



FORECLOSURE SALE

Sunapee Cove Assisted Living
1250 Route 11
Georges Mills, NH 03751
A 35 Unit Assisted Living Facility

Is offered for sale at foreclosure:

- ❖ This is an "all-cash, as-is" sale.
- ❖ HUD is not offering financing.



Oral bids will be accepted on:
March 14, 2012
at: 12:00pm (local time)

Sale Location:
(at the property)
1250 Route 11
Georges Mills, NH 03751



U. S. Department of Housing and Urban Development
Atlanta Multifamily Property Disposition Center
Five Points Plaza, 40 Marietta St.
Atlanta, GA 30303-2806

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

INVITATION TO BID

Consistent with and subject to the terms and conditions of this Invitation to Bid, there is an opportunity to make an offer to purchase the Project more particularly described below. This document, titled Invitation to Bid, sometimes referred to herein as the "Invitation," and commonly known as a "Bid Kit," sets forth the terms and conditions for the submission of a bid to acquire the Project at the foreclosure sale of the Project. This Invitation also includes information concerning Previous Participation Certification (Form HUD-2530) requirements and a list of the forms necessary to submit a complete, responsive bid.

INVITATION DEFINITIONS

The following definitions apply to capitalized terms in this Invitation.

1. **APPS:** The Active Partners Performance System (APPS) allows HUD's business partners to manage their company and individual participation information and submit their APPS Previous Participation Certification (APPC) requests directly to HUD for processing via the Internet.
2. **Acknowledgment:** The document executed at the Foreclosure Sale by the High Bidder, obligating the High Bidder to the terms and requirements of the Foreclosure Sale, the form of which is attached to this Invitation as Attachment B.
3. **Act:** Multifamily Mortgage Foreclosure Act, 12 U.S.C. § 200.215.
4. **Affiliate:** Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to (a) Interlocking management or ownership; (b) Identity of interests among family members; (c) Shared facilities and equipment; (d) Common use of employees; or (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person. ([24 C.F.R. § 200.215](#) - Affiliate.)
5. **Cash Due at Closing:** The bid price less the Earnest Money Deposit received, plus any prorations. Cash due at Closing includes all initial deposits to escrow and/or reserve accounts as may be required by HUD. Funds shall be paid in the form of a money order, certified funds or a cashier's check made payable to: The U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
6. **Cash Escrow:** An assurance of completion of HUD required repairs. The amount(s) identified in the Property at a Glance. The cash escrow shall be held by HUD.
7. **Certification of Substantial Compliance:** A certification by High Bidder that its other properties in the jurisdiction of the Project are in substantial compliance with state and local laws. Attachment G of this Invitation.
8. **Closing:** When title to the Project is transferred to the bidder that HUD deems qualified to purchase the Project.
9. **Days:** Federal government business days, unless otherwise stated as calendar days.
10. **Deed:** Foreclosure Deed (see Invitation Definition #16 herein).
11. **Earnest Money Deposit:** The amount of the deposit identified in the Property at a Glance. Must be submitted at the Foreclosure Sale.
12. **Evidence of APPS registration:** After the foreclosure sale, this is certification that must be submitted to the Realty Specialist identified in the Property at a Glance and can be in the form of a copy of the 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 for printing instructions).
13. **Extension Fees:** The fee that must be paid to HUD when requesting an extension of the time, or deadline, for the Closing. If an extension of the deadline for the Closing to occur is authorized, the Purchaser must pay a fee for each thirty (30) day extension period, the amount of which will be determined by HUD consistent with current policies and procedures.
14. **Extension Period:** Extensions of time for Closing are granted for a thirty (30) day period.
15. **Foreclosure Commissioner:** An attorney or law firm designated by HUD to conduct the Foreclosure Sale of the Project, pursuant to 12 U.S.C. §3704.
16. **Foreclosure Deed:** The deed that will transfer title to the Purchaser. It will not contain any warranties of title.
17. **Foreclosure Sale:** Sale of the Project resulting from a mortgage foreclosure by HUD.
18. **High Bidder:** Highest, responsive bidder at Foreclosure Sale.
19. **LOC:** Letter of Credit: An assurance of the completion of HUD required Repairs. An unconditional, irrevocable and nondocumentary Letter of Credit, issued from a recognized FDIC-insured lending institution. The amount is identified in the Property at a Glance.
20. **PCS:** Physical Condition Standards; The HUD minimum physical condition standards for dwelling units occupied by families receiving Section 8 project-based assistance. ([24 C.F.R. § 5.703](#)). These are the decent, safe and sanitary conditions, and in good repair, standards which must be met within a specified number of days after Closing.
21. **Post-Bid Document Submittals:** All documents, statements, and forms listed in the Invitation that must be submitted by High Bidder in order to be considered for HUD approval to purchase the Project.

22. Post-Closing Repairs: A list of HUD required "Repairs" to be performed by Purchaser post-Closing is provided in the Use Agreement, Rider 1.
23. Previous Participation: It is HUD's policy that participants in its housing programs be responsible individuals and organizations that will honor their legal, financial, fair housing and contractual obligations. ("Responsibility" is a term used by HUD to mean business integrity, honesty and capacity to perform). Accordingly, uniform standards are established in HUD regulations for approval, disapproval or withholding of action on principals for projects in which they apply to participate.
24. Previous Participation Certification: Form HUD-2530. The information within this form, in combination with other factors and submitted documentation, will be used to determine whether HUD will approve a bidder to purchase, operate, and/or manage the Project.
25. Principal: Principal means (a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or (b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who (1) Is in a position to handle Federal funds; (2) Is in a position to influence or control the use of those funds; or, (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (c) A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. (For complete definition see [24 C.F.R. § 200.215](#) – Principal.)
26. Project: The multifamily apartment project and all real and personal property appurtenant thereto, as presented on the cover of this Invitation.
27. Property at a Glance: Contains information about the Project and contact information for the Realty Specialist – see Attachment A to Invitation.
28. Purchaser: Person or entity receiving HUD approval to purchase the Project.
29. Realty Specialist: HUD staff member to be contacted for additional information concerning the Project or the Foreclosure Sale. Identified on the Property at a Glance.
30. Repairs: see Post-Closing Repairs.
31. Second High Bidder: Second highest, responsive bidder at Foreclosure Sale.
32. Section 8: Section 8 of the United States Housing Act of 1937 and applicable regulations within Title 24 of the Code of Federal Regulations.
33. Statement of Experience: The written statement to be submitted by High Bidder, as part of the qualification process in order to be considered by HUD for approval to purchase the Project.
34. Use Agreement: The Foreclosure Sale Use Agreement in the form attached as Attachment C to this Invitation, which will be executed by Purchaser of the Project at Closing and run with the land to bind the grantee and any permitted successors and assigns.

SECTION 1 - INTRODUCTION AND GENERAL INFORMATION

1. **BID RESPONSIVENESS:** A bid must be responsive to the terms of the Foreclosure 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 and Attachments. Lack of an Earnest Money Deposit, as required by this Invitation, will be cause for bid rejection.
2. **SALE TO HIGHEST QUALIFIED BIDDER:** Sale of this Project will be awarded to the highest bidder determined to be qualified to purchase the Project. The defaulting owner of the Project, or any affiliate thereof, will not be permitted to bid.
3. **NO REDEMPTION PERIOD:** This Foreclosure Sale is not subject to redemption by the defaulting owner of the Project.
4. **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 necessary to own and provide management acceptable to HUD.
5. **CANCELLATION OF SALE:** HUD reserves the unconditional right to cancel this Invitation and reject any and all bids at any time prior to the Closing of the Foreclosure Sale.
6. **BIDDER'S DUE DILIGENCE:** Bidders, their agents and advisors should review carefully the information in this Invitation and Attachments, and any additional information made available by HUD, and should undertake their own investigation of the Project to evaluate the risks associated with purchasing the Project.
7. **POST-CLOSING REQUIRED REPAIRS:** Any Repairs that must be completed by Purchaser after Closing are included in the Use Agreement, Rider 1. The required Repairs survive the Foreclosure Sale and will be recorded with the Deed.
8. **While care has been exercised to assure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the Project is of such type and general character they are interested in purchasing. HUD makes no warranty as to the accuracy of the information. The failure of any bidder to inspect or be fully informed as to the condition of all or any portion of the Project, or any conditions of Foreclosure Sale, will not constitute grounds for any claim, demand, adjustment, or withdrawal of a bid.**
9. **OUTSTANDING ENCUMBRANCES THAT SURVIVE FORECLOSURE:** By entering its bid, the High Bidder agrees to assume all responsibility for paying all outstanding encumbrances and expenses, including, but not limited to, taxes, assessments, utility bills and any liens not extinguished by the foreclosure. Bidders are advised to determine outstanding expenses, taxes, utilities, assessments, and liens as part of the due diligence process and take them into consideration when bidding.
10. **RECORDATION OF CERTAIN DOCUMENTS:** The Use Agreement, with any riders thereto (if provided herein) and Attachment E with any exhibits and/or attachments thereto (if provided herein) will be recorded with the Deed.
11. **ADDITIONAL INFORMATION:** For further information, please contact the Realty Specialist.

SECTION 2 - PREVIOUS PARTICIPATION CERTIFICATION FOR PARTICIPANTS IN HUD MULTIFAMILY PROGRAMS

1. **GENERAL:** All bidders, management agents and other participants as required by HUD must file a Previous Participation Certification (Form HUD-2530) in either electronic or paper format. Bidders must comply with all HUD Previous Participation Certification (Form HUD-2530) requirements as outlined in the Acknowledgment (Attachment B.)
2. **ELECTRONIC FILING:** If filing electronically, use [APPS](#) to submit 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, all potential bidders registering for the first time in Secure Systems and/or APPS should do so at least two (2) weeks prior to the Foreclosure Sale because it takes approximately two (2) weeks after registration to receive the User/Coordinator ID. For instructions for registering for both Secure Systems and APPS are located on the [Active Partners Performance System \(APPS\) web site](#).
3. **PAPER FILING:** If filing in paper format, submit the Form HUD-2530, and an Organizational Chart of the proposed ownership entity to the Realty Specialist.
4. **UPDATES:** If the bidder is changing principals, adding principals, changing the name of the purchasing entity, or changing tax identification from information already recorded in APPS or on a paper 2530, **it is the High Bidder's responsibility to ensure that all required participants register and complete the 2530 process within the prescribed time frames.**

- **Failure of any participant to submit a Previous Participation Certification (Form HUD-2530) or other required document(s) within the indicated time frame specified in Section 4 below, may be grounds for rejection of the bid.**

SECTION 3 - FORECLOSURE SALE PROCEDURES AND SUBMISSION OF BIDS

- GENERAL:** In order to submit a complete, responsive bid to this Invitation, a bidder must submit the items listed in this Section, and the additional items as indicated in Section 4, below.
- BIDDING AT THE FORECLOSURE SALE:**
 - The Foreclosure Sale is an oral, open bid sale that takes place at the date, time and place indicated on the cover of this Invitation. HUD has designated a Foreclosure Commissioner to conduct the sale of this Project.
 - The bidder must either:
 - State a bid price orally at the sale, or
 - Submit a written bid to the Foreclosure Commissioner two (2) days before the date of the Foreclosure Sale. Written bids, if received, will be read aloud at the Foreclosure 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 identified in the Property at a Glance for details regarding submitting a written bid.
- 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 their agent only and must be initialed by the bidder or agent.
- TELEGRAPHIC OR FACSIMILE BIDS:** Emailed, telegraphic or facsimile bids and/or bid modifications will not be considered.
- ITEMS THAT MUST BE SUBMITTED AT THE FORECLOSURE SALE:**
 - Earnest Money Deposit:**
 - The Earnest Money Deposit, for the amount specified in the Property at a Glance (Attachment A), must be submitted to the Foreclosure Commissioner prior to presenting an oral or written bid, at the start of the Foreclosure Sale.
 - The Earnest Money Deposit must be in the form of a money order, certified funds, or cashier's check payable to: **THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**. No other method of payment is acceptable.
 - A financial organization submitting a bid on its own behalf must have the Earnest Money Deposit drawn on another financial organization.
 - Lack of proper deposit will be cause for rejection of the bid by HUD.
 - Immediately following the Foreclosure Sale, the Earnest Money Deposit will be returned to all but the High Bidder.
 - Evidence of bidder eligibility**, if applicable (ex: non-profit organization.) See Attachment I, if provided.
- NOTIFICATION TO THE HIGH AND SECOND HIGH BIDDER:** The High Bidder and Second High Bidder will be notified orally of their bidding positions by the Foreclosure Commissioner immediately after the Foreclosure Sale.
- ACKNOWLEDGMENT BY BIDDER:** Immediately after the Foreclosure Sale, the High Bidder must submit **ONE** (1) signed copy of the Acknowledgment to the Foreclosure Commissioner.

SECTION 4 - POST FORECLOSURE SALE PROCEDURES

- CONTINUANCE OF OFFERS:** All bids shall be deemed to be continuing offers from the time of the Foreclosure Sale until bid-rejection by HUD or until Closing.
- POST-BID DOCUMENTS SUBMITTALS:** The High Bidder must submit the following items within the timeframes shown below:
 - Two (2) Days After Foreclosure Sale:
 - Previous Participation Certification:
 - Paper filing:
 - Form HUD-2530:** A completed paper Form HUD-2530(s), with original signatures, for the purchasing entity and all principals. Proposed ownership must have established tax identification or social security number; an entity not yet formed cannot be accepted, and all principals. Proposed ownership must have established tax identification or social security number; an entity not yet formed cannot be accepted, and
 - Organization Chart:** An organization chart, reflecting all principals of the purchasing entity and each principal's percentage of ownership must accompany the completed paper Form HUD-2530.
 - Electronic filing:
 - Bidders not registered in APPS and Secure Systems:** Submit certification of registration in Secure Systems and APPS.

- (ii) **Electronic Filers registered in APPS and Secure Systems:** Submit evidence of filing in accordance with Section 2 herein
- ii. Certification of Substantial Compliance: A completed and original, Attachment G to this Invitation. If HUD determines that such projects of the High Bidder, are not in substantial compliance with state and local codes, HUD may determine that the High Bidder is not qualified to purchase the Project. The Earnest Money Deposit may be forfeited.
- b. Ten (10) days After Foreclosure Sale: The High Bidder must submit the documents checked below:
 - Form HUD-2530 for Purchaser, if different from High Bidder
- c. Ten (10) days After Foreclosure Sale: Electronic filing of the Form HUD-2530 for the management agent or the High Bidder's ownership entity must be completed and a signed copy provided to the Realty Specialist.

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 BIDDER'S EARNEST MONEY DEPOSIT

3. QUALIFICATION, ACCEPTANCE, REJECTION OF BID:

- a. Required Bidder Qualifications to Purchase Project:
 - i. Submission and approval of Previous Participation Certification,
 - ii. Submission of Certification of Substantial Compliance.
(See Section 4, paragraph 2 for more information)
- b. **Bidder Approval:**
 - i. If HUD determines that the High Bidder is 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;
 - iii. If HUD rejects the High Bidder, HUD may in its sole discretion elect to contact the Second High Bidder, and/or succeeding bidders as bidders withdraw or do not qualify, to purchase the Project. If contacted by HUD, the Second High bidder or succeeding bidder will be offered the opportunity to purchase the Project and will be given twenty-four (24) hours to submit the earnest money deposit and execute the Acknowledgment, and thereby will be deemed as the High Bidder. HUD will review the bidder's Post- Bid Document Submittals, which must be submitted within the same timeframes detailed in Section 4 of this Invitation beginning from the date the Acknowledgment is executed, in order to determine if the bidder is qualified to purchase the Project;
 - iv. HUD's notification of rejection due to lack of qualifications, if applicable, shall be deemed to be given when mailed to the individual that executed the Acknowledgment; and
 - v. 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.

4. EARNEST MONEY DEPOSIT: All bidders must submit the Earnest Money Deposit to the Foreclosure Commissioner at the start of the Foreclosure Sale. Immediately following the Foreclosure Sale the Earnest Money Deposit will be returned to all but the High Bidder. Interest will not be paid on Earnest Money Deposits.

- 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, the Earnest Money Deposit will be credited against the bid price at Closing.
- b. If the bid amount is unacceptable, the bidder's Earnest Money Deposit will be refunded.
- c. If, during the review of the High Bidder, it is found that the High Bidder has made any misrepresentation or material omission(s) in the bidder's submission of documentation, the Earnest Money Deposit will be forfeited.
- d. If the High Bidder is determined not to be qualified to purchase the Project **and** the High Bidder has complied with the requirements of this Invitation the Earnest Money Deposit will be refunded.
- e. If the High Bidder has failed to comply with the provisions outlined in this Invitation, the Earnest Money Deposit will be forfeited.

5. CLOSING DATE REQUIREMENT: The date and place for Closing will be determined by HUD and the Foreclosure Commissioner and occur within the time period specified in the Acknowledgment, (Attachment B).

6. EXTENSION OF CLOSING: The right to extend the Closing is expressly reserved by HUD as set forth in the Acknowledgment (Attachment B).

SECTION 5 – CLOSING

- 1. **EXECUTION OF USE AGREEMENT:** The Purchaser and HUD will execute the Use Agreement at Closing. HUD will have the Deed, Use Agreement and all attachments recorded.
- 2. **CASH DUE AT CLOSING:** Cash due at Closing is the bid price less the Earnest Money Deposit received, plus any outstanding encumbrance amount that survived foreclosure and/or any pro-rations (see Paragraph 3 below.) All initial deposits to escrows and/or reserve accounts, if applicable, must be made at Closing.

3. **PRORATIONS:**

- a. Purchaser is responsible for paying all taxes, assessments, liens, and utility bills including but not limited to, water, sewer, gas and electric, and any other encumbrances not extinguished by the foreclosure. These amounts will not be prorated.
- b. If Extension Fees were paid, and the Closing occurs prior to the expiration of an Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period will be credited toward the amount due from Purchaser at Closing.

4. **CLOSING EXPENSES:** Irrespective of local custom, the Purchaser shall pay all Closing expenses, including, but not limited to, all documentary stamp taxes, and any costs in connection with a review of title or title insurance. The fees for the recordation of the HUD Deed and Use Agreement will be paid by HUD.

5. **METHOD OF PAYMENT:** Cash Due at Closing shall be paid in the form of a money order, certified funds, or cashier's check made payable to:
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

6. **REPAIR ESCROW:** If Repairs are required as a condition of Closing Purchaser shall provide assurance at Closing that the Repairs will be completed. The Purchaser must submit either a LOC or Cash Escrow, the choice of which shall be at HUD's sole discretion.

7. **CONVEYANCE:** Conveyance of the Project shall be by Foreclosure Commissioners Deed ("Deed"). The Deed will not contain any warranties of title.

8. **RECORDATION OF DEED:** HUD shall record the Deed and the Use Agreement.

9. **DOCUMENTS TO BE FURNISHED OR EXECUTED AT CLOSING:**

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

SECTION 6 – POST-CLOSING

POST-CLOSING REPAIRS: HUD is not requiring specific repairs and is not including a Form HUD-9552 in this Invitation. Please refer to Rider 1, "Post-Closing Repairs and/or Demolition Escrow Requirements for more repair information.

SECTION 7 – DISCLAIMERS

1. **DISCLAIMER:**

- a. This is an "all-cash", "as-is" sale. As stated in paragraph 6 of Section 1 bidders interested in purchasing this 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 valuation 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 and in any Addendum hereof.**
- b. While care has been exercised to assure accuracy, all information provided is solely for potential purchasers to determine whether or not the Project is of such type and general character as might interest them in its 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 ground 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 the bidder (Purchaser).

3. **HUD LIABILITY:** HUD's liability shall not exceed the amount of such portion of the bid price that has been paid to HUD.

ATTACHMENTS

- | | |
|---|---|
| <input checked="" type="checkbox"/> ATTACHMENT A - Property at a Glance | <input type="checkbox"/> ATTACHMENT F - Reserved |
| <input checked="" type="checkbox"/> ATTACHMENT B - Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder | <input checked="" type="checkbox"/> ATTACHMENT G - Certification of Substantial Compliance |
| <input checked="" type="checkbox"/> ATTACHMENT C - Foreclosure Sale Use Agreement | <input checked="" type="checkbox"/> ATTACHMENT H - Protecting Tenants at Foreclosure Act |
| <input checked="" type="checkbox"/> ATTACHMENT D - Letter of Credit (LoC) Sample | <input type="checkbox"/> ATTACHMENT I - Reserved |
| <input type="checkbox"/> ATTACHMENT E - Reserved | <input type="checkbox"/> ATTACHMENT J - Reserved |
| | <input type="checkbox"/> ATTACHMENT K - Reserved |
| | <input checked="" type="checkbox"/> ATTACHMENT L - Post-Closing Repair Report |

THESE FORMS ARE AVAILABLE AT

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms

OR USE THE URL PROVIDED BELOW TO OBTAIN THE FORM

<input checked="" type="checkbox"/>	Previous Participation Certification (Form HUD-2530) http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf
<input type="checkbox"/>	Personal Financial and Credit Statement (Form HUD-92417) for each proposed principal and/or partner http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_20675.pdf
<input type="checkbox"/>	Management Entity Profile (Form HUD-9832) http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35584.pdf
<input type="checkbox"/>	Project Owners Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839 A) http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35589.pdf
OR <input type="checkbox"/>	Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity of Interest or Independents Management Agents (Form HUD-9839 B) http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9839-b.pdf
OR <input type="checkbox"/>	Project Owner's/Borrower's Certification (Form HUD-9839 C) - For elderly housing projects managed by Administrators only http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35591.pdf
(Only one of these forms, 9839A, B or C, will be required for management certification.)	

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

USE RESTRICTIONS

The property will be sold "as-is" with no HUD use restrictions.

TERMS OF SALE

- This is an "All-Cash" – "As-Is" sale. HUD is not providing financing for this sale. Payment of the full bid price must be presented at Closing.
- 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 24 C.F.R. Part 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 Project. ("principal" and "affiliate" are defined at [24 C.F.R. § 200.215](#).)
- Bids for this Project will only be considered for acceptance if properly submitted by following the bidding instructions which includes but is not limited to submitting the Earnest Money Deposit, forms and statements as required in the Invitation. High Bidder will be reviewed to determine if qualified to purchase, own and manage the Project.
- The High Bidder must certify to HUD that any/all projects that are owned by the bidder or its affiliates and are located in the same jurisdiction (City or Town) where the Project is located are in substantial compliance with applicable state and local housing statues, regulations, ordinances and codes. See Attachment G, Certification of Substantial Compliance.
- High Bidder has the option to file the required Previous Participation Certification (Form HUD-2530) in electronic or paper format. **For questions concerning APPS contact the Multifamily Housing Systems Help Desk at 1-800-767-7588. For questions concerning Secure Systems contact the REAC Help Desk at 1-888-245-4860.**
- HUD is requiring the Property be repaired to meet state and local codes. Refer to the Use Agreement, Rider 1, for more information.
- Closing is to be held thirty (30) days after HUD notifies the High Bidder that they are qualified to purchase the Project being offered.
- If HUD approves an extension of the Closing, the Purchaser must pay a fee which is the greater of 1.5% of the bid price or HUD's holding costs of \$40.80 per unit per day for each thirty (30) day period.
- The Use Agreement will include the following Riders: Post-Closing Repairs and/or Demolition Escrow Requirements, Environmental Hazards with Demolition

PROSPECTIVE BIDDERS SHOULD READ AND THOROUGHLY UNDERSTAND ALL INFORMATION PROVIDED HEREIN AND IN THE BID KIT PRIOR TO SUBMITTING A BID.

INFORMATION AND BID KIT

INFORMATION and BID KIT may be viewed or printed at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/pd/mfplist.

You may also sign up for our electronic mailing list at

<http://www.hud.gov/subscribe/signup.cfm?listname=Multifamily%20Property%20Disposition&list=mfpd-l>. If you do not have access to the internet or cannot download a PDF file, you may contact the Realty Specialist identified below to obtain a copy of the bid kit.

Bids for Sunapee Cove Assisted Living:

MUST BE PRESENTED ON: March 14, 2012

At: 12:00pm (local time)

Location of Foreclosure Sale:

(at the property)

1250 Route 11

Georges Mills, NH 03751

HUD Office and Contact Information for submission of documents:

Atlanta HUD Office

Multifamily Property Disposition Center, 4AHMLAU

Five Points Plaza, 40 Marietta St.

Atlanta, GA 30303-2806

Realty Specialist: Donald Winston

Phone: (678) 732-2095

Fax: (404) 730-2400

Email: Donald.j.winston@hud.gov

INSPECTION OF PROJECT

HUD does not own or operate this facility and cannot grant access for viewing. Viewing is at the discretion of the current owner. For information concerning the property or visitation, please contact Thomas Hayes, Esq. at (802) 457-2123.

ATTACHMENT B

TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER

PART I

BID PRICE - The Undersigned, _____, (the "High Bidder") submits a bid of _____ dollars (\$) at the Foreclosure Sale of Sunapee Cove Assisted Living (the "Project"), the legal description of which is included as Exhibit A, to be paid as follows:

1. **EARNEST MONEY:** \$50,000 in the form of a money order, certified funds, or cashier's check, as the Earnest Money Deposit, which has been submitted at the Foreclosure Sale to the Foreclosure Commissioner, and which shall not earn interest, **and**
2. **BALANCE OF THE BID PRICE:** \$_____, to be paid by the High Bidder at Closing, in the form of a money order, certified funds, or cashier's check in accordance with the Acknowledgment. The Closing will be held at a place, date and time established in accordance with Part II, paragraph 4 below.
3. **CLOSING COSTS, DEPOSITS, REPAIR ESCROW:** 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, Letters of Credit, and/or Cash Escrow, as described in Riders incorporated herein, the Invitation, the Use Agreement.
4. **PRORATIONS:**
 - a. High Bidder is responsible for paying all taxes, assessments, liens, and utility bills including, but not limited to, water/sewer, gas and electric, and any other encumbrances not extinguished by the foreclosure. These amounts will not be prorated.
 - b. If Extension Fees were paid, and the Closing occurs prior to the expiration of the Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period shall be credited against the amount owed by the High Bidder at Closing.

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 all the terms, conditions and requirements contained in herein, including the Use Agreement and Invitation, which are incorporated by reference in this Acknowledgment.
2. **EXECUTION OF USE AGREEMENT:** Without limiting the foregoing, 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. **SUBMISSION OF POST-BID DOCUMENTS BY HIGH BIDDER:**
 - a. **Two (2) Days After Foreclosure Sale:**
 - i. **Previous Participation Certification:**
 - (a) **Paper Filers:**
 - (i) **Form HUD-2530:** The completed paper Form HUD-2530(s), with original signatures, for the purchasing entity and all principals. Proposed ownership must have established tax identification or social security number; an entity "to be formed" will not be accepted, and
 - (ii) **Organization Chart:** an organization chart, reflecting all principals of the purchasing entity and each principal's percentage or ownership must accompany the completed Form HUD-2530.
 - (b) **Electronic Filers:**
 - (i) **Bidders not registered in APPS and Secure Systems:** Submit certification, evidence of registration in APPS and Secure Systems.
 - (ii) **Electronic Filers registered in APPS and Secure Systems:** Submit evidence of filing.
 - ii. **Certification of Substantial Compliance:** Complete, original certification (Attachment G). The High Bidder must certify to HUD that any/all projects that are owned by the High Bidder or its affiliates and are located in the same jurisdiction (city or town) where the Project is located are in substantial compliance with applicable state and local housing statutes, regulations, ordinances and codes.
NOTE: If HUD determines that such projects of the High Bidder are not in substantial compliance with state and local codes, HUD may refuse to sell the Project to the High Bidder and retain its Earnest Money Deposit.
 - b. **Within Ten (10) Days of Foreclosure Sale:** The High Bidder must, if checked below, submit the additional post-bid documents:
 Form HUD-2530 for Purchaser, if different from High Bidder (See paragraph 3 above)
 - c. **Within Ten (10) Days of Foreclosure Sale:** If the management agent or the High Bidder's ownership entity registered Form HUD-2530 electronically (e2530), the High Bidder and/or management agent must subsequently electronically file the e2530 after registration has been completed.

NOTICE: It is the High Bidder's responsibility to ensure compliance with form and document submission as required in this Invitation to Bid and the Acknowledgment by Bidder. Failure to submit or comply with any requirements of the Invitation or Acknowledgment may result in High Bidder being declared ineligible to purchase the Project. In such case the Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.

All forms and instruments referred to in this Acknowledgment 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.

4. ESTABLISHMENT OF CLOSING DATE, TIME AND PLACE:

- a. Time is of the essence.
- b. If HUD approves the High Bidder as being qualified, the High Bidder will be confirmed, identified as the Purchaser and notified in writing of the approval. Approval to purchase is subject to review and approval of bidder's Post Bid Document Submittals as required in Section 4 (Post Foreclosure Sales Procedures) of the Invitation, and in Acknowledgment, specifically Part II, paragraph 3. The Closing **shall be within thirty (30) days of such notification**, unless extended pursuant to paragraph 9 below.
- c. The Closing date and place will be determined by the Foreclosure Commissioner and/or HUD and will take place within the time period specified above in paragraph 4.b. The Purchaser will be notified of said date and place by HUD and the Foreclosure Commissioner.

5. CLOSING, CLOSING EXPENSES AND TRANSFER OF POSSESSION:

- a. The sale shall be effective upon Closing.
- b. Purchaser shall pay all Closing costs and expenses, excluding fees for recording the Deed and Use Agreement, irrespective of local custom. Recording fees for the HUD Deed and Use Agreement shall be paid by HUD.
- c. Transfer of title and possession of the Project shall become effective as of the Closing date.

6. PAYMENT OF BID PRICE AT CLOSING: The Purchaser shall pay the balance of the bid price at Closing and, where applicable, make the deposits to escrows and reserve accounts, in the form of a money order, certified funds or cashier's check made payable to:

THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

7. REPAIR ESCROW: At Closing the Purchaser shall submit "**One**" of the following to HUD:

- An unconditional, irrevocable and non-documentary LOC, or a group of no more than five (5) LOC's, to represent the total amount of \$100,000. The fifth (5th) LOC must be equal to ten percent of the total amount of the LOC requirement. The LOC's shall expire no earlier than six (6) months past the deadline for Repairs. HUD may release the LOC's as Repairs are completed and accepted by HUD, with the exception of the final or fifth (5th) LOC, which shall be held for six (6) months past the deadline for completion of Repairs to ensure the integrity of the Repairs.
- A Cash Escrow in the amount of \$100,000, 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 percent (10%) which will be held for an additional six (6) months to ensure the integrity of Repairs.

8. LIQUIDATED DAMAGES: Should the High Bidder/Purchaser fail or refuse to perform all obligations hereunder for any reason including, but not limited to, failure to establish the legal entity that is to take title in a timely manner that permits Closing within the deadline set forth in paragraph 4, the Earnest Money Deposit and any Extension Fees, paid under paragraph 9, HUD reserves the right to retain the Earnest Money Deposit.

9. EXTENSION FEES: The granting of extensions of time to close the sale is within the sole and absolute discretion of HUD. Any extension, if granted, will be on the following conditions:

- a. A written request, which clearly states the reason for the Purchaser's inability to close the sale on or before the prescribed Closing date, or any Extension Period, must be received within seven (7) days prior to the prescribed Closing date, or within any Extension Period. The request **must be accompanied by the payment** of the required Extension Fee and sent to the following address:
Atlanta Multifamily PD Center
Attn: Scott R. Bearden, Acting Director
Five Points Plaza, 40 Marietta St.
Atlanta, GA 30303-2806
- b. Extensions shall be for thirty (30) days.
- c. For each thirty (30) day period requested by Purchaser and approved by HUD, Extension Fees shall be equal to;
 - i. \$40.80, per unit, per day, which is \$1,428.00 daily, a cost of **\$42,840**, which covers the 30-day period (the holding cost for such period), **or**
 - ii. one and one-half percent (1.5%) of the bid price, whichever is greater.
- d. The Extension Fees are not credited against the amount due from Purchaser at Closing. However, if the Closing is held prior to the expiration of an Extension Period, the prorated amount of the Extension Fee, for the unused portion of the Extension Period, shall be credited toward the amount due from the 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, an Extension Fee must be paid for this period.

- g. Extension fees must be submitted by money order, certified funds or cashier's check made payable to:
THE 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 admitted to any share or part of this Foreclosure Sale ("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 with a corporation for the corporation's general benefit.
- b. If bidder is, or becomes suspended, debarred, or temporarily denied from participating in HUD programs prior to Closing, this Sale shall be terminated. In addition, if such suspension, debarment or temporary denial of participation occurs either before or after bidder's execution of this Acknowledgment, any Extension Fees paid under paragraph 9 shall be retained by HUD as liquidated damages.
- c. Pursuant to 24 C.F.R. Part 27.20(f), 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 Project being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 C.F.R. § 200.215.

11. AS-IS SALE; NO REPRESENTATIONS:

- a. 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 or otherwise.
- b. High Bidder acknowledges that the bid price set forth in this Acknowledgment is based on its own evaluation of the Project and not upon any representations by HUD. High Bidder's failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Project, shall not affect the liabilities, obligations or duties of HUD, nor be a basis for termination of this Foreclosure Sale or for the return of any Earnest Money Deposit or Extension Fees paid to HUD.

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 other than willful acts or neglect, HUD, in its sole discretion, may negotiate with the High Bidder for a reduction in the bid price corresponding to the estimated amount of damages. Such amount shall be added to the Repair requirements, Form HUD-9552, included in the Invitation. If a bid price reduction cannot be negotiated or if the High Bidder and HUD are unable to agree on the amount by which the bid price should be reduced or on the amendment to the Repair requirements, High Bidder may withdraw the bid. In such case, the Earnest Money Deposit and any Extension Fees paid will be returned, *unless* there is cause to retain the Earnest Money Deposit based on breach of the Invitation and/or Acknowledgment.

13. SECURITY DEPOSITS: APPLICATION AS CHECKED:

Notwithstanding state or local law, the High Bidder will receive only those security deposits which are on hand at the Project and made available to HUD on the date of Closing. The High Bidder will assume all liability under state and local law with respect to security deposits.

14. LIMITATION OF LIABILITY: In no event shall HUD's liability exceed the portion of the bid price that has been paid to HUD.

15. ANTI-COLLUSION CERTIFICATION:

- a. The High Bidder certifies:
- i. The bid price in this offer was 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 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 bidder to induce any other bidder to submit or not to submit a bid price for the purpose of restricting competition.
- b. If the bid procedure requires or permits written bids, 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 being offered in this bid 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, does certify that the principals named in the above have not participated, and will not participate, in any action contrary to paragraph 16 a. above;
and

(b) As agent, has not personally participated, and will not participate, in any action contrary to paragraph a. above.

- 16. 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 which case the High Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.
- 17. SEVERABILITY: If for any reason one or more of the provisions contained in the Invitation, including this Acknowledgment, the Use Agreement, or any other attachments or exhibits thereto, shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of the Invitation, but the Invitation shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included therein.
- 18. ASSIGNMENT: The High Bidder may not assign its rights and responsibilities under this Acknowledgment without the prior written approval of HUD.
- 19. CONFLICTING TERMS: In the event that there are terms or conditions herein that conflict with terms or conditions contained in the Invitation incorporated herein by reference, the terms or conditions of this Acknowledgment shall control.
- 20. REQUIRED STATEMENTS AND FORMS:
The High Bidder acknowledges the receipt of the Use Agreement applicable to this Project's Foreclosure Sale and the inclusion of the following Riders to that Use Agreement:
 - Post-Closing Repairs and/or Demolition Escrow Requirements
 - Environmental Hazards with Demolition
- 21. EXECUTION
 - a. By signature below, High Bidder indicates acknowledgment of and agreement to the terms and requirements of this Foreclosure Sale.
 - b. 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.

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.

Executed by the Bidder on the _____ day of _____, 20____.

Witness: _____

By: _____

Typed Name: _____

Typed Name: _____

Address: _____

City, ST Zip: _____

Phone No. with Area Code: (____) _____ - _____

ATTACHMENT C
FORECLOSURE SALE USE AGREEMENT

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

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. Sections 3701 et seq. (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, or pursuant to a judicial foreclosure the Secretary has elected to apply Section 367(b) of the Act, with respect to Sunapee Cove Assisted Living, HUD Project No. 024-43078, (the "Project") a legal description of which is attached as Exhibit "A"; **and**

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

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

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

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for twelve (12) months from the date of this Agreement (the "Restricted Period") or until the property is verified by HUD to be repaired to state and local code and/or demolished.
2. **CONVEYANCE:** During the term of this Agreement, any Conveyance of the Project must have the prior written approval of HUD, or such Conveyance will be deemed to be null and void, and a default will exist under this Agreement. Conveyance is defined as any sale, assignment, transfer, creation of a leasehold estate in excess of one (1) year, or any other legal or equitable conveyance or transfer of the Project or an interest therein, or any legal or equitable transfer of an interest in the Grantee or any entities that may comprise the Grantee. Without limiting the foregoing and not intending to be all inclusive, a merger, conversion, share exchange, or exchange of corporate or partnership interests is deemed to be a Conveyance, which requires the prior written approval from HUD.

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

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

- a. Implement and/or continue to comply with all existing use restrictions;
- b. implement sound financial and physical management program;
- c. respond to the needs of the residents and work cooperatively with resident organizations;
- d. provide adequate organizational staff and resources to manage the Project; and

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

3. **SUBJECT TO EXAMINATION:** At the request of the Secretary, Purchaser must supply evidence by means of physical condition reports, reports on operations, or any evidence as requested to ensure that the above requirement of repairing the property to state and local code and/or demolition is met.
4. **NON-DISCRIMINATION REQUIREMENTS:** The Grantee will comply with the provisions of all federal, state, or local laws prohibiting discrimination in housing.
5. **REMEDIES FOR NONCOMPLIANCE:** Upon any violation of any provision of this Agreement by the Grantee, HUD may give written notice thereof to the Grantee by registered or certified mail, to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary may be designated by the Grantee as its legal business address. If such

violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain. The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy available under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not be construed as a waiver of the right to exercise that or any other right or remedy at any time.

6. **SUCCESSORS AND ASSIGNS:** This Agreement is binding upon the Grantee's heirs, successors and assigns. If HUD approves a Conveyance during the term of this Agreement, it may be conditioned upon, among other things, the grantee assuming in writing Grantee's obligations under this Agreement.
7. **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 Agreement if the Agreement is made with a corporation for its general benefit.
8. **CONTRADICTORY AGREEMENTS:** The Grantee certifies that it has not, and agrees that it will not, execute any other Agreement with provisions contradictory of, or in opposition to, the provisions of this agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other provisions or requirements in conflict with this Agreement.
9. **SEPARABILITY:** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
10. **AMENDMENT:** This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.
11. **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. Capitalized terms used but not defined in a Rider shall have the meaning ascribed to such term in this Agreement. The use of the term Grantee in a Rider shall be deemed to mean the Purchaser.
 - Post-Closing Repairs and/or Demolition Escrow Requirements
 - Environmental Hazards with Demolition
12. **PRIORITY:** This Agreement shall be recorded against the Project in a superior position to any post foreclosure liens or mortgage debts.

IN WITNESS WHEREOF:

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

WITNESS:

GRANTEE:

 By: Signature

 Typed Name of Grantee

 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

A certain tract or parcel of land with any buildings and improvements thereon situated in the Town of Sunapee, County of Sullivan and State of New Hampshire, bounded and described as follows:

Lot 1 on plan entitled "SUBDIVISION PLAN OF LAND OWNED BY JOHN W. SARGENT GEORGES MILLS SUNAPEE, NEW HAMPSHIRE" dated November 25, 1997 and recorded at Pocket 6, Folder4, Number 23 of Planfile 4 of the Sullivan County Registry of Deeds, more particularly described as follows and shown on said Plan:

Beginning at an iron pin at the northeasterly corner of the within described premises and the northwesterly corner of Lot 2, on the southeasterly right of way line for Route 11; Thence proceeding S 15 degree 51 feet 40 inches E along the westerly boundary of Lot 2, 203.0 feet to an iron pin; Thence S 58 degree 37 feet 09 inches E 77.1 feet to an iron pin at the edge of Otter Pond Brook; Thence turning and proceeding 460 feet, more or less, along the Otter Pond Brook in a southwesterly and westerly direction to the convergence with Muzzey Brook and further in a northwesterly direction along the shore of Muzzey Brook, having a closure line of N 77 degree 21 feet W, 408.6 feet, to an iron pin at the southeasterly right of way line of Route 11, near the easterly side of a culvert leading from Muzzey Brook under Route 11; Thence proceeding N 62 degree 14 feet 30 inches E along the southeasterly right of way line of Route 11, a distance of 158.0 feet to a New Hampshire Highway Department Concrete Bound; Thence continuing along said right of way for Route 11 N 62 degree 14 feet 30 inches E 155.4 feet to the point or place of beginning.

Containing 43,286 sq. ft. or 0.99 acre, more or less.

Excepting and reserving that easement and right of way over and across the land shown as Lot 1 on said plan entitled "SUBDIVISION PLAN OF LAND OWNED BY JOHN W. SARGENT GEORGES MILLS SUNAPEE, NEW HAMPSHIRE" dated November 25, 1997 and recorded at Pocket 6, Folder 4, Number 23 of Planfile 4 of the Sullivan County Registry of Deeds, for the purposed of ingress, egress and parking, as such easement and right of way are depicted upon a certain site plan prepared by Blakeman Engineering, Inc. entitled "Site Plan prepared for Malone-Hayes Realty, LLC" dated November 1997 and most recently revised April 12, 2000, and as set out and granted in the Warranty Deed of Malone-Hayes Realty, LLC to Black, Malone and Hayes Properties, LLC dated December 10, 2001, and recorded in Book 1287, Page 181 of the Sullivan County Registry of Deeds.

Granting that easement and right of way over and across the within conveyed premises, for the purpose of ingress, egress, parking, landscaping and all other activities reasonably necessary for Malone-Hayes Realty, LLC, its successors and assigns, to comply with the permits, regulations and laws of the Town of Sunapee and State of new Hampshire with regard to land known as Lot 1 on said plan entitled "SUBDIVISION PLAN OF LAND OWNED BY JOHN W. SARGENT GEORGES MILLS SUNAPEE, NEW HAMPSHIRE" dated November 25, 1997 and recorded at Pocket 6, Folder 4, Number 23 of Planfile 4 of the Sullivan County Registry of Deeds, as such easement and right of way are depicted upon a certain site plan prepared by Blakeman Engineering, Inc. entitled "Site Plan prepared for Malone-Hayes Realty, LLC" dated November 1997 and most recently revised April 12, 2000. Also granting the right to construct and maintain the parking area drainage and landscaping system on Lot 1, as such is set forth on said site plan and upon the associated landscape plan. Said easements are set forth in the Warranty Deed of Malone-Hayes realty, LLC to Black, Malone & Hayes Properties, LLC, dated December 10, 2001, and recorded in Book 1287, Page 181 of the Sullivan County Registry of Deeds.

Until such time as Lot 2 is developed by Black, Malone & Hayes properties, LLC, its successors and assigns, Malone-Hayes Realty, LLC, its successors and assigns, shall bear all cost of improvements and maintenance associated with its use of Lot 2, pursuant to this reservation. At such time as said Black, Malone & Hayes, LLC, its successors and assigns, develops Lot 2, the cost of maintaining the improvements thereon shall be divided pro-rata based upon the ratio between the number of parking spaces required for the use of Lot 1 and the number of parking spaces required for the use of Lot 2 as set forth in the applicable Town of Sunapee zoning regulations.

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

RIDER 1 OF 2
**POST-CLOSING REPAIRS and/or DEMOLITION
ESCROW REQUIREMENTS**

The Use Agreement shall contain the following provision:

1. Grantee covenants to repair and/or demolish the Property in a manner that complies with state and local codes, ordinances and regulations ("Repair or Demolish Work") within twelve (12) months of Closing.
2. To assure completion of the Repair or Demolish Work, Grantee shall provide to HUD, at Closing, one of the following forms of assurances of completion:
 - a. An unconditional, irrevocable and non-documentary Letter of Credit ("LOC") in the amount of \$100,000. If the Repair or Demolish Work is performed in stages, as agreed between Grantee and HUD prior to Closing, up to five (5) LOCs may be provided to HUD. The sum of all must equal the total required LOC amount specified in the preceding sentence;
 - b. Cash in the amount of \$100,000 which shall be held by HUD in a non-interest bearing escrow account.
3. HUD will monitor the progress of the Repair or Demolish Work as required by this provision. Grantee must submit quarterly reports to HUD on the status of the repairs as required by HUD (Post-Closing Repair Report, Attachment L.) The report must include:
 - a. the number and type of units completed,
 - b. a list of major repairs and percentage completed,
 - c. a narrative describing:
 - i. any special circumstances which may, or have delayed the repairs,
 - ii. the status of the planned rehabilitation, i.e. are repairs ahead of, on schedule, or behind on the original rehabilitation schedule.

All Repair or Demolish Work required under this Section will not be considered complete until such time as HUD or its designee has inspected the work and HUD has accepted the work.

4. It shall be within HUD's sole discretion to allow one form of assurance of completion, as specified in paragraph 2 above, or some combination thereof.
5. Any LOC(s) or cash escrow shall have an expiration date of at least six (6) months beyond the estimated completion date of the Repair or Demolish Work to allow for correction or repairs during any latent defect period. In the event an extension of time to complete the Repair or Demolish Work is approved by HUD, the LOC(s) or cash escrow must be extended accordingly.
6. In the event the property is conveyed prior to completion of the Repair or Demolish Work, Grantee shall submit one of the forms of assurances of completion specified in paragraph 2, in an amount approved by HUD.
7. Any LOC(s) or cash held in escrow shall be released on a pro rata basis as the Repair or Demolish Work is satisfactorily completed. After HUD has accepted the work, HUD shall retain ten percent (10%) of the whole estimated cost of the Repair or Demolish Work for six (6) months beyond HUD's estimated completion date of the Repair or Demolish Work to allow for correction or repairs during any latent defect period.
8. If Grantee is unable or unwilling to complete the Repair or Demolish Work in accordance with this provision, HUD shall be entitled to cash the LOC(s) or cash escrow(s) to complete the Repair or Demolish Work, correct latent defects in the completed Repair or Demolish Work, or for such purposes as HUD deems appropriate;
9. However, if Grantee fails to complete the Repair or Demolish Work in accordance with this provision, HUD will not exercise the remedies as described in paragraph 7 above if any lender holding a lien or security interest on the Property:
 - a. Within the period specified in paragraph 1 above, gives written notice to HUD that it intends to complete the Repair or Demolish Work, and
 - b. Completes such work within thirty (30) days of the notice or any HUD approved time period.

10. When the Repair or Demolish Work has been completed, Grantee shall submit verification from the county, state or local building agency that the Repair or Demolish Work meets local codes and that the agency has given the Property a Certificate of Occupancy ("C.O.") for all units. After submission of the C.O. to HUD, HUD may release the assurance of completion it is holding.

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

Grantee _____

HUD _____

RIDER 2 OF 2
ENVIRONMENTAL HAZARDS WITH DEMOLITION

The Use Agreement shall contain the following provision:

Grantee covenants to:

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

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

- ASBESTOS: 29 CFR 1926 and any subsequent regulations(s) including, but not limited to, all federal, state and local laws regarding detection, abatement, containment and removal of asbestos containing materials.
- LEAD-BASED PAINT: 42 USC 4821-4886 and the regulations thereunder, 24 CFR Part 35. Grantee shall inspect, test and abate any lead-based paint. Grantee shall comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgment of Disclosure" of 24 CFR, *Lead Based Paint Poisoning Prevention in Certain Residential Structures*.
- RADON: All federal, state and local laws, and EPA guidelines regarding detection and abatement.
- MOLD: All federal, state and local laws, and EPA guidelines regarding detection and abatement of mold.
- TOXIC AND HAZARDOUS SUBSTANCES: 29 CFR 1926 subpart Z (where a list of applicable substances can be found).

Operations and Maintenance Plan:

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

Remedies:

1. If Grantee fails to comply with this provision, HUD may exercise one or more the remedies listed below:
 - a. Enter and terminate the estate hereby conveyed,
 - b. Cash Grantee's LOC(s),
 - c. Withdraw remaining funds in the Cash Escrow account;
2. If HUD cashes the Grantee's LOC(s), withdraws Cash Escrow funds, or files a claim with the surety company as a remedy for the Grantee's default under this provision, HUD may apply the funds to perform the Inspect and Remediate Requirements, retain the funds as liquidated damages, or for such other project purposes as HUD deems appropriate.

3. HUD shall not exercise its available remedies if any lender holding a lien or security interest on the Property:
 - a. Gives written notice to HUD within the period provided for repairs, that it intends to complete the Inspect and Remediate Requirements, and
 - b. Completes the Inspect and Remediate Requirements within thirty (30) days of the notice or within such extended period that HUD may approve in writing.

Demolition:

1. DEMOLITION WHERE LEAD-BASED PAINT MAY BE PRESENT. Grantee agrees to test for lead-based paint prior to any demolition and to apply the EPA Toxicity Characteristic Leaching Procedure (TCLP) to those architectural components with leaded paint to determine if they must be disposed of as hazardous waste under the provisions of EPA's Resource Conservation and Recovery Act (RCRA). The latest revision of those EPA regulations, sometimes referred to as the "toxic characteristic (TC) rules", shall be applied to determine if the waste generated will be classified hazardous waste. The latest information on the "TC Rules" is available by contacting EPA, RCRA Section, at (800) 424-9346. The routine application of the "TC rules" could document that the project will contain no hazardous waste for disposal. Grantee agrees to comply with all applicable EPA regulations pertaining to hazardous waste disposal in effect at the time of demolition.
2. DEMOLITION WHERE ASBESTOS-CONTAINING-MATERIALS (ACMs) MAY BE PRESENT. Grantee agrees to test for and remove all asbestos containing materials prior to any demolition. EPA's Clean Air Act requires that each ACM be removed and disposed of properly before demolition activities commence. Grantee agrees to comply with all applicable EPA, state, OSHA regulations concerning ACM removal.
3. DEMOLITION WHERE PCB TRANSFORMERS MAY BE PRESENT. Where there are visibly obvious electrical transformers serving the project to be demolished, that may contain dielectric oil which is contaminated with polychlorinated biphenyls (PCB), the owner shall contact the local utility. A PCB transformer is any transformer with at least 500 PPM PCB content. Grantee agrees to notify the local utility of intentions to demolish the structure(s) and request EPA regulations (40 CFR, Part 761) be applied by the utility as electrical transformers are removed from service at the site as a part of the demolition process.
4. DEMOLITION WHERE CFCS MAY BE PRESENT. Grantee agrees to apply EPA regulations in section 608, Clean Air Act, 1990, which require the capturing and recycling of the refrigerant (latest revision). Grantee agrees to have chlorofluorocarbons (CFCs) contractually purged and captured from any and all air conditioning (AC) units present on the site before commencing demolition activities.
5. DEMOLITION WHERE HARMFUL CHEMICAL HAZARDS MAY BE PRESENT. Grantee covenants that any potential Harmful Chemical Hazards will be remediated in accordance with applicable federal, state, and local laws, regulatory standards and guidelines, including without limitation the Environmental Protection Agency (EPA) Guidelines.

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

Grantee_____

HUD_____

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 Marietta St.
Atlanta, GA 30303-2806

Attention: Mr. David Hancock
4AHMLAU – Atlanta PD 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) _____
_____, 20____
(City, State)

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:_____

Schedule A: All projects owned by _____ or affiliates.

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

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.

Attachment L

Post Closing Repair/Demolition Report

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

Number of Units: _____ Number of Units repaired/and or demolished: _____

List major repairs to meet State and local codes and/or demolition actions and provide status of those repairs/demolition:

Major Repair/Demolition Action (EX: replace roofs for 5 buildings)	Work/Demolition Completed (EX: roofs replaced for 3 buildings: 60%)

Provide narrative describing any special circumstances which may, or have delayed the repairs/demolition:

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

Date of Report: _____

Report completed by: _____ Title _____

Please fax a completed version of this report to David Hancock, Realty Specialist, at (404) 730-2440. Reports are due quarterly and to be continued until the repairs are complete.