will not close; windows that, when closed, do not form a reasonably tight seal. If there is only "moderate deterioration" of the windows the item should "Pass." "Moderate deterioration" means windows which are reasonably weather-tight, but show evidence of some aging, abuse, or lack of repair. Signs of deterioration are: minor crack in window pane; splintered sill; signs of some minor rotting in the window frame or the window itself; window panes loose because of missing window putty. Also for deteriorated and peeling paint see 1.9. If more than one window is in this condition, provide your comments/findings.

### **1.6 Ceiling Condition**

#### **Is the ceiling sound and free from hazardous defects?**

"Unsound or hazardous" means: the presence of such serious defects that either a potential exists for structural collapse or that large cracks or holes allow significant drafts to enter the unit. The condition includes: severe bulging or buckling; large holes; missing parts; falling or in danger of falling loose surface materials (other than paper or paint). Pass ceilings that are basically sound but have some nonhazardous defects, including: small holes or cracks; missing or broken ceiling tiles; water stains; soiled surfaces; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

### **1.7 Wall Condition**

#### **Is the wall sound and free from hazardous defects?**

"Unsound or hazardous" includes: serious defects such that the structural safety of the building is threatened, such as severe buckling, bulging or leaning; damaged or loose structural members; large holes; air infiltration. Pass walls that are basically sound but have some non hazardous defects, including: small or shallow holes; cracks; loose or missing parts; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

### **1.8 Floor Condition**

#### **Is the floor sound and free from hazardous defects?**

"Unsound or hazardous" means the presence of such serious defects that a potential exists for structural collapse or other threats to safety (e.g., stripping) or large cracks or holes allow substantial drafts from below the floor. The condition includes: severe buckling or major movements under walking stress; damaged or missing parts. Pass floors that are basically sound but have some nonhazardous defects, including: heavily worn or damaged floor surface (for ex-ample, scratches or gouges in surface, missing portions of tile or linoleum, previous water damage). If there is a floor covering, also note the condition, especially if badly worn or soiled. If there is a floor covering, including paint or sealant, also note the



**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
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conditions in your comments/findings, especially if badly worn, soiled or peeling (for peeling paint, see 1.9).

### **1.9 Lead-Based Paint**

**Are all painted surfaces free of deteriorated paint? If no, do deteriorated surfaces exceed two square feet and/or more than 10% of a component?**

If the unit was built January 1, 1978, or after, no child under age six will occupy or currently occupies it, is a 0-BR, elderly or handicapped unit with no children under age six on the lease or expected, has been certified lead based paint free by a certified lead-based paint inspector (no lead based paint present or no lead-based paint present after removal of lead-based paint.), mark "N/A" and do not inspect painted surfaces. This requirement applies to all painted surfaces (building components) within the unit. (Do not include tenant belongings). Surfaces to receive a visual assessment for deteriorated paint include walls, floors, ceilings, built in cabinets (sink bases), baseboards, doors, door frames, windows systems including mullions, sills, or frames and any other painted building component within the unit. Deteriorated paint includes any painted surface that is peeling, chipping, chalking, cracking, damaged or otherwise separated from the substrate. All deteriorated paint surfaces **more than 2 sq. ft. in any one interior room or space, or more than 10% of the total surface area of an interior type of component with a small surface area (i.e., window sills, baseboards, and trim)** must be stabilized (corrected) in accordance with all safe work practice requirements and clearance is required. **If the deteriorated painted surface is less than 2 sq. ft. or less than 10% of the component, only stabilization is required.**

**Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities, except for *de minimis* level repairs.

## **2. Kitchen**

### **2.1 Kitchen Area Present**

**Is there a kitchen present?**

Note: A kitchen is an area used for preparation of meals. It may be either a separate room or an area of a larger room (for example, a kitchen area in an efficiency apartment).

**2.2 - 2.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:**

### **2.2 Electricity**

**Are there at least one working outlet and one working, permanently installed light fixture?**

Note: The requirement is that at least one outlet and one permanent light fixture are present and working.

### **2.5 Window Condition**

Note: The absence of a window does not fail this item in the kitchen. If there is no window, check "Pass."

### **2.10 Stove or Range with Oven**

**Is there a working oven, and a stove (or range) with top burners that work? If no oven and stove (or range) are present, is there a microwave oven and, if microwave oven is owner-supplied, do other tenants have microwaves instead of an oven and stove (or range)?**

Both an oven and a stove (or range) with top burners must be present and working. If either is missing and you know that the owner is responsible for supplying these appliances, mark "Fail." Mark "Inconclusive" if the tenant is responsible for supplying the appliances and has not yet moved in. Contact tenant or prospective tenant to gain verification that facility will be supplied and is in working condition. Hot plates are not acceptable substitutes for these facilities. An oven is not working if it will not heat up. To be working a stove or range must have all burners working and knobs to turn them off and on. Under "working condition," also look for hazardous gas hook-ups evidenced by strong gas smells; these should fail. (Be sure that this condition is not confused with an unlit pilot light – a condition that should be noted, but does not fail.) If both an oven and a stove or range is present, but the gas or electricity is turned off, mark "Inconclusive." Contact owner or manager to get verification that facility works when gas is turned on. If both an oven and a stove or range are present and working, but defects exist, mark "Pass" and note these in your comments/findings. Possible defects are marked, dented, or scratched surfaces; cracked burner ring; limited size relative to family needs.

### **2.11 Refrigerator**

**If there a refrigerator that works and maintains a temperature low enough so that food does not spoil over a period of time?**

If no refrigerator is present, use the same criteria for marking either "Fail" or "Inconclusive" as were used for the oven and stove or range. A refrigerator is not working if it will not maintain a temperature low enough to keep food from spoiling over a reasonable period of time. If the electricity is turned off, mark

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"Inconclusive." Contact the owner (or tenant if unit is occupied) to get verification of working condition. If the refrigerator is present and working but defects exist, note these in your comments/findings. Possible minor defects include: broken or missing interior shelving; dented or scratched interior or exterior surfaces; minor deterioration of door seal; loose door handle.

### **2.12 Sink**

#### **Is there a kitchen sink that works with hot and cold running water?**

If a permanently attached kitchen sink is not present in the kitchen or kitchen area, mark "Fail." A sink in a bathroom or a portable basin will not satisfy this requirement. A sink is not working unless it has running hot and cold water from the faucets and a properly connected and properly working drain (with a "gas trap"). In a vacant apartment, the hot water may have been turned off and there will be no hot water. Mark this "Inconclusive." Check with owner or manager to verify that hot water is available when service is turned on. If a working sink has defects, note this in your comments/findings. Possible minor defects include: dripping faucet; marked, dented, or scratched surface; slow drain; missing or broken drain stopper.

### **2.13 Space for Storage, Preparation, and Serving of Food**

#### **Is there space to store, prepare, and serve food?**

Some space must be available for the storage, preparation, and serving of food. If there is no built-in space for food storage and preparation, a table used for food preparation and a portable storage cabinet will satisfy the requirement. If there is no built-in space, and no room for a table and portable cabinet, mark "Inconclusive" and discuss with the tenant. The tenant makes the final determination as to whether or not this space is acceptable. If there are some minor defects, mark "Pass" and indicate this in your comments/findings. Possible defects include: marked, dented, or scratched surfaces; broken shelving or cabinet doors; broken drawers or cabinet hardware; limited size relative to family needs.

## **3. Bathroom**

### **3.1 Bathroom Present**

#### **Is there a bathroom?**

Most units have easily identifiable bathrooms (i.e., a separate room with toilet, washbasin and tub or shower). In some cases, however, you will encounter units with scattered bathroom facilities (i.e., toilet, washbasin and tub or shower located in separate parts of the unit). At a minimum, there must be an enclosure around the toilet. In this case, count the enclosure around the toilet as the bathroom and proceed with 3.2-3.9 below, with respect to this enclosure. If there is more than one bathroom that is normally used, rate the one that is in best condition for Part 3. If there is a second bathroom that is also used, complete Part 4 of the checklist for this room.

#### **3.2 - 3.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:**

### **3.2 Electricity**

Note: The requirement is that at least one permanent light fixture is present and working.

### **3.3 Electrical Hazards**

Note: In addition to the previously mentioned hazards, non-GFCI outlets that are located within 6 feet of a water source are considered to be an electrical hazard.

### **3.5 Window Condition**

Note: The absence of a window does not fail this item in the bathroom (see item 3.13, Ventilation, for relevance of window with respect to ventilation). If there is no window, but a working vent system is present, mark "Pass."

### **3.7 Wall Condition**

Note: Include under nonhazardous defects (that would pass, but should be noted in your comments/findings) the following: broken or loose tile; deteriorated grouting at tub/wall and tub/floor joints, or tiled surfaces; water stains.

### **3.8 Floor Condition**

Note: Include under nonhazardous defects (that would pass, but should be noted in your comments/findings) the following: missing floor tiles; water stains.

### **3.10 Flush Toilet in Enclosed Room in Unit**

#### **Is there a working toilet in the unit for the exclusive private use of the tenant?**

The toilet must be contained within the unit, be in proper operating condition, and be available for the exclusive use of the occupants of the unit (i.e., outhouses or facilities shared by occupants of other units are not acceptable). It must allow for privacy. Not working means: the toilet is not connected to a water supply; it is not connected to a sewer drain; it is clogged; it does not have a trap; the connections, vents

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or traps are faulty to the extent that severe leakage of water or escape of gases occurs; the flushing mechanism does not function properly. If the water to the unit has been turned off, mark "Inconclusive." Obtain verification from owner or manager that facility works properly when water is turned on. If the toilet is "present, exclusive, and working," but has the following types of defects: constant running; chipped or broken porcelain; slow draining, note this in your comments/findings. If drain blockage is more serious and occurs further in the sewer line, causing backup, check item 5.6, "Fail," under the plumbing and heating part of the checklist. A sign of serious sewer blockage is the presence of numerous backed-up drains.

### **3.11 Fixed Wash Basin or Lavatory in Unit**

#### **Is there a working, permanently installed wash basin with hot and cold running water in the unit?**

The wash basin must be permanently installed (i.e., a portable wash basin does not satisfy the requirement). Also, a kitchen sink used to pass the requirements under Part 2 of the checklist (kitchen facilities) cannot also serve as the bathroom wash basin. The wash basin may be located separate from the other bathroom facilities (i.e. in a hallway). Not working means: the wash basin is not connected to a system that will deliver hot and cold running water; it is not connected to a properly operating drain; the connectors (or vents or traps) are faulty to the extent that severe leakage of water or escape of sewer gases occurs. If the water to the unit or the hot water unit has been turned off, mark "Inconclusive." Obtain verification from owner or manager that the system is in working condition. If the wash basin is "present and working," but has the following types of minor defects: insufficient water pressure; dripping faucets; minor leaks; cracked or chipped porcelain; slow drain (see discussion above at 3.10), note this in your comments/findings.

### **3.12 Tub or Shower in Unit**

#### **Is there a working tub or shower with hot and cold running water in the unit?**

Not present means that neither a tub nor shower is present in the unit. Again, these facilities need not be in the same room with the rest of the bathroom facilities. They must, however, be private. Not working covers the same requirements detailed above for wash basin (3.11). If the tub or shower is present and working, but has the following types of defects: dripping faucet; minor leaks; cracked porcelain; slow drain (see discussion under 3.10); absent or broken support rod for shower curtain, note this in your comments/findings.

### **3.13 Ventilation**

#### **Are there operable windows or a working vent system?**

Working vent systems include: ventilation shafts (non –mechanical vents) and electric fans. Electric vent fans must function when switch is turned on. (Make sure that any malfunctions are not due to the fan not being plugged in.) If electric current to the unit has not been turned on (and there is no operable window), mark "Inconclusive." Obtain verification from owner or manager that system works. Note: exhaust vents must be vented to the outside, attic, or crawlspace.

### **4. Other Room(s) Used for Living and Halls**

Complete an "Other Room" checklist for as many "other rooms used for living" as are present in the unit and not already noted in Parts 1, 2, and 3 of the checklist. See the discussion below for definition of "used for living." Also complete an "Other Room" checklist for all entrance halls, corridors, and staircases that are located within the unit and are part of the area used for living. If a hall, entry and/or stairway are contiguous, rate them as a whole (i.e., as part of one space). Additional forms for rating "Other Rooms" are provided in the check-list. Definition of "used for living." Rooms "used for living" are areas of the unit that are walked through or lived in on a regular basis. Do not include rooms or other areas that have been permanently, or near permanently, closed off or areas that are infrequently entered. For example, do not include a utility room, attached shed, attached closed-in porch, basement, or garage if they are closed off from the main living area or are infrequently entered. Do include any of these areas if they are frequently used (e.g., a finished basement/play-room, a closed-in porch that is used as a bedroom during summer months). Occasional use of a washer or dryer in an otherwise unused room does not constitute regular use. If the unit is vacant and you do not know the eventual use of a particular room, complete an "Other Room" checklist if there is any chance that the room will be used on a regular basis. If there is no chance that the room will be used on a regular basis, do not include it (e.g., an unfinished basement) since it will be checked under Part 5, All Secondary Rooms (Rooms not used for living).

### **4.1 Room Code and Room Location**

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Enter the appropriate room code given below:

**Room Codes:**

- 1 = Bedroom or any other room used for sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other

**Room Location:** Write on the line provided the location of the room with respect to the unit's width, length and floor level as if you were standing outside the unit facing the entrance to the unit:  
right/left/center: record whether the room is situated to the right, left, or center of the unit.  
front/rear/center: record whether the room is situated to the back, front or center of the unit.  
floor level: identify the floor level on which the room is located.

If the unit is vacant, you may have some difficulty predicting the eventual use of a room. Before giving any room a code of 1 (bedroom), the room must meet all of the requirements for a "room used for sleeping" (see items 4.2 and 4.5).

**4.2 - 4.9 Explanations of these items are the same as those provided for "Living Room" with the following modifications:**

**4.2 Electricity/Illumination**

**If room code is "1", are there at least two working outlets or one working outlet and one working, permanently installed light fixture?**

**If room code is not a "1", is there a means of illumination?**

If the room code is not a "1," the room must have a means of natural or artificial illumination such as a permanent light fixture, wall outlet present, or light from a window in the room or near the room. If any required item is missing, mark "Fail." If the electricity is turned off, mark "Inconclusive."

**4.5 Window Condition**

**If room code is "1", is there at least one window? And, regardless of room code, are all windows free of signs of severe deterioration or missing or broken-out panes?**

Any room used for sleeping must have at least one window. If the windows in sleeping rooms are designed to be opened, at least one window must be operable. The minimum standards do not require a window in "other rooms." Therefore, if there is no window in another room not used for sleeping, mark "Pass," and note "no window" in your comments/findings.

**4.6 Smoke Detectors**

**Is there a working smoke detector on each level?**

**Do the smoke detectors meet the requirements of NFPA 74?**

**In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?**

At least one battery-operated or hard-wired smoke detector must be present and working on each level of the unit, including the basement, but not the crawl spaces and unfinished attic. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system designed for hearing-impaired persons as specified in NFPA 74 (or successor standards). If the unit was under HAP contract prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992 (57 F R 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit). In this case, mark "Pass" and note in your comments/findings.

**Additional Notes**

For staircases, the adequacy of light and condition of the stair rails and railings is covered under Part 7 of the checklist (General Health and Safety)

**5. All Secondary Rooms (Rooms not used for living)**

If any room in the unit did not meet the requirements for "other room used for living" in Part 4, it is to be considered a "secondary room (not used for living)." Rate all of these rooms together (i.e., a single Part 5 checklist for all secondary rooms in the unit). Inspection is required of the following two items since hazardous defects under these items could jeopardize the rest of the unit, even if present in rooms not

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used for living: 5. 2 Security, 5. 3 Electrical Hazards. Also, be observant of any other potentially hazardous features in these rooms and record under 5.4. If there are no "Secondary Rooms (rooms not used for living)," mark "None" under "Description" and go on to Part 6.

**5.1 - 5.3 Explanations of these items is the same as those provided for "Living Room."**

**Additional Note**

In recording "other potentially hazardous features," note (in your comments/findings) the means of access to the room with the hazard and mark "Inconclusive." Discuss the hazard with the HA inspection supervisor to determine "Pass" or "Fail." Include defects like: large holes in floor, walls or ceilings; evidence of structural collapse; windows in condition of severe deterioration; and deteriorated paint surfaces.

**6. Heating and Plumbing**

**6.1 Adequacy of Heating Equipment**

**Is the heating system capable of providing adequate heat (either directly or indirectly) to all rooms used for living?**

"Adequate heat" means that the heating system is capable of delivering enough heat to assure a healthy environment in the unit (appropriate to the climate). The HA is responsible for defining what constitutes a healthy living environment in the area of the country in which it operates. Local codes (city or state codes) should be instructive in arriving at a reasonable local definition. For example, for heat adequacy, local codes often require that the unit's heating facility be capable of maintaining a given temperature level during a designated time period. Portable electric room heaters or kitchen stoves or ranges with a built-in heat unit are not acceptable as a primary source of heat for units located in areas where climate conditions require regular heating. "Directly or indirectly to all rooms used for living" means: "Directly" means that each room used for living has a heat source (e.g., working radiator; working hot air register; baseboard heat) "indirectly" means that, if there is no heat source present in the room, heat can enter the room easily from a heated adjacent room (e.g. a dining room may not have a radiator, but would receive heat from the heated living room through a large open archway). If the heating system in the unit works, but there is some question whether a room without a heat source would receive adequate indirect heat, mark "Inconclusive" and verify adequacy from tenant or owner (e.g., unheated bedroom at the end of a long hallway). How to determine the capability of the heating system: If the unit is occupied, usually the quickest way to determine the capability of the heating system over time is to question the tenant. If the unit is not occupied, or the tenant has not lived in the unit during the months when heat would be needed, mark "Inclusive." It will be necessary to question the owner on this point after the inspection has been completed and, if possible, to question other tenants (if it is a multi-unit structure) about the adequacy of heat provided. Under some circumstances, the adequacy of heat can be determined by a simple comparison of the size of the heating system to the area to be heated. For example, a small permanently installed space heater in a living room is probably inadequate for heating anything larger than a relatively small apartment.

**6.2 Safety of Heating Equipment**

**Is the unit free from unvented fuel burning space heaters or any other types of unsafe heating conditions?**

Examples of "unvented fuel burning space heaters" are: portable kerosene units; unvented open flame portable units. "Other unsafe conditions" include: breakage or damage to heating system such that there is a potential for fire or other threats to safety; improper connection of flues allowing exhaust gases to enter the living area; improper installation of equipment ( e.g., proximity of fuel tank to heat source, absence of safety devices); indications of improper use of equipment (e.g., evidence of heavy build-up of soot, creosote, or other substance in the chimney); disintegrating equipment; combustible materials near heat source or flue. If you are unable to gain access to primary heating systems the unit mark "Inconclusive." Contact the owner or manager for verification of safety of the system. If the system has passed a recent local inspection, mark "Pass." This applies especially to units in which heat is provided by a large scale, complex central heating system that serves multiple units (e.g., a boiler in the basement of a large apartment building). In most cases, a large scale heating system for a multi-unit building will be subject to periodic safety inspections by a local public agency. Check with the owner or manager to determine the date and outcome of the last such inspection, or look for a posted inspection certificate.

**6.3 Ventilation and Adequacy of Cooling**

**Does the unit have adequate ventilation and cooling by means of openable windows or a working cooling system?**

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If the tenant is present and has occupied the unit during the summer months, inquire about the adequacy of air flow. If the tenant is not present or has not occupied the unit during the summer months, test a sample of windows to see that they open. Equipment includes: central (fan) ventilation system; evaporative cooling system; room or central air conditioning. Mark "Inconclusive" if there are no operable windows and it is impossible, or inappropriate, to test whether a cooling system works. Check with other tenants in the building (in a multi-unit structure) and with the owner or manager for verification of the adequacy of ventilation and cooling.

#### **6.4 Water Heater**

##### **Is the water heater located, equipped, and installed in a safe manner?**

"Location presents hazard" means that the gas or oil water heater is located in living areas or closets where safety hazards may exist (e.g., water heater located in a cluttered closet with cloth and paper items stacked against it). Gas water heaters in bedrooms or other living areas must have safety dividers or shields. Water heaters must have a temperature-pressure relief valve and discharge line (directed toward the floor or outside of the living area) as a safeguard against build up of steam if the water heater malfunctions. If not, they are not properly equipped and shall fail. To pass, gas or oil fired water heaters must be vented into a properly installed chimney or flue leading outside. Electric water heaters do not require venting. If it is impossible to view the water heater, mark "Inconclusive." Obtain verification of safety of system from owner or manager. Mark "Pass" if the water heater has passed a local inspection. This applies primarily to hot water that is supplied by a large scale complex water heating system that serves multiple units (e.g., water heating system in large apartment building). Check in the same manner described for heating system safety, item 7.2, above.

#### **6.5 Water Supply**

##### **Is the unit served by an approvable public or private sanitary water supply?**

If the structure is connected to a city or town water system, mark "Pass." If the structure has a private water supply (usually in rural areas) inquire into the nature of the supply (probably from the owner) and check with owner or manager for verification of adequacy.

#### **6.6 Plumbing**

##### **Is plumbing free from major leaks or corrosion that causes serious and persistent levels of rust or contamination of the drinking water?**

"Major leaks" means that main water drain and feed pipes (often located in the basement) are seriously leaking. (Leaks present at specific facilities have already been evaluated under the checklist items for Bathroom and Kitchen.) Leaks causing serious and persistent levels of rust or contamination in the drinking water can be determined by observing the color of the drinking water at several taps. Badly corroded pipes will produce noticeably brownish water. If the tenant is currently occupying the unit, he or she should be able to provide information about the persistence of this condition. (Make sure that the "rusty water" is not a temporary condition caused by city or town maintenance of main water lines.) See general note under 6.5.

#### **6.7 Sewer Connection**

##### **Is plumbing connected to an approvable public or private disposal system, and is it free from sewer back-up?**

If the structure is connected to the city or town sewer system, mark "Pass." If the structure has its own private disposal system (e.g., septic field), inquire into the nature of the system and determine whether this type of system can meet appropriate health and safety regulations. The following conditions constitute "evidence of sewer back up": strong sewer gas smell in the basement or outside of unit; numerous clogged or very slow drains; marshy areas outside of unit above septic field.

#### **7. General Health and Safety**

##### **7.1 Access to Unit**

###### **Can the unit be entered without having to go through another unit?**

"Through another unit" means that access to the unit is only possible by means of passage through another dwelling unit.

##### **7.2 Exits**

###### **Is there an acceptable fire exit from this building that is not blocked?**

Is there an acceptable fire exit from this building that is not blocked? "Acceptable fire exit" means that the building must have an alternative means of exit that meets local or state regulations in case of fire; this could include: An openable window if the unit is on the first floor or second floor or easily accessible to the ground; A back door opening on to a porch with a stairway leading to the ground; Fire escape, fire ladder, or fire stairs. "Blocked" means that the exit is not useable due to conditions such as debris,

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storage, door or window nailed shut, broken lock. Important note: HUD/or the HA has the final responsibility for deciding whether the type of emergency exit is acceptable, although the tenant should assist in making the decision.

**7.3 Evidence of Infestation**

**Is the unit free from rats or severe infestation by mice or vermin?**

"Presence of rats" or severe infestation by mice or vermin" (such as roaches) is evidenced by: rat holes; droppings; rat runs; numerous settings of rat poison. If the unit is occupied, ask the tenant.

**7.4 Garbage and Debris**

**Is the unit free from heavy accumulation of garbage or debris inside and outside?**

"Heavy accumulation" means large piles of trash and garbage, discarded furniture, and other debris (not temporarily stored awaiting removal) that might harbor rodents. This may occur inside the unit, in common areas, or outside. It usually means a level of accumulation beyond the capacity of an individual to pick up within an hour or two.

**7.5 Refuse Disposal**

**Are there adequate covered facilities for temporary storage and disposal of food wastes, and are they approvable by a local agency?**

"Adequate covered facilities" includes: trash cans with covers, garbage chutes, "dumpsters" (i.e., large scale refuse boxes with lids); trash bags (if approvable by local public agency). "Approvable by local public agency" means that the local Health and Sanitation Department (city, town or county) approves the type of facility in use. Note: During the period when the HA is setting up its inspection program, it will check with the local health and sanitation department to determine which types of facilities are acceptable and include this in the inspection requirements. If the unit is vacant and there are no adequate covered facilities present, mark "Inconclusive." Contact the owner or manager for verification of facilities provided when the unit is occupied.

**7.6 Interior Stairs and Common Halls**

**Are interior stairs and common halls free from hazards to the occupant because of loose, broken, or missing steps on stairways; absent or insecure railings; inadequate lighting; or other hazards?**

"Loose, broken, or missing steps" should fail if they present a serious risk of tripping or falling. A handrail is required on extended sections of stairs (generally four or more consecutive steps). A railing is required on unprotected heights such as around stairwells. "Other hazards" would be conditions such as bare electrical wires and tripping hazards.

**7.7 Other Interior Hazards**

**Is the interior of the unit free from any other hazard not specifically identified previously?**

Examples of other hazards might be: a broken bathroom fixture with a sharp edge in a location where it represents a hazard; a protruding nail in a doorway.

**7.8 Interior Air Quality**

**Is the unit free from abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants?**

If the inspector has any questions about whether an existing poor air quality condition should be considered dangerous, he or she should check with the local Health and Safety Department (city, town or county).

**8. Decision of Inspector:** While it is HUD's position that, if any one unit fails, the Property fails. However, to make future inspections easier, we are requiring that the Inspector indicate the grade (i.e., Pass or Fail) for each unit individually.

**Be sure to submit all pages of the inspection report, including any/all comment/finding pages. Do not include the instructions with your submission. HUD will not accept any inspection report that is not signed and dated by any party to the inspection.**

Attachment E
Post-Closing Repair Requirements

Project Name
Project Number
Location

The Purchaser must repair the property to meet the following requirements within the time frame noted in the Contract of Sale or Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder:

Applicable State and local Codes
Housing Quality Standards (HQS) as set forth in 24 CFR 886, Subpart C
Additional repairs required by HUD

HUD will monitor to ensure compliance. Repairs shall be considered complete only after: (1) Purchaser provides written certification that repairs are completed; (2) Purchaser requests final inspection by HUD; and (3) HUD verifies in writing completion and compliance with the requirements stated herein. Trade Item Cost Breakdown: HUD's estimate of repairs is broken out by trade item. Detailed descriptions of repairs are stated in exhibits to this form. Unless checked as Mandatory on this form, repairs may begin upon conveyance. For repair items listed in this form as Mandatory, the Purchaser, prior to beginning work, must submit specifications for approval to the HUD office with jurisdiction over this project.

The repairs listed herein represent HUD's estimate of the property's repair needs. These repairs may not represent all repairs needed to satisfy HUD's requirements and/or requirements other than HUD's. HUD does not warrant that the list is either comprehensive or sufficient. The Purchaser accepts responsibility for: (1) developing his/her own repair cost estimate, (2) determining what, if any, repairs are needed in excess of those listed herein, and (3) providing funding for such repairs.

Item	Mandatory	Estimated Cost	Item	Mandatory	Estimated Cost
Repairs to Residential Structures (including commercial areas)					
1. Concrete			17. Wood Flooring		
2. Masonry			18. Resilient Flooring		
3. Metals			19. Painting and Decorating		
4. Rough Carpentry			20. Specialties		
5. Finish Carpentry			21. Special Equipment		
6. Waterproofing			22. Cabinets		
7. Insulation			23. Appliances		
8. Roofing			24. Blinds and Shades		
9. Sheet Metal			25. Carpets		
10. Doors			26. Special Construction		
11. Windows			27. Elevators		
12. Glass			28. Plumbing and Hot Water		
13. Lath and Plaster			29. Heat and Ventilation		
14. Drywall			30. Air Conditioning		
15. Tile Work			31. Electrical		
16. Acoustical			Residential Structures Subtotal		\$
Repairs to Accessory Structures (community, maintenance, mechanical, garages, carports, etc.)					
32. Accessory Structure			34.		
33.			Accessory Structures Subtotal		\$
Site Work					
35. Earth Work			39. Lawns and Planting		
36. Site Work			40. Unusual Site Conditions		
37. Roads and Walks			41.		
38. Site Improvements			Site Work Subtotal		\$
Environmental Mitigation					
42. Lead-Based Paint			44.		
43.			Environmental Mitigation Subtotal		\$
Totals					
Estimated Total Hard Cost					\$
Contingency = Hard Cost X _____ =					\$
Overhead/General Requirements = Hard Cost X _____ =					\$
Estimated Total Repair Cost					\$



## **COST ESTIMATE SUMMARY**

### **DESCRIPTIVE SUMMARY OF SUGGESTED REPAIRS**

#### *COST FACTOR #1: Asphalt Resealing & Striping*

The asphalt parking lots and driveways require resealing and restriping (9,750 SF) at a cost of \$12,187.50.

#### *COST FACTOR #2: Woods and Plastics*

Kitchen cabinets require miscellaneous repairs (100%) at a cost of \$7,500.00

#### *COST FACTOR #3: Doors and Windows*

Window and Sliding Door screens are in need of replacement (50%) at a cost of \$3,750.00

#### *COST FACTOR #4: Finishes – Resilient Flooring, Painting, and Cabinet Refinishing*

Resilient "VCT" Flooring needs to be replaced at the bathrooms, kitchens, and vestibules (14,350 SF).

Total replacement cost of \$93,275.

Interior surfaces, corridor and stair, require painting throughout the site (16,200 SF) at a cost of \$28,350.00

Kitchen cabinets require refinish at all units including community room (100%) at a cost of \$90,000.00

#### *COST FACTOR #5: Interior Furnishings*

Window blinds and shades require replacement (50%) at a cost of \$4,500.00

Carpets need to be replaced throughout common area, corridor, stairs, and administrative office (6,800 SF) at a cost of \$27,200.00

Laminated kitchen countertops require replacement (100%) at a cost of \$78,400.00

Kitchen cabinet hardware require replacement (100%) at a cost of \$12,500.00

Bathroom towel bar and toilet paper holders need to be replaced (100%) at a cost of \$2,940.00

Bathroom vanity counter combos require replacement (100%) at a cost of \$19,600.00

#### *COST FACTOR #6: Mechanical – Equipment, Plumbing, and HVAC*

Electric range stove, hood, and refrigerator require replacement (50%) at a cost of \$32,500.00

Bathroom toilets, sinks, and faucets require replacement (100%) at a cost of \$58,800.00

Kitchen double bowl stainless steel sinks and faucets require replacement (100%) at a cost of \$70,000.00

HVAC system - 2.5 ton air compressor needs to be replaced (4 units) at a cost of \$8,800.00

Air handling equipment requires replacement (4 units) at a cost of \$5,200.00

#### *COST FACTOR #7: Electrical and Lighting*

Kitchen light fixtures require replacement (100%) at a cost of \$7,500.00

Bathroom light fixtures and exhaust fans require replacement (100%) at a cost of \$8,575.00

	Quantity	Unit Cost	Cost
<b>Division 1: General Requirements</b>			
General Conditions	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>General Requirements Subtotal</b>			<b>\$0.00</b>
<b>Division 2: Site Construction</b>			
Site Demolition:	0	\$0.00	\$0.00
General Building Demolition:	0	\$0.00	\$0.00
Excavation, Fill & Grading:	0	\$0.00	\$0.00
Site Utilities	0	\$0.00	\$0.00
Storm Drainage & Sanitary Sewer Rodding	0	\$0.00	\$0.00
Water, Steam & Gas Distribution	0	\$0.00	\$0.00
Miscellaneous Site Improvements	0	\$0.00	\$0.00
Irrigation, Sprinkler Head Systems	0	\$0.00	\$0.00
Landscaping	0	\$0.00	\$0.00
Other: Asphalt Sealing & Striping (Square Ft.)	9,750	\$1.25	\$12,187.50
Other:	0	\$0.00	\$0.00
<b>Site Construction Subtotal</b>			<b>\$12,187.50</b>
<b>Division 3: Concrete</b>			
Precast Concrete	0	\$0.00	\$0.00
Specialty Concrete	0	\$0.00	\$0.00
Excavation & Backfill	0	\$0.00	\$0.00
Concrete Forms	0	\$0.00	\$0.00
Foundation forms	0	\$0.00	\$0.00
Footing Forms	0	\$0.00	\$0.00
Forms, Slab on Grade	0	\$0.00	\$0.00
Reinforcing steel	0	\$0.00	\$0.00
Slab Finishes	0	\$0.00	\$0.00
Insulating Decks	0	\$0.00	\$0.00
Fiber Deck	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Concrete Subtotal</b>			<b>\$0.00</b>
<b>Division 4: Masonry</b>			
Brick Masonry	0	\$0.00	\$0.00
Concrete Masonry	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Masonry Subtotal</b>			<b>\$0.00</b>
<b>Division 5: Metals</b>			
Structural Steel	0	\$0.00	\$0.00
Decking & Siding	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Metals Subtotal</b>			<b>\$0.00</b>
<b>Division 6: Woods and Plastics</b>			
Rough Carpentry	0	\$0.00	\$0.00
Vertical Framing, Walls	0	\$0.00	\$0.00
Horizontal Framing	0	\$0.00	\$0.00
Misc. Framing & Materials	0	\$0.00	\$0.00
Sheathing	0	\$0.00	\$0.00
Finish Carpentry	0	\$0.00	\$0.00
Beams, trusses	0	\$0.00	\$0.00
Stairs, Wood	0	\$0.00	\$0.00
Rough Hardware	0	\$0.00	\$0.00
Other: Kitchen Cabinet (Unit/Community)	50	\$150.00	\$7,500.00
<b>Wood and Plastics Subtotal</b>			<b>\$7,500.00</b>
<b>Division 7: Thermal &amp; Moisture Protection</b>			
Waterproofing	0	\$0.00	\$0.00
Thermal & Sound Insulation	0	\$0.00	\$0.00
Roofing	0	\$0.00	\$0.00
Composite Building Panels	0	\$0.00	\$0.00
Architectural Sheet Metal	0	\$0.00	\$0.00
Caulking & Sealants	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Thermal and Moisture Protection Subtotal</b>			<b>\$0.00</b>

<b>Division 8: Doors and Windows</b>			
Hollow Metal Doors & Frames	0	\$0.00	\$0.00
Wood Doors & Frames	0	\$0.00	\$0.00
Wood Garage Doors	0	\$0.00	\$0.00
Wood Door Specialties	0	\$0.00	\$0.00
Special Doors	0	\$0.00	\$0.00
Vinyl, Windows & Doors	0	\$0.00	\$0.00
Aluminum, Windows & Doors (complete window assembly)	0	\$0.00	\$0.00
Wood Windows & Doors	0	\$0.00	\$0.00
Finish & Hardware	0	\$0.00	\$0.00
Glass & Glassing	0	\$0.00	\$0.00
Curtain Walls	0	\$0.00	\$0.00
Other: (1) Window Screen and (1) Slider Screens (Unit)	25	\$150.00	\$3,750.00
<b>Doors and Windows Subtotal</b>			<b>\$3,750.00</b>
<b>Division 9: Finishes</b>			
Studs	0	\$0.00	\$0.00
Furring	0	\$0.00	\$0.00
Lathing	0	\$0.00	\$0.00
Plaster & Lath	0	\$0.00	\$0.00
Gypsum Wall board, Secularities	0	\$0.00	\$0.00
Ceramic Tile	0	\$0.00	\$0.00
Terrazzo	0	\$0.00	\$0.00
Acoustic Treatment	0	\$0.00	\$0.00
Wood Flooring	0	\$0.00	\$0.00
Resilient Flooring (VTC Flooring) "Bathroom/Kitchen/Vestibule" (Square Ft.)	14,350	\$6.50	\$93,275.00
Painting & Wall covering (Interior) "/Corridors/Stairs" (Square Ft.)	16,200	\$1.75	\$28,350.00
Plastic & Factory Finish Wall Surfaces	0	\$0.00	\$0.00
Other: Kitchen Cabinet Refinish (Unit/Community)	50	\$1,800.00	\$90,000.00
<b>Finishes Subtotal</b>			<b>\$211,625.00</b>
<b>Division 10: Specialties</b>			
Toilet Partitions & Compartments	0	\$0.00	\$0.00
Partitions Toilet Accessories	0	\$0.00	\$0.00
Misc. Building Specialties	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Specialties Subtotal</b>			<b>\$0.00</b>
<b>Division 11: Equipment</b>			
Other:	0	\$0.00	\$0.00
<b>Equipment Subtotal</b>			<b>\$0.00</b>
<b>Division 12: Furnishings</b>			
Blinds & Shades (Unit)	25	\$180.00	\$4,500.00
Laminated Counter Tops: Kitchen (Unit)	49	\$1,600.00	\$78,400.00
Carpets (Common Area/Corridor/Stairs/Admin Office) (Square Ft.)	6,800	\$4.00	\$27,200.00
Bathroom towel bar and toilet paper holder (Unit)	49	\$60.00	\$2,940.00
Other: Kitchen Cabinet Hardware (Unit/Community)	50	\$250.00	\$12,500.00
Other: Bathroom Vanity Counter combo (Unit)	49	\$400.00	\$19,600.00
<b>Furnishings Subtotal</b>			<b>\$145,140.00</b>
<b>Division 13: Special Construction</b>			
Special Construction	0	\$0.00	\$0.00
Prefabricated Structures	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Special Construction Subtotal</b>			<b>\$0.00</b>
<b>Division 14: Conveying Systems</b>			
Conveying Systems	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Conveying Systems Subtotal</b>			<b>\$0.00</b>
<b>Division 15: Mechanical (Ex. Plumbing and HVAC)</b>			
Equipment: Stove, Hood, Refrigerator (Unit)	25	\$1,300.00	\$32,500.00
Fixtures – Bathroom: Toilet/Sink/Faucet (Unit)	49	\$1,200.00	\$58,800.00
Fixtures – Kitchen: Sink/Faucet (Unit/Community)	50	\$1,400.00	\$70,000.00
Valves & Specialties	0	\$0.00	\$0.00
Insulation, Piping	0	\$0.00	\$0.00
Miscellaneous Plumbing Specialties	0	\$0.00	\$0.00

Medical & Laboratory Equipment & Pipe	0	\$0.00	\$0.00
Industrial Piping Insulation	0	\$0.00	\$0.00
HVAC: 2.5 ton compressor (Unit)	4	\$2,200.00	\$8,800.00
Equipment, Furnaces	0	\$0.00	\$0.00
Equipment, Hot Water & Steam Boilers	0	\$0.00	\$0.00
Equipment, Cooling	0	\$0.00	\$0.00
Equipment, Heating & Cooling Combinations (Heat Pumps)	0	\$0.00	\$0.00
Auxiliary heating & Cooling Equipment	0	\$0.00	\$0.00
Air Handling Equipment (Unit)	4	\$1,300.00	\$5,200.00
Distribution, Terminal Equipment	0	\$0.00	\$0.00
Miscellaneous Equipment	0	\$0.00	\$0.00
Controls	0	\$0.00	\$0.00
Duct Work, Grills & Registers	0	\$0.00	\$0.00
Piping & Insulation	0	\$0.00	\$0.00
Fittings	0	\$0.00	\$0.00
Valves & Specialties	0	\$0.00	\$0.00
Insulation, Piping	0	\$0.00	\$0.00
Fire Protection Systems	0	\$0.00	\$0.00
Other:	0	\$0.00	\$0.00
<b>Mechanical Subtotal</b>			<b>\$175,300.00</b>
<b>Division 16: Electrical</b>			
Total Electrical Work, Buildings	0	\$0.00	\$0.00
Main Switchboards, 600v, Service & Distribution	0	\$0.00	\$0.00
Transformers	0	\$0.00	\$0.00
Lighting Fixtures: Kitchen (Unit/Community)	50	\$150.00	\$7,500.00
Lighting Fixtures & Exhaust Fan: Bathroom (Unit/Community)	49	\$175.00	\$8,575.00
Branch Circuit Runs, Sp Purpose Conduit & Wire	0	\$0.00	\$0.00
Signal & Communications Systems	0	\$0.00	\$0.00
Combination Service & Distribution, Switchboards	0	\$0.00	\$0.00
Motor Control Centers	0	\$0.00	\$0.00
Panelboards, 600v Max, Bolt-On Breakers	0	\$0.00	\$0.00
Lighting Fixtures- Exterior	0	\$0.00	\$0.00
Electric & Signal Devices	0	\$0.00	\$0.00
Other: Ceiling Fans	0	\$0.00	\$0.00
<b>Electrical Subtotal</b>			<b>\$16,075.00</b>
<b>TOTAL</b>			<b>\$571,577.50</b>

Attachment F  
**Post-Closing Repair Report**

Property:		Repair Expenditures to Date: \$
Address:		Date Repairs Began:

Number of HAP Units:                      Number of HAP Units repaired/meeting PCS:  
Number of Units:                      Number of Units repaired/meeting PCS:  
List major repairs as required by Form HUD-9552 and provide status of those repairs:

Major Repair	Work Completed
Ex. Replace roof on 5 buildings (80%)	Ex: Roof replaced for 3 buildings (60%)


Provide a narrative describing special circumstances beyond your control which may, or have delayed the repairs:

Provide narrative describing the status of the planned rehabilitation. Your narrative should include whether you are ahead of, on schedule, or behind on your original rehabilitation schedule:

Date of Report:

Report completed by: \_\_\_\_\_ Title \_\_\_\_\_

Please fax a completed version of this report to the Property Disposition Construction Analyst at (817) 978-6018.  
Reports are due quarterly and to be continued until the repairs are complete.

Attachment G  
**CERTIFICATE OF SUBSTANTIAL COMPLIANCE**

TO: The United States Department of Housing and Urban Development

FROM:

I certify to HUD that any and all project(s) that are owned by \_\_\_\_\_, or its affiliates, and located in \_\_\_\_\_ (City or Town where project being purchased is located) is/are in substantial compliance with applicable state and/or local housing statutes, regulations, ordinances and codes and are listed on Schedule A attached hereto.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

By:

Signature

\_\_\_\_\_

Grantee Name

\_\_\_\_\_

Title

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone Number

\_\_\_\_\_

Date

\_\_\_\_\_

STATE OF:

)

COUNTY OF:

)

Came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Notary Seal.

**Schedule A**

All projects owned by \_\_\_\_\_ or affiliates.

List each project name	List name of principal or affiliate with ownership of project.	List project address



Attachment K  
**DUNS Number and CCR Registration Certification**

This is to certify that:

\_\_\_\_\_  
(Owner Name and DUNS Number)

\_\_\_\_\_  
(Global Parent Owner Name and DUNS Number)

\_\_\_\_\_  
(Global Parent Legal Business Name)

\_\_\_\_\_  
(CCR Legal Business Name)

\_\_\_\_\_  
(Doing Business As)

In conjunction with the following Section 8 or Project Rental Assistance Contract, as of \_\_\_\_\_, 20\_\_\_\_

has received CCR registration and the following DUNS number in accordance with [Notice H 2011-01](#):

Section 8 Project Based Contract Number: \_\_\_\_\_

Project Rental Assistance Contract Number: \_\_\_\_\_

DUNS Number: \_\_\_\_\_

I certify that the information contained herein was examined by me and to the best of my knowledge and belief is true, correct and complete. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802.)

\_\_\_\_\_  
(Signature and Title of Project Owner)

\_\_\_\_\_  
(Date)