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# **FORECLOSURE SALE**

## **209 UNIT APARTMENT COMPLEX**

### **IN SALISBURY, MARYLAND**

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- ❖ **The Purchaser and HUD will execute a Project-Based Section 8 Housing Assistance Payments Contract ("HAP Contract") for (143) units at closing. HUD will provide funding for the HAP Contract subject to the availability of funds. The HAP Contract initially will be funded for a minimum of one (1) month and a maximum of twelve (12) months. A Sample form of the HAP Contract is attached.**
  - ❖ **Bidders must demonstrate substantive experience in managing subsidized multifamily properties with project-based Section 8 assistance, or, if directed by HUD, hire a Property Manager, prior to closing, with demonstrated substantive experience in managing subsidized multifamily properties with project-based Section 8 assistance.**
- \* **At closing of the sale of the Property, the deed restrictions contained in this bid kit supersede any HUD use restrictions previously recorded against the Property.**

## **PEMBERTON MANOR APARTMENTS**

Is offered for sale at  
foreclosure.

Bids will be accepted orally  
on October 6, 2011  
at: 2:00 p.m. local time

at: Wicomico County  
Courthouse  
(on the steps)  
Wicomico County Courthouse  
101 North Division Street  
Salisbury, MD 21801



U. S. Department of  
Housing and Urban  
Development



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| <input checked="" type="checkbox"/> <b>ATTACHMENT A</b> - Property at a Glance  | <input checked="" type="checkbox"/> <b>ATTACHMENT E</b> - Repair Summary and narrative; and Environmental information if available |
| <input checked="" type="checkbox"/> <b>ATTACHMENT B</b> - Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder | <input checked="" type="checkbox"/> <b>ATTACHMENT F</b> - Certification of Substantial Compliance                                  |
| <input checked="" type="checkbox"/> <b>ATTACHMENT C</b> - Foreclosure Use Agreement   | <input checked="" type="checkbox"/> <b>ATTACHMENT G</b> - Protecting Tenants at Foreclosure  |
| <input checked="" type="checkbox"/> <b>ATTACHMENT D</b> - Letter of Credit (LOC) Sample   | <input checked="" type="checkbox"/> <b>ATTACHMENT H</b> - HAP Contract   |

**PROCEDURES AND FORMS REQUIRED TO COMPLETE BID AND PURCHASE**

**New Procedure Requirements - Previous Participation Certification**

Electronic filing: HUD's Active Partners Performance System ("APPS") allows for the submission of the **Previous Participation Certification (Form HUD-2530)** on HUD's Secure Systems Internet site. **Prior registration is not mandatory in order to bid at the foreclosure sale. However, it is suggested that all potential bidders registering for the first time in APPS do so at least two weeks prior to the sale.** Instructions for registering for both "Secure Systems" and APPS are located on the [Active Partners Performance System \(APPS\) web site](http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf). Be advised that it takes approximately two weeks after registration in these systems to receive the User/Coordinator ID. **However, the highest bidder must comply with registration and HUD Previous Participation Certification (Form HUD-2530) requirements as outlined in ATTACHMENT B, TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER.** For more information, see Section 1 - Introduction and General Information, Section 2 - Previous Participation Certification and Section 4 - Post Foreclosure Sale Procedures.

**THESE FORMS ARE AVAILABLE AT [http://www.hudclips.org/sub\\_nonhud/html/forms.htm](http://www.hudclips.org/sub_nonhud/html/forms.htm) OR CLICK ON THE URL BELOW TO OBTAIN THE FORM**

<input checked="" type="checkbox"/>	Previous Participation Certification (Form HUD-2530) <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf</a>
<input checked="" type="checkbox"/>	Personal Financial and Credit Statement (Form HUD-92417) for each proposed principal and/or partner <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/92417.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/92417.pdf</a>
<input checked="" type="checkbox"/>	Affirmative Fair Housing Marketing Plan (Form HUD-935.2A) <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf</a>
<input checked="" type="checkbox"/>	Management Entity Profile (Form HUD-9832) <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/9832.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/9832.pdf</a>
<input checked="" type="checkbox"/>	Project Owners Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839 A) <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/9839-a.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/9839-a.pdf</a>
<input checked="" type="checkbox"/>	Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity of Interest or Independent Management Agents (Form HUD-9839 B) <a href="http://www.hud.gov/offices/adm/hudclips/forms/files/9839-b.pdf">http://www.hud.gov/offices/adm/hudclips/forms/files/9839-b.pdf</a> <b>(Only one of these forms; HUD-9839 A, HUD-9839 B or HUD-9839 C will be required for management certification)</b>
<input checked="" type="checkbox"/>	Direct Deposit Signup (Standard form 1199-A) <a href="http://www.fms.treas.gov/eft/1199a.pdf">http://www.fms.treas.gov/eft/1199a.pdf</a>

## SECTION 1 - INTRODUCTION AND GENERAL INFORMATION

1. **DEFINITION OF INVITATION FOR BID:** This document, including attachments, exhibits, and any amendments thereto, constitutes the Invitation for Bid ("Invitation") for **Pemberton Manor**, FHA Number: **052-35602** ("Project"). The PROPERTY AT A GLANCE, Attachment A to this Invitation, contains a summary of facts, figures, and terms of the sale. This Invitation also includes **information concerning Previous Participation Certification (Form HUD 2530) requirements** and a list of the forms and statements necessary to complete a responsive bid. This Invitation does not terminate until the closing of the foreclosure sale has occurred.
2. **BID RESPONSIVENESS:** A bid must be responsive to the terms of the sale. To be considered for award, a bid must comply in all material respects with this Invitation. Each bid on its face shall be firm, unconditional, responsive, fixed in one amount certain, and not in the alternative. Special conditions, alterations, or deletions will render a bid non-responsive. The terms of the foreclosure sale are those set out in this Invitation, primarily in the Acknowledgment by Bidder and Foreclosure Sale Use Agreement ("Use Agreement"). Lack of an earnest money deposit ("Earnest Money Deposit"), as required by this Invitation, will be cause for bid rejection.
3. **SALE TO HIGHEST QUALIFIED BIDDER:** Sale of this project will be made to the highest, responsive, qualified bidder. The defaulting owner of the property, or any affiliate thereof, will not be permitted to bid.
4. **NO REDEMPTION PERIOD:** This sale is not subject to redemption by the previous owner.
5. **BID ACCEPTANCE OR REJECTION:** At any time prior to closing, HUD reserves the right to reject any and all bids, to waive any informality in any bid received, and to reject the bid of any bidder HUD determines lacks the experience, ability or financial responsibility needed to own and manage the Project.
6. **CANCELLATION OF SALE:** HUD reserves the unconditional right to cancel this Invitation and reject any and all bids at any time prior to the closing of the purchase.
7. **BIDDER'S DUE DILIGENCE:** Bidders, their agents and advisors should review carefully the information set forth in this Invitation and any additional information made available by HUD, and should undertake their own investigations of the Project and related collateral to evaluate the risks associated with purchasing the Project.
8. **POST-CLOSING REQUIRED REPAIRS:** Repair requirements that must be completed after closing, if applicable to this sale, are included in the Form HUD-9552, Post-Closing Repair Requirements and Exhibits, Attachment E, to this Invitation. The repair requirements listed in Attachment E survive the sale and will be recorded with the Deed. **NOTE:** the Form HUD-9552 and exhibits reflect **cost estimates** of the required repairs. **While care has been exercised to assure accuracy, all information is provided solely for the purpose of permitting a party to determine whether or not they are interested in bidding on the Project. HUD makes no warranty as to the accuracy of such information. The failure of any bidder to inspect or be fully informed as to the condition of or value of the Project, or any conditions of the sale, will not constitute grounds for any claim, demand, adjustment, or withdrawal of a bid.**
9. **RECORDATION OF CERTAIN DOCUMENTS:** Attachment E, Post Closing Repair Requirements (Form HUD-9552) with any exhibits and/or attachments thereto (if provided herein) and Attachment C, Foreclosure Sale Use Agreement, with any riders thereto (if provided herein) will be recorded with the Deed.
10. **SOURCE FOR ADDITIONAL INFORMATION** - For further information, contact the Realty Specialist identified in the Property at a Glance.

## SECTION 2 - PREVIOUS PARTICIPATION CERTIFICATION - PREVIOUS PARTICIPATION FOR PARTICIPANTS IN THE HUD MULTIFAMILY PROGRAMS New Procedure Requirements

As of June 15, 2007, the Preservation Approval Process Improvement Act of 2007 allows a bidder and/or management agent to file the required Previous Participation Certificate (Form HUD-2530) in either electronic or paper format. If filing in paper format, the Form HUD-2530 must be submitted to the HUD contacts noted in ATTACHMENT B, "Acknowledgment by Bidder". If filing electronically, use HUD's Active Partners Performance System (APPS) to submit a Previous Participation Certification HUD Form 2530 on HUD's Secure Systems Internet site. Prior registration is not mandatory to bid at the foreclosure sale. However, it is suggested that all potential bidders registering for the first time in APPS do so at least two weeks prior to the sale. Instructions for registering for both "Secure Systems" and APPS are located on the [Active Partners Performance System \(APPS\) web site](#).

Be advised that if a management agent will be participating in the management of the property, or if a bidder changes principals, adds principals, changes the name or tax identification of the proposed owner or makes other changes, it is the bidder's responsibility to ensure that all participants register and complete the 2530 process within the prescribed timeframes.

**Failure of any participant to submit a Previous Participation Certification (Form HUD-2530) or other required document within the time frames specified in Section 4, below, may be grounds for rejection of the bid. The high bidder must be approved by HUD in order to close the purchase.**

## SECTION 3 - FORECLOSURE SALE PROCEDURES AND SUBMISSION OF BIDS

1. **GENERAL:** In order to submit a responsive bid to this Invitation, a bidder must submit the items listed in this Section and the additional documents/items, as indicated in Section 4, Paragraphs 1 and 2.
2. **BIDDING AT THE FORECLOSURE SALE:**
  - (a) The foreclosure sale is an open bid auction that takes place at the date, time and place indicated in the attached Property at a Glance.
  - (b) A bidder must either:
    - (i) State a bid price orally at the sale, or

- (ii) Submit a written bid to HUD's Foreclosure Commissioner two (2) Federal Government business days before the date of sale.
- (iii) Written bids, if received, will be read aloud at the sale before oral bids are accepted. Only the bidder that submitted the written bid, or an agent thereof, may raise a written bid price. Please contact the Realty Specialist regarding the submittal of a written bid.
- (iv) Bids and/or bid modifications received either electronically or via facsimile will not be considered for award.

**3. ITEMS THAT MUST BE SUBMITTED AT THE FORECLOSURE SALE:**

Earnest Money Deposit:

- (i) The Earnest Money Deposit, for the amount specified in the Property at a Glance, must be submitted to the Foreclosure Commissioner prior to presenting an oral or written bid.
- (ii) The Earnest Money Deposit must be in the form of a money order, certified funds or a cashier's check payable to: **THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**
- (iii) No other method of payment for the Earnest Money Deposit is acceptable.
- (iv) A financial organization submitting a bid on its own behalf must have the Earnest Money Deposit drawn on another financial institution.
- (v) Lack of proper deposit will be cause for rejection of the bid by HUD.
- (vi) Immediately following the sale Earnest Money Deposits will be returned to all bidders, except the highest bidder.

- 4. **CORRECTIONS:** Any changes or erasures made to information submitted by a bidder in connection with a written bid may be made by the bidder or its agent only and must be initialed by the bidder or agent.
- 5. **NOTIFICATION TO THE HIGH AND SECOND HIGH BIDDER:** The highest bidder ("High Bidder") and the second highest bidder ("Second High Bidder") will be notified orally of their bidding positions by the Foreclosure Commissioner immediately after the foreclosure sale. If the High Bidder and/or Second High Bidder are not present at the sale, they will be contacted by the Foreclosure Commissioner promptly after the foreclosure sale.
- 6. **ACKNOWLEDGMENT BY BIDDER:** Immediately after the foreclosure sale, the High Bidder must submit one signed copy of the Acknowledgment by Bidder to the Foreclosure Commissioner.
- 7. **CONTINUATION OF OFFERS:** All bids shall be deemed to be continuing offers from the time of the foreclosure sale until closing, withdrawal by the bidder or bid rejection by HUD.

**SECTION 4 - POST FORECLOSURE SALE PROCEDURES**

- 1. **SUBMISSION OF POST-BID DOCUMENTS BY HIGH BIDDER:** Please refer to ATTACHMENT B, ACKNOWLEDGMENT BY BIDDER, for detailed instructions on submission of the following post-bid documents.  
**WITHIN TWO (2) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:**
  - (a) **Previous Participation Certification:** Please refer to ATTACHMENT B, ACKNOWLEDGMENT BY BIDDER, PARAGRAPH FOUR (4), "PREVIOUS PARTICIPATION CERTIFICATION", for detailed instructions.
    - (i) **Bidders not registered in APPS and Secure Systems:** The high bidder must register in the **Active Partners Performance System (APPS)** which allows for the electronic submission of Previous Participation Certification (form HUD-2530) **and** the HUD's Multifamily Secure Systems after being verbally notified at the foreclosure sale of being the high bidder; **or**
    - (ii) **If the high bidder elects to file the required Previous Participation Certification (Form HUD-2530) in paper format,** the high bidder must submit a completed and executed Previous Participation Certification (Form HUD-2530) for the proposed owner to HUD.
  - (b) **Certification of Substantial Compliance** – the **complete and original** (Attachment F) must be received by HUD Realty Specialist, Jane Butler - 4AHMLAU, HUD Atlanta MFPD Center, Five Points Plaza, 40 Marietta St., Atlanta, GA 30303-2806.

**WITHIN FIFTEEN (15) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:**

(c) If using the APPS System, the High Bidder must electronically file the Form HUD-2530 and fax a printed copy of the 2530 Submission Package to the HUD Realty Specialist, Jane Butler at (404) 730-2440.

**WITHIN TEN (10) FEDERAL GOVERNMENT BUSINESS DAYS AFTER THE FORECLOSURE SALE:**

Please refer to ATTACHMENT B, ACKNOWLEDGMENT BY BIDDER, PARAGRAPH NINETEEN (19), "ADDITIONAL FORMS AND STATEMENTS", for detailed instructions on submission of the following post-bid documents.

- Affirmative Fair Housing Marketing Plan (Form HUD 935.2A)
- Form HUD- 2530 for Purchasing Entity, if different from bidding entity(See Section 2)
- Form HUD- 2530 for the Managing Agent, if applicable (See Section 2)
- Personal Financial and Credit Statement (Form HUD 92417)-for each proposed principal/general partner
- Management Entity Profile (Form HUD 9832)
- Management Certification (Form HUD 9839 A or B)
- Direct Deposit Signup – Standard form 1199A

**FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME MAY BE GROUNDS FOR REJECTION OF THE BID. HUD RESERVES THE RIGHT TO REJECT THE BID AND RETAIN THE EARNEST MONEY DEPOSIT.**

**2. QUALIFICATION, ACCEPTANCE, REJECTION OF BID**

(a) Required Bidder Qualifications to Purchase Property:

It is the objective of the Department's multifamily foreclosure process to transform troubled and distressed multifamily properties into viable, long-term affordable housing resources. To accomplish this objective, the Department will only permit a bidder to acquire a property from HUD's foreclosure

sale that has the financial capacity and generally 5 years of demonstrated experience in successfully owning and managing distressed and troubled multifamily properties as viable, low-income housing resources.

The Department will evaluate, starting with the highest bidder and proceeding in descending order, if necessary, the bidder's experience, qualifications and capacity to purchase the Property based on the submission of the documentation described below, any other information independently verified by HUD and any other information required by the Bid Kit. The documentation must demonstrate that the bidder owns and is successfully managing and operating properties of similar size and characteristics (including problematic complexities) as the Property being sold. The documentation will be used to determine whether the bidder has the required demonstrated experience and financial capacity to acquire and successfully transform the Property into a long-term, viable affordable housing resource. HUD shall, in its sole discretion, accept or reject any bid submitted in the sale of the Property. The review and approval of the Previous Participation Certification (form HUD-2530) is required, for the purchase of the Property. However, Previous Participation Certification approval is only a threshold to HUD's review and potential approval of all other required documentation.

**ALL OF THE FOLLOWING REQUIRED DOCUMENTATION MUST BE SUBMITTED TO HUD WITHIN FIVE (5) FEDERAL GOVERNMENT BUSINESS DAYS OF THE DATE OF THE FORECLOSURE SALE.**

Required Documentation:

Written Statement of Experience: Bidder must submit a written statement to HUD Realty Specialist, Jane Butler – 4AHMLAU, HUD Atlanta MFPD Center, Five Points Plaza, 40 Marietta St., Atlanta, GA 30303-2806 demonstrating generally five (5) years of experience in successfully owning and managing properties similar to the property being sold. The statement shall provide the following information for all similar properties to the property being sold, not to exceed three (3) specific examples. The written statement should not exceed five (5) pages per property.

- The location of other owned multifamily properties.
- The number of units and construction type (garden, walk-up, hi-rise) for each property.
- Identify properties that have government assistance and type of assistance, i.e., project-based assistance, tenant-based voucher assistance, etc.
- Identify the initial physical needs of each property and how they were addressed.
- Identify the social needs of each property and how they were addressed.
- Identify the economic needs of each property and how they were addressed.

For the Property being sold, provide the following documentation:

- Describe how bidder will satisfy conditions of the sale, i.e., repair program, income and rent limitations, etc.
- Describe how bidder will implement a sound financial and physical management program for the Property.
- Describe bidder's methods for responding to the needs of the tenants and working cooperatively with resident organizations.
- Describe how bidder will provide adequate organizational staff and financial resources to the property.
- Provide statement of services, maintenance and utilities which bidder will provide to property.
- Provide a statement disclosing whether other government assistance will be utilized in conjunction with the Section 8 assistance if HUD is providing project-based Section 8.

Based on the required documentation, set forth above as well as any additional information independently obtained and verified by the Department, HUD will determine whether the bidder has the requisite experience, qualifications and financial capacity to purchase the Property. This determination is a matter within HUD's sole and absolute discretion. If HUD determines that the bidder does not have the experience, qualifications and/or financial capacity to purchase the Property, HUD will reject the bid and proceed to the next highest bidder pursuant to the terms of the Invitation to Bid.

In the event that HUD rejects a bid, HUD will return the bidder's earnest money deposit, provided the bidder has not failed to meet time limits required to submit documentation, or made any misrepresentation or material omission(s) in the bidder's submission of the bid and supporting documentation. **If the bidder fails to properly submit all required documentation within the required time limit or HUD determines that the bidder misrepresented his or her experience, qualifications or financial capacity to successfully own and operate the Property, or omitted a material fact(s), HUD will retain the bidder's earnest money deposit as liquidated damages and may seek any and all additional available remedies.**

HUD may require the high Bidder to obtain the services of a qualified property management firm. Management acceptable to HUD (see paragraph 5 below) must be approved prior to closing.

- (i) If HUD approves the high Bidder as being qualified, the high Bidder will be confirmed as and identified as the Purchaser.
  - (ii) If the high bid is rejected due to HUD's determination that the high Bidder is not qualified to purchase the project, HUD will notify the high Bidder in writing.
- (b) If HUD rejects the high Bidder, and HUD elects to contact the second high bidder, the second high Bidder will be given twenty-four (24) hours to submit the earnest money deposit and will be reviewed to determine if qualified to purchase the project.

- (i) If HUD approves the second high Bidder as being qualified, second high Bidder will be confirmed as and identified as the Purchaser.
- (ii) If the second high bid is rejected due to HUD's determination that the second high Bidder is not qualified to purchase the project, HUD will notify the second high Bidder in writing.
- (c) HUD's notification of rejection due to lack of qualifications, if applicable, shall be deemed to be given when mailed to the individual indicated in the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder.
- (d) The written rejection of the bid will be made as promptly as possible and generally within thirty (30) days after the date of the foreclosure sale.

**3. HANDLING OF THE EARNEST MONEY DEPOSIT:**

The Earnest Money Deposit will be submitted by all bidders to the Foreclosure Commissioner but the High Bidder's deposit will be held by HUD.

- (a) If HUD determines that the High Bidder is qualified to own and manage the Project, its bid is acceptable and the High Bidder complies with the requirements of this Invitation, HUD will apply the amount of the Earnest Money Deposit to the sales price at the closing of the foreclosure sale.
- (b) If the bid amount is unacceptable, the bidder's Earnest Money Deposit will be refunded.
- (c) If the High Bidder is deemed unqualified to purchase the Project, the Earnest Money Deposit will be retained by HUD.
- (d) If the High Bidder has failed to comply with the provisions outlined in this Invitation, the Earnest Money Deposit will be retained by HUD.
- (e) Interest will not be paid on Earnest Money Deposits.

- 4. REVIEW OF PROJECT MANAGEMENT:** In addition to the 2530 Previous Participation review, HUD will review the statements and forms submitted as required by Section 4, paragraph 2 above and the Acknowledgment by Bidder, to determine that the High Bidder is qualified to own, operate, and manage the Project. HUD may elect to discuss in person with the High Bidder project management plans after submission of the post-bid documents by the High Bidder. **The High Bidder must demonstrate that it or its management agent has substantive experience in managing subsidized multifamily properties with project-based Section 8 assistance.** HUD reserves the right to reject the bid of any High Bidder that HUD determines lacks the experience, ability or financial responsibility to own and manage the Project, and retain its Earnest Money Deposit.

- 5. CLOSING DATE REQUIREMENT:** The closing date and place will be determined by the Foreclosure Commissioner and/or HUD and will take place within the time period specified in the Acknowledgment by Bidder. The Purchaser will be notified of said date and place by the Foreclosure Commissioner.

- 6. EXTENSION OF CLOSING:** The right to extend the closing is expressly reserved by HUD as set forth in the Acknowledgment by Bidder.

**SECTION 5 - CLOSING**

- 1. EXECUTION OF USE AGREEMENT:** The bidder that is confirmed as the Purchaser and HUD must execute Attachment C, Foreclosure Use Agreement ("Use Agreement) at closing.
- 2. CASH DUE AT CLOSING:** Cash due at closing is the purchase price less the Earnest Money Deposit received, plus any pro-rations (see Section 5, paragraph 3 below). Cash due at closing includes all initial deposits to reserve accounts, if applicable.
- 3. PRORATIONS:** Purchaser is responsible for paying **all** outstanding taxes, assessments and utility bills including, but not limited to, water/sewer, gas and electric. These amounts will not be prorated. However, if Extension Fees were paid, and if the sale closes prior to the expiration of an extension period, the prorated amount of the Extension Fees for the unused portion of the extension period shall be credited toward the amount due from Purchaser at closing.
- 4. CLOSING EXPENSES:** Irrespective of local custom, the Purchaser shall pay all stipulated closing expenses, including, but not limited to, all documentary stamp taxes, and any costs in connection with a review of title or title insurance as may be requested by the Purchaser. HUD will pay all recording fees.
- 5. METHOD OF PAYMENT:** Cash due at closing shall be paid in the form of a money order, certified funds or a cashier's check made payable to: **THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**
- 6. LETTER OF CREDIT or CASH ESCROW:** If any post-closing repair requirements are included in the sale, **at closing** the Purchaser shall provide HUD with an unconditional, irrevocable, and nondocumentary Letter of Credit (LOC), or a group of no more than five (5) LOCs, in the amount shown in the Property at a Glance. Such LOCs shall expire no earlier than six (6) months beyond HUD's estimated completion date of the HUD-required repairs. HUD will release any undrawn balance of the LOCs, less ten (10) percent, **of the total estimate of repairs.** The ten (10) percent will be held for six (6) months after completion of repairs for correction of any latent defects. Any balance remaining shall be released thereafter. As an alternative to a Letter(s) of Credit, the Purchaser may provide a **Cash Escrow** in the amount shown in the Property at a Glance to be held by HUD in a non-interest bearing escrow account. The cash escrow will be returned to the Purchaser after repairs have been satisfactorily completed, except for ten (10) percent which will be held for an additional six (6) months
- 7. HOUSING ASSISTANCE PAYMENTS (SECTION 8):** For projects sold with Project-Based Section 8 assistance, (See the Property at a Glance and the Use Agreement) the Purchaser must execute a HAP Contract. **The HAP Contract is subject to the availability of Section 8 funds.** The HAP Contract will initially be funded for a minimum of one (1) month and a maximum of twelve (12) months. A sample form of the HAP Contract is attached.

8. **CONVEYANCE:** Conveyance of the project shall be by Quitclaim Deed ("Deed") from the Foreclosure Commissioner. **The Deed will not contain any warranties of title.**
9. **RECORDATION OF DEED:** HUD shall record the Deed and all other recordable documents. All recordation costs shall be at HUD's expense.
10. **DOCUMENTS TO BE FURNISHED OR EXECUTED AT CLOSING**

<input checked="" type="checkbox"/> Foreclosure Sale Use Agreement	<input checked="" type="checkbox"/> Letter(s) of Credit or Cash Escrow
<input checked="" type="checkbox"/> HAP Contract	<input checked="" type="checkbox"/> Closing Statement

**SECTION 6 - DISCLAIMERS**

1. **DISCLAIMER:**
  - (a) As stated in Section 1, paragraph 7 above, bidders interested in purchasing the Project are expected to perform due diligence to arrive at 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 upon value of the Project. **Any bid submitted shall be deemed to have been made with full knowledge of all the terms, conditions and requirements contained in this Invitation.**
  - (b) While care has been exercised to assure accuracy, all information is provided solely for potential bidders to determine whether or not the Project is of such type and general character as might interest them in their purchase. **HUD makes no warranty as to the accuracy of such information.** The failure of any bidder to inspect, or be fully informed as to the condition or value of the Project, or conditions of sale, will not constitute grounds for any claim, demand, adjustment or withdrawal of a bid.
2. **UNAUTHORIZED ORAL STATEMENT OR MODIFICATIONS:** Any oral statement or representation by any representative of HUD changing or supplementing this Invitation, or any condition hereof, is unauthorized and shall confer no right upon any bidder or Purchaser.
3. **HUD LIABILITY:** HUD's liability shall not exceed the amount of such portion of the purchase price that has been paid to HUD or to the Foreclosure Commissioner.



# Property at a Glance

## PEMBERTON MANOR APARTMENTS

**FHA: 052-35602**

ADDRESS: **1020 Fairground Drive**  
**Salisbury, Maryland 21801**

EARNEST MONEY: **\$200,000**  
 COUNTY: **Wicomico**  
 LoC or Cash Escrow: **\$243,000**

SALES PRICE: **Unstated Minimum**  
 TERMS: **All Cash - 30 days to close**  
 SALE TYPE: **Foreclosure**

### PROPERTY INFORMATION

<b>Total Units</b>	<b>Residential</b>	<b>Commercial</b>	<b>Foundation:</b>	<b>Concrete</b>
<b>209</b>	Revenue <b>209</b>	<b>0</b>	<b>Roof:</b>	<b>Shingles</b>
	Non-Revenue		<b>Exterior:</b>	<b>Stud/Siding/Brick</b>
			<b>Floors/Finish:</b>	<b>VCT/Carpet</b>

<b>Elevator</b>	<b>Garden</b>	<b>Walk-up</b>	<b>Townhouse</b>	<b>Scattered Sites</b>	<b>Service Center</b>	<b>Mobile Home Park</b>	<b>Nursing Home</b>	<b>Vacant Land</b>	<b>Other:</b>
		<b>X</b>							

<b>Number of Buildings</b>	<b>Stories</b>	<b>Year Built</b>	<b>Rehab Year</b>	<b>Site Acreage</b>	<b>Approximate Net Rentable Area</b>
<b>19+ 1 Office</b>	<b>3</b>	<b>1974</b>	<b>2004</b>		<b>157,501</b>

#### Mechanical Systems

<b>Heating:</b>	<b>Air Conditioning</b>
Fuel System: <b>Gas</b> <b>Individual</b>	Windows: <b>Individual</b> <b>Insulated</b>
<b>Hot Water:</b>	
Fuel System: <b>Gas</b> <b>Central</b>	

#### Utilities

Public Water	<b>X</b>
Gas Main	<b>X</b>
Electric	<b>X</b>
Sanitary Sewer	<b>X</b>
Storm Sewer	<b>X</b>
Septic Tank	

#### Parking

Street	<b>Asphalt</b>
Curb	<b>Concrete</b>
Sidewalk	<b>Concrete</b>
Parking Lot	<b>Asphalt</b>
Parking Spaces	<b>302</b>

#### Apartment Features

<b>X</b>	Air Conditioning
<b>X</b>	Dishwasher
<b>X</b>	Microwave
<b>X</b>	Garbage Disposal
<b>X</b>	Refrigerator
<b>X</b>	Range/Oven
<b>X</b>	Drapes/Blinds

#### Community Features

<b>X</b>	Garage
<b>X</b>	Covered Parking
<b>X</b>	Laundry Facility
<b>X</b>	Cable/Sat Hookup
<b>X</b>	Playground
<b>X</b>	Pool
<b>X</b>	Community Space

#### Owner Expense

<b>Cold &amp; Hot Water</b>
<b>Gas</b>
<b>Heat</b>

#### Tenant Expense

<b>Electricity</b>
<b>Air Conditioner</b>

#### OCCUPANCY

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2011	89%	90%	91%	90%	90%	91%	92					
2010	64%	62%	62%	70%	73%	72%	76%	77%	76%	85%	88%	90%

#### ESTIMATED ANNUAL RENTAL INCOME:

Number of Units	Type	Approx Square Feet	Current Rent	Estimated /Possible After Sale Rent	Estimated /Possible Total After Sale Rent														
17	1-BR		\$575	695	\$11,815														
12	1-BR		626	626	7,512														
38	2-BR		675	750	28,500														
80	2-BR		734	734	58,720														
11	3-BR		775	850	9,350														
51	3-BR		844	844	43,044														
<b>TOTAL MONTHLY</b>						<b>\$158,941</b>													
										<b>Total Estimated/Possible Annual Income</b>									
										Rent		<b>\$1,907,292</b>							
										Commercial		<b>0</b>							
										Parking		<b>0</b>							
										<b>TOTAL</b>		<b>\$1,907,292</b>							
										<b>Estimated Annual Expenses</b>									
										Administrative		<b>\$226,138</b>							
										Utilities		<b>108,262</b>							
										Operating		<b>359,480</b>							
										Taxes/Insurance		<b>148,390</b>							
										Reserve/Replace		<b>62,700</b>							
										<b>TOTAL</b>		<b>\$904,970</b>							

#### COMMENTS CONCERNING PROPERTY INFORMATION:

A Project Based Section 8 Housing Assistance Payment (HAP) Contract will be provided to the Purchaser at closing. Project based assistance is predicated on the availability of funds.

To inspect the property, you should contact Eleanor Puleo, Senior Property Manager, Habitat America at (443) 716-2555.

Due diligence should be performed in advance of submitting a bid. While care has been exercised to ensure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as to interest them in its purchase. HUD makes no warranty as to the accuracy of such information.

## USE RESTRICTIONS

20 Years affordable housing. 2-Year rent cap protection for 66 residents.

### PROJECT BASED SECTION 8 - CAUTION TO BIDDERS

A Project Based Section 8 Housing Assistance Payment (HAP) Contract will be provided to the Purchaser at closing. Project based assistance is predicated on the availability of funds. Bidders are cautioned that payments under the HAP Contract may not start immediately after closing, either due to repairs required by the Purchaser or processing time required to determine that units meet HUD's Uniform Physical Condition Standards and tenants are eligible for the assistance. Prior to receipt of the subsidy payments, Purchaser may not charge eligible tenants, who are slated to receive Section 8, more than the amount of Total Tenant Payment the tenant would be required to pay under Section 8 program. In addition, some tenants may have to be temporarily relocated due to project repairs. HUD has already accounted for these and other costs in this project's disposition process. Therefore, HUD is not obligated to make any monetary adjustments to cover any costs that may be incurred by the Purchaser. Bidders should compute their bids accordingly.

### TERMS OF SALE

The Purchaser must complete the repairs to HUD's satisfaction within 18 months after closing. The repairs are estimated to cost \$971,929.60. Closing is to be held 30 days after HUD accepts the bid. If HUD authorizes an extension of the closing, the Purchaser must pay a fee which is the greater of 1.5% of the purchase price or HUD's holding costs of \$40.80 per unit per day for each 30 day period.

The High Bidder/Purchaser is responsible for paying in full all outstanding or delinquent property taxes/property tax liens that survive foreclosure at Closing. Taxes paid by the Purchaser after the Closing date will not be prorated, even if those taxes are for a period prior to Closing.

The high Bidder must certify to HUD that any projects that are owned by the high Bidder or its affiliates and are located in the same jurisdiction (City or Town where Project purchased is located) as Pemberton Manor Apartments are in substantial compliance with applicable State and local housing statutes, regulations, ordinances and codes. The **complete and original** (Attachment F) must be received by Jane Butler, Atlanta MFPD Center, Five Points Plaza, 40 Marietta St., Atlanta, GA 30303-2806 within two (2) Federal Government business days of the foreclosure sale date. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the high Bidder. If HUD determines at its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the project to the high Bidder and retain the Earnest Money Deposit (See Attachment F).

**The Purchaser and HUD will execute a Project-Based Section 8 Housing Assistance Payments Contract ("HAP Contract") for (143) units at closing. HUD will provide funding for the HAP Contract subject to the availability of funds. The HAP Contract initially will be funded for a minimum of one (1) month and a maximum of twelve (12) months.**

**Bidders must demonstrate substantive experience in managing subsidized multifamily properties with project-based Section 8 assistance, or, if directed by HUD, hire a Property Manager, prior to closing, with demonstrated substantive experience in managing subsidized multifamily properties with project-based Section 8 assistance.**

**If the high Bidder elects to file the required Previous Participation Certification (a.k.a. Form HUD-2530) in paper format, the high Bidder must submit within two (2) Federal Government business days of the foreclosure sale, a completed and executed Previous Participation Certification (Form HUD-2530) for the proposed owner to Jane Butler – 4AHMLAU, Atlanta MFPD Center, Five Points Plaza, 40 Marietta St., Atlanta, GA 30303-2806.**

**For questions about APPS contact the Multifamily Housing Systems Help Desk at 1-800-767-7588. PROSPECTIVE BIDDERS SHOULD READ AND THOROUGHLY UNDERSTAND ALL INFORMATION PROVIDED HEREIN AND IN THE BID KIT PRIOR TO SUBMITTING A BID.**

**This is an "All Cash – As Is" sale.** HUD is providing no financing for this sale. The Purchaser must provide for payment of the full purchase price in cash at closing.

**Submission of Bids:** Bids for this property can only be considered for acceptance if submitted on the specific forms listed in the Bid Kit for this property, along with required earnest money. A Bid Kit may be obtained as indicated below.

**Suspended or Debarred Parties:** No consideration will be given to a bid submitted by any party currently suspended or debarred from participating in HUD programs. AS PROVIDED FOR IN CFR TITLE 24, SECT. 27, THE DEFAULTING MORTGAGOR, OR ANY PRINCIPAL, SUCCESSOR, AFFILIATE, OR ASSIGNEE ON THE MORTGAGE AT THE TIME OF DEFAULT SHALL NOT BE ELIGIBLE TO BID ON OR OTHERWISE PURCHASE THIS PROPERTY. (Principal and Affiliate are defined at 24 CFR 200.215)

### INSPECTION OF PROPERTY AND BIDDING INSTRUCTIONS

Prospective bidders are urged and invited to inspect the property prior to submitting a bid. Note: If this is a foreclosure sale, HUD may not have access to the property. Bids for this property can only be considered if properly submitted by following the bidding instructions provided in the FREE INFORMATION and BID KIT.

The FREE INFORMATION and BID KIT may be viewed or printed at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/pd/mfplist](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/pd/mfplist).

You may also sign up for our electronic mailing list at this web address. If you do not have internet access or cannot download a PDF file, you may obtain a copy of the bid kit by contacting Diane Trimble at (678) 732-2051.

**BIDS for Pemberton Manor Apartments  
MUST BE PRESENTED ON: October 6, 2011**  
at: 2:00 p.m. (local time)  
at: Wicomico County Courthouse  
(On the steps)  
101 North Division Street  
Salisbury, MD 21801

**HUD OFFICE:**  
Atlanta MFPD Center  
Five Points Plaza  
40 Marietta St.  
Atlanta, GA 30303

**REALTY SPECIALIST:**  
Jane Butler  
Phone: (678) 732-2535  
[jane.y.butler@hud.gov](mailto:jane.y.butler@hud.gov)

**ATTACHMENT B**

TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER

**PART I**

BID PRICE: The Undersigned, \_\_\_\_\_, ("High Bidder") submits a bid of \_\_\_\_\_ dollars (\$) at the foreclosure sale of **Pemberton Manor** ("Project"), the legal description of which is included as Exhibit A, to be paid as follows:

1. \$**200,000** in the form of a money order, certified funds or a cashier's check, as the Earnest Money Deposit, which has been paid at the foreclosure sale to the Foreclosure Commissioner, and which shall not earn interest, and
2. \$ \_\_\_\_\_, the balance of the sales price to be paid by the High Bidder at the closing ("Closing"), in the form of a money order, certified funds or a cashier's check in accordance with this Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder ("Acknowledgment by Bidder"). The Closing will be held at a place, date and time established in accordance with Part II, Section 5 below.
3. In addition to the above, the High Bidder will be required to pay at Closing all closing costs, regardless of local custom, and, where applicable, deposits to reserve accounts and/or Letters of Credit as described in Riders, Use Agreement and other documents incorporated into this Invitation for Bid ("Invitation"), and the HAP Contract.

**PART II**

The High Bidder, by executing this document, acknowledges the following requirements as conditions of purchasing the Project:

1. **ACKNOWLEDGMENT OF TERMS:** – High Bidder affirms to have full knowledge of the all terms, conditions and requirements contained in this Invitation, including this Acknowledgment by Bidder and documents referred to herein and Attachments.
2. **EXECUTION OF USE AGREEMENT:** At Closing, High Bidder will, in addition to any other related documents, execute the Use Agreement and all of the Exhibits to the Use Agreement as contained in the Invitation. Such documents will control the use of the Project for a specified period, be recorded with the Deed, and run with the land.
3. **CERTIFICATION OF SUBSTANTIAL COMPLIANCE (Attachment F):** The High Bidder must provide a certification to HUD (**within two (2) Federal Government business days after the foreclosure auction sale**) that any other projects that are owned by the High Bidder or its affiliates that are located in the same jurisdiction as the Project are in substantial compliance with applicable State and local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the High Bidder. The complete and original Attachment F must be received by HUD Realty Specialist, Jane Butler - 4AHMLAU, HUD Atlanta MFPD Center, Five Points Plaza, 40 Marietta St., Atlanta, GA 30303-2806. If HUD determines, in its sole discretion, that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the Project to the High Bidder and retain the Earnest Money Deposit.
4. **PREVIOUS PARTICIPATION CERTIFICATION:**

**WITHIN TWO (2) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:**

- (a) High Bidder, if using **paper submittal** of the Previous Participation Certification (Form HUD-2530), must submit the form to HUD Realty Specialist, Jane Butler – 4AHMLAU, HUD Atlanta MFPD Center, Five Points Plaza, 40 Marietta St., Atlanta, GA 30303-2806.
- (b) **Bidders not registered in APPS and Secure Systems:** A High Bidder choosing to file electronically must submit to HUD certification of registration in APPS and Secure Systems. The High Bidder must fax a copy of *Participant Successfully Registered* page from the APPS System **and** a copy of the *Multifamily Coordinator and User Registration page* from Secure Systems **or** a copy of the *Participant Detail* page (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4 for printing instructions) to HUD Realty Specialist, Jane Butler, HUD Atlanta MFPD Center at (404) 730-2440. The High Bidder is also responsible for submitting any changes necessary for principals, tax ID numbers, and owners into the APPS System.
- (c) **For Participants Registered in APPS and Secure Systems:** High Bidder must fax a copy of the Participant Detail page to HUD Realty Specialist, Jane Butler, HUD Atlanta MFPD Center at (404) 730-2440.

**WITHIN FIFTEEN (15) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:**

- (d) If using APPS, the High Bidder must submit certification to HUD that the High Bidder has completed the 2530 submission process for the ownership entity in APPS. This certification must be in the form of printed copy of the *2530 Submission Package* (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4). The High Bidder must fax a copy of the *2530 Submission Package* from APPS System to HUD Realty Specialist, Jane Butler, HUD Atlanta MFPD Center at (404) 730-2440.

*NOTE: Any change in ownership entity will require changes (updating) in the APPS system. Participants (High Bidder) must adhere to all APPS registration and submission timeframes. Delays in updating the 2530 application will not be grounds for delaying any closing, nor will it be grounds for approving an extension of the closing date.*

5. **ESTABLISHMENT OF CLOSING DATE, TIME AND PLACE:** Time is of the essence.
  - (a) HUD will notify the High Bidder and the Foreclosure Commissioner in writing after HUD determines that the High Bidder has been approved to purchase the Project. Approval to purchase is subject to review and approval of Bidders written statements and HUD forms as required for purchase in Section 4 (Post Foreclosure Sale Procedures) of the "Invitation to Bid", and in Attachment B, Terms and Requirements of Foreclosure Sale, Acknowledgement by Bidder, specifically Number 19 "ADDITIONAL FORMS AND STATEMENTS" as indicated. The Closing **shall be within thirty (30) days after such notification**, unless extended pursuant to Section 9 below.
  - (b) The Foreclosure Commissioner will establish a time and date for the Closing. The Closing will take place at a site agreed upon by HUD and the Foreclosure Commissioner.

6. CLOSING, CLOSING EXPENSES AND TRANSFER OF POSSESSION:
  - (a) The sale shall be effective upon Closing.
  - (b) High Bidder/Purchaser shall pay all closing costs and expenses, excluding fees for recording the Deed and Use Agreement, irrespective of local custom. Recording fees shall be paid by HUD.
  - (c) Transfer of title and possession of the Project shall become effective as of the Closing date.
7. PAYMENT OF PURCHASE PRICE AT CLOSING: The High Bidder/Purchaser shall pay the balance of the purchase price at Closing in the form of a money order, certified funds or a cashier's check made out to:

**THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**
8. **LIQUIDATED DAMAGES: Should the High Bidder/Purchaser fail or refuse to perform all obligations under the Invitation (which includes this Acknowledgement by Bidder) for any reason within the deadline referred to in Section 5 above, the Earnest Money Deposit and any extension fees, paid under Section 9, shall be retained by HUD as liquidated damages.**
9. EXTENSION FEES: The granting of extensions of time to close the sale is within HUD's sole and absolute discretion. Any extensions granted will be on the following conditions:
  - (a) A written request for an extension must be received by the Foreclosure Commissioner at least seven (7) days prior to the Closing and **must be accompanied by the payment** of the required extension fees ("Extension Fees") in accordance with paragraph 9(c) below. The request must state the reason for Purchaser's inability to timely close the sale.
  - (b) Extensions shall be for thirty (30) day periods.
  - (c) For each thirty (30) day period requested and approved by HUD, Extension Fees shall be equal to
    - (i) **\$40.80**, per unit, per day, which is **\$8,527.20** daily for the Project, for a total cost of **\$255,816** for the 30 day period, or
    - (ii) one and one-half percent (1.5%) of the purchase price, whichever is greater.
  - (d) The Extension Fees shall be retained by HUD and shall not be credited to the amount due from High Bidder/Purchaser at Closing. However, if the sale closes prior to the expiration of an extension period, the prorated amount of the Extension Fees, for the unused portion of the extension period, shall be credited toward the amount due from the High Bidder/Purchaser at Closing.
  - (e) The granting of one or more extensions shall not obligate HUD to grant additional extensions.
  - (f) If any form or instrument required by HUD is not submitted within sufficient and reasonable time for HUD's review or processing and such delay necessitates an extension of the Closing deadline, Extension Fees must be paid for this period.
  - (g) Extension Fees must be in the form of a money order, certified funds or a cashier's check payable to: **THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**
10. BIDDER RESTRICTIONS:
  - (a) No Member of/or Delegate to Congress, resident commissioner, or local elected official, shall be permitted to participate in any share or part of this sale, or to any benefit arising from it. However, this provision does not apply to this sale to the extent that this sale is made to a corporation for the corporation's general benefit.
  - (b) If the High Bidder is, or becomes suspended, debarred, or temporarily denied from participating in HUD programs prior to approval as the Purchaser of the Project, the sale to the High Bidder shall be cancelled. In addition, if such suspension, debarment or temporary denial of participation occurs either before or after High Bidder's execution of this Acknowledgment by Bidder, the Earnest Money Deposit and any Extension Fees paid shall be retained by HUD as liquidated damages.
  - (c) Pursuant to 24 CFR Section 27.20, the defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by HUD under this subpart or any other provision of law. A "principal" and an "affiliate" are defined at 2 CFR 180.995 and 180.905, respectively.
11. AS-IS SALE; NO REPRESENTATIONS:
  - (a) **High Bidder/Purchaser shall accept the Project "as is." HUD makes no representations or warranties concerning the physical condition of the Project. In addition, HUD does not represent or warrant the number and occupancy of revenue producing units, or any factor bearing upon the value of the Project.**
  - (b) High Bidder/Purchaser acknowledges that the purchase price set forth in this Acknowledgment by Bidder is based on its own independent evaluation of the Project and not upon any representations by HUD. A bidder's failure to inspect, or to be fully informed as to any factor bearing upon the value of the Project, shall not affect the liabilities, obligations or duties of HUD, nor be a basis for termination of this sale or for the return of the Earnest Money Deposit and/or Extension Fees paid.
12. RISK OF LOSS AND RIGHTS OF RESCISSION: In the event of any substantial damage to the Project prior to Closing by any cause including, but not limited to, fire, flood, earthquake, tornado and significant vandalism, HUD, in its sole discretion, may negotiate with the High Bidder/Purchaser for a reduction in the sales price corresponding to the estimated amount of damages. Such amount shall be added to the Post-Closing Repair Requirements, Form HUD – 9552, included in the Invitation. If HUD fails to negotiate a sales price reduction or if HUD and the Purchaser are unable to agree on the amount by which the purchase price should be reduced or on the amendment to the repair requirements, Purchaser may withdraw the bid. In such case, HUD will return the Earnest Money Deposit and any Extension Fees paid, *unless* there is cause to retain the Earnest Money Deposit based on breach of the Invitation and/or this Acknowledgement by Bidder.

13. PRORATIONS:

- (a) There will be no prorations at Closing. High Bidder/Purchaser is responsible for paying all outstanding property taxes, assessments and utility bills including, but not limited to, water/sewer, gas and electric which are not extinguished by the foreclosure. However, if Extension Fees were paid and if the sale closes prior to the expiration of an extension period, a prorated amount of the Extension Fees, for the unused portion of the extension period, shall be credited toward the amount due from High Bidder/Purchaser at Closing. The High Bidder/Purchaser will be responsible for expenses incurred by the Project after Closing. *Bidders are required to determine outstanding expenses/assessments/liens as part of its due diligence and take those outstanding expenses into consideration when submitting bids.*
- (b) The High Bidder/Purchaser is responsible for paying in full all outstanding or delinquent property taxes/property tax liens that survive the foreclosure action at Closing. Taxes paid by the Purchaser after the Closing date will not be prorated, even if those taxes are for a period prior to Closing.

14. SECURITY DEPOSITS:

Notwithstanding State or local law, the Purchaser will receive only those security deposits which are on hand at the Project on the date of Closing. The Purchaser will assume all liability under State and local law with respect to security deposits.

15. LIMITATION OF LIABILITY: In no event shall HUD’s liability exceed the portion of the purchase price that has been paid to HUD and/or the Foreclosure Commissioner.

16. ANTI-COLLUSION CERTIFICATION:

- (a) The High Bidder certifies:
    - (i) The bid price in this offer has been arrived at independently, without (for the purposes of restricting competition) any consultation, communication, or agreement with any other bidder relating to:
      - a. the bid price;
      - b. the intention to submit a bid price; or
      - c. the methods or factors used in calculating the bid price offered;
    - (ii) The bid price in this offer has not been and will not be knowingly disclosed by the High Bidder, directly or indirectly, to any other bidder or competitor before or during the actual time of the bid event, unless otherwise required by law; and
    - (iii) No attempt has been made or will be made by the High Bidder to induce any other bidder to submit or not submit a bid for the purpose of restricting competition.
  - (b) If written bids were submitted, each signature on the offer is considered to be certification by the signatory that the signatory:
    - (i) Is the person in the High Bidder's organization responsible for determining the bid price and that the signatory has not participated and will not participate in any action contrary to paragraph (a) above; or
    - (ii) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to paragraph (a), above;
      - Name: \_\_\_\_\_
      - Title: \_\_\_\_\_
      - Organization responsible for determining price \_\_\_\_\_
- a. As an authorized agent, certifies that the principals named above have not participated, and will not participate, in any action contrary to paragraph (a) above; and
  - b. As an authorized agent, has not personally participated, and will not participate, in any action contrary to paragraph (a) above.

**17. FAILURE TO COMPLY: Upon the failure or refusal of the High Bidder to comply with any of the requirements listed above or elsewhere in this Invitation, HUD may declare the High Bidder ineligible to purchase the Project. In such case High Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.**

**\*HUD reserves the right to review and approve or reject the proposed project management.** If HUD determines that the High Bidder is not qualified to self-manage the Project, HUD, in its sole discretion, may either reject the High Bidder’s bid or require the High Bidder to obtain the services of a property management firm satisfactory to HUD. If HUD chooses the latter, the High Bidder must provide HUD with evidence that a qualified property management firm has been retained. If High Bidder does not meet this obligation, HUD reserves the right to reject the bid and retain the High Bidder’s Earnest Money Deposit and any Extension Fees paid.

18. SEVERABILITY: If for any reason one or more of the provisions contained in the Invitation, including this Acknowledgment by Bidder, 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.

19. ADDITIONAL FORMS AND STATEMENTS: All forms and instruments referred to in this Acknowledgment by Bidder are standard HUD forms and instruments prepared by HUD, used by HUD in the jurisdiction in which the Project is located, and contain any additional covenants and conditions required by the Invitation.

Not later than **ten (10)** Federal business days after oral notification at the foreclosure sale of being the High Bidder, **the High Bidder must demonstrate the ability to meet HUD requirements** for purchase of the Project by submitting the documents checked below to HUD Realty Specialist, Jane Butler – 4AHMLAU, HUD Atlanta MFPD Center, Five Points Plaza, 40 Marietta St., Atlanta, GA 30303-2806.

- Affirmative Fair Housing Marketing Plan (Form HUD 935.2A)
- Form HUD- 2530 for Purchasing Entity, if different from bidding entity(See Section 2)
- Form HUD- 2530 for the Managing Agent, if applicable (See Section 2)
- Personal Financial and Credit Statement (Form HUD 92417)-for each proposed principal/general partner
- Management Entity Profile (Form HUD 9832)
- Management Certification (Form HUD 9839 A or B)
- Direct Deposit Signup – Standard form 1199A

**WITHIN FIVE (5) FEDERAL GOVERNMENT BUSINESS DAYS AFTER FORECLOSURE SALE:**

- Bidders Property Management Statements: Please see “**SECTION 4 - POST FORECLOSURE SALE PROCEDURES**”, “**2. QUALIFICATION, ACCEPTANCE, REJECTION OF BID**” of the “**Invitation to Bid**” for detailed instructions on how to comply with this requirement.

By signature below, High Bidder acknowledges and agrees to the terms and requirements of this foreclosure sale. In the case of a bid submitted by an agent or representative of the High Bidder, the signatory attests to be duly authorized to submit the bid on behalf of the High Bidder and to execute this Acknowledgment by Bidder.

**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. Title 18 U.S. Code, Section 1001 and Section 1010.

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

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

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

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

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

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

City, ST Zip: \_\_\_\_\_

Phone No. with Area Code:(\_\_\_\_)\_\_\_\_\_-\_\_\_\_\_

FORECLOSURE SALE USE AGREEMENT

The High Bidder acknowledges the receipt of the Use Agreement applicable to this Project's sale and the inclusion of the following Riders in that Use Agreement:

- Nondiscrimination against Multifamily Section 8 Certificate Holders and Voucher Holders
- Affordability of Units
- Two-Year Rent Protection for Pre-Existing Very Low-Income Tenants
- Post-Closing Repair Escrow Requirements
- Post-Closing Repair to Local Codes Escrow Requirements
- Relocation
- Relocation [NURSING HOMES, BOARD AND CARE FACILITIES and/or ASSISTED LIVING FACILITIES (ALF)]
- Asbestos Hazards
- Lead-Based Paint Hazards
- Existing Hazardous Substances-Demolition Activities
- Historic Preservation
- Mobile Home Parks
- Retirement Service Centers
- Projects Primarily Occupied by the Elderly
- Operating Deficit Escrow Account
- Reserve Account
- Security
- Project-Based Section 8 Assistance

The Use Agreement, with the above noted Riders, is to be incorporated into and recorded as part of the Deed.

High Bidder acknowledges that this Rider is incorporated into and is a part of the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder  
Bidder \_\_\_\_\_

**ATTACHMENT C**  
**FORECLOSURE SALE USE AGREEMENT**

This Agreement is entered into by \_\_\_\_\_ ("Purchaser") 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 Pemberton Manor, HUD Project No. 052-35602, (the "Project" or the "Property") 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(a), and the Department of Housing and Urban Development regulations thereunder at 24 C.F.R. Part 290, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the Property 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 Purchaser; **and**

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

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for twenty (20) years from the date of this Agreement (the "Restricted Period"). During the Restricted Period the Project must be maintained as affordable rental housing.
2. **CONVEYANCE OF PROJECT:** During the term of this Agreement, any conveyance of the project must have prior written approval of HUD. Any request for HUD's approval of conveyance must include the Previous Participation Certification approval (clearance) of the entity and all principals, submission of a signed Certification of Substantial Compliance, and a signed Agreement to Abide by Deed Restrictions. HUD's approval of conveyance will be based on information provided in written statements of how the Purchaser, or any subsequent Purchaser, 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 subsidized multifamily properties with Project-Based Section 8 assistance.

Conveyance is defined as any sale, assignment, transfer, leasehold estate, or conveyance of the Project or any ownership interest. In addition, a merger, conversion, share exchange, long term leasehold estate, and interest exchange of corporate or partnership interest is also considered a transfer/conveyance of the Project and requires 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 provide that any such merger or conversion or share (or interest) exchange, or leasehold estate transaction does not constitute or involve the occurrence of a "transfer" or "assignment" of real estate interest or other assets of a constituent party to any such transaction.

3. **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 subsidized multifamily properties of similar size and complexity. If the Project is being sold with 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.

Any change in management of the Project must have HUD's prior written approval. Any request for HUD's approval of the proposed Purchaser's/owner's management of the Project must include the entity and all principals obtaining Previous Participation Certification approval (clearance) and the proposed management agent for the Project must submit for HUD's review and approval the following documents/forms:

- Management Entity Profile (Form HUD-9832),
- Project Owner's Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839A) **or**
- Project Owner's/Management Agents Certification for Multifamily Housing Projects for Identity-of-Interest (Form HUD-9839B), **or**
- Project Owner's/Borrower's Certification - for elderly housing project managed by Administrators only (Form HUD-9839C).

**(Only one of the Forms 9839 A, B or C will be required for management certification.)**

4. **ANNUAL FINANCIAL STATEMENTS:** The Purchaser shall comply with the Uniform Financial Reporting Standards of 24 C.F.R. Part 5, Subpart H, including any changes in the regulation and related Directives or any subsequent systems. The annual financial statements must be prepared in accordance with generally accepted accounting principles (GAAP), Owner certified and submitted electronically no later than ninety (90) days after the end of the Owner's fiscal year in accordance with the requirements of 24 C.F.R. Part 5.
5. **RENTAL RATES:** A Housing Assistance Payment (HAP) Contract was executed on the date of this Agreement for 143 units (HAP units). The HAP Contract shall govern the rent schedule and eligibility requirements for HAP units during the term of the HAP, of any extension thereof, until such time as HUD elects not to renew the HAP due to budget appropriations. If HUD elects not to renew the HAP due to budget appropriations, the rent schedule and tenant eligibility will be controlled by the Affordability of Units provision, Rider 2 of 11.

For Projects where less than 100% of the units are to be covered by the HAP Contract, the rent schedule and tenant eligibility for units not covered by a HAP Contract are controlled by the Affordability of Units provision, Rider 2 of 11.

6. **CONDITION OF UNITS:** The Purchaser shall comply with the Physical Condition Standards and inspection requirements of 24 C.F.R. Part 5, Subpart G, including any changes in the regulation and related Directives. In addition, the Owner shall comply with HUD's Physical Condition Standards of Multifamily Properties of 24 C.F.R. Part 200, Subpart P, including any changes in the regulation and related Directives.
7. **INSPECTION:** Upon reasonable notice, the Secretary or its designee, reserves the right to enter upon and inspect the Project including, but not limited to, common areas, vacant and occupied units, during Purchaser's normal business hours to ascertain Purchaser's compliance with Physical Condition Standards.
8. **SUBJECT TO EXAMINATION:** The Project shall at all times,
  - (a) be maintained in accordance with 24 C.F.R. 5.703; Owners of housing must maintain such housing in a manner that meets the physical condition standards to be considered decent, safe and sanitary condition to the greatest extent possible. All areas and components of the housing must be free of health and safety hazards,
  - (b) maintain full occupancy to the greatest extent possible,
  - (c) be maintained as rental housing for the term of this Agreement.At the request of the Secretary, Purchaser 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.
9. **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.
10. **NON-DISCRIMINATION REQUIREMENTS:** The Purchaser will comply with the provisions of all Federal, State, or local laws prohibiting discrimination in housing.
11. **HAZARD INSURANCE:** Hazard insurance shall be maintained in an amount to ensure that the Purchaser is able to meet the rental housing requirements described in this Agreement.
12. **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 property destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
13. **DEMOLITION OF PROJECT PROPERTY:** The Purchaser 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.
14. **REMEDIES FOR NONCOMPLIANCE:** Upon any violation of any provision of this Agreement by the Purchaser, HUD may give written notice thereof to the Purchaser by registered or certified mail, addressed 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 Purchaser as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) 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 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 construe a waiver of the right to exercise that or any other right or remedy at any time.

15. **SUCCESSORS AND ASSIGNS:** This Agreement is binding upon the Purchaser's heirs, successors and assigns. The Purchaser agrees that if title to the Project is conveyed during the term of this Agreement, the Purchaser will require its purchaser to assume in writing its obligations under this Agreement.
16. **RESTRICTIONS:** No Member of Congress or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of the benefits of the Use Agreement, but this provision shall not be construed to extend to this Use Agreement if the Use Agreement is made with a corporation for its general benefit.
17. **CONTRADICTORY AGREEMENTS:** The Purchaser 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 requirements in conflict with this Agreement.
18. **SEPARABILITY:** The invalidity of any provision of this Agreement shall not affect the validity of the **remaining** provisions hereof.
19. **AMENDMENT:** This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.
20. **RIDERS TO THE USE AGREEMENT:** The Riders checked and 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:
 

<input checked="" type="checkbox"/> Affordability of Units <input checked="" type="checkbox"/> Two-Year Rent Protection for Pre-Existing Very Low-Income Tenants <input checked="" type="checkbox"/> Nondiscrimination Against Multifamily Section 8 Certificate Holders and Voucher Holders <input checked="" type="checkbox"/> Post-Closing Repair Escrow Requirements <input checked="" type="checkbox"/> Operating Deficit Escrow Account	<input checked="" type="checkbox"/> Relocation <input checked="" type="checkbox"/> Lead-Based Paint Hazards <input checked="" type="checkbox"/> Asbestos Hazards <input checked="" type="checkbox"/> Security <input checked="" type="checkbox"/> Project-Based Section 8 Assistance <input checked="" type="checkbox"/> Reserve Account <input checked="" type="checkbox"/> Lead-Based Paint Hazards
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21. **PRIORITY:** This Foreclosure Sale Use Agreement shall be recorded against the Project in a superior position to any post foreclosure liens or mortgage debts. The deed restrictions contained in this bid kit supersede any HUD use restrictions previously recorded against the Property.

IN WITNESS WHEREOF:

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

WITNESS:

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

PURCHASER:

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

\_\_\_\_\_  
 Typed Name of Purchaser

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

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

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

WITNESS:

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

FOR: THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

BY: \_\_\_\_\_

\_\_\_\_\_  
 Official's Typed Name

\_\_\_\_\_  
 Title

Exhibit A  
Legal Description

ALL THOSE CERTAIN LOTS or parcels of land situate, lying and being in Salisbury, Wicomico County, Maryland, and more particularly described as follows:

Lot No. 3:

Beginning at a concrete monument found at the intersection of the Southwest side of First Street, 30 ft. wide, with the Southeast side of South Street, 30 ft. wide, both streets as shown on the plat of the Fairground Property as recorded among the Land Records of Wicomico County, MD in Liber JWS 250, folio 21, said point also being on the Northwest line of Westover Heights as recorded among the said Land Records in Plat Book 74, plats 522 and 526;

thence from the said point of beginning and running with the said lines of Westover Heights:

S 45°29'31" W a distance of 394.93 ft. to a point; thence by a line

S 57° 14' 39" W a distance of 30.28 ft. to a point marked by a P.K. nail; thence by a line

N 40° 30' 29" W a distance of 503.09 ft. to the P.C. of a curve having a radius of 250.00', thence by and with said 250.00' radius curve, a distance of 392.70 feet to the P.T. of said 250.00' Radius curve, thence

N 49° 29' 32" E a distance of 173.95 ft. to a point; thence by a line;

S 40° 30' 29" E a distance of 729.62 ft. to the point of beginning, containing 6.935 acres more or less.

Lot No. 1:

Beginning at a P.K. nail at the Southerly terminus of the division line between Lot 1 and Lot 3 described herein and lying also being also on the Northwest line of Westover Heights as recorded among the Land Records in Plat Book 74, plats 522 thence from said point of and 526, thence, from said point of beginning and running with said Northwest line of Westover Heights,

S 57° 14' 39" W a distance of 30.28 ft. to a point; thence by a line

S 46° 19' 30" W a distance of 224.82 ft. to a point; thence by a line

N 40° 30' 29" W a distance of 1013.95 ft. to a point; thence by a line

N 45° 29' 31" E a distance of 680.09 ft. to a point; thence by a line

S 40° 30' 29" E a distance of 299.97 ft. to a point; said point being the Easterly terminus of the divisional line between Lot 1 and Lot 3 described herein; thence by a line

S 49° 29' 32" W a distance of 173.95 ft. to a point, said point being the P.C. of a curve having a radius of 250.00'; thence by and with the arc of said 250.00' radius curve, a distance of 392.70 ft. to a point, said point being the P.T. of said 250.00 ft. radius curve; thence by a line; curve; thence by a line;

S 40° 30' 29" E a distance of 503.09 ft. to the point of beginning containing 9.020 acres, more or less.

RIDER 1 OF 11  
NONDISCRIMINATION AGAINST MULTIFAMILY SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS

The Use Agreement shall include the following provisions:

Nondiscrimination

In order to comply with Section 204 of the Housing and Community Development Amendments of 1978, 12 USC §1701z-12, as amended, the Purchaser, for itself, its successors and assigns, agrees not to unreasonably refuse to lease a dwelling unit offered for rent, 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 its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 fair market rent for a comparable unit in the area as determined by HUD.

If the Purchaser breaches this provision, HUD and/or one or more third-party beneficiaries, shall be entitled to institute legal action to enforce performance and observance of such provision and to enjoin any acts which violate such provision. For the purposes of this provision, 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 a part of the Use Agreement.

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

RIDER 2 OF 11  
AFFORDABILITY OF UNITS

The Use Agreement shall contain the following provisions:

Housing Assistance Payments (HAP) applicable when checked:

As long as the HAP Contract is in effect, the HAP Contract will control the rent and eligibility requirements for the residents under the HAP Contract. If the HAP Contract expires, terminates, is not renewed, or funding expires within the affordability term as specified below, the Affordability of Units Rider ("Affordability Rider") will control future operations of the property. The Affordability Rider will also control future operation of the Property for those residential units not under the HAP Contract. No resident in place on the Closing date will be forced to vacate a unit.

Use Restriction:

1. The Purchaser **must maintain the property as affordable rental housing** for a period of twenty (20) years after the date of this Deed or such earlier time as the Secretary may specify in writing (the "Restricted Period").
2. Any change to the number or configuration of residential units required to be maintained as affordable housing must receive prior written approval from HUD.
3. The Purchaser will not unreasonably refuse to lease units to, or discriminate against, very low-income families.

Income Eligibility Limitation:

During the Restricted Period, the Purchaser must rent **209** dwelling units for affordable housing purposes, unless otherwise approved by HUD. The Purchaser may only rent the affordable units to families with adjusted gross annual incomes that do not exceed **80%** percent of the area median income, adjusted for smaller and larger family size.

Maintenance of Rents at Affordable Levels:

1. For current tenants, affordable rents means **the lesser of:**
  - (a) For a unit occupied by a very-low income family, the unit rent does not exceed 30 percent (30%) of 50 percent (50%) of the area median income (not the income of the family), as determined by HUD, with adjustments for smaller and larger families, less a reasonable utility allowance for utilities paid by the tenant; or
  - (b) For a unit occupied by a low-income family that is not a very low-income family, the unit rent does not exceed 30 percent (30%) of 80 percent (80%) of the area median income (not the income of the family), as determined by HUD, with adjustments for smaller and larger family size, less a reasonable utility allowance for utilities paid by the tenant; or
  - (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 Purchaser's expense, in accordance with HUD requirements.
2. For new turnover tenants, affordable rent means **the lesser of:**
  - (a) The unit rent does not exceed thirty percent (30%) of eighty percent (80%) of the area median income (not the income of the family), as determined by HUD, with adjustments for smaller and larger family size, less a reasonable utility allowance for utilities paid by the tenant; or
  - (b) The Section 8 Voucher Payment Standard (less utility allowance established by the voucher provider; or
  - (c) Market Rent in the immediate area established by a Rent Comparability Study prepared, at the Purchaser's expense, in accordance with HUD requirements.

Annual Certification

The Purchaser 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 a part of the Use Agreement.

PURCHASER \_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

RIDER 3 OF 11  
TWO-YEAR RENT PROTECTION FOR PRE-EXISTING  
VERY LOW-INCOME TENANTS

The Use Agreement shall include the following provisions:

To ensure compliance with Section 203(g) of the Multifamily Housing Property Disposition Reform Act of 1994 (the "Act"), the Purchaser agrees that, for any very low-income family (as defined in 24 CFR 5.603) which is a pre-existing tenant of an unassisted project as defined in the Act and which would be required to pay rent in an amount in excess of 30 percent of its adjusted income (as defined in 24 CFR 5.611), for a period of 2 years beginning upon the date of acquisition of the project by the Purchaser:

- (1) The rent payable by any very low-income family which, on that date, is paying over 30% of its adjusted annual income for rent shall not exceed the amount being charged on that date; and,
- (2) The rent payable by any very low-income family which is paying 30% or less of its adjusted annual income for rent, shall not be subject to any rent increase which would require the family to pay more than 30% of its adjusted annual income.

For all tenants covered by these provisions, the Purchaser must include in the leases the terms and conditions of the two year rent protection, including a provision for an initial tenant income certification and not more than one tenant income certification a year, except upon reduction of tenant income or upon tenant request.

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

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

RIDER 4 OF 11  
POST-CLOSING REPAIR ESCROW REQUIREMENTS

The Use Agreement shall include the following provisions:

1. Purchaser covenants to complete required repairs within eighteen (18) months of Closing. To ensure completion, the Purchaser shall provide to HUD, at Closing, one of the following:
  - (a) an unconditional, irrevocable and non-documentary Letter of Credit (LOC) in the amount of **\$243,000**, with an expiration date at least six (6) months beyond HUD's estimated date for completion of repairs; or
  - (b) if repairs are performed in stages, as agreed between Purchaser and HUD prior to Closing, up to five (5) LOCs may be provided to HUD. The first LOC shall be equal to at least ten percent (10%) of the total cost of the repairs. The remaining LOCs shall be in equal dollar amounts, the sum of all must equal the required LOC amount specified in paragraph 1(a) above; or
  - (c) a cash escrow in the amount of **\$243,000**, to be held by HUD in a non-interest bearing escrow account. The cash escrow will be returned to the Purchaser after repairs have been satisfactorily completed, except for ten (10) percent which will be held for an additional six (6) months.
2. It is within HUD's sole discretion to allow one LOC, multiple LOCs or a cash escrow.
3. The LOC(s) shall have expiration dates of at least six (6) months beyond the estimated completion date of the repairs. The LOC(s) will be returned to the Purchaser after the repairs have been completed to HUD's satisfaction, except for ten (10) percent, which will be held for six months after the work has been completed to HUD's satisfaction. In the case of multiple LOC's, the first LOC of ten percent will be held for six months after the work has been completed to HUD's satisfaction.
4. The LOC(s) or cash escrow will be released on a prorated basis as the work is satisfactorily completed.
5. In the event an extension for completion of repairs is granted, the LOC(s) and/or cash escrow will be extended accordingly.
6. If the Purchaser is unable or unwilling to perform the repairs, HUD may cash the LOC(s) or use the cash escrow to complete the repairs or correct latent defects in the completed repairs, or for such purposes as HUD deems appropriate.
7. After Closing the Purchaser may, at HUD's discretion, replace the LOC(s) with Performance and Payment Bonds meeting State and local codes as assurance of completion for post-closing repair requirements, as listed on Form HUD-9552 and its exhibits, or form HUD 9822.

Purchaser must use HUD Form-92452 for the payment bond and a form for the performance bond that is acceptable to HUD.

- (a) Evidence of the existence of payment and performance bonds each in the amount of **\$971,929.60** [the total cost of repairs] must be provided to HUD.
  - (b) Purchaser must follow the following requirements:
    - i. 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;
    - ii. The payment and performance bonds must not exceed limits listed in the Circular;
    - iii. The payment and performance bonds must show HUD as payee, along with Purchaser's mortgagee, at the mortgagee's request.
8. If the Purchaser fails to complete repairs in accordance with this Agreement, the Secretary will not exercise the remedies described in paragraph 6, above, or request payment on the bonds secured under paragraph 6, above, if any lender holding a lien or security interest on the Project:
    - (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 30 days of the notice or within such longer periods that HUD approves in writing.
  9. The Purchaser 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 rehabilitation requirements set forth above.

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

PURCHASER \_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_

Use Agreement

RIDER 5 OF 11  
RELOCATION

The Use Agreement shall include the following provisions:

Relocation Restriction The Purchaser covenants that it will operate the Project pursuant to paragraphs 2 through 4 below to ensure compliance with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), Section 215 of the Consolidated Appropriations Act, 2010, P.L. 110-161, and any subsequent legislation affecting tenant relocation. Additionally, the Purchaser covenants it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the Regulations thereunder, 49 CFR Part 24. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations.

- (1) The Purchaser covenants that the Project will be rehabilitated within eighteen (18) months from the date of this Use Agreement in accordance with all applicable State and local laws, codes, ordinances and regulations [and Housing Quality Standards pursuant to 24 CFR Part 886, Subpart C, and other requirements set forth in any Property Improvements Requirements sheet, attached hereto].
- (2) If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- (3) If temporary relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit which, to the extent feasible, shall be in a location not generally less desirable than the Project, and reimburse tenants for:
  - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period; and
  - (b) Expenses of returning to a repaired unit at the Project.
- (4) If permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
  - (a) Advisory services necessary to locate decent, safe and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Project; and
  - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.

HUD will not provide the Purchaser with any funds or subsidy with which to make the payments required by this paragraph.

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

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

RIDER 6 OF 11  
ASBESTOS HAZARDS

The Use Agreement shall include the following provisions:

- (1) Purchaser agrees to indemnify, defend, and hold HUD harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of asbestos health hazards, the prohibition against the use of asbestos and Purchaser's responsibility for complying with applicable State and local asbestos laws and regulations.
- (2) If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will comply with Section 203(f)(7) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), Section 215 of the Consolidated Appropriations Act, 2010, P. L. 110-161 and all other subsequent legislation affecting tenant relocation. Additionally, the Purchaser covenants that it will comply with the Uniform Relocation Assistance and Real Project Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by the Seller. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Purchaser covenants that it will provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- (3) If temporary relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit which, to the extent feasible, shall be in a location not generally less desirable than the Project, and reimburse tenants for:
  - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
  - (b) Expenses of returning to a repaired unit in the Project.
- (4) If permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
  - (a) Advisory services necessary to locate decent, safe and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Project.
  - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by the Secretary to be reasonable considering the size of the household and the circumstances surrounding the move.
- (5) The Purchaser covenants not to increase the rent for any unit until such unit meets all the rehabilitation requirements. In addition, rent for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.
- (6) If Purchaser fails to comply with (1), above, and no extension by written agreement has been granted by the Secretary, the Secretary and his successors in office shall be entitled to:
  - (a) Cash Purchaser's LOC(s) or Cash Escrow and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
  - (b) Request payment or performance under any payment and/or performance bonds as described in the Post Closing Repair Escrow Requirements Rider.
- (7) Notwithstanding 6(a) and (b) above, the Secretary will not exercise those remedies, if any lender holding a lien or security interest on the Project:
  - (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 30 days of the notice or within such longer period(s) that HUD may approve in writing.

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

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

RIDER 7 OF 11  
LEAD-BASED PAINT HAZARDS

The Use Agreement shall include the following provisions:

- (1) In order to comply with 42 USC §§4821-4886 and the regulations thereunder, 24 CFR Part 35 (the "Regulations"), (applicable as checked)
  - Purchaser covenants that the Project will be inspected and tested for lead-based paint, and any hazards will be abated in accordance with the Regulations.
  - Purchaser covenants that any lead-based paint hazards will be abated in accordance with the Regulations.

**Purchaser shall certify to the Secretary (in a form acceptable to the Secretary) and the Secretary shall determine, through its inspection (or at its discretion, the inspection and certification of a local government official) that all lead based-paint hazards have been removed from the Project in accordance with the Regulations.**
- (2) Purchaser understands and agrees that HUD's inspection and finding of satisfactory performance is not intended to and does not constitute a guarantee that all lead based-paint and all potential lead-based paint hazards have been eliminated from the Project and does not relieve Purchaser of its ongoing responsibility for complying with all applicable State and local lead based-paint laws and regulations.
- (3) Purchaser agrees to indemnify defend, and hold HUD harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of lead based-paint health hazards, the prohibition against the use of lead based-paint, and Purchaser's responsibility for complying with applicable State and local lead based-paint laws and regulations.
- (4) If temporary or permanent relocation is necessary because of such abatement, Purchaser covenants that it will comply with paragraphs 5 through 8, below. Additionally, the Purchaser covenants that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Act"), as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by the HUD. The Purchaser is responsible for ensuring compliance with the Act and regulations thereunder, notwithstanding any contractual obligations with third parties to comply with the Act and regulations. Purchaser covenants that it will provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- (5) If temporary relocation is necessary because of such abatement, Purchaser covenants that it will provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which to the extent feasible, shall be in a location not generally less desirable than the Project, and reimburse tenants for:
  - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
  - (b) Expenses of returning to a repaired unit in the Project.
- (6) If permanent relocation is necessary because of such abatement, Purchaser covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
  - (a) Advisory services necessary to locate decent, safe and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Project.
  - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.
- (7) The Purchaser covenants not to increase the rent for any unit until such unit meets all the rehabilitation requirements. In addition, rent for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.
- (8) Purchaser agrees to 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*.
- (9) If Purchaser fails to comply with (1), above, and no extension by written agreement has been granted by the Secretary, the Secretary and his successors in office shall be entitled to:
  - (a) cash Purchaser's LOC(s) and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
  - (b) request payment or performance under any payment and/or performance bonds described in the Post-Closing Repair Escrow Requirements.
- (10) Notwithstanding 6(a) and (b) above, the Secretary will not exercise those remedies, if any lender holding a lien or security interest on the Project:
  - (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 30 days of the notice or within such longer periods that HUD may approve in writing.

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

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

Use Agreement

RIDER 8 OF 11  
OPERATING DEFICIT ESCROW ACCOUNT

The Use Agreement shall include the following provisions:

The Purchaser must establish an Operating Deficit Escrow Account to ensure that funds are available for Project operation purposes, primarily for the absorption of any deficit resulting from the operation and repair of the Project prior to the issuance of Section 8 HAP Contract Payments.

The Operating Deficit Escrow Account shall be held, subject to disbursement at the direction of HUD, for a period of one year (escrow period) immediately following sale closing, plus any additional period if HUD deems necessary. Disbursements from the Deficit Escrow Account may be authorized monthly by HUD to meet any cash deficit in the operation of the Project for the escrow period. In determining the amount of any such cash deficit, HUD will consider payments for the HUD approve management agent of the project, expenses determined (by HUD) to be reasonable and necessary towards achieving compliance with 24 CFR Part 5 Uniform Physical Condition Standards and any other expense deemed reasonable and necessary for project operations by HUD.

The Purchaser shall deposit at Closing **\$209,000** into the Deficit Escrow Account. The Operating Deficit Escrow Account will be an interest-bearing bank account and fully guaranteed as to the principal by the United States of America. At the expiration of the escrow period, all funds remaining in the Operating Deficit Account shall be deposited into the Reserve for Replacement Account.

The Operating Deficit Escrow Account shall be subject to the control of HUD and disbursements from such funds may be made only with the prior written approval of HUD. Such approval will not be unreasonably withheld.

Immediately, following the closing of the sale and continuing through the escrow period, the Purchaser shall provide to the local HUD Program Center having jurisdiction over the property, monthly financial reports for all deposits and withdrawals from the Deficit Escrow Account. These reports will be submitted on HUD forms 93479, 93480 and 93481 – Monthly Report for Establishing Net Income (93479), Schedule of Disbursements (93480) and Schedule of Accounts Payable (93481). These reports will be due on the 10<sup>th</sup> day of the monthly following the reporting period. The first report may cover a partial period.

The requirements of this rider will terminate at the expiration of the escrow period or when all units covered by the HAP contract are online and receiving HAP payments, whichever occurs first.

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

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

RIDER 9 OF 11  
RESERVE ACCOUNT

The Use Agreement shall include the following provisions:

After completion of all repairs, Purchaser will be required to deposit **\$62,700** annually into the Reserve Account, payable monthly in an amount of **\$5,225** per month, commencing the first day of the first month following completion of all repairs required by Seller on HUD form 9552. If the terms of the sale did not require completion of specific repairs on HUD form 9552, payments must commence the second month the Purchaser vouchers for Section 8 assistance.

Each Reserve Account will be an interest-bearing bank account and fully guaranteed as to the principal by the United States of America. The Reserve Account shall aid in funding extraordinary maintenance and repair and replacement of capital items. Such items include, but are not limited to: appliances, heating and cooling equipment, new floor covering, structural repairs, and roofs.

The Reserve Account shall be subject to the control of HUD and disbursements from such funds may be made only with the prior written consent of HUD, which will not be unreasonably withheld. Purchaser may request the release of funds from the Reserve Account for reimbursement of major capital expenditures.

Within sixty (60) days following the end of each fiscal year, HUD will be furnished with a complete annual financial report including deposits and withdrawals from the Reserve Account based upon an examination of the books and records of the Purchaser prepared in accordance with the requirements of HUD, prepared and certified to by a Certified Public Accountant.

The Purchaser agrees to comply with the HUD's rules and regulations concerning replacement reserves and surplus cash.

The requirements of this rider will terminate if the HAP Contract is terminated or expires and is not renewed or twenty (20) years from the date of this deed, whichever occurs first.

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

Purchaser\_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT\_\_\_\_\_

RIDER 10 OF 11  
SECURITY

The Use Agreement shall include the following provisions:

The Purchaser shall implement the following security measures for the property.

1. Establish 2-24 hour armed security guards with one located at the entrance to the property and the second patrolling the buildings in a vehicle. Guards should be equipped with radios.
2. Maintain 2-24 hour armed guards until such time as the owner can document through police reports, incidence reports, etc., a declining need. At that time, such documentation and an assessment supporting revised security needs with input from tenants, management, and police, must be submitted to HUD for approval.

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

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

RIDER 11 OF 11  
PROJECT-BASED SECTION 8 ASSISTANCE

The Use Agreement shall include the following provisions:

The Purchaser agrees to rehabilitate/repair the Project to make the Project units decent, safe and sanitary as defined by HUD and to complete the work in accordance with the HUD approved work write up and cost estimates. Upon the acceptable completion of the Project, the Purchaser may bill for housing assistance payments to enable low income persons to occupy the (143) units assisted under the Housing Assistance Payments (HAP) Contract for the term of the HAP Contract or as long as funding is available.

**SECTION ONE**

1. Significant Dates, Contents, and Scope of Agreement.
  - a. Effective Date of Agreement: Upon Closing
  - b. Date for Commencement of Work – Not later than 14 calendar days after the effective date of this Rider
  - c. The Project must be brought into compliance with 24 CFR Part 5 Uniform Physical Condition Standards not later than 180 calendar days (not to exceed 6 months) after the date for commencement of work.
  - d. Final Inspection. HUD (or its designee) shall perform the final inspection of the completed units upon receipt of evidence of completion submitted by the Purchaser.
2. HUD Assurance. The acceptance of this Rider by HUD is an assurance by HUD to the Purchaser that:
  - a. The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract for as long as funding is available.
3. Purchaser's Failure to Comply with Rider. Any default under this Rider constitutes a default under the Housing Assistance Payments (HAP) Contract even in the event no funds have been requested and/or paid from said Contract. Any or all remedies outlined in the in the HAP Contract and the Use Agreement are the remedies that are applicable to a default under this Rider.

**SECTION TWO**

1. Schedule of Completion.
  - a. Timely Performance of Work. The Purchaser agrees to begin work no later than by the time indicated in Part 1 of this Rider. The Purchaser shall report to HUD's Property Disposition Center the date work has commenced and shall thereafter furnish periodic progress reports (monthly unless more frequent reporting is required by HUD). In the event the work is not commenced, diligently continued, or completed as required under this Rider, the remedies outlined in paragraph 5 of this Section shall apply.
  - b. Completion of Work. The Purchaser agrees to perform repair items necessary to bring the property into compliance with 24 CFR Part 5 Uniform Physical Condition Standards or subsequent laws. These repairs may not be the total repairs required and may not constitute release of any or all Letter(s) of Credit (LOC) required under a Post Closing Repair Rider.
2. Construction or Rehabilitation Period
  - a. Inspections. Inspections will be limited to no more than 1 per month. Upon written notification from HUD that the property or individual units are in compliance with Uniform Physical Condition Standards, the Purchaser may begin billing for HAP payments. Payments may be retroactive to the inspection date for occupied units and the effective lease date for vacant units. At no time may payments be made for units that do not meet HUD's Uniform Physical Condition Standards or subsequent laws.
  - b. Increases in Contract Rents or Utility Allowance. Increases in contract rents or utility allowed during the construction or rehabilitation period are permitted only with HUD approval consistent with HUD regulations.
3. Project Completion.
  - a. The Project shall be rehabilitated in accordance with the Uniform Physical Condition Standards 24 CFR Part 5. The purchaser shall be solely responsible for rehabilitation of the Project.
  - b. The Project shall be in good and tenantable condition.
  - c. The Project shall be rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.
4. Review and Inspection.
  - a. Upon receipt of the notification and the evidence of completion, HUD shall review the evidence of completion for adequacy.
  - b. A HUD representative (or its designee) shall inspect the Project in a manner sufficient to enable the inspector to report that he or she has inspected the observable elements and features of the Project in accordance with professional standards of care and judgment and that, on the basis of the inspection
    - i. The Project has been completed in accordance with this Rider; and
    - ii. There are no observable conditions inconsistent with the evidence of completion, including the certification of the Purchaser. If the inspection disclosed defects or deficiencies, the inspector shall report these in detail.
  - c. Unconditional Acceptance. If HUD determines from the review and inspection that the Project has been completed in accordance with this Rider, the Purchaser and the HUD Field Office (having jurisdiction over the Project) shall be promptly notified of the units deemed acceptable and the date of said inspection.

- d. Notification of Non-acceptance. If HUD determines that, based on the review of the evidence of completion and inspection, the Project cannot be accepted, the Purchaser shall be promptly notified of this decision with a statement of the reasons.
  - e. Contract Rents. The Contract Rents by unit size, amounts of housing assistance payments, and other applicable terms and conditions shall be specified in the proposed Housing Assistance Payments (HAP) Contract signed at closing. The Contract Rents will be the amounts established by HUD and published for the sale. There will be no exceptions.
5. Defaults. Any default under this Rider constitutes a default under the HAP Contract even in the event no funds have been requested and/or paid from said Contract. Any or all remedies outlined in the in the HAP Contract and the Use Agreement are the remedies that are applicable to a default under this Rider.
6. Assignments, Sale or Foreclosure
- a. The Purchaser agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Rider, the Contract or the Project all or in part of them or any of its interest in them, without the prior written consent of HUD (and the PHA where it is the CA and/or PBCA); however, in the case of an assignment as security for the purposes of obtaining financing of the Project, HUD (and the PHA where it is the CA and/or PBCA) shall consent in writing if HUD has approved the terms of such financing.
  - b. The Purchaser agrees to notify HUD (and the PHA where it is the CA and/or PBCA) promptly of any proposed action covered by Part 2 provision 6(a). The Purchaser further agrees to request the prior written consent of HUD (and the PHA where it is the CA and/or PBCA).
  - c. For the purposes of this part, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
    1. Transfer by the purchaser, in whole or in part.
    2. A transfer by a party having a substantial interest in the Purchaser.
    3. Transfers by more than one party of interest aggregating a substantial interest in the Purchaser.
    4. Any other similarly significant change in the ownership of interest in the Purchaser or in the relative distribution of interest by any other method or means, and
    5. Any refinancing by the Purchaser of the Project.
      - i. An assignment by the Purchaser to a limited partnership, in which no limited partner has 25 percent or more interest and of which the Purchaser is the sole general partner, shall not be considered an assignment, conveyance, or transfer. As assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.
      - ii. The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization
  - d. The Purchaser, and the party executing this Rider on behalf of the Purchaser, represent that they have the authority of all of the parties having ownership interests in the Purchaser to agree to this Rider on their behalf and to bind them with respect to it.
  - e. Except where otherwise approved by HUD, this Rider, the Contract shall continue in effect in the event:
    - i. Of assignment, sale, or other disposition of the project or this Rider or the Contract,
    - ii. Of foreclosure, including foreclosure by HUD,
    - iii. Of assignment of the mortgage or deed in lieu of foreclosure, or
    - iv. The PHA or HUD takes over possession, operation or ownership.

### SECTION THREE

1. Project-based Section 8 Assistance
  - a. A Housing Assistance Payments (HAP) Contract will be executed at closing. The HAP Contract will cover **143** units in the Property, as specified by HUD. The HAP Contract will be initially funded for a minimum of one (1) month and a maximum of twelve (12) months prior to closing. The Purchaser agrees to accept the HAP Contract.
  - b. The HAP Contract shall provide that, when a vacancy occurs in any unit in the Project requiring project-based Section 8 assistance, Purchaser shall rent the unit to a family that is eligible for said Section 8 assistance under the HAP Contract.
  - c. The Purchaser agrees that, for any property formerly insured under Section 221(d)(3) or 236 of the National Housing Act, or for which a direct loan under Section 202 of the Housing Act of 1959 was made, any unit in the Property that does not receive project-based Section 8 assistance shall remain available and affordable for a period of 20 years under the terms of the Affordability of Units Rider.
  - d. The Purchaser agrees that at anytime the HAP Contract expires, terminated, is not renewed by HUD, or funding expires; the affordability rider will become applicable to the units previously covered under the HAP Contract. The Purchaser may reduce the term of the rider for such units by the collective term(s) of the HAP Contract and any subsequent renewals effective after this sale.
2. The Purchaser cannot voucher for Section 8 HAP payments until HUD has inspected the units and determined that they meet the Uniform Physical Condition Standards (UPCS) of the HAP Contract. Section 8 assistance payments will not be made retroactive to the date of closing. Assistance/subsidy will only be paid from the date the unit(s) was determined to meet the Uniform Physical Condition Standards (as per Section 2 Provisions 2 and 4).

3. Prior to receipt of subsidy payments, Purchaser shall not charge Section 8 eligible tenants more than the amount of the Total Tenant Payment (per the HUD 50059) the tenant would be required to pay under the Section 8 program.
4. Other Government Assistance and Adjustments in Project-Based Section 8 Assistance
  - a. In order to comply with Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and the regulations thereunder, 24 CFR Part 12, Purchaser covenants that it will disclose to Seller:
    - i. Any Federal, State or local governmental assistance, other than the Section 8 assistance provided under the terms of this Deed, that it will receive or reasonably expects to receive prior to or during the term of the Section 8 HAP Contract.
    - ii. In cases where the Purchaser will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available for the Property. Such other assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect governmental assistance.
  - b. In order to comply with this requirement, the Purchaser, within 10 business days after receiving notice that it has been selected to purchase the Project, must complete and execute a Certification of Disclosure.
  - c. Within 30 calendar days of any changes in circumstances occurring at any time before or during the term of the Section 8 HAP Contract that affect the accuracy of the Certification of Disclosure, the Purchaser shall submit to Seller a revised Certification. The Seller may reduce the amount of Section 8 assistance provided for the Project to compensate in whole or in part, as the Seller deems appropriate, for any increases in other assistance.
5. Affordability and Availability of Project-based Section 8 Units. In order to assure compliance with 12 USC §1715z-11a (a), the Secretary of Housing and Urban Development, pursuant to a HAP Contract, will provide housing assistance under Section 8 of the United States Housing Act of 1937 (42 USC §1437f) for the Project predicated on the availability of funds. During the term of the HAP Contract, the Purchaser shall maintain all dwelling units covered thereby after the date of this Deed in accordance with the requirements of the HAP Contract and the Section 8 Housing Assistance Payments Program (24 CFR Part 5.403). Any inconsistencies between the CFR (cited above) and the HAP Contract, the HAP Contract will prevail. The Purchaser shall not remove any existing tenant solely due to the tenant's ineligibility for Section 8 assistance, so long as the tenant remains in good standing. However, if an existing Section 8 ineligible tenant moves/relocates from the property, the Purchaser shall rent the unit to a Section 8 (24 CFR Part 5.403) eligible family, if the unit is assisted under the HAP Contract. This provision shall be enforceable by the Seller, Eligible Families or any other tenants on the Property.
6. The Purchaser agrees to request and accept project-based Section 8 assistance or any replacement rental assistance program, for as long as the Department of HUD offers renewal rental assistance. Should the Purchaser elect not to renew the HAP Contract or any subsequent rental assistance offered by HUD, current or future residents who are or would have been eligible for the project based assistance shall not be required to pay rent in excess of the amount that would have been required if the assistance was in place. All units that were assisted under the HAP Contract(s) are restricted for the term of the Use Agreement to occupancy by eligible families in accordance with HUD requirements under the HAP contract and this Rider and rent payments by these families shall not exceed 30% of adjusted monthly income **or the contract rent, whichever is less.** See SECTION THREE paragraph (1) (d) above for HAP Contract expiration, termination or non-renewal by HUD.

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

PURCHASER \_\_\_\_\_

SECRETARY OF HOUSING AND URBAN DEVELOPMENT \_\_\_\_\_

**ATTACHMENT D**  
LETTER OF CREDIT (LoC) SAMPLE

(ISSUING BANK'S LETTERHEAD)

IRREVOCABLE UNCONDITIONAL LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_

U.S. Department of Housing and Urban Development  
Five Points Plaza, 40 Marrietta Street  
Atlanta, GA 30303-2186

Attention: Ruth E. Pompa, Director  
Atlanta Property Disposition Center

Dear Sir:

For the account of \_\_\_\_\_  
(name of account party/customer)  
we hereby authorize you to draw on us at sight up to an aggregate amount of U.S. \$ \_\_\_\_\_,  
effective immediately and expiring on \_\_\_\_\_, 20\_\_\_\_.

This Letter of Credit is irrevocable and unconditional.

Funds under this Credit are available to you against your sight draft(s) on us, substantially in the form attached as Exhibit A, for all or any part of this Credit.

This Letter of Credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We will promptly honor all drafts in compliance with the terms of this credit if received on or before the expiration date at

\_\_\_\_\_  
(bank's address)

This Credit is governed by the laws of \_\_\_\_\_.

Sincerely,

(Issuing Bank)

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

**SAMPLE SIGHT DRAFT**

(HUD LETTERHEAD)

(Name and address of bank) \_\_\_\_\_  
\_\_\_\_\_  
(City, State)  
\_\_\_\_\_, 20\_\_\_\_

Pay to the order of the U.S. Department of Housing and Urban Development the sum of  
\$\_\_\_\_\_. This draft is drawn under your Irrevocable Letter of  
Credit NO.\_\_\_\_\_.

U.S. Department of Housing and Urban Development  
By:\_\_\_\_\_



## COST ESTIMATE SUMMARY

PEMBERTON MANOR - SALISBURY, MARYLAND CONSTRUCTION ITEMS ISSUE DATE: 11/29/10 FHA CASE NO.: 052-35602		HEALTH AND SAFETY	FORM 9552	UNIT	PER ITEM COST	QUAN.	TOTAL COST PER ITEM	TOTAL COST PER DIVISION
<b>DIVISION 1 - NO ENTRY</b>								<b>\$0.00</b>
<b>DIVISION 2 - SITEWORK</b>								<b>\$24,100.00</b>
020651*	Develop O&M plan for asbestos left in place	YES	40	LS	\$850.00	1	\$850.00	
02200E*	Prepare soil and provide topsoil and sod		37	LS	\$7,000.00	1	\$7,000.00	
02500E*	Restripe parking including handicap accessible spaces and loading zones		35	LS	\$4,000.00	1	\$4,000.00	
02501E	Repair asphalt at storm drain		35	LS	\$1,000.00	1	\$1,000.00	
02700E	Repair drainage grate		34	EA	\$250.00	1	\$250.00	
02800E*	Upgrade mulch at play areas		36	EA	\$1,000.00	4	\$4,000.00	
02830E*	Allowance for miscellaneous chainlink fence repairs		36	LS	\$4,000.00	1	\$4,000.00	
02900E*	General landscaping allowance to replace missing shrubs		37	LS	\$3,000.00	1	\$3,000.00	
<b>DIVISION 3 - CONCRETE</b>								<b>\$12,500.00</b>
03301E	Replace damaged concrete at Maintenance Building		1	SF	\$5.00	1500	\$7,500.00	
03302E*	Allowance for repair of concrete walks, curbs, and valley gutters	YES	1	LS	\$5,000.00	1	\$5,000.00	
<b>DIVISION 4 - MASONRY</b>								<b>\$19,200.00</b>
04201E	Repair/repoint masonry retaining wall at end of pool		2	LS	\$3,500.00	1	\$3,500.00	
04202E*	Repair brick veneer areas at modified stair systems		2	EA	\$1,000.00	4	\$4,000.00	
04203E*	Repair damaged brick masonry		2	SF	\$50.00	6	\$300.00	
04204E*	Remove paint and graffiti from brick veneer		2	BLDG	\$600.00	19	\$11,400.00	
<b>DIVISION 5 - METALS</b>								<b>\$3,950.00</b>
05500E*	Repair treads, risers, and nosings	YES	3	EA	\$50.00	65	\$3,250.00	
05501E*	Replace missing newel post caps on steel stair systems		3	EA	\$35.00	20	\$700.00	
<b>DIVISION 6 - WOODS AND PLASTICS</b>								<b>\$25,288.00</b>
06101A*	Int. wall modifications at 2BR HC accessible apts. to comply with UFAS		4	APT	\$5,000.00	5	\$25,000.00	
06102A	Repair damaged wood subfloor		4	SF	\$12.00	24	\$288.00	
<b>DIVISION 7 - THERMAL &amp; MOISTURE PROTECTION</b>								<b>\$9,080.00</b>
07610E	Repair gutters and downspouts at gable entry roofs		9	LF	\$8.00	50	\$400.00	
07611E*	Repair prefinished aluminum fascias		9	LF	\$10.00	8	\$80.00	
07612E*	Repair vinyl siding		9	SF	\$10.00	100	\$1,000.00	
07613E*	Clean mildew from vinyl siding		9	BLDG	\$400.00	19	\$7,600.00	
<b>DIVISION 8 - DOORS AND WINDOWS</b>								<b>\$56,600.00</b>
08110I*	Replace entry vestibule doors	YES	10	EA	\$500.00	20	\$10,000.00	
08111I	Replace laundry room doors	YES	10	EA	\$500.00	2	\$1,000.00	
08200A	Repair damaged mechanical room door		10	EA	\$100.00	4	\$400.00	
08500A*	Replace damaged window panes	YES	11	EA	\$150.00	25	\$3,750.00	
08501A*	Replace missing or damaged window screens		11	EA	\$40.00	260	\$10,400.00	
08710A*	Provide lever hardware at handicap accessible apartment entry doors		10	EA	\$100.00	12	\$1,200.00	
08711I*	Provide lever hardware at handicap building entry vestibule doors		10	EA	\$100.00	8	\$800.00	
08712I*	Provide lever hardware at laundries of buildings with accessible units		10	EA	\$100.00	4	\$400.00	
08713I*	Replace closers and door hardware at entry vestibule doors	YES	10	EA	\$350.00	52	\$18,200.00	
08714I*	Adjust common entry vestibule doors to self-close and/or self-latch	YES	10	EA	\$50.00	25	\$1,250.00	
08715I	Adjust laundry room doors to self-close and/or self-latch	YES	10	EA	\$50.00	9	\$450.00	
08716I	Replace laundry room door hardware	YES	10	EA	\$200.00	2	\$400.00	
08717A*	Adjust apartment entry doors to self-close and/or self-latch	YES	10	EA	\$50.00	136	\$6,800.00	
08718A	Replace apartment entry door hardware	YES	10	EA	\$200.00	4	\$800.00	
08719A	Replace interior swinging door hardware		10	EA	\$35.00	10	\$350.00	
08800I*	Replace glazing in common entry vestibule doors	YES	12	EA	\$100.00	4	\$400.00	
<b>DIVISION 9 - FINISHES</b>								<b>\$389,712.00</b>
09250A*	Replace drywall ceilings & walls in apts. where mold was remediated		14	APT	\$2,000.00	10	\$20,000.00	
09251A*	Repair drywall in down-units		14	APT	\$1,200.00	10	\$12,000.00	
09252A*	Repair miscellaneous damaged drywall in apartments		14	SF	\$8.00	48	\$384.00	
09253E	Repair common area and exterior gypsum board		14	SF	\$8.00	100	\$800.00	
09300A	Repair damaged ceramic tile		15	SF	\$15.00	8	\$120.00	
09651A*	Replace sheet vinyl in apartments		18	SF	\$3.00	1236	\$3,708.00	
09652A*	Replace VCT		18	SF	\$2.00	800	\$1,600.00	
09680A*	Replace carpet in apartments		25	SY	\$22.00	7816	\$171,952.00	
09681A*	Clean carpet in apartments		25	APT	\$200.00	20	\$4,000.00	
09682I*	Replace carpet in common entry vestibules		18	SY	\$22.00	684	\$15,048.00	
09900I*	Paint common entry vestibules including apartment and common doors		19	VEST	\$500.00	57	\$28,500.00	
09901E*	Paint metal common stair systems including railings		19	FLIGHT	\$750.00	76	\$57,000.00	
09902E*	Paint exterior of common entry vestibule doors and frames		19	EA	\$100.00	114	\$11,400.00	
09903E*	Miscellaneous exterior building painting		19	BLDG	\$850.00	20	\$17,000.00	
09904I*	Laundry repairs and painting		19	EA	\$1,000.00	9	\$9,000.00	
09905A*	Paint apartments		19	APT	\$1,200.00	31	\$37,200.00	

**COST ESTIMATE SUMMARY**

PEMBERTON MANOR - SALISBURY, MARYLAND CONSTRUCTION ITEMS ISSUE DATE: 11/29/10 FHA CASE NO.: 052-35602		HEALTH AND SAFETY	FORM 9552	UNIT	PER ITEM COST	QUAN.	TOTAL COST PER ITEM	TOTAL COST PER DIVISION
<b>DIVISION 10 - SPECIALTIES</b>								<b>\$3,520.00</b>
10430E*	Replace handicap accessible parking signs		20	EA	\$200.00	17	\$3,400.00	
10431E*	Provide new apartment identification signage	YES	20	EA	\$30.00	4	\$120.00	
<b>DIVISION 11 - EQUIPMENT</b>								<b>\$23,700.00</b>
11451A*	Replace refrigerator		23	EA	\$600.00	19	\$11,400.00	
11452A*	Replace range		23	EA	\$500.00	15	\$7,500.00	
11453I*	Provide front-loading washers w/ accessible controls at bldgs. w/ HC units		23	EA	\$1,200.00	4	\$4,800.00	
<b>DIVISION 12 - FURNISHINGS</b>								<b>\$27,900.00</b>
12300A*	Repair damaged base cabinet bottom below sink		22	EA	\$100.00	12	\$1,200.00	
12301A*	Repair cabinet door and/or panels at sink		22	EA	\$100.00	17	\$1,700.00	
12302A*	Replace cabinets and countertops in units where mold was remediated		22	APT	\$2,500.00	10	\$25,000.00	
<b>DIVISION 13 - SPECIAL CONSTRUCTION</b>								<b>\$30,000.00</b>
13001A*	Modify apartments for the hearing and vision impaired to comply with UFAS		26	APT	\$2,000.00	5	\$10,000.00	
13002I*	Pool repairs and upgrades		26	LS	\$20,000.00	1	\$20,000.00	
<b>DIVISION 14 - CONVEYING SYSTEMS - NO ENTRY</b>								<b>\$0.00</b>
<b>DIVISION 15 - MECHANICAL</b>								<b>\$29,695.00</b>
15401A*	Offset tub controls to side of tub at handicap accessible apartments		28	EA	\$750.00	12	\$9,000.00	
15402A	Reglaze tubs		28	EA	\$250.00	40	\$10,000.00	
15403A	Properly anchor existing water closet		28	EA	\$75.00	4	\$300.00	
15404A*	Replace kitchen sink and fittings at units where mold was remediated		28	EA	\$350.00	10	\$3,500.00	
15405A*	Replace vanities at units where mold was remediated		28	EA	\$400.00	10	\$4,000.00	
15780A	Repair bath exhaust fans		29	EA	\$50.00	4	\$200.00	
15781E*	Replace exterior wall grilles for kitchen and bath exhausts		29	EA	\$35.00	17	\$595.00	
15782E*	Replace exterior mechanical grilles		29	EA	\$150.00	14	\$2,100.00	
<b>DIVISION 16 - ELECTRICAL</b>								<b>\$104,075.00</b>
16131A*	Provide GFI receptacles in kitchens on dedicated circuits	YES	31	APT	\$300.00	4	\$1,200.00	
16132A*	Provide GFI receptacles in bathrooms on dedicated circuits	YES	31	APT	\$150.00	4	\$600.00	
16133A*	Provide arc-fault breakers for bedroom receptacle circuits	YES	31	APT	\$100.00	209	\$20,900.00	
16511I	Replace damaged or missing exit signs in common entry vestibules	YES	31	EA	\$150.00	6	\$900.00	
16512I	Replace common entry vestibule light fixtures	YES	31	EA	\$150.00	5	\$750.00	
16722A*	Provide smoke detectors in bedrooms of non-handicap apartments	YES	31	EA	\$150.00	427	\$64,050.00	
16723A*	Provide carbon monoxide detectors	YES	31	EA	\$75.00	209	\$15,675.00	

SUBTOTAL **\$759,320.00**

Inflation 2.4% **\$18,223.68**

**SUBTOTAL \$777,543.68**

O.H. & Profit, A&E (15%) **\$116,631.55**

Contingency (10%) **\$77,754.37**

**GRAND TOTAL \$971,929.60**

NOTES FOR QUICK INTERPRETATION OF THIS WORKSHEET: E=Exterior A=Per Apartment I= Common areas (These are suffixes to construction item numbers)  
 When suffix E is used, the associated quantity refers to exterior items not directly associated with an individual unit.  
 When suffix A is used, the associated quantity refers to items associated with individual apartments.  
 When suffix I is used, the associated quantity refers to items associated with the common areas of the building that cannot be associated with an individual apt.  
 \* after the suffix indicates a corresponding remark in COST ESTIMATE REMARKS following the COST ESTIMATE SUMMARY  
 ABBREVIATIONS: CY = CUBIC YARD SY = SQUARE YARD SF = SQUARE FOOT L F = LINEAR FOOT LS = LUMP SUM EA = EACH HC = HANDICAP UNIT  
 BLDG = BUILDING SEC = BUILDING SECTION APT = APARTMENT FLR = FLOOR

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

Property Disposition  
Federal Fiscal Year 2011

SECTION 8  
PROJECT-BASED RENTAL ASSISTANCE  
**HOUSING ASSISTANCE PAYMENTS CONTRACT**

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U.S. Department of Housing and Urban Development  
Office of Housing  
Property Disposition  
Federal Fiscal Year 2011  
SECTION 8  
PROJECT-BASED RENTAL ASSISTANCE  
**HOUSING ASSISTANCE PAYMENTS CONTRACT  
PART 1 OF HAP CONTRACT**

**1. CONTRACT INFORMATION<sup>1</sup>**

**A. Property**

**Section 8 Project Number MD06M000091**

**Section 8 Project Number of prior HAP contract for property N/A**

**FHA Project Number (if applicable) 052-35602**

**Property Name Pemberton Manor**

**Property Description<sup>2</sup> \_\_\_\_\_**

**A total of 209 units in 19 3- story buildings, with 143 Project Based Section 8 HAP units, located at the following address: 1020 Fairground Dr., Salisbury, Maryland 21801 (See Exhibit C "Legal Description.)**

**B. Contents of contract**

\_\_\_\_\_

**C. Contract exhibits**

EXHIBIT A: SITE PLAN, LEGAL DESCRIPTION, OR OTHER DESCRIPTIVE INFORMATION<sup>3</sup>

EXHIBIT B: ANY ADDITIONAL INFORMATION DESCRIBING PHYSICAL CONDITION, LOCATION, AND/OR PLANS OF THE CONTRACT UNITS.<sup>4</sup>

EXHIBIT C: LEGAL DESCRIPTION<sup>5</sup>

**D. Effective date and term of HAP Contract**

*i. Effective date:* \_\_\_\_\_

*ii. Length of contract term:* One Year

*iii. Anniversary date:* \_\_\_\_\_

**E. Funding of HAP Contract**

- i. The HAP Contract shall be funded first from any budget authority remaining under the prior HAP contract for the Property identified in paragraph 1.a. If any such budget authority remains as of the

date of execution of the HAP Contract, HUD will use that amount to provide housing assistance payments under the HAP Contract. HUD will not obligate any additional funding until such time as the amount of remaining budget authority is depleted and additional funding is needed to provide housing assistance payments under the HAP Contract. If there is no such remaining budget authority as of the date of execution of the HAP Contract, funding shall be provided subject to the availability of sufficient appropriations for the renewal of expiring or terminating section 8 project-based rental assistance contracts in accordance with subparagraph iii.

- ii. Execution of the HAP Contract by the Contract Administrator is an obligation by HUD of \$ \_\_\_\_\_<sup>6</sup>, an amount sufficient to provide housing assistance payments for approximately \_\_\_\_\_<sup>7</sup> months of the first annual increment of the Renewal Contract term.
- iii. HUD will provide additional funding for the remainder of the first annual increment and for subsequent annual increments, including for any remainder of such subsequent annual increments, subject to the availability of sufficient appropriations. When such appropriations are available, HUD will obligate additional funding and provide the Owner written notification of (i) the amount of such additional funding, and (ii) the approximate period of time within the Renewal Contract term to which it will be applied.

**EXECUTION OF HAP CONTRACT**

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)**

By: \_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Name and official title (Print)

Date \_\_\_\_\_

**OWNER**

**Name of Owner** (Print)  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Name and title (Print)

Date \_\_\_\_\_

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

Property Disposition

Federal Fiscal Year 2011

SECTION 8  
PROJECT-BASED RENTAL ASSISTANCE

**HOUSING ASSISTANCE PAYMENTS CONTRACT  
PART 2 OF HAP CONTRACT**

**2. DEFINITIONS**

**CA.** Contract administrator. The agency that has entered into the HAP contract with the owner. The agency is HUD or a public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

**Central Contractor Registration (CCR).** As required by [Notice H 2011-01](#), the owner is required to obtain and register a Dun and Bradstreet Numbering Systems Number (DUNS) number. HUD has established a regulation at 24 C.F.R. Part 5 Subpart K that requires for each obligation of funds, the recipient to have DUNS number and a valid registration in the Central Contractor Registration.

**Contract rent.** The total monthly rent payable to the owner for a contract unit, including the tenant rent. Contract rent includes payment for any housing services, maintenance and utilities to be provided by the owner in accordance with the HAP Contract.

**Contract units.** The housing units covered by this HAP contract. The contract units are described in Exhibit A by unit size (number of bedrooms) and applicable initial contract rents.

**Enterprise Income Verification (EIV).** A computerized income verification system as required under 24 C.F.R. Parts 5 and 908.

**Family.** The persons approved by the CA to reside in a contract unit with assistance under the program.

**HAP Contract.** This housing assistance payments contract between the CA and the owner. The contract consists of Part 1, Part 2, and the contract exhibits (listed in paragraph 1.c of the HAP contract).

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

**HUD requirements.** HUD requirements are issued by HUD headquarters as regulations, [Federal Register](#) notices, or other binding program directives.

**PHA.** A public housing agency (as defined and qualified in accordance with the United States Housing Act of 1937, 42 U.S.C. 1437 et seq.).

**Physical condition standards (PCS).** The HUD physical condition standards for HUD housing that is decent, safe and sanitary and in good repair (DSS/GR) as defined at; [24 CFR Part 5 Subpart G \(5.703\)](#).

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

**Principal or interested party.** This term includes a management agent and other persons or entities participating in property management, and the officers and principal members, shareholders, investors, and other parties having a substantial interest in the HAP contract, or in any proceeds or benefits arising from the HAP contract.

**Property.** The housing designated in paragraph 1a of the HAP contract.

**Section 8.** Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

**Tenant rent.** The portion of the contract rent payable by the family, as determined by the CA in accordance with HUD requirements. The CA is not responsible for paying any part of the tenant rent.

### **3. PURPOSE**

- 1) This is a HAP contract between HUD and the owner. The HAP contract is entered pursuant to Section 8.
- 2) The contract units are located in a multifamily property. HUD has conveyed the property to the owner. Prior to HUD acquisition of the property, occupancy of the contract units had been assisted by project-based rental assistance payments under Section 8.
- 3) The purpose of the HAP contract is to provide housing assistance payments on behalf of eligible families who lease and occupy contract units that comply with the HUD PCS. Housing assistance payments will only be paid to the owner for contract units occupied by eligible families who lease contract units from the owner in accordance with statutory requirements, and with all HUD regulations and other HUD requirements.
- 4) Both at the beginning of the contract term and at all times thereafter during the contract term, housing assistance payments will only be paid for contract units that comply with the PCS. Housing assistance payments will not be paid for any period when the contract units do not comply with the PCS.
- 5) If HUD is the CA, HUD may, at HUD's discretion, transfer administration of the HAP contract to a public housing agency acting as the CA under an annual contributions contract (ACC) with HUD.
- 6) The CA must make housing assistance payments to the owner in accordance with the HAP contract for contract units leased and occupied by eligible families during the HAP contract term.

### **4. OCCUPANCY AND PAYMENT**

#### **A. Payment for occupied unit**

During the term of the HAP contract, the CA shall make housing assistance payments to the owner for the months during which a contract unit is leased to and occupied by an eligible family, as determined in accordance with HUD requirements. If an assisted family moves out of a contract unit, the owner may keep the housing assistance payment for the month when the family moves out.

#### **B. Occupancy by eligible families**

During the contract term, the owner shall lease all of the contract units to eligible families. Eligibility shall be determined in accordance with HUD requirements.

#### **C. Vacancy payment**

- 1) The owner may receive housing assistance payments for so much of the month in which the family moves out of a contract unit as the contract unit remains vacant.
- 2) If the unit remains vacant after the move-out month, the owner may receive a housing assistance payment in the amount of eighty percent (80%) of the contract rent for a vacancy period not to exceed an additional month after the month when the family moves out. However, if the owner collects any of the tenant rent for this month, the payment for the vacancy period must be reduced to an amount which, when added to the family's payments, does not exceed eighty percent (80%) of the contract rent.
- 3) The owner shall not receive any vacancy payment under this paragraph c, unless the owner:
  - a) Immediately upon learning of the vacancy, has notified the CA of the vacancy, or prospective vacancy, and the reason for the vacancy,
  - b) Takes all feasible actions to fill the vacancy, including contacting applicants on the owner's waiting list, conducting appropriate outreach for eligible families, and advertising the availability of the unit; and
  - c) Has not rejected any eligible applicant, except for good cause acceptable to the CA.

## **5. CONTRACT RENT; HOUSING ASSISTANCE PAYMENTS**

### **A. Amount of initial contract rent**

The initial contract rent for each contract unit is stated in Exhibit A of the HAP contract. At the beginning of the HAP contract term, and until the contract rent is adjusted in accordance with section 6 of the HAP contract, the contract rent for each bedroom size (number of bedrooms) shall be the initial contract rent amount listed in Exhibit A.

### **B. HUD rent requirements**

Notwithstanding any other provision of the HAP contract, the contract rent may in no event exceed the amount authorized in accordance with HUD requirements.

### **C. CA payment to owner**

- 1) Each month the CA must make a housing assistance payment to the owner for a unit under lease to and occupied by an eligible family in accordance with the HAP contract.
- 2) The monthly housing assistance payment to the owner for a contract unit is equal to the amount by which the contract rent exceeds the tenant rent.
- 3) Payment of the tenant rent is the responsibility of the family. The CA is not responsible for paying any part of the tenant rent, or for paying any other claim by the owner against a family. The CA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract.
- 4) The owner will be paid the housing assistance payment under the HAP contract on or about the first day of the month for which payment is due.
- 5) To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.
- 6) If the CA determines that the owner is not entitled to the payment or any part of it, the CA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner, including amounts due under any other housing assistance payments contract.
- 7) The owner must notify the CA promptly of any overpayment or any change of circumstances that would affect the amount of the monthly housing assistance payment, and must return the amount of any overpayment.

## **6. ADJUSTMENT OF CONTRACT RENT**

### **A. Determination of adjusted rent**

- 1) During the term of the HAP contract, the CA shall annually, on the anniversary date, adjust the amount of the monthly contract rents in accordance with HUD requirements by using an OCAF (operating cost adjustment factor).
- 2) The owner shall not receive any other adjustment of the contract rent.

### **B. Maximum rent**

Contract rent for each contract unit, as adjusted annually by the CA in accordance with section 6 of the HAP contract, may at no time exceed reasonable rent, as determined by the CA, charged for comparable units in the private unassisted market.

### **C. Owner compliance with HAP contract**

The CA shall not approve, and the owner shall not receive, any increase of contract rent unless all contract units are in accordance with the PCS, and the owner has complied with the terms of the assisted leases and the HAP contract.

### **D. Notice of rent adjustment**

Contract rent shall be adjusted by written notice by the CA to the owner in accordance with this section. Such notice constitutes an amendment of the rents specified in Exhibit A.

## **7. OWNER RESPONSIBILITY**

A. The owner is responsible for:

- 1) Performing all management and rental functions for the contract units.
- 2) Selecting tenants.
- 3) Determining tenant eligibility.
- 4) Performing an initial examination and reexamination of family income; verifying family income utilizing EIV systems.
- 5) Calculating the amount of the tenant rent and the housing assistance payment in accordance with the HAP contract and HUD requirements.
- 6) Entering a lease with each assisted tenant.
- 7) Enforcing tenant obligations under the lease.
- 8) Paying for utilities and housing services (unless paid by the tenant in accordance with the HAP contract).
- 9) Collecting from the tenant:
  - a) Any security deposit.
  - b) The tenant rent.
  - c) Any charge for unit damage by the family.
- 10) Paying the family any applicable utility reimbursement for tenant-paid utilities (where the amount of the utility allowance exceeds the amount of the tenant rent).
- 11) Submitting monthly requests for payment in the form and manner required by HUD and the CA.
- 12) Maintaining and accounting for the replacement reserve.

B. The owner shall perform all owner responsibilities in accordance with HUD requirements.

## **8. OWNER CERTIFICATION**

The owner certifies that at all times during the term of the HAP contract:

- 1) All contract units for which the owner is receiving housing assistance payments are in good and tenantable condition, and in accordance with the PCS. The owner is maintaining the premises and all contract units in accordance with the PCS.

- 2) The owner is providing all the services, maintenance and utilities as agreed to under the HAP contract and the leases with assisted families.
- 3) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family, and the lease is in accordance with the HAP contract and HUD requirements.
- 4) To the best of the owner's knowledge, the members of an eligible family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
- 5) The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- 6) The amount of any housing assistance payment requested or received by the owner is the correct amount due under the HAP contract.
- 7) The contract rent for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- 8) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payments or other consideration (from the family, the CA, HUD, or any other public or private source) for rental of the contract unit.
- 9) The family does not own, or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.

## **9. CONDITION OF UNITS**

### **A. Owner maintenance and operation**

- 1) The owner shall comply with the Physical Condition Standards and inspection requirements of 24 C.F.R. Part 5, Subpart G, including any changes in the regulation and related Directives. In addition, the owner shall comply with HUD's Physical Condition Standards of Multifamily Properties of 24 C.F.R. Part 200, Subpart P, including any changes in the regulation and related Directives. This obligation shall apply both during the current term of the HAP contract and during each successive renewal term.
- 2) The owner must maintain and operate the contract units and premises to provide decent, safe and sanitary housing in accordance with the PCS, including performance of ordinary and extraordinary maintenance.
- 3) Both at the beginning of the contract term, and at all times thereafter during the contract term, the owner shall not request payment for or receive any housing assistance payment for any unit during any period when the unit or premises are not in accordance with the PCS.
- 4) If the premises or any contract unit is not in compliance with the PCS at the beginning of the contract term, the owner must promptly perform any ordinary or extraordinary maintenance necessary to bring the unit into compliance with the PCS. However, the owner shall not request or receive any housing assistance payment with respect to a contract unit for any period when the premises or the unit are not in accordance with the PCS.
- 4) The owner must provide all the services, maintenance and utilities set forth in Exhibit B, and in the lease with each assisted family.

### **B. CA inspection**

The CA may inspect the contract units and the premises annually, and any time the CA deems necessary to assure that the contract units and premises are in accordance with the PCS, and that the owner is providing the maintenance, utilities, and other services in accordance with the leases and the HAP contract. The CA shall give the owner reasonable notice of the annual inspection.

### **C. Violation of PCS**

- 1) If the CA determines that a contract unit is not in accordance with the PCS, the CA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination, suspension

or reduction of housing assistance payments, and termination of the HAP contract. The CA may exercise any contractual remedy respecting a contract unit even if the family continues to occupy the unit.

- 2) If the CA determines that the owner has failed to maintain one or more units in decent, safe and sanitary condition, and has abated the housing assistance payments to the owner for such units, the CA may use amounts otherwise payable to the owner pursuant to this Contract, or any Renewal Contract, for the purposes of relocating or rehousing assisted residents in other housing.
- 3) The CA shall not make any housing assistance payment for a dwelling unit that fails to meet the PCS. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any CA-approved extension). The owner shall not request or receive any housing assistance payment for a dwelling unit for any period prior to the correction of any defect.

#### **D. Maintenance and replacement -- owner's standard practice**

Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

### **10. LEASING CONTRACT UNITS**

- A. During the term of the HAP contract, the owner must lease all contract units to eligible families.
- B. The owner must determine family eligibility in accordance with HUD requirements.
- C. The contract unit leased to each family must be appropriate for the size of the family as determined in accordance with HUD requirements.
- D. If a contract unit was occupied by an eligible family on the effective date of the HAP contract, the owner must offer the family the opportunity to lease the same or another appropriately sized contract unit with assistance under the HAP contract.
- E. The owner is responsible for screening and selecting tenants.

### **11. TENANCY**

#### **A. Lease**

The lease between the owner and each assisted family must be in accordance with HUD requirements. The lease must include word-for-word all provisions required by HUD.

#### **B. Termination of tenancy**

- 1) The owner may only terminate a tenancy in accordance with the lease and HUD requirements.
- 2) The owner must give the CA a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used to commence an eviction action under State or local law.

#### **C. Family payment**

- 1) The portion of the monthly contract rent payable by the family ("tenant rent") will be determined by the owner in accordance with HUD requirements. The amount of the tenant rent is subject to change during the term of the HAP contract.

- 2) The amount of the tenant rent as determined by the owner in accordance with HUD requirements is the maximum amount the owner may charge the family for rent of a contract unit, including all housing services, maintenance and utilities to be provided by the owner in accordance with the HAP contract and the lease.
- 3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the owner in accordance with HUD requirements. The owner must immediately return any excess tenant rent payment to the tenant.
- 4) The family is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the CA housing assistance payment.
- 5) The owner is responsible for computing, in accordance with HUD requirements, the amount of the housing assistance payment and the tenant rent for each assisted family.

#### **D. Other owner charges**

The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to an unsubsidized tenant in the premises.

#### **E. Security deposit**

- 1) The owner may collect a security deposit from the family.
- 2) The owner must comply with HUD and CA requirements regarding security deposits from a tenant.
- 3) When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner must promptly refund the full amount of the balance to the family.
- 4) If the security deposit is not sufficient to cover amounts the family owes under the lease, the owner may seek to collect the balance from the tenant.

#### **12. RESERVE FOR REPLACEMENTS**

The owner must establish and maintain a replacement reserve for the property, in the amount required by HUD, to pay for extraordinary maintenance and repair, and for replacement of capital items. The owner must establish, maintain and account for the replacement reserve in accordance with HUD requirements.

#### **13. OVERCROWDED AND UNDEROCCUPIED UNITS**

If a contract unit is not decent, safe and sanitary because of an increase in the family size which causes the unit to be overcrowded, or if a contract unit is larger than appropriate for the size of the family, the owner must offer the family a suitable unit as soon as one becomes vacant and ready for occupancy, and the owner must require the family to move.

#### **14. PROHIBITION OF DISCRIMINATION**

- A. The owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, creed, religion, sex, national origin, disability or familial status (i.e., because the family includes children).
- B. The owner must comply with the following requirements:
  - 1) The Fair Housing Act (42 U.S.C. 3610 - 3619) and implementing regulations at 24 C.F.R. parts 100, et seq.;

- 2) Executive Orders 11063, 12259, and 12892 (Equal Opportunity in Housing) and implementing regulations at 24 C.F.R. part 107;
  - 3) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d - 2000d-4) (prohibition of discrimination in Federally-assisted programs) and implementing regulations at 24 C.F.R. part 1;
  - 4) The Age Discrimination Act of 1975 (42 U.S.C. 6101 - 6107) and implementing regulations at 24 C.F.R. part 146;
  - 5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibition of discrimination because of disability) and implementing regulations at 24 C.F.R. part 8;
  - 6) Executive Orders 11625, 12138, and 12432 (promoting minority and women's business enterprise);
  - 7) Title II of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) (prohibition of employment discrimination because of disability); and
  - 8) The fair housing advertising poster guidelines at 24 C.F.R. part 110.
- C. The CA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and implementing regulations.

## **15. REDUCTION OF CONTRACT UNITS**

If the owner fails for a continuous period of six months to have all of the contract units leased or available for leasing by eligible families, the contract administrator may, on thirty calendar days notice, reduce the number of contract units to not less than the number of units under lease to eligible families.

## **16. OWNER DEFAULT AND CA REMEDIES**

### **A. Owner default**

Any of the following is a default by the owner under the HAP contract:

- 1) The owner has failed to comply with any obligation under the HAP contract, including the owner's obligations to maintain all contract units in accordance with the PCS.
- 2) The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
- 3) The owner has committed any fraud or made any false statement to the CA or HUD in connection with the HAP contract.
- 4) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
- 5) If the property is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD:
  - a) The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement, or
  - b) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
- 6) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.

## **B. CA remedies**

- 1) If the CA determines that a breach has occurred, the CA may exercise any of its rights or remedies under the HAP contract.
- 2) The CA must notify the owner in writing of such determination. The notice by the CA to the owner may require the owner to take corrective action (as verified by the CA) by a time prescribed in the notice.
- 3) The CA's rights and remedies under the HAP contract include recovery of overpayments, termination or reduction of housing assistance payments, and termination of the HAP contract.
- 4) If the CA determines that the owner has failed to maintain one or more units in decent, safe and sanitary condition, and has abated housing assistance payments to the owner for such units, the CA may use amounts otherwise payable to the owner pursuant to this Contract, or any Renewal Contract, for the purposes of relocating or rehousing assisted residents in other housing.

## **C. CA remedy is not waived**

The CA's exercise or non-exercise of any remedy for owner breach of the HAP contract is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

## **17. OWNER DUTY TO PROVIDE INFORMATION AND ACCESS REQUIRED BY HUD OR CA**

### **A. Required information**

The owner must prepare and furnish any information pertinent to the HAP contract as may reasonably be required from time to time by the CA or HUD. The owner shall furnish such information in the form and manner required by the CA or HUD.

### **B. Central Contractor Registration (CCR)**

The owner must complete the requirements outlined in Notice H 2011-01. This requires the owner to obtain a DUNS number and register with the Central Contractor Registration. HUD will not issue HAP payments to the owner until this requirement is met and the local HUD office has received DUNS number and CCR registration certification.

### **C. CA and HUD access to premises**

The owner must permit the CA or HUD or any of their authorized representatives to have access to the premises during normal business hours, and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the HAP contract, including the verification of information pertinent to the housing assistance payments or the HAP contract.

### **D. Annual Financial Statements**

The owner shall comply with the Uniform Financial Reporting Standards of 24 C.F.R. Part 5, Subpart H, including any changes in the regulation and related Directives or any subsequent systems. The annual financial statements must be prepared in accordance with generally accepted accounting principles (GAAP), owner certified and submitted electronically no later than 90 days after the end of the owner's fiscal year in accordance with the requirements of 24 C.F.R. Part 5. This obligation shall apply during the term of the HAP contract and for each successive renewal term.

## **18. CA AND OWNER RELATION TO THIRD PARTIES**

### **A. Injury because of owner action or failure to act**

The CA has no responsibility for or liability to any person injured as a result of the owner's action or failure to act in connection with the implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

## **B. Legal relationship**

The owner is not the agent of the CA. The HAP contract does not create or affect any relationship between the CA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with the implementation of the HAP contract.

## **C. Exclusion of third party claims**

Nothing in the HAP contract shall be construed as creating any right of a family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the CA or the owner under the HAP contract.

## **D. Exclusion of owner claims against HUD**

Nothing in the HAP contract shall be construed as creating any right of the owner to assert any claim against HUD.

## **19. CONFLICT OF INTEREST**

### **A. Prohibited interest**

- 1) No covered individual or entity may have any direct or indirect interest in the HAP contract.
- 2) Direct or indirect interest includes the interest of an immediate family member.

### **B. Definitions**

- 1) "Immediate family member" means the spouse, parent, child, grandparent, grandchild, sister, or brother of any covered individual.
- 2) "Covered individual or entity" means an individual or entity that is a member of any of the following classes:
  - a) A member, officer or director of the CA, or any other CA official with administrative functions or responsibility concerning contract administration under the ACC.
  - b) If the CA is an instrumentality of a governmental body:
    - i) A member, officer or director of such governmental body.
    - ii) A member, officer or director of any entity that holds a direct or indirect interest in the instrumentality entity.
  - c) An employee of the CA.
  - d) A CA contractor, subcontractor or agent with administrative functions or responsibility concerning contract administration under the ACC, or a principal or other interested party of such contractor, subcontractor or agent.
  - e) An individual who has administrative functions or responsibility concerning contract administration under the ACC, including an employee of a CA contractor, subcontractor or agent.
  - f) A public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities concerning contract administration under the ACC.

### **C. Disclosure**

- 1) A covered individual or entity must disclose his, her or its interest or prospective interest in the HAP contract, or any other contract, subcontract or other arrangement in connection with contract administration under the ACC to the CA and HUD.

- 2) The owner certifies that it has fully disclosed to the CA and HUD any interest that would be a violation of the conflict of interest requirements, and that it will fully and promptly update such disclosures.

#### **D. HUD waiver**

- 1) HUD may waive the conflict of interest requirements for good cause.
- 2) Any covered individual or entity for whom a waiver is granted may not execute any contract administration functions or responsibility concerning a HAP contract under which such individual is or may be assisted, or with respect to a HAP contract in which such individual or entity is a party or has any interest.

#### **E. Interest of member of 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 the HAP contract or to any benefits, which may arise from it.

### **20. EXCLUSION FROM FEDERAL PROGRAMS**

#### **A. Federal requirements**

The owner must comply with and is subject to requirements of 24 C.F.R. Part 24, concerning debarment, suspension, and limited denial of participation.

#### **B. Disclosure**

The owner certifies that:

- 1) The owner has disclosed to the CA the identity of the owner and any principal or interested party.
- 2) Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended or subject to a limited denial of participation under 24 C.F.R. part 24.

### **21. TRANSFER OF THE CONTRACT OR PROPERTY**

#### **A. When consent is required**

- 1) The owner agrees that the HAP contract may not be transferred without the advance written consent of the CA in accordance with HUD requirements.
- 2) The owner agrees that the property may not be transferred without the advance written consent of the CA in accordance with HUD requirements.
- 3) "Transfer" includes:
  - a) An assignment or other transfer of ownership, in any form, of the HAP contract or the property;
  - b) An assignment or other transfer of the right to receive housing assistance payments that may be payable pursuant to the HAP contract;
  - c) The creation of a security interest in the HAP contract or the property; d) Foreclosure or other execution on a security interest; or e) A creditor's lien, or a transfer in bankruptcy.
- 4) If the owner is a corporation, partnership, trust or joint venture, the owner is not required to obtain advance consent of the CA pursuant to this paragraph a of the HAP contract for transfer of a passive and non-controlling interest in the ownership entity (such as a stock transfer or transfer of the interest of a limited partner), if any interests so transferred cumulatively represent less than half the beneficial interest in the HAP

contract or the property. The owner must obtain advance consent pursuant to paragraph a of the HAP contract to transfer any interest of a general partner.

**B. Transferee assumption of HAP contract**

No transferee (including the holder of a security interest, the security holder's transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive any payment of housing assistance payments pursuant to the HAP contract, or to exercise any rights or remedies under the HAP contract, unless the CA has consented in advance, in writing, to such transfer, and the transferee has agreed in writing, in a form acceptable to the CA in accordance with HUD requirements, to assume the obligations of the owner under the HAP contract, and to comply with all the terms of the HAP contract.

**C. Effect of consent to transfer**

- 1) The creation or transfer of any security interest in the HAP contract is limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.
- 2) The CA's consent to transfer of the HAP contract does not change the terms of the HAP contract in any way, and does not change the rights or obligations of the CA or the owner under the HAP contract.
- 3) The CA's consent to transfer of the HAP contract to any transferee does not constitute consent to any further transfers of the HAP contract, including further transfers to any successors or assigns of an approved transferee.

**D. When transfer is prohibited**

The CA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended or subject to a limited denial of participation under 24 C.F.R. part 24, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

**22. OWNER DISCLOSURE OF OTHER GOVERNMENT ASSISTANCE**

**A. Owner disclosure**

The owner must disclose to the CA, in accordance with HUD requirements, information regarding any assistance from the Federal Government, a State, or a unit of general local government, or from any agency or instrumentality thereof, that is available or expected to be available with respect to the contract units ("covered assistance"). Covered assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, or tax benefit, or any other form of direct or indirect assistance.

**B. Limit of payments**

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of any covered assistance. The CA will adjust, in accordance with HUD requirements, the amount of the housing assistance payments to the owner to compensate in whole or in part for any covered assistance.

**23. OWNER LOBBYING CERTIFICATIONS**

A. The owner certifies, to the best of owner's knowledge and belief, that:

- 1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the HAP contract.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an

officer or employee of Congress, or an employee of a Member of Congress, in connection with the HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

#### **24. NOTICES AND OWNER CERTIFICATIONS**

- A. Where the owner is required to give any notice to the CA pursuant to the HAP contract, such notice must be in writing, and must be given in the form and manner required by the CA.
- B. Any certification or warranty by the owner pursuant to the HAP contract shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

#### **25. HUD REQUIREMENTS**

The HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP contract. The owner agrees to comply with all such laws and HUD requirements.

#### **26. ENTIRE AGREEMENT**

The HAP contract, including the exhibits, is the entire agreement between the CA and the owner. No changes in the HAP contract may be made except in writing signed by both the owner and the CA





**EXHIBIT C**  
**Legal Description**

ALL THOSE CERTAIN LOTS or parcels of land situate, lying and being in Salisbury, Wicomico County, Maryland, and more particularly described as follows:

Lot No. 3:

Beginning at a concrete monument found at the intersection of the Southwest side of First Street, 30 ft. wide, with the Southeast side of South Street, 30 ft. wide, both streets as shown on the plat of the Fairground Property as recorded among the Land Records of Wicomico County, MD in Liber JWS 250, folio 21, said point also being on the Northwest line of Westover Heights as recorded among the said Land Records in Plat Book 74, plats 522 and 526; thence from the said point of beginning and running with the said lines of Westover Heights:

S 45°29'31" W a distance of 394.93 ft. to a point; thence by a line

S 57° 14' 39" W a distance of 30.28 ft. to a point marked by a P.K. nail; thence by a line

N 40° 30' 29" W a distance of 503.09 ft. to the P.C. of a curve having a radius of 250.00', thence by and with said 250.00' radius curve, a distance of 392.70 feet to the P.T. of said 250.00' Radius curve, thence

N 49° 29' 32" E a distance of 173.95 ft. to a point; thence by a line;

S 40° 30' 29" E a distance of 729.62 ft. to the point of beginning, containing 6.935 acres more or less.

Lot No. 1:

Beginning at a P.K. nail at the Southerly terminus of the division line between Lot 1 and Lot 3 described herein and lying also being also on the Northwest line of Westover Heights as recorded among the Land Records in Plat Book 74, plats 522 thence from said point of and 526, thence, from said point of beginning and running with said Northwest line of Westover Heights,

S 57° 14' 39" W a distance of 30.28 ft. to a point; thence by a line

S 46° 19' 30" W a distance of 224.82 ft. to a point; thence by a line

N 40° 30' 29" W a distance of 1013.95 ft. to a point; thence by a line

N 45° 29' 31" E a distance of 680.09 ft. to a point; thence by a line

S 40° 30' 29" E a distance of 299.97 ft. to a point; said point being the Easterly terminus of the divisional line between Lot 1 and Lot 3 described herein; thence by a line

S 49° 29' 32" W a distance of 173.95 ft. to a point, said point being the P.C. of a curve having a radius of 250.00'; thence by and with the arc of said 250.00' radius curve, a distance of 392.70 ft. to a point, said point being the P.T. of said 250.00 ft. radius curve; thence by a line; curve; thence by a line;

S 40° 30' 29" E a distance of 503.09 ft. to the point of beginning containing 9.020 acres, more or less.

INSTRUCTIONS
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**PREPARATION OF HAP CONTRACT**

The HAP contract consists of Part 1, Part 2, and the contract exhibits. The exhibits are listed in paragraph 1.c of Part 1.

This form of HAP contract must be used word-for-word, and may not be modified. Part 1 contains section 1 of the HAP contract. Part 2 contains sections 2 to 26 of the HAP Contract.

Part 1 includes fill-in items, and a list of the contract exhibits. Fill out part 1 to prepare the HAP contract for execution.

The form of HAP contract must be used word-for-word, and may not be modified.

**CONTRACT EXECUTION**

Part 1 must be signed by the CA and by the owner of the housing.

**ENDNOTES**

<sup>1</sup> Enter all contract information.

<sup>2</sup> Enter a description of the housing that will be covered by the HAP contract. The description must clearly identify the property by providing the property's name, street address, city, county, state and zip code, block and lot number (if known), and any other information necessary to clearly designate the covered property.

<sup>3</sup> If necessary, attach as Exhibit A a site plan, legal description or other descriptive information.

<sup>4</sup> If required by the CA, attach as Exhibit B any additional information describing the physical condition, location, and/or plans of the contract units.

<sup>5</sup> List in the space provided and attach at the back of the contract any additional exhibits, beginning with Exhibit C.

<sup>6</sup> Enter the amount of funding obligated.

<sup>7</sup> Enter a whole number of months

Attachment F

Certification 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 local housing statutes, regulations, ordinances and codes and are listed on Schedule A attached hereto. If HUD determines, in its sole discretion, that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the Project to the High Bidder and retain the Earnest Money Deposit.

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: \_\_\_\_\_  
Purchaser Name

Verified by: \_\_\_\_\_

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Date

STATE OF: \_\_\_\_\_ )

COUNTY OF: \_\_\_\_\_ )

Came before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**Notary Seal**

Schedule A: All projects owned by \_\_\_\_\_ or affiliates.

<b>List each project name</b>	<b>List name of principal or affiliate with ownership of project.</b>	<b>List project address</b>

ATTACHMENT G

PROTECTING TENANTS AT FORECLOSURE ACT OF 2009

Applicable to all foreclosure sales taking place from May 21, 2009, through December 31, 2012

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 days prior notice to vacate the unit; and
2. Any tenant retains all of its rights as of the date of the notice of foreclosure. These rights include:
  - a) Any tenant who, on or after the date of the notice of foreclosure, is under a lease agreement entitling the 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 days prior to the effective date of the notice.
  - b) 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 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.
3. 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 days before the effective date of the notice.
4. 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.