*AMENDED 4/16/15: Affordability of Units, Environmental Hazards and Attachment N (Mark to Market Use Agreement)*

# FORECLOSURE SALE

Terrace Apartments
6640 NW 10th Street
Oklahoma City, OK 78127
A 205 Unit Multifamily Community

## Is offered for sale at foreclosure:

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

Oral bids will be accepted on:
Wednesday, May 13, 2015
at: 9:00 a.m. (local time)

Sale Location:
Oklahoma County Courthouse
320 Robert S. Kerr
Outside Room 103
Oklahoma City, Oklahoma 73108

Open House:
Thursday, April 23, 2015
1:00 p.m.- 4:00 p.m. (local time)

U. S. Department of Housing and Urban Development
Property Disposition Division
801 Cherry Street, Unit #45, Ste. 2500
Fort Worth, TX 76102

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. §3701.
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. Applicant/Recipient Disclosure/Update Report (Form HUD-2880): A disclosure made to HUD of federal, state, or local governmental assistance, other than the Section 8 assistance provided by the Secretary, that the bidder will receive or reasonably expects to receive prior to, or during the term of the HAP Contracts and in cases where the bidder will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available to the Project. Such other assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or other form of direct or indirect governmental assistance.
6. 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.
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. CCR: Central Contractor Registration: Established to facilitate the federal government's compliance with the Prompt Payment Act (Pub. L. 97-177) (31 U.S.C. 3901 *et seq*.), as amended, and is the primary registrant database for the federal government. CCR collects, validates, stores and disseminates data in support of agency missions, including federal agency contract and assistance awards, and the electronic payment process.
10. Days: Federal government business days, unless otherwise stated as calendar days.
11. Deed: see Foreclosure Deed.
12. DUNS: Data Universal Numbering System (aka Dun and Bradstreet Numbering System): Owners with Project Based Section 8 Contracts must obtain a DUNS number and register that number in CCR. An online web-form process is provided at http://fedgov.dnb.com/webform. The process for obtaining a DUNS number is free for all entities doing business with the Federal government. For assistance, registrants should call toll free: 866-705-5711, press Option 4, Grantee. In Alaska and Puerto Rico the toll free number is 800-234-3867. For more information: http://portal.hud.gov/hudportal/documents/huddoc?id=11-01HSGN.PDF.
13. Earnest Money Deposit: The amount of the deposit identified in the Property at a Glance. Must be submitted at the Foreclosure Sale.
14. 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).
15. 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) calendar day extension period, the amount of which will be determined by HUD consistent with current policies and procedures.

16. Extension Period: Extensions of time for Closing are granted for a thirty (30) calendar day period.
17. 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.
18. Foreclosure Deed: The deed that will transfer title to the Purchaser. It will not contain any warranties of title.
19. Foreclosure Sale: Sale of the Project resulting from a mortgage foreclosure by HUD.
20. Form HUD-9552: Post-Closing Repair Requirements and Exhibits, Attachment E of this Invitation ("Repairs".)
21. HAP Contract: Project Based Section 8 Housing Assistance Payment Contract, if applicable, which shall be executed at Closing, in the form of Attachment F.
22. High Bidder: Highest, responsive bidder at Foreclosure Sale.
23. 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.
24. Payment and Performance Bonds: An assurance of completion of HUD required Repairs. Form HUD-92452A should be used for payment bonds and form for the performance bond that is acceptable to HUD, each equaling 100% of HUD's estimate of the required Repairs.
25. 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 calendar days after Closing.
26. PCS Repairs: HUD's Physical Condition Standard, found within 24 C.F.R. § 5 Subpart G, which requires the Project to be maintained in good physical condition and subject the Project to periodic HUD inspections.
27. Post-Bid Document Submittals: All documents, statement, 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.
28. Post-Closing Repairs: All repair/rehabilitation work must be performed in a manner compliant with the essential and material requirements of the state and local codes and laws, ordinances, regulations, HUD's Physical Condition Standards and a list of HUD required "Repairs" to be performed by Purchaser post-Closing. The cost of the repairs has been estimated by HUD; see Attachment E to this Invitation.
29. 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.
30. 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.
31. 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.)
32. Project: The multifamily apartment project and all real and personal property appurtenant thereto, as presented on the cover of this Invitation.
33. Property at a Glance: Contains information about the Project and contact information for the Realty Specialist – see Attachment A to Invitation.
34. Purchaser: Person or entity receiving HUD approval to purchase the Project.
35. 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.
36. Repairs: see Post-Closing Repairs.
37. Second High Bidder: Second highest, responsive bidder at Foreclosure Sale.
38. Section 8: Section 8 of the United States Housing Act of 1937 and applicable regulations within Title 24 of the Code of Federal Regulations.
39. 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.
40. 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 eligibility to bid, 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, if applicable to this Foreclosure Sale, are included in Rider 1of the Use Agreement and Attachment E to this Invitation. The required Repairs listed in Attachment E survive the Foreclosure Sale and will be recorded with the Deed. NOTE: The Form HUD-9552 and Exhibits are cost estimates of the required Repairs. Actual costs ultimately incurred by the Purchaser may be more or less than the estimates.

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 (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. 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 a management agent will be participating in the management of the Project, or if 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.**
   - **The High Bidder's experience, qualifications and capacity to purchase the Project must be approved by HUD in order to purchase the Project. This includes, but is not limited to, 2530 approval.**

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

1. **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.

2. **BIDDING AT THE FORECLOSURE SALE:**
   a. 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.
   b. The bidder must either:
      i. State a bid price orally at the sale, **or**
      ii. 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.

3. **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.

4. **TELEGRAPHIC OR FACSIMILE BIDS**: Emailed, telegraphic or facsimile bids and/or bid modifications will not be considered.

5. **ITEMS THAT MUST BE SUBMITTED AT THE FORECLOSURE SALE:**
   a. **Earnest Money Deposit:**
      i. 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.
      ii. 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.
      iii. A financial organization submitting a bid on its own behalf must have the Earnest Money Deposit drawn on another financial organization.
      iv. Lack of proper deposit will be cause for rejection of the bid by HUD.
      v. Immediately following the Foreclosure Sale, the Earnest Money Deposit will be returned to all but the High Bidder.
   b. **Evidence of bidder eligibility**, if applicable (ex: non-profit organization.)

6. **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.

7. **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

1. **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.

2. **POST-BID DOCUMENTS SUBMITTALS:** The High Bidder must submit the following items within the timeframes shown below:
   a. Five (5) Days After Foreclosure Sale:
      i. Previous Participation Certification:
         (a) Paper filing:
            (i) **Form HUD-2530**: **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; **and**
            (ii) **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.
         (b) Electronic filing:
            (i) **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.
      iii. Written Statement of Experience: The High Bidder must submit a written Statement of Experience. Instructions for preparing the written Statement of Experience are provided in the Acknowledgment.
   b. Ten (10) days After Foreclosure Sale: The High Bidder must submit the documents checked below:
      ☒ Affirmative Fair Housing Marketing Plan (Form HUD-935.2A)
      ☒ Form HUD-2530 for Purchaser, if different from High Bidder
      ☒ Form HUD-2530 for the Management Agent, if applicable
      ☒ Personal Financial and Credit Statement (Form HUD 92417), for each proposed
      ☒ Management Entity Profile (Form HUD-9832)
      ☒ Project Owner's Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839A):
      **OR**
      ☒ Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents (Form HUD-9839B):
      **(Only one of these forms A or B will be required for management certification.)**
      ☒ Direct Deposit Signup (Standard Form 1199A)
      ☒ Applicant/Recipient Disclosure/Update Report (Form HUD-2880)
   c. Fifteen (15) 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. It is the objective of the Department's multifamily foreclosure process to transform troubled and distressed multifamily properties into viable, long-term affordable rental housing resources. To accomplish this objective, the Department will only award a HUD-foreclosed property to a High Bidder that is eligible to bid, has the financial capacity and demonstrated experience (approximately five (5) years) of successfully owning, managing and transforming distressed and troubled multifamily properties as viable, low-income housing resources.
      ii. The Department has the discretion to evaluate, starting with the High Bidder and proceeding in descending order, if necessary, the bidder's experience, qualifications and capacity to purchase the Project based on a review of the documentation described below, information independently obtained and verified by HUD, and the Post-Bid Document Submittals required herein. The documentation must demonstrate that the bidder owns (or has owned) and is successfully managing and operating (or has successfully managed and operated) properties of similar size and characteristics (including problematic complexities) as the Project being sold. The documentation will be used by HUD to determine whether the bidder has the financial capacity and demonstrated experience to acquire and successfully transform the Project into a long-term, viable rental housing resource.

iii. HUD may, in its sole discretion, accept or reject any bid submitted for the purchase of the Project. The review and approval of the Previous Participation Certification (Form HUD-2530) is a requirement for the purchase of the Project. However, Previous Participation Certification approval is only one aspect of HUD approval of the bidder's qualifications.

iv. Based on HUD's review of the documentation submitted, 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 Project. This determination is 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 Project, HUD will reject the bid and proceed to the next highest bidder pursuant to the terms of the Invitation.

v. 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 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 eligibility to bid, experience, qualifications, or financial capacity, the Earnest Money Deposit will be forfeited and retained as liquidated damages. HUD may seek any and all additional remedies.

vi. HUD may require the High Bidder to obtain the services of a qualified multifamily project management firm. Management acceptable to HUD (see paragraph 5 below) must be approved prior to Closing.

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 evidence of eligibility to bid, 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 eligibility and/or 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 evidence of eligibility and/or 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. **REVIEW OF PROJECT MANAGEMENT:** HUD will review the statements and Post-Bid Document Submittals to determine, in its sole discretion, if the proposed management entity has the necessary qualifications to operate, manage, and/or administer the type and nature of the project being offered for sale. HUD may elect to discuss Project management plans after submission of the Post-Bid Document Submittals by the High Bidder. HUD reserves the right to reject the bid of any bidder and retain the Earnest Money Deposit, if the High Bidder does not provide management acceptable to HUD.

6. **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).

7. **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 a Letter of Credit at Closing as assurance that the Repairs will be completed.

7. **SECTION 8 HOUSING ASSISTANCE PAYMENTS:** For a Project sold with Project-Based Section 8 assistance (see the Property at a Glance and the Use Agreement,) the Purchaser must execute a HAP Contract at Closing.
   a. The HAP Contract will be 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.
   b. A sample form of the HAP is attached (Attachment F.)

8. **TENANT INCOME VERIFICATION/CERTIFICATION:** Purchaser is required to begin tenant income verification/certification immediately upon Closing. Within thirty (30) calendar days of Closing Purchaser must certify to HUD that all verification/certifications have been completed and submit a Tenant report. See the Project Based Section 8 Rider for information regarding report requirements.

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

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

11. **DOCUMENTS TO BE FURNISHED OR EXECUTED AT CLOSING:**
    ☒ **Foreclosure Sale Use Agreement** ☒ **Letters of Credit** ☒ **Closing Statement**
    ☒ **HAP Contract**

## SECTION 6 – 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**

- ☒ **ATTACHMENT A:** Property at a Glance
- ☒ **ATTACHMENT B:** Terms and Requirements of Foreclosure Sale – Acknowledgement by Bidder
- ☒ **ATTACHMENT C:** Foreclosure Sale Use Agreement
- ☒ **ATTACHMENT D:** Letter of Credit (LOC) Sample
- ☒ **ATTACHMENT E:** Post Closing Repair Requirements, Form HUD-9552 and Exhibits
- ☒ **ATTACHMENT F:** HAP Contract
- ☒ **ATTACHMENT G:** Certification of Substantial Compliance
- ☒ **ATTACHMENT H:** Protecting Tenants at Foreclosure Act
- ☐ **ATTACHMENT I:** Reserved
- ☒ **ATTACHMENT J:** DUNS/CCR Registration Certification
- ☒ **ATTACHMENT K:** 24 CFR PART 5, Physical Condition Standards
- ☒ **ATTACHMENT M:** Owner's Physical Condition Standards Inspection and Certification
- ☒ **ATTACHMENT N:** Mark to Market Use Agreement

**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**

| | |
|---|---|
| ☒ | Previous Participation Certification (Form HUD-2530)<br>http://portal.hud.gov/hudportal/documents/huddoc?id=2530.pdf |
| ☒ | Personal Financial and Credit Statement (Form HUD-92417) for each proposed principal and/or partner<br>http://portal.hud.gov/hudportal/documents/huddoc?id=92417.pdf |
| ☒ | Affirmative Fair Housing Marketing Plan (Form HUD-935.2A)<br>http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf |
| ☒ | Management Entity Profile (Form HUD-9832)<br>http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35584.pdf |
| ☒<br>**OR**<br>☒ | Project Owners Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839 A)<br>http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35589.pdf<br>Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity of Interest or Independents Management Agents (Form HUD-9839 B)<br>http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9839-b.pdf<br><br>**(Only one of these forms 9839A or B will be required for management certification.)** |
| ☒ | Direct Deposit Signup (Standard form 1199-A) http://www.ssa.gov/deposit/1199a.pdf |
| ☒ | Applicant/Recipient Disclosure/Update Report (Form HUD-2880)<br>http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf |

***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.***

*AMENDED 4/16/15: Affordability of Units, Environmental Hazards and Attachment N (Mark to Market Use Agreement)*

## *Attachment A*
## *PROPERTY AT A GLANCE*

**Terrace Apartments FHA #: 117-35213**

ADDRESS: **6640 NW 10th Street**
**Oklahoma City, OK 73127**
PARISH: **Oklahoma**

EARNEST MONEY: **$100,000** SALES TERMS: **"All Cash- As Is"; 30 calendar days to close**
LETTER OF CREDIT: **$635,000** SALE: **Foreclosure** **Unstated Minimum**

### PROJECT INFORMATION

| Total Units | Residential | Commercial |
|---|---|---|
| 205 | Revenue 205 | |
| | Non-Revenue | |
| Building/Site Type | Garden | |

| | |
|---|---|
| Foundation: | Wood on Concrete Slab |
| Roof: | Composition Shingle |
| Exterior: | Brick Veneer Over Wood |
| Floors/Finish: | Vinyl Tile/Carpet |

| Number of Buildings | Stories | Year Built | Rehab Year | Approximate Site Acreage | Approximate Net Rentable Area |
|---|---|---|---|---|---|
| 30 | 2 | 1968 | 1987 | 8 | 174,809 |

### Mechanical Systems

| | | | |
|---|---|---|---|
| **Heating:** | | Air Conditioning | Individual |
| Fuel | Gas/Elec* | Windows | Screen |
| System | Individual | | |
| **Hot Water:** | | | |
| Fuel | Electric | | |
| System | Individual | | |

### Utilities

| | |
|---|---|
| Public Water | ☒ |
| Gas Main | ☒ |
| Electric | ☒ |
| Sanitary Sewer | ☒ |
| Storm Sewer | ☐ |
| Septic Tank | ☐ |

### Parking

| | |
|---|---|
| Street | Asphalt |
| Curb | Concrete |
| Sidewalk | Concrete |
| Parking Lot | Concrete |
| Parking | 2 Lots |
| Spaces | 254 |

### Apartment Features

| | |
|---|---|
| ☒ | Air Conditioning |
| ☐ | Dishwasher |
| ☐ | Microwave |
| ☐ | Garbage Disposal |
| ☒ | Refrigerator |
| Gas | Range/Oven |
| ☐ | Drapes/Blinds |

### Community Features

| | |
|---|---|
| ☐ | Garage |
| ☐ | Covered Parking |
| ☒ | Laundry Facility |
| ☐ | Cable/Sat Hookup |
| ☒ | Tot Lot/Picnic Area |
| ☒ | Pool |
| ☒ | Community Space |

### Owner Expense

Cold Water

### Tenant Expense

Gas
Heat
Electricity
Hot Water

### OCCUPANCY

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2015 | 38% | 39% | | | | | | | | | | |
| 2014 | 79% | 77% | 79% | 79% | 79% | 74% | 72% | 68% | 67% | 48% | 39% | 39% |

### ESTIMATED ANNUAL RENTAL INCOME and EXPENSE:

| # of Units | Type (# of Bdrs) | Approx Square Feet | Current Gross Rent (Contract Rent plus UA) | Estimated Utility Allowance (UA) | After Sale Contract Rent (excluding UA) | Total After Sale Contract Rent (excluding UA) |
|---|---|---|---|---|---|---|
| 52 | 1 Bdr | 657 | 604 | 125 | 479 | 24,908 |
| 31 | 1 Bdr | 725 | 604 | 125 | 479 | 14,849 |
| 10 | 1 Bdr | 725 | 604 | 125 | 479 | 4,790 |
| 68 | 2 Bdr | 985 | 686 | 120 | 566 | 38,488 |
| 8 | 2 Bdr | 985 | 686 | 120 | 566 | 4,852 |
| 24 | 2 Bdr | 910 | 686 | 120 | 566 | 13,584 |
| 12 | 3 Bdr | 1185 | 905 | 169 | 736 | 8,832 |
| | | | | | | |
| | | | | | | |
| | | | | | Estimated/Possible Monthly Total | $109,979 |

| Total Estimated/Possible Annual Income | |
|---|---|
| Rent | $1,319,748 |
| Commercial | |
| Parking | |
| TOTAL | $1,319,748 |
| **Estimated Annual Expenses** | |
| Administrative | $171,277 |
| Utilities | 170,877 |
| Operating | 92,435 |
| Taxes/Insurance | 251,478 |
| Reserve/Replace | 61,500 |
| O&M Maintenance | 2,500 |
| Total | $750,067 |

### COMMENTS CONCERNING PROJECT INFORMATION:

**A Housing Payment Contract (HAP) for 205 units will be provided to the High Bidder prior to Closing. Project-based assistance is predicated on the availability of funds.**

*Gas heating is being phased out/conversion to electric heating.

Any questions related to the after-sale, HUD required repairs are to be directed to: Terry Barnes, Construction Analyst at (817) 978-5805 or via email at terry.a.barnes@hud.gov.

**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 Project 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 rental housing.**

***PROJECT BASED SECTION 8***

**A Housing Payment Contract (HAP) will be provided to the Purchaser prior to Closing. Predicated on the availability of funds, assistance will be available for eligible residents in 205 units at the Project. Bidders are cautioned that payments under the HAP Contract may not start for qualifying units immediately after Closing. However, HAP units must meet HUD's Physical Condition Standards within 180 calendar days of Closing. HUD will inspect these units to ensure compliance. Bidders are urged to review the Project Based Section 8 Assistance Rider, the HAP Contract and Use Agreement and Riders to obtain a complete understanding of the requirements and conditions of the Foreclosure Sale. 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 HUD required 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

- 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 evidence of bidding eligibility, 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 statutes, 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.**
- Repairs estimated at $2,540,820, must be completed to HUD's satisfaction within 24 months of Closing. Refer to the Use Agreement, Riders "Required Rehabilitation", "Project-Based Section 8 Assistance", "Environmental Hazards" and the Attachment E for more information.
- Closing is to be held thirty (30) calendar 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 calendar day for each thirty (30) calendar day period.
- The Use Agreement will include the following Riders: Required Rehabilitation, Affordability of Units, Nondiscrimination Against Section 8 Certificate Holders and Voucher Holders, Relocation, Project-Based Section 8 Assistance, Reserve Fund for Replacement Account, Enforcement and Environmental Hazards.

**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 the Property Disposition web site.
You may also sign up for our electronic mailing list. 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 Terrace Apartments**:
MUST BE PRESENTED ON: Wednesday, May 13, 20115
At: 9:00 a.m. (local time)
Location of Foreclosure Sale:
Oklahoma County Courthouse
320 Robert S. Kerr
Outside Room 103
Oklahoma City, Oklahoma

**HUD Office and Contact Information for submission of documents:**
Fort Worth HUD Office
Property Disposition Division, 6AHMLAT
801 Cherry Street, Unit #45, Ste. 2500
Fort Worth, TX 76102

**Realty Specialist**: Wil'Lwin Wallace
Phone: (817) 978-6023
Fax: (817) 978-6019
Email: wil'lwin.wallace@hud.gov

## INSPECTION OF PROJECT

OPEN HOUSE: Thursday, April 23, 2015 from 1:00 p.m. to 4:00 p.m. local time.

**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 Terrace Apartments (the "Project"), the legal description of which is included as Exhibit A, to be paid as follows:

1. EARNEST MONEY: $ 100,000 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, and/or Letters of Credit as described in Riders incorporated herein, the Invitation, the Use Agreement and the HAP.

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. Five (5) 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.
      iii. Written Statement of Experience: The High Bidder must submit a written Statement of Experience demonstrating approximately five (5) years of experience in successfully owning and managing properties similar to the Project. The written Statement of Experience shall provide the following

information for all properties similar to the Project being sold, not to exceed three (3) specific examples. The written Statement of Experience 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 type of management.
- 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 Project being sold, describe how you will:

- Satisfy conditions of the sale, i.e., repair program, income and rent limitations, etc.
- Implement a sound financial and physical management program for the Project.
- Respond to the needs of the tenants and work cooperatively with resident organizations.
- Provide adequate organizational staff and financial resources to the Project.
- Provide services, maintenance and utilities to the Project.
- In addition, disclose whether other government assistance will be utilized in conjunction with the Section 8 assistance if HUD is providing project-based Section 8 assistance.

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 High Bidder has the requisite experience, qualifications and financial capacity to purchase the Project. This determination is a matter within HUD's sole and absolute discretion. If HUD determines that the High Bidder does not have the experience, qualifications and/or financial capacity to purchase the Project, HUD will reject the bid and proceed to the next highest bidder pursuant to the terms of the Invitation to Bid.

b. Within Ten (10) Days of Foreclosure Sale: The High Bidder must, if checked below, submit the additional post-bid documents:

☒ Affirmative Fair Housing Marketing Plan (Form HUD-935.2A)
☒ Form HUD-2530 for Purchaser, if different from High Bidder (See paragraph 3 above)
☒ Form HUD-2530 for the Management Agent, if applicable (See paragraph 3 above)
☒ Personal Financial and Credit Statement (Form HUD-92417), for each proposed principal/general partner
☒ Management Entity Profile (Form HUD-9832)
☒ Project Owner's Certification for Owner-Managed Multifamily Housing Projects (Form HUD-9839A)
**OR**
☒ Project Owner's/Management Agent's Certification for Multifamily Housing Projects for Identity-of-Interest or Independent Management Agents (Form HUD-9839B)
**(Only one of the forms 9839 A or B will be required for management certification)**
☒ Direct Deposit Signup – Standard form 1199A
☒ Applicant/Recipient Disclosure/Update Report (Form HUD-2880).

c. Within Fifteen (15) 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 Acknowledgement 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) calendar days of such notification**, unless extended pursuant to paragraph 10 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. PROJECT-BASED SECTION 8 ASSISTANCE AND OTHER GOVERNMENT ASSISTANCE:
   a. HAP Contract:
      i. HUD and the Purchaser shall execute a HAP Contract which shall be effective upon the date of Closing and cover the number of units specified by HUD. Execution of the HAP contract by HUD is subject to the availability of funds and no Closing will occur if these funds are not available. In which case, HUD may rescind this sale and return the Earnest Money Deposit paid under Part I, paragraph 1, and any Extension Fees paid under Part II, paragraph 10. Sending the notice of rescission and returning any fees to the Purchaser, or the tender thereof, shall release HUD from any and all obligations and liabilities to the Purchaser.
      ii. Payments will be made in accordance with the provisions of the HAP Contract and the Project-Based Section 8 Assistance Rider.
      iii. Purchaser must obtain a DUNS number and have an active, valid registration in CCR and must submit certification (Attachment J) to the local HUD office prior to the implementation of vouchering for HAP payments. For more information on the registration requirements see Notice H 2011-01.
      iv. Tenant certification/recertification and verification of income must be reviewed by Purchaser within 30 calendar days of Closing. The Purchaser will be required to submit a tenant report within 30 calendar days of Closing (see Project Based Section 8 Assistance Rider for report requirements.) Tenant certification/recertification is subject to the 24 C.F.R. Parts 5 and 908 and requires owners and agents to access the Enterprise Income Verification (EIV) system via HUD's internet site. Information concerning the system and instructions for access application is provided at: http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/eivhome.cfm.
   b. Adjustment in Section 8 Assistance pursuant to other Government assistance:
      i. High Bidder must disclose within ten (10) calendar days of Foreclosure Sale by submitting the Applicant/Recipient Disclosure/Update Report (Form HUD-2880) :
         (a) Federal, state or local governmental assistance, other than the Section 8 assistance provided by the Secretary, that it will receive or reasonably expects to receive prior to, or during the term of the HAP Contract; **and**
         (b) In cases where the High Bidder will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available to the Project. Such other assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or other form of direct or indirect governmental assistance.
      ii. Within thirty (30) calendar days of any changes in circumstances occurring at any time before or during the term of the Section 8 HAP Contract that affects the accuracy of such disclosure, the Purchaser shall submit to HUD a revised Applicant/Recipient Disclosure/Update Report (Form HUD-2880). HUD shall reduce the amount of Section 8 assistance provided for the Project to compensate in whole or in part, as HUD deems appropriate, for any increases in other assistance.

6. 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.

7. 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**

8. REPAIR ESCROW: At Closing the Purchaser shall submit to HUD a minimum of two (2), and a maximum of four (4) unconditional, irrevocable and non-documentary Letters of Credit (LOCs):
   a. which total $635,000, and
   b. which shall remain in effect and may be drawn on by HUD for at least thirty (30) months, **and**
   c. LOCs may be returned or amended as the Grantee completes Repairs and HUD has inspected and accepted the Repairs.

9. 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 10, HUD reserves the right to retain the Earnest Money Deposit.

10. 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 ten (10) 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:

    Property Disposition Division
    Attn: Scott R. Bearden, Director
    801 Cherry Street, Unit #45, Ste. 2500
    Fort Worth, TX 76102

    b. Extensions shall be for thirty (30) calendar days.
    c. For each thirty (30) calendar day period requested by Purchaser and approved by HUD, Extension Fees shall be equal to;
        i $ 40.80, per unit, per calendar day, which is $ 8,404.80 daily, a cost of $ **252,144**, which covers the 30-calendar 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**

11. 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 10 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.
12. 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.

13. 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, Attachment E, 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.

14. SECURITY DEPOSITS: Any security deposits collected from tenants and paid to HUD prior to the Closing shall be assigned to Purchaser within fifteen (15) days of the Closing, with the exception of security deposits forfeited by the tenant in accordance with the terms of the tenant's lease. Notwithstanding state and local law, no other security deposits collected from tenants will be transferred by HUD to Purchaser. HUD has no other liability under state and local law with respect to security deposits. Purchaser agrees to assume all responsibility and liability under state and local law with respect to the collection, application and return of security deposits.

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

16. 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 a. above; **and**

(b) As 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 which case the High Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.

    **HUD reserves the right to review, approve or reject the proposed 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 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 prior to Closing. HUD must approve form and type of management prior to Closing and throughout the term of the Use Agreement. If the 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, 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. ASSIGNMENT: The High Bidder may not assign its rights and responsibilities under this Acknowledgment without the prior written approval of HUD.

20. 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.

21. 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:
    - Required Rehabilitation
    - Affordability of Units
    - Nondiscrimination Against Section 8 Certificate Holders and Voucher Holders
    - Relocation
    - Project-Based Section 8 Assistance
    - Reserve Fund For Replacement Account
    - Environmental Hazards
    - Enforcement

22. 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:_____

Typed Name:_____

By:_____

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 Terrace Apartments, HUD Project No. 117-35213, (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 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:** During the term of this Agreement, any Conveyance of the Project must have the prior written approval of HUD, or such Conveyance will be deemed to be null and void, and a default will exist under this Agreement. Conveyance is defined as any sale, assignment, transfer, creation of a leasehold estate in excess of one (1) year, or any other legal or equitable conveyance or transfer of the Project or an interest therein, or any legal or equitable transfer of an interest in the Grantee or any entities that may comprise the Grantee. Without limiting the foregoing and not intending to be all inclusive, a merger, conversion, share exchange, or exchange of corporate or partnership interests is deemed to be a Conveyance, which requires the prior written approval from HUD.

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

   Any request for HUD's approval of Conveyance must include the entity and all principals obtaining Previous Participation Certification approval (clearance), submission of a signed Certification of Substantial Compliance, and a signed Agreement to Abide by Deed Restrictions. HUD's approval of a Conveyance will be based on information provided in written statements of how the Grantee, or any subsequent Grantee, in consideration of any and all existing use restrictions, will:
   a. Implement and/or continue to comply with all existing use restrictions;
   b. implement sound financial and physical management program;
   c. respond to the needs of the residents and work cooperatively with resident organizations;
   d. provide adequate organizational staff and resources to manage the Project; and
   e. provide evidence of a minimum of five (5) years' substantive experience owning and managing subsidized multifamily properties with project-based Section 8 assistance.

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

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

4. **RENTAL RATES:** A Housing Assistance Payment (HAP) Contract was executed on the date of this Agreement for 205 units (HAP units).

   The HAP Contract shall govern the rent schedule, the amount of the Section 8 to be paid, 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 or default with the terms of the HAP Contract by the Owner.

5. **PROJECT MANAGEMENT:** HUD reserves the right to approve management for the Project during the term of this Agreement. Any proposed property manager must demonstrate a minimum of five (5) years substantive experience managing multifamily properties of similar size and complexity. If the Project has project- based Section 8 assistance, any proposed property manager must demonstrate a minimum of five (5) years' experience managing multifamily properties with project-based Section 8 assistance.

   Any change in management of the Project must have HUD's prior written approval. Any request for HUD's approval of the proposed Grantee'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),

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

6. **SUBJECT TO EXAMINATION:** The Project shall at all times,
   a. Be maintained in decent, safe and sanitary condition and in good repair to the greatest extent possible,
   b. Maintain full occupancy to the greatest extent possible,
   c. Be maintained as rental housing for the term of this Agreement,
   d. Be subjected to periodic HUD inspections or inspections under REAC protocol (24 C.F.R. parts 5 and 200).

   The Owner will be obligated to provide audited annual financial statements to HUD (24 C.F.R. parts 5 and 200.)

   At the request of the Secretary, Grantee must supply evidence by means of occupancy reports, physical condition reports, reports on operations, or any evidence as requested to ensure that the above requirements are being met.

7. **UNIT NUMBER OR USE CHANGE:** Changes to the use, number, size, or configuration of residential units in the Project; e.g., apartment units, beds in a care facility, from the use as of the date of this Agreement, must receive the written prior approval of HUD.

8. **NON-DISCRIMINATION REQUIREMENTS:** The Grantee will comply with the provisions of all federal, state, or local laws prohibiting discrimination in housing.

9. **HAZARD INSURANCE:** Hazard insurance shall be maintained in an amount to ensure that the Grantee is able to restore the Project so that it meets the rental housing requirements described in this Agreement after restoration.

10. **DESTRUCTION OF PROJECT:** In the event that any, or all, of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Project shall be applied to rebuild or replace the Project destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.

11. **DEMOLITION OF PROJECT:** The Grantee will not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs), without the prior written approval of HUD.

12. **REMEDIES FOR NONCOMPLIANCE:** Upon any violation of any provision of this Agreement by the Grantee, HUD may give written notice thereof to the Grantee by registered or certified mail, to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary may be designated by the Grantee as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) calendar days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain. The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy available under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not be construed as a waiver of the right to exercise that or any other right or remedy at any time.

13. **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.

14. **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.

15. **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.

16. **SEPARABILITY:** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.

17. **AMENDMENT:** This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.

18. **RIDERS TO THE USE AGREEMENT:** The Riders checked below 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.
    - Required Rehabilitation
    - Affordability of Units
    - Nondiscrimination Against Section 8 Certificate Holders and Voucher Holders
    - Relocation
    - Project-Based Section 8 Assistance
    - Reserve Fund For Replacement Account
    - Environmental Hazards
    - Enforcement

19. **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

TERRACE APARTMENTS, OKLAHOMA CITY, OKLAHOMA COUNTY, OKLAHOMA

PARCEL A:

A part of the Northwest Quarter (NW/4) of Section 33. Township 12 North. Range 4 West of the Indian Meridian. Oklahoma County. Oklahoma, more particularly described as follows:

BEGINNING at a point 50 feet South of the Northeast Corner of said Northwest Quarter of Section 33: Thence West and along the Southerly right-of-way line of N.W. 10e, Street a distance of 233.45 feet; Thence South a distance of 50 feet; Thence Southwesterly on a curve to the right having a radius of 225.54 feet a distance of 110.22 feat, said curve having a chord whose length is 109.12 feet and bearing is South /4°00'00" West; Thence South 28°0000" West a distance of 100 feet; Thence Southwesterly on a curve to the left having a radius of 175.54 feet a distance of 85.78 feet, said curve having a chord whose length is 84.93 feet and bearing is South 14°0000" West: Thence South a distance of 100 feet; Thence Southeasterly on a curve to the left having a radius of 191.57 feet a distance of 86.93 feet, said curve having a chord whose length is 86.19 feet and bearing is South 13°00'00" East; Thence South 26°00'00" East, a distance of 181.17 feet: Thence North 64°00'00" East a distance of 99.22 feet; Thence East a distance of 145 feet; Thence North 0°31'15" West a distance of 630 feet to the point or place of beginning.

AND

PARCEL B:
All of Block One (1) in MEN1FEES SECOND ADDITION to Oklahoma City, Oklahoma County, Oklahoma, as shown by the recorded plat thereof.

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

**REQUIRED REHABILITATION**

The Use Agreement shall contain the following provision:

1. REPAIRS: All property and property improvements must meet or surpass, at a minimum, all state and local codes and ordinances, Physical Condition Standards (pursuant to 24CFR Part 5), the General Repair and Property Standards (listed below), the Post Closing Repair Requirements (Attachment E), and Rider 8, Environmental Hazards (collectively the " Repairs").
   a. General Repair and Property Standards
      i. Exterior:
         - Any trip hazards (deviations of ½ in or greater) on all surfaces of the property must be mitigated.
         - Repair and/or replace any loose, damaged or deteriorated facade, trim, posts, and cornice.
         - All exterior paint must be fully intact, mold and rust free.
         - All drainage, water diversion, roofing, and water proofing systems must be performing as originally intended to ensure positive drainage and minimize pooling.
         - All windows and exterior doors must be operable, lockable, draft free and water tight.
      ii. Interior/MEPs:
         - All mechanical, plumbing, plumbing fixtures, electrical fixtures, electrical devices, appliances and HVAC must be in "Good" operating condition and hazard free.
         - All fire protection devices and systems must be working as originally intended.
         - All ventilation systems must be working as originally intended.
         - All interior painted surfaces and millwork must be fully intact, free of excessive grease and dirt.
         - All floor coverings must be fully attached, free of holes, chips, frays and excessive dirt.
         - All interior doors, locks, closures and stops must be operating as originally intended.
      iii. Workmanship and Materials:
         - All work shall be performed in a workmanlike manner and in accordance with generally accepted practices and procedures.
         - Materials installed shall be of such kind and quality to ensure that the dwelling will provide acceptable durability for the duration of the Restricted Period.
         - All repair/rehabilitation work must be performed in a manner compliant with the essential and material requirements of all state codes, local codes, laws, ordinances, regulations, Physical Conditions Standards pursuant to 24 CFR Part 5.
         - All long and short lived building components must be performing as originally designed or intended.

2. REPAIR PERIOD: The Repair Period begins at closing and expires **twenty-four (24) months** from the date of the Use Agreement. The Grantee covenants that the Repairs will be completed within the Repair Period.

3. EXTENSION OF THE REPAIR PERIOD: If the Grantee cannot complete the Repairs within the Repair Period, Grantee shall submit a written request for an extension to HUD stating the reason(s) for Grantee's inability to complete the Repairs. Grantee's request must be received not less than thirty (30) calendar days prior to the expiration of the Repair Period.
   a. In the event an extension for completion of Repairs is granted, the Grantee shall extend the expiration of the LOCs, or Payment and Performance Bond(s) accordingly;
   b. Extensions of time to complete Repairs are within HUD's sole and absolute discretion; and
   c. The granting of one or more extensions shall not obligate HUD to grant additional extensions.

4. REPAIR ESCROW: To ensure completion of the Repairs by the Grantee, at Closing the Grantee shall deliver to HUD:
   a. Letter of Credit (LOC): A minimum of two (2), and a maximum of four (4) unconditional, irrevocable and non-documentary Letter of Credit (LOC):
      i. which total $635,000 and
      ii. which shall remain in effect and may be drawn by HUD for at least six (6) months beyond the repair period as stated above, **and**
      iii. LOCs may be returned or amended as the Grantee completes Repairs and HUD has inspected and accepted the Repairs.
   b. Payment and Performance Bond: **After Closing, and with prior approval by HUD,** the LOC may be replaced with a 100% Payment and Performance Bond:
      i. Grantee must use HUD Form-92452 for the payment bond and a form for the performance bond that is acceptable to HUD. Evidence of the existence of payment and performance bonds each in the amount of $2,540,820 (the total cost of Repairs) must be provided to HUD.

ii. Provide HUD with a fully executed copy of the approved Plans and Specifications, Construction Contract which specifically address items, quantities and timelines specified in paragraphs 1 and 2 of this provision, and the Use Agreement or Deed, as applicable to the sale of the Project prior to the release of the LOC.

iii. Grantee must ensure the bonds comply with the following requirements:

(a) The surety entity issuing the bonds must be included on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1 of each year;

(b) The payment and performance bonds must not exceed limits listed in the Circular;

(c) The payment and performance bonds must show HUD as an Obligee;

iv. This "Required Rehabilitation Rider" and Attachment E must be attached to and referenced in article 9.1.7 of the construction contract (AIA A101).

5. REPORTING: HUD will monitor the progress of the Repairs using reports from the Grantee and inspections performed by HUD or a designee.

a. Quarterly Reports: Grantee must submit quarterly reports (Post-Closing Repair Report, Attachment L) to HUD on the status of Repairs. The first report is due 90 days after closing and must include:

i. the number and type of units completed,

ii. a list of major Repairs and percentage completed,

iii. a narrative describing:

(a) the status of the planned rehabilitation, i.e. are Repairs ahead of, on schedule, or behind on the original rehabilitation schedule.

(b) any special circumstances which may or have delayed the Repairs.

b. Additional Reports: Upon request, Grantee must submit reports, in addition to the Quarterly Reports, to HUD. The frequency and content of these reports will be provided to the Grantee by HUD.

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

6. RENTS: The Grantee covenants not to increase the rent for any unit, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the requirements set forth in paragraph 1, above. Rents for units to be covered by a Housing Assistance Payment Contract may be increased only pursuant to and following execution of such Contract.

7. RELOCATION: If temporary or permanent relocation is necessary because of Repairs required under this provision, Grantee covenants to comply with the Relocation provision of this Use Agreement.

8. NONCOMPLIANCE: If Grantee fails to complete the required Repairs within the Repair Period and no extension by written agreement has been granted by HUD, HUD and any/all successors in office, in its sole discretion, shall be entitled to:

a. Enter and terminate the estate hereby conveyed, or

b. Cash any LOC or request performance under any payment and/or performance bond, and seek remedies provided in the Enforcement provision of this Use Agreement, as HUD deems appropriate.

If HUD cashes the Grantee's LOC(s), HUD will NOT apply the funds to complete the Repairs. HUD will retain the funds as liquidated damages or for any other purposes as HUD deems appropriate. In the event that HUD cashes the Grantee's LOC(s) for failure to successfully complete the Repairs, the Grantee is still responsible for completion of the Repairs in order to prevent HUD from initiating further sanctions. These rights and remedies may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Use Agreement.

9. LENDER OR SECURITY INTEREST: If the Grantee fails to repair the Property in accordance with this Use Agreement, HUD will not exercise the remedies as described in paragraph 8 above, if any lender holding a lien or security interest on the Property:

a. Gives written notice to HUD within the period provided for Repairs, that it intends to complete the Repairs, and

b. Completes such Repairs within thirty (30) calendar days of the notice or within such longer periods as HUD may approve in writing.

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

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

HUD_____

**AFFORDABILITY OF UNITS**

The Use Agreement includes the following provisions:

**Project-Based Section 8 Housing Assistance Payments Contract (HAP Contract)**

At closing, Grantee and HUD will execute a HAP contract for 205 units. As long as the HAP contract is in effect, the HAP Contract will designate HAP units, control the operation, occupancy, rent and income limits for the Property. The Owner will affirmatively market these units within the HAP requirements.

**Use Agreement for Multifamily Projects Participating in the Mark to Market Program Under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (M2M Use Agreement).**

During the Restricted Period, Grantee shall comply with the Use Agreement for Multifamily Projects Participating in the Mark to Market Program (Under the Multifamily Assisted Housing Reform and Affordability Act of 1997.)

**Annual Certification**

The Grantee shall certify to HUD annually that the requirements in the above paragraphs have been fulfilled. The Grantee shall provide upon request by the HUD, copies of all tenant certifications of income, recertifications, calculations of permitted income ranges regarding the Property, and such other documentation as may reasonably be required to evaluate the Owner's compliance with the terms of the M2M Use Agreement.

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

Grantee_____

HUD_____

**NONDISCRIMINATION AGAINST SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS**

The Use Agreement shall contain the following provision:

1. In order to comply with Section 204 of the Housing and Community Development Amendments of 1978, 12 USC §1701z-12, as amended, the Grantee, for self, successors and assigns, shall not unreasonably refuse to lease a dwelling unit offered for rent, refuse to offer or sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC §1437f), or any successor legislation hereinafter referred to as "Section 8". This provision is limited in application, for tenants or applicants with Section 8 Certificates or Vouchers, to those units, which rent for an amount not greater than one-hundred and twenty percent (120%) of the Section 8 fair market rent for a comparable unit in the area as determined by HUD.

2. This restriction shall bind the Grantee, any/all successors, assigns and Grantees for value, for a period equal to the Restricted Period, which is twenty (20) years from the date of this Use Agreement. In the event of a breach or a threatened breach of this covenant, HUD, any/all successors in office and/or one or more third-party beneficiaries, shall be entitled to institute legal action to enforce performance and observance of such covenant and to enjoin any acts which are in violation of such covenant. For the purposes of this restriction, a third-party beneficiary shall be any person who holds a Certificate of Family Participation or a Voucher under Section 8 or any equivalent document under successor legislation.

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

Grantee_____

HUD_____

RIDER 4 OF 8

**RELOCATION**

The Use Agreement shall contain the following provision:

1. Grantee covenants that it shall comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), and any subsequent legislation affecting relocation of tenants. Additionally, Grantee 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 C.F.R. Part 24, when Project-based Section 8 assistance is provided by HUD (collectively the "Act and Regulations"). Grantee shall comply with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Grantee shall provide a report on a quarterly basis to HUD which demonstrates compliance with the Acts and Regulations throughout the Repair or Redevelopment Period.
2. Grantee covenants that if the Use Agreement requires rehabilitation or hazard remediation such work shall be performed in accordance with all applicable federal, state and local laws, codes, ordinances and regulations, and HUD's Physical Condition Standards ("PCS").
3. If temporary or permanent relocation is necessary because of such rehabilitation and/or hazard remediation, if required, Grantee covenants that it will provide advance written notice of the expected displacement to the tenants. 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.
4. If temporary or permanent relocation is necessary because of such rehabilitation and/or hazard remediation, if required, Grantee covenants that it will assist 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 Property, 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 Property.

   HUD will not provide Grantee with any funds or subsidy with which to make the payments required by this paragraph.
5. If temporary or permanent relocation is necessary because of such rehabilitation and/or hazard remediation, if required, Grantee 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 Property; 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 Grantee with any funds or subsidy with which to make the payments required by this paragraph.
6. Grantee covenants not to increase the rent for any unit, from the rent the tenant pays on the Closing date, until such unit meets all the rehabilitation and/or hazard remediation requirements of this Use Agreement are completed by Grantee, and inspected and accepted by HUD. In addition, rents for units to be covered by a Housing Assistance Payment (HAP) Contract may be increased only pursuant to and following execution of such HAP Contract.

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

Grantee_____

HUD_____

**PROJECT-BASED SECTION 8 ASSISTANCE**

The Use Agreement includes the following provisions:

The Grantee, successor and assigns ("Grantee" or "Owner") agree(s) to rehabilitate/repair the property to make the project units decent, safe and sanitary as defined by HUD and to complete the work in accordance with HUD's required repairs and Physical Condition Standards. Upon the acceptable completion of the project, the Owner may bill the Department for housing assistance payments for units as prescribed under the Housing Assistance Payments (HAP) Contract.

## SECTION ONE

1. Significant Dates, Contents, and Scope of the HAP Contract.
   a. Effective Date of the HAP: Upon Closing
   b. Date for Commencement of Work: – Not later than 30 calendar days after the effective date of this Rider.
   c. Time for Completion of Project: - Not later than 180 calendar days (not to exceed 6 months unless previously approved) after the effective date of this Rider.
   d. Final Inspection. HUD (or its designee) shall perform the final inspection of the completed units upon receipt of evidence of completion (Owners Physical Condition Standards Inspection and Certification; see Section Two, paragraph 4) submitted by the owner.

2. HUD Assurance. The acceptance of this Rider by HUD is an assurance by HUD to the Owner that:
   a. The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract, and
   b. HUD has obligated funds for these payments.

3. Owner's Failure to Comply with Rider. In addition to other remedies available to HUD for a default by the owner, the Owner and HUD agree that if the Owner fails to comply with the requirements of this Rider;
   a. HUD may rescind the sale of the project,
   b. abate the HAP contract and relocate the tenants, and/or
   c. take other appropriate remedial action in accordance with its authority.

4. Definitions:

| | | | |
|---|---|---|---|
| ☒ | Family and Elderly Family | ☐ | Person With Disabilities |
| ☐ | Elderly Family | ☐ | Disabled Household |
| ☐ | Disabled Family | ☐ | Disabled (Handicapped) Family |
| ☐ | | ☐ | |

## SECTION TWO

1. Schedule of Completion.
   a. Timely Performance of Work. The Owner agrees to begin work within the time indicated in Section 1 of this Rider. The Grantee/Owner shall report, within three business days, to the Property Disposition Division (PD) the date work has commenced and shall thereafter furnish PD with periodic progress reports (monthly unless more frequent reporting is required by PD). In the event the work is not commenced, diligently continued, or completed as required under this Rider, the CA, HUD AND/OR PBCA at the direction of PD where the CA AND/OR PBCA is the Public Housing Agency, reserves the right to take such action as it determines appropriate and within its authority.
   b. If completion is in multiple releases, a minimum of ten (10)% of the units not approved at time of contract execution must be included in each partial release except for the final release. If units are determined acceptable but the number is insufficient to meet the 10% requirement, the Grantee/Owner may not bill for the units until they have been approved on a partial release. The effective date for the units will be the date of the last inspection of the units added to the partial release.
   c. The work is defined as "the repair and/or replacements necessary to bring the property into compliance with 24 CFR Part 5 Physical Condition Standards." The work may not be inclusive of the total HUD repair requirement for the project (additional repairs may be required under the Post closing Repair Requirements) and may not result in the release of any or all of the repair escrow as required under the "Required Rehabilitation" Rider.

2. Construction or Rehabilitation Period.
   a. Inspections. Inspections will be limited to no more than 1 per month. Upon written notification from the Grantee/Owner that the property or individual units are in compliance with Physical Condition Standards, HUD will order an inspection of the units.
   If partial releases have been approved, the signature block for the first partial release shall be executed in accordance with 1b above. (The first integral release will be provided to the Grantee at closing, if any units are determined to meet HUD standards at the time of sale.) The form will reflect the unit numbers and unit types.

The chargeable rents will be the rents reflected in an Exhibit to the Housing Assistance Payments (HAP) Contract signed at closing.
The Owner may begin billing for HAP payments upon receipt of the partial release from HUD for occupied units. Payments may be retroactive to the effective date on the release for occupied units. The effective date for each release will be the inspection date for the last unit added to the partial release. No retroactive payments will be made on vacant units. The Owner will be able to bill on a vacant unit after it has been added to an integral release and becomes occupied. The Owner may not bill for units that have not been inspected by HUD and approved for billing under the HAP. At no time may payments be made for units that do not meet HUD's Physical Condition Standard.

b. Increases in Contract Rents or Utility Allowance. Increases in contract rents or utility allowances 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 Physical Condition Standards 24 CFR Part 5. The owner 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 "Owners Physical Condition Standards Inspection and Certification" (Attachment M) from the Owner, HUD shall order an inspection or notify the Owner if additional evidence of completion is required.
   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 or portion thereof been has completed in accordance with this Rider, and that
      ii. There are no observable conditions inconsistent with the certification of the Owner. If the inspection disclosed defects or deficiencies, the inspector shall report these in detail and HUD will notify the Owner of the items that must be corrected.
   c. Unconditional Acceptance. If HUD determines from the review and inspection that the project (or on those units if partial releases are previously approved) has been completed in accordance with this Rider, the Owner and the HUD Field Office (having jurisdiction over the property) shall be promptly notified of the units deemed acceptable and the effective date of the integral release.
   d. Notification of Non-acceptance. If HUD determines that, based on the review of the Owner's certification of completion and/or HUD's inspection report, the project or portion thereof cannot be accepted, the Owner 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 are specified in the Housing Assistance Payments Contract. The initial Contract Rents shall be the amounts established by HUD and published for the sale.

5. Defaults. 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 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 Owner agrees that the ownership entity has not made and shall not make any sale, assignment, conveyance or transfer, of the HAP Contract or the subject property 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 Owner agrees to notify HUD (and the PHA where it is the CA and/or PBCA) promptly of any proposed action covered by 6(a) above. The Owner further agrees to request the prior written consent of HUD (and the PHA where it is the CA and/or PBCA).
   c. Definitions:
      i. For the purposes of this part, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
         (a) Transfer by the owner, in whole or in part.
         (b) A transfer by a party having a substantial interest in the Ownership.
         (c) Transfers by more than one party of interest aggregating a substantial interest in the Ownership,
         (d) Any significant change in the ownership of interest or in the relative distribution of interest by any other method or means, and

(e) Any refinancing of the project.

ii. An assignment by the Owner to a limited partnership, in which no limited partner has twenty-five percent (25%) or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer that affects the HAP.
An 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 twenty-five percent (25%) interest, shall not be considered an assignment, conveyance, or transfer that affects the HAP.

iii. The term "substantial interest" means any interest of a general partner, corporate officer or Director, any limited partner having a twenty-five percent (25%) or more interest in the organization or any stockholder having a ten percent (10%) or more interest in the organization.

iv. Notwithstanding the foregoing, a merger, conversion, share exchange, extended lease interest, or interest exchange of corporate or partnership interest will be considered a transfer of the property and require the approval of HUD if property is sold with an Equity Participation Rider.

d. The Owner and the party executing this Rider on behalf of the Grantee/Owner certify that he/she has the requisite authority to bind the ownership and to execute this rider on behalf of the Purchasing Entity.

e. Except where otherwise approved by HUD, this Rider and the HAP Contract shall continue in effect in the event:

i. Of assignment, sale, or other disposition of the project, or this Rider or the HAP Contract,

ii. Of foreclosure of any mortgage note secured by the subject property,

iii. Assignment of the mortgage or Deed in lieu of foreclosure of the subject property, or

iv. The PHA or HUD takes over possession, operation or ownership of the subject property.

## SECTION THREE

1. Review of Tenant Income Verification/Certification. Promptly after Closing, Grantee shall review every Project leasing file and within thirty (30) days after Closing provide a report to the Multifamily Property Disposition Center, which contains the following information for each HAP Unit:
   1. Unit number,
   2. Unit type, i.e. 1 bedroom, 2 bedroom, etc...
   3. Name(s) of lease holders,
   4. Date of lease,
   5. HAP Contract rent amount,
   6. Date of income certification/verification
   7. Number of family members residing in unit.

   Every thirty (30) days thereafter, during the PCS Repair and Tenant Verification Period and without request, Grantee shall provide the Multifamily Property Disposition Center with a report that reflects all intervening (a) eligibility determinations made by Grantee with respect to new tenants, with supportive verification documents attached, (b) annual verifications and recertifications of family composition and income, including notices to tenant(s) in anticipation thereof, (b) interim recertifications, (c) unit transfers, and (d) gross rent changes, if any, in accordance with all statutory, regulatory, and administrative requirements, including, without limitation, Chapter 7 of the HUD Multifamily Occupancy Handbook, 4350.3 REV-1.

2. Project-based Section 8 Assistance.
   a. A Housing Assistance Payments (HAP) Contract will be executed at closing. The HAP Contract will cover 205 units in the Property, as specified by HUD. The HAP Contract will initially be funded for a minimum of one (1) month and a maximum of twelve (12) months prior to closing. **The Grantee/Owner agrees to accept the Project Based Section 8 Housing Assistance Payments Contract.**
   b. The HAP Contract shall provide that, when a vacancy occurs in any unit in the property requiring project-based Section 8 assistance, Owner shall rent the unit to a family that is eligible for said Section 8 assistance under the HAP Contract.
   c. The Owner 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 Owner agrees that at any time the HAP Contract expires, is terminated or not renewed, the Affordability of Units Rider will become applicable to the units previously covered under the HAP Contract. The Owner may reduce the term of the Affordability of Units Rider for such units by the collective term(s) of the HAP Contract and any subsequent renewals effective after this sale.

3. The Owner cannot voucher for Section 8 HAP payments until HUD has inspected the units and determined that they meet the Physical Condition Standards (PCS) of the HAP Contract. Section 8 assistance payments will not be made retroactive to the date of closing. Retroactive payments will not be made on vacant units. Assistance/subsidy will only be paid on occupied units from the effective date on the partial release (or final release if partial releases were not approved) reflecting that the unit(s) was determined to meet the Physical

Condition Standards (as per Section 2 Provisions 2 and 4).

4. Prior to receipt of subsidy payments, Owner shall not charge Section 8 eligible tenants more than the amount of the Total Tenant Payment (per the Form HUD-50059) the tenant would be required to pay under the Section 8 program.

5. 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(s) 4.9 and 4.11, Owner 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 Owner 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 Owner, within ten (10) Federal Government business days after receiving notice that he/she has been selected to purchase the Property, 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 Grantee/ Owner shall submit to HUD a revised Certification. HUD may reduce the amount of Section 8 assistance provided for the Property to compensate in whole or in part, as the Department deems appropriate, for any increases in other assistance.

6. Affordability and Availability of Project-based Section 8 Units. In order to assure compliance with 12 USC §1715z-11a(a), the Secretary of HUD, 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 Property predicated on the availability of funds. During the term of the HAP Contract, the Owner 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.
   The Owner 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 Owner shall rent the unit to an eligible low-income family, if the unit is assisted under the HAP Contract. This provision shall be enforceable by the HUD, Eligible Families or any other tenants on the Property.

7. The Owner agrees to request and accept project-based Section 8 assistance or any other subsequent rental assistance offered by HUD and shall execute a Housing Assistance Payments Contract at closing. Should HUD elect not to extend future Section 8 assistance or not renew the HAP Contract or any subsequent rental assistance offered by HUD, the Affordability of Units Rider would control rent and income eligibility.
   Should the Owner elect not to accept or renew the HAP contract, current or future residents who are or would be 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 requirement 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.

8. The following is a list of units that HUD will release for billing under the HAP contract after HUD has determined that the units have been rehabilitated to meet the Physical Condition Standards in 24 CFR Part 5:

| Unit Number | Type (Eff., 1, 2 Bdr) | | Unit Number | Type (Eff., 1, 2 Bdr) | | Unit Number | Type (Eff., 1, 2 Bdr) |
|---|---|---|---|---|---|---|---|
| 93 | 1 Bdr | | | | | | |
| 100 | 2 Bdr | | | | | | |
| 12 | 3 Bdr | | | | | | |

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

Grantee_____

HUD_____

**RESERVE FUND FOR REPLACEMENT ACCOUNT**

1. The Grantee shall deposit at Closing $ 0 into a Reserve Fund for Replacement account. After completion of all repairs, the Grantee shall deposit $ 61,500 annually into the Reserve Fund for Replacement account (reserve account), payable monthly in an amount of $ 5,125 per month, commencing the first day of the first month following completion of all repairs required by HUD on Form HUD-9552. If the terms of the sale do not require completion of specific repairs on Form HUD-9552, payments shall commence the second month the Grantee vouchers for Section 8 assistance.
2. The Grantee shall open an interest-bearing bank account insured by the Federal Deposit Insurance Corporation. 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.
3. The reserve account shall be subject to the control of HUD and disbursements from such funds may be made only with the written consent of HUD. Grantee may request the release of funds from the reserve account for reimbursement of major capital expenditures.
4. Within sixty (60) calendar days following the end of each fiscal year, Grantee shall submit to HUD a complete annual financial report including deposits and withdrawals from the reserve account based upon an examination of the books and records of the Grantee/Owner prepared in accordance with the requirements of HUD, prepared and certified to by a Certified Public Accountant.
5. The Grantee shall comply with HUD's rules and regulations concerning replacement reserves.
6. Upon renewal of the HAP Contract, the requirements of this Section will be governed by the HAP Contract and applicable HUD regulations regarding the Replacement Reserve account, and may be subject to increases consistent with increases in rent.
7. The fiscal year for audit purposes is: September 30.
8. The Grantee, any/all successors, assigns or Grantees for value shall comply with HUD's rules and regulations concerning residual receipts, replacement reserves, and surplus cash.

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

Grantee_____

HUD_____

## ENVIRONMENTAL HAZARDS

The Use Agreement shall contain the following provision:

**Grantee covenants to:**

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

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

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

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

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

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

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

**Remedies:**

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

**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
   c. 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 ninety (90) calendar days after the date of this Use Agreement.

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

HUD_____

RIDER 8 OF 8

**ENFORCEMENT**

The Use Agreement shall contain the following provision:

1. The restrictive covenants set forth in this Agreement shall run with the land hereby conveyed and, to the fullest extent permitted by law and equity, shall be binding for the benefit and in favor of and enforceable by the HUD and any/all successors in office.

2. Without limiting any other rights and remedies available to HUD, the HUD shall be entitled to:
   a. institute legal action to enforce performance and observance of these covenants,
   b. enjoin any acts which violate these covenants,
   c. exercise any other legal or equitable right or remedy with respect to these covenants.

3. In addition, the restrictive covenants, if any, set forth in this Use Agreement relating to Section 8 assistance shall be enforceable by any tenant or applicant eligible for assistance under the Section 8 program.

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
801 Cherry Street, Unit #45, Ste. 2500
Ft. Worth, TX 76102

Attention: Mr. Jack Stark
6AC – 28th Floor

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:_____

**Post Closing Repair Requirements**

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

| Project Name | Project Number | Location |
|---|---|---|
| Terrace Apartments | 117-35213 | Oklahoma City, OK |

The Grantee must repair the Project to meet the following requirements within the time frame noted in the Contract of Sale or Terms and Requirements of Foreclosure Sale – Acknowledgement by Bidder:

☒ Applicable state and local codes ☒ Physical Condition Standards (set forth in 24 CRF Part 5) ☒ Additional repairs required by HUD

HUD will monitor to ensure compliance. Repairs shall be considered complete only after: (1) Grantee provides written certification that repairs are completed: (2) Grantee requests final inspection by HUD, and (3) HUD verifies in writing completion and compliance with the requirements stated herein.

Trade Item Cost Breakdown: HUD's estimate of repairs is broken out by trade item. Detailed descriptions of repairs are stated in exhibits to this form. Unless checked as **Mandatory** on this form, repairs may begin upon conveyance. For repair items checked on this form as **Mandatory,** the Grantee, prior to beginning work, must submit specifications for approval to the HUD office with jurisdiction over this Project.

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

| Item | | Mandatory | Estimated Cost | Item | | Mandatory | Estimated Cost |
|---|---|---|---|---|---|---|---|
| **Repairs to Residential Structures** (including commercial areas) | | | | | | | |
| 1 | Concrete | ☐ | 41,600 | 17 | Wood Flooring | ☐ | |
| 2 | Masonry | ☐ | 8,048 | 18 | Resilient Flooring | ☐ | 48,779 |
| 3 | Metals | ☐ | 9,600 | 19 | Painting and Decorating | ☐ | 267,284 |
| 4 | Rough Carpentry | ☐ | 15,941 | 20 | Specialties | ☐ | 1,650 |
| 5 | Finish Carpentry | ☐ | | 21 | Special Equipment | ☐ | |
| 6 | Waterproofing | ☐ | | 22 | Cabinets | ☐ | 282,527 |
| 7 | Insulation | ☐ | 19,384 | 23 | Appliances | ☐ | 107,630 |
| 8 | Roofing | ☐ | | 24 | Blinds and Shades | ☐ | 41,210 |
| 9 | Sheet Metal | ☐ | 3,295 | 25 | Carpets | ☐ | 364,924 |
| 10 | Doors | ☐ | 58,405 | 26 | Special Construction | ☐ | |
| 11 | Windows | ☐ | 594 | 27 | Elevators | ☐ | |
| 12 | Glass | ☐ | | 28 | Plumbing and Hot Water | ☐ | 134,885 |
| 13 | Lath and Plaster | ☐ | | 29 | Heat and Ventilation | ☐ | |
| 14 | Drywall | ☐ | 127,932 | 30 | Air Conditioning | ☐ | 55,933 |
| 15 | Tile Work | ☐ | | 31 | Electrical | ☐ | 168,036 |
| 16 | Acoustical | ☐ | | **Residential Structures Subtotal** | | | $1,757,657 |
| **Repairs to Accessory Structures** (community, maintenance, mechanical, garages, carports, etc.) | | | | | | | |
| 32 | Accessory Structure | ☐ | | 34 | | ☐ | |
| 33 | | ☐ | | **Accessory Structures Subtotal** | | | |
| **Site Work** | | | | | | | |
| 35 | Earth Work | ☐ | | 39 | Lawns and Plantings | ☐ | 15,880 |
| 36 | Site Work | ☐ | | 40 | Unusual Site Conditions | ☐ | |
| 37 | Roads and Walks | ☐ | | 41 | San Sewer Testing/Repairs | ☐ | 123,675 |
| 38 | Site Improvements | ☐ | | **Site Work Subtotal** | | | $442,295 |
| **Environmental Mitigation** | | | | | | | |
| 42 | Lead Based Paint | ☐ | | 44 | | ☐ | |
| 43 | | ☐ | | **Environmental Mitigation Subtotal** | | | $20,075 |

| **Totals** | | |
|---|---|---|
| Estimated Hard Costs | | $2,220,027 |
| Overhead and General Requirements | 9% | $199,802 |
| **Subtotal** | | $2,419,829 |
| Profit | 5% | $120,991 |
| | **Estimated Total Repair Cost** | $2,540,820 |

# COMPREHENSIVE REPAIR SURVEY REPORT

| | |
|---|---|
| PROPERTY: | TERRACE APARTMENTS<br>6640 NW 10TH St.<br>Oklahoma City, OK 73127 |
| Project Number: | 117-35213, 117-35195V and 117-35195W |
| Year Built: | 1968 |
| Buildings: | 30 |
| Building Type: | (29) Two-Story Walkups and (1) Single Story Office |
| Use Type: | Residential Units |
| Total Number of Units: | 206 |
| HAP Units: | 206 |
| Units Inspected (CRS): | 32 |

## GENERAL PROPERTY DESCRITPION

The property was inspected on January 7th and 8th, 2014.

The property is comprised of twenty nine (29) 2-story walk-up residential buildings housing two Hundred and six (206) 1, 2 and 3 bedroom residential units and one (1)1-story office building. The buildings are individually numbered with the units identified by an alpha character. The units that were inspected for this survey were:

6600H, 6602A, 6602B, 6604B, 6606E, 6608F, 6610B, 6612C, 6614A, 6616D, 6618C, 6620A, 6622F, 6624G, 6626E, 6628B, 6630D, 6650A, 6650B, 6652C, 6654I, 6656I, 6658B, 6660A, 6662H, 6664A, 6666C, 6668E (Community Room), 6670A, 6670E, 6672A, and 6674D

There is a mail area located adjacent to the parking lot across from the office building and two (2) laundry rooms that are located in the bottom floor of two of the unit buildings. Building 6618 and 6666 are the laundry location buildings. Building 6618's entrance is below grade by several steps.

Currently, one of the ground level apartments in building 6668 unit E is being utilized as the Community Center for the complex.

Roofs are pitched with asphalt shingle as their covering. Ground level interior floors are concrete slab-on-grade construction, with the second floors being wood joist construction. The building exteriors are comprised of brick veneer over wood framing (ground floor) and vinyl siding over wood framing (2nd floor)

All the interior and exterior walls are 2x4 wood framing. Interior finishes are painted gypsum board for the walls and ceilings, carpet for the main living areas and bedrooms and VCT for the kitchen and bathrooms.

The site was initially supplied by electric power and natural gas for heating. The natural gas heating is being phased out for total electric heating and cooling. Electrical power is distributed to each unit from a separate meter. There are electrical meters for each unit from a main distribution section on the exterior of each building. Each unit has a local electrical breaker panel located in the bedroom closet. Water is distributed to the site from a single metering point for the property.

Hot water is supplied to the units individually by electric hot water heaters in each unit, or in some units by low boy 40 gallon water heaters mounted below the center stair landing in the common stair towers. This location is very difficult to service.

Heating and cooling is provided in each unit via an HVAC split-system unit for the converted total electric units and a gas heater air handler electric split system for the remaining unconverted units.

The kitchens have upper and lower cabinets along with plastic laminate counter tops and a kitchen double bowl stainless sink with disposal. Also included is a 4 –burner range / oven along with a refrigerator/freezer combination unit. Most all units have a dishwasher. Most of the appliances are in fair to good condition. The full bathroom has a toilet, fiberglass bathtub/shower combination, and a base cabinet with countertop and single sink. The half bathrooms in some units have a fiberglass shower unit in place of the tub / shower unit.

Individual units are supplied with battery operated smoke detectors. These units are not operational in most units. In addition hard wired units had been installed originally but they have been disconnected. Building entrance lighting is provided but in many cases the units are broken or missing. Exterior area security lighting for the common walk ways and parking are provided on the buildings with some pole lighting for the site.

The common areas on the interior of each building have a staircase to the 2nd floor with an intermediate landing. The intermediate landings in many of the buildings are not properly supported and structural repairs to firm up the flooring are required. This condition was discovered frequently enough that all intermediate landings should be evaluated and repaired as necessary. The hand railing and guard rail at the top of the second floor do not meet current code and need to be up dated along with the landing work.

Resident parking is accommodated by parking areas adjacent to each building grouping. The parking lots and driveways are asphalt and are in need of some minor repair, resurfacing and re-striping.

There are a total of four trash areas for the complex that are spread out in convenient locations.

There are no ADA compliant units. In addition there is no proper ADA parking provided at the complex.

This complex does not represent a historic facility and as such will not require historic preservation consideration while completing the repairs indicated herein.

## OBSERVATIONS FOR THE PROPERTY

The property is in basically good condition and has been maintained.

Walkways and sidewalks, etc. are in serviceable condition with some sidewalks and pathways requiring repair to remove trip hazards. There were no structural issues detected anywhere in the complex. One staircase to a 2nd story pair of units (Building 6618) has rusted through the steel structure and needs to be replaced.

The main entry and exit from the complex are controlled by privacy gates that are automatically controlled for the tenants. Guests have to be buzzed into the complex. There is an additional locked emergency access gate located on the East side of the property. The security fence and gates around the in-ground pool need to be replaced before next swimming season.

## OBSERVATIONS FOR INTERIORS

Several of the buildings have had water heater leaks in the past. Two of the buildings in particular (6602 and 6650) have had water heater leaks on the ground floor which have caused major damage to the walls and floors of the ground level units. There is considerable mold growth in the damaged areas. There has been an attempt to repair some of those units but the mold is being covered over and not abated prior to the repair efforts.

The ceilings have a popcorn texture that has been painted over many times. The patching of the ceilings has not been done correctly and the patches show. Many of the gypsum board walls have been patched in the past but the workingman ship has not been the best. Most of the patches are visible on the walls.

Some of the hollow core painted wood doors have had damaged patched in the past as well that do not show well. A majority of unit entry doors are damaged including the wood frames. The frames and the doors should be replaced to provide better unit security. The blinds in the units are generally damaged and all need to be replaced.

The thermal windows are in good condition with the occasional broken window but while we were there one of these units was repaired. Painting and flooring need to be refreshed in many of the units. Many of the kitchens need to be refreshed along with the bathrooms, walls floors and ceilings.

**PLUMBING/ELECTRICAL/HVAC**

PLUMBING: The sanitary sewer system is in extremely poor condition and needs to be completely renovated. The original clay sewer piping is collapsing causing back-ups in the units. Some repair has been attempted, but a comprehensive survey and repair project is necessary. Large trees were observed on the West side of the complex that may be contributing to the problem. The domestic water supply to each of the units is ok to this point.

ELECTRICAL: Power is distributed from a metering distribution panels on the exterior of each building. There are individual electrical meters for each unit. In turn each unit has their own electrical panel in their unit. There were no major problems discovered.

MECHANICAL: Each unit has its own individual split-system type combination HVAC unit. The units are operable. There are several of the condensing units missing, from the vacant apartment units. We were told once the unit is refurbished and ready to rent a new unit will be provided.

FIRE PROTECTION: Two of the buildings had fires in the past (6608 and 6668) so they have been refitted with Fire Sprinkler System. None of the other buildings have a Fire Sprinkler System installed. There is no site-wide fire alarm system in any of the structures and the smoke fire detectors in each unit are not adequate.

**OBSERVATIONS FOR EXTERIORS**

Generally the buildings are in fair to good repair. There are minor repairs needed at each building and some minor brick work in the common areas. Some of the buildings have soffit and fascia damage that involves the roof gutters as well.

Approximately half of the outdoor condensing units have been replaced. The original condensing unit fins are in general need of cleaning and straightening. The asphalt shingles on the roof have been replaced in the last 6 years and are in excellent condition. There is some brick veneer damage on a few of the buildings that needs attention but does not pose any structural issues.

**CODE ISSUES**

- Railings and guard rails in the common areas.
- Lack of smoke detectors for the hall and each sleeping space.
- No ADA access and parking

**HANDICAP ACCESSIBILITY**

There are no provisions for ADA access to the main office including proper parking and ramps and there are no units that are accessible.

## RECOMMENDATION

This complex is in fair to good condition. With some repairs, general maintenance and housekeeping, several units would be ready to rent out. With major repairs on the reaming units the total complex could be in much better shape. The major issue at this time is the existing sanitary sewer system. If this goes unresolved there will always be backup issues into the units and onto the property. This should be the number one issue for this complex.

All the other items need to be planned out and then worked out. There are several units that need a small amount of work to get them into a rentable condition. The major repair units can follow once the minor work for the units and the site has taken place.

## HEALTH AND SAFETY

HEALTH: Mold growth was observed in ten (10) of the thirty-two (32) apartment units that were inspected. Mold is a health concern to the residents and staff of the apartment complex.

Exterior window caulking was identified as suspect asbestos containing material (ACM) therefore it was sampled and analyzed for asbestos. The caulking is positive for asbestos. The undisturbed caulking does not present a health concern. GPI recommends that any renovations or window replacement requires precaution to protect the workers and/or a qualified asbestos abatement contractor should be involved to remove and properly dispose of the exterior window caulking. No other health-related adverse findings were observed based on the limitations of the reports and applicable standards and guidelines.

SAFETY: The safety issues detected are:

- Open exposed wiring at the electrical junction boxes for the exterior AC units.
- Trip hazards at several of the sidewalks and pathways.
- The swimming pool security fence and gates.
- The rusted stairway on Building 6618.

## ENVIRONMENTAL

A Phase I Environmental Site Assessment (ESA) was conducted to investigate the Property for “Recognized Environmental Conditions,” (RECs) defined by American Society for Testing and Materials (ASTM) E 1527-05 as the presence or likely presence of any hazardous substances or petroleum products on the subject site under conditions that indicate an existing release, a past release, or a material threat of a release into the structures, ground, groundwater or surface water of the subject site. Mold, asbestos and lead are not recognized as Recognized Environmental Conditions by ASTM; however they are addressed in the Phase I ESA report.

No evidence of any Recognized Environmental Conditions for the Property was found during the investigation. Mold growth and water damage (past and present) was observed in ten (10) of the thirty-two (32) apartment units that were inspected. All ten (10) of the units where mold was observed were vacant at the time of the inspection.

Lead-based paint (LBP) inspection and testing (with XRF) was performed as part of the Phase I ESA. All of the XRF readings for lead-based paint in interior and exterior building components at the Property were negative.

Inspection and sampling for suspect asbestos containing material (ACM) was performed as part of the Phase I ESA. One sample of suspect material (exterior window caulking) was collected and analyzed for asbestos. The sample was positive for asbestos.

It is HUD’s policy to leave undamaged asbestos in place; enclose exposed asbestos that might be vulnerable to disturbance and damage; assure that maintenance personnel are aware of the existence of the asbestos and trained in the proper performance of future maintenance responsibilities; and inspect all areas periodically.

Asbestos should only be removed where it is damaged or crumbling, or when it is disturbed by building renovations or demolition. Any removal and subsequent disposal must be undertaken only under contract with government-certified removal contractors in compliance with EPA requirements.

It is recommended that any renovations or window replacement requires precaution to protect the workers and/or a qualified asbestos abatement contractor should be involved to remove and properly dispose of the exterior window caulking.

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

Property Disposition

Federal Fiscal Year 2015

SECTION 8
PROJECT-BASED RENTAL ASSISTANCE

**HOUSING ASSISTANCE PAYMENTS CONTRACT**

PREPARATION OF HAP CONTRACT

Instructions on preparation of the HAP Contract are attached at the end of the HAP contract text. Superscripts 1 through 10 in the text of section 1 of the contract correspond to notes at the end of the HAP Contract text.

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

Property Disposition

Federal Fiscal Year 2015

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

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U.S. Department of Housing and Urban Development
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SECTION 8
PROJECT-BASED RENTAL ASSISTANCE

**HOUSING ASSISTANCE PAYMENTS CONTRACT**
**PART 1 OF HAP CONTRACT**

## 1. CONTRACT INFORMATION[1]

### A. Property

**Section 8 Project Number OK56-M000-155**

**Section 8 Project Number of prior HAP contract for property OK56-M000-155**

**FHA Project Number (if applicable) 117-35213**

**Property Name Terrace Apartments**

**Property Description[2] 6640 NW 10th Street, Oklahoma City, OK 73127 (See Exhibit C "Legal Description")**

**A total of 205 units in 2 story buildings, with 205 Project Based Section 8 HAP units, located at the following address: 6640 NW 10th Street, Oklahoma City, OK 73127**

### B. Contents of contract

_____

### C. Contract exhibits

EXHIBIT A: IDENTIFICATION OF UNITS

EXHIBIT B: SERVICES

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

*i. Effective date*: Date of Closing

*ii. Length of contract term:* One Year

*iii. Anniversary date:* One (1) Year from Date of Closing

### 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 $ _____[6], an amount sufficient to provide housing assistance payments for approximately _____[7] 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 2015

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) 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.

8) 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 calendar 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 A**

**IDENTIFICATION OF UNITS ("CONTRACT UNITS")**
**BY SIZE AND APPLICABLE CONTRACT RENT**

| Number of Contract Units | Number of Bedrooms | Contract Rent | Utility Allowance | Gross Rent |
|---|---|---|---|---|
| 93 | 1 Bdr | $ 479 | $ 125 | $ 604 |
| 100 | 2 Bdr | 566 | 120 | 686 |
| 12 | 3 Bdr | 736 | 169 | 905 |
| | | | | |
| | | | | |
| | | | |

**EXHIBIT B**

**PROVIDE LISTING OF ALL SERVICES, MAINTENANCE AND UTILITIES TO BE PROVIDED BY OWNER**

| SERVICES | MAINTENANCE | UTILITIES |
|---|---|---|
| | | |
| Parking / Security Lighting | Routine Maintenance of | Water |
| Refrigerator | Buildings / Units / Grounds | Sewer |
| Drapes/Blinds/Carpet | | |
| Exhaust Fan, Kitchen/Bath | | |
| Laundry Facility | | |
| Pool | | |
| Electric Range | | |
| | | |
| | | |
|

INSTRUCTIONS

**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**

[1] Enter all contract information.

[2] 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.

[3] If necessary, attach as Exhibit A a site plan, legal description or other descriptive information.

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

[5] List in the space provided and attach at the back of the contract any additional exhibits, beginning with Exhibit C.

[6] Enter the amount of funding obligated.

[7] Enter a whole number of months

## 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/or local housing statutes, regulations, ordinances and codes and are listed on Schedule A attached hereto.

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

By:_____
Grantee Name

_____
Title

_____
Address

_____

_____
Telephone Number

_____
Date

STATE OF: )
COUNTY OF: )
Came before me this _____day of _____, 20___. Notary Seal

Schedule A:  All projects owned by _____ or affiliates.

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

PROTECTING TENANTS AT FORECLOSURE ACT

Applicable to all foreclosure sales:

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

1. Any bona fide tenant occupying a unit as of the date of the notice of foreclosure must be given 90 calendar days prior notice to vacate the unit; 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 calendar 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 calendar days prior notice by the purchaser at foreclosure.

   (C) Nothing contained in paragraphs 1 and 2 herein shall affect the requirements for termination of any federal or state subsidized tenancy or of any state or local law that provides longer time periods or additional protections for tenants, those rights will be retained by the tenant.

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 calendar 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 J

DUNS Number and CCR Registration Certification

This is to certify that:

_____
(Owner Name and DUNS Number)

_____
(Global Parent Owner Name and DUNS Number)

_____
(Global Parent Legal Business Name)

_____
(CCR Legal Business Name)

_____
(Doing Business As)

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

has received CCR registration and the following DUNS number in accordance with Notice H 2011-01:

Section 8 Project Based Contract Number:_____

Project Rental Assistance Contract Number:_____

DUNS Number:_____

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

_____
(Signature and Title of Project Owner) (Date)

**Attachment K - 24 CFR Part 5**

**§ 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).**

These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(b) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(d) *Dwelling units.*

(1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).

(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(4) The dwelling unit must include at least one battery-operated or hardwired smoke detector, in proper working condition, on each level of the unit.

(e) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) *Compliance with state and local codes.* The physical condition standards in this section do not supersede or preempt state and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

# Post Closing Repair Report

| Property: | | Repair Expenditures to Date: $ |
|---|---|---|
| Address: | | Date Repairs Began: |

Number of HAP Units: Number of HAP Units repaired/meeting PCS:

Number of Units: Number of Units repaired/meeting PCS:

List major repairs as required by Form HUD-9552 and provide status of those repairs:

| **Major Repair**<br>(EX: replace roofs for 5 buildings) | **Work Completed**<br>(EX: roofs replaced for 3 buildings: 60%) |
|---|---|
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Provide narrative describing any special circumstances beyond your control which may, or have delayed the repairs:

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

Date of Report:

Report completed by:_____Title_____

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

Attachments:
1. Attach a minimum of 4 photographs depicting repaired conditions.
2. Attach additional pages as necessary to provide a thorough explanation of status of repairs.

# OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION (PCS INSPECTION CHECKLIST) – PROPERTY DISPOSITION SALE

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

Property Name:_____ Address:_____

Inspection Number: _____ _____

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

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

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

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

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

| **4. Other rooms used for living and halls: See Instructions under category 4.** | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Unit Number:** | | | | | | | | | | | | | | | | | | | | | | | | |
| **4.1 Room Code** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** |
| Location: (R)right, (L)left, (C)center | | | | | | | | | | | | | | | | | | | | | | | | |
| (f)Front (r)Rear (c)center of unit | | | | | | | | | | | | | | | | | | | | | | | | |
| Level: (#) floor or (B) basement | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.2 Electricity/Illumination | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.3 Electrical Hazards | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.4 Security | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.5 Window Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.6 Ceiling Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.7 Wall Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.8 Floor Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.9 Lead-based Paint Hazard | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.10 Smoke Detectors | | | | | | | | | | | | | | | | | | | | | | | | |
| Additional Comments/Findings on separate page (Y/N) | | | | | | | | | | | | | | | | | | | | | | | | |

| **4. Other rooms used for living and halls: See Instructions under category 4.** | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Unit Number:** | | | | | | | | | | | | | | | | | | | | | | | | |
| **4.1 Room Code** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** |
| Location: (R)right, (L)left, (C)center | | | | | | | | | | | | | | | | | | | | | | | | |
| (f)Front (r)Rear (c)center of unit | | | | | | | | | | | | | | | | | | | | | | | | |
| Level: (#) floor or (B) basement | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.2 Electricity/Illumination | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.3 Electrical Hazards | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.4 Security | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.5 Window Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.6 Ceiling Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.7 Wall Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.8 Floor Condition | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.9 Lead-based Paint Hazard | | | | | | | | | | | | | | | | | | | | | | | | |
| 4.10 Smoke Detectors | | | | | | | | | | | | | | | | | | | | | | | | |
| Additional Comments/Findings on separate page (Y/N) | | | | | | | | | | | | | | | | | | | | | | | | |

# OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION (PCS INSPECTION CHECKLIST) – PROPERTY DISPOSITION SALE

| **5. All secondary rooms: not used for living: See instructions under Category 5.** | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Unit Number:** | | | | | | | | | | | | | | | | | | | | | | | | |
| **Description:_____** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** |
| 5.1 Security | | | | | | | | | | | | | | | | | | | | | | | | |
| 5.2 Electrical Hazards | | | | | | | | | | | | | | | | | | | | | | | | |
| 5.3 Other potential hazards | | | | | | | | | | | | | | | | | | | | | | | | |
| Additional Comments/Findings on separate page (Y/N) | | | | | | | | | | | | | | | | | | | | | | | | |

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

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

| **Unit Number:** | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **8. Decision of Inspector** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** | **P** | **F** | **I** |
| Indicate Pass or Fail for each unit | | | | | | | | | | | | | | | | | | | | | | | | |

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

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

_____ _____

Signature of Owner Date

I hereby certify, as the Inspector performing the PCS inspection, that this Property was inspected as indicated by my signature below. This Property ☐ Passes ☐ Fails the PCS inspection.

_____ _____

Signature of Individual Performing Inspection Date

_____

(Print name of Inspector)

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

## ***OWNER'S PCS INSPECTION INSTRUCTIONS:***

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

**Property Name**: is the name of the apartment complex.
**Property Address**: is the physical location of the property, i.e., usually the site office address
**Number of Inspections:** the number of inspections as completed by the Owner. (This may not be the first PCS inspection, if so indicate the number of times an inspection of the physical conditions standards has been held for the property.
**Building Number:** is the building number for the units being inspected.
**Unit Number:** is the unit number, e.g., Unit 1. If the units are not numbered, but have separate identifying addresses, then use the address for the unit.
**Number of bedrooms:** self explanatory
**Number of baths:** self explanatory
**Unit is Occupied/Vacant:** self explanatory

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

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

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

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

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

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

**1. Living Room**
**1.1 Living Room Present**
**Is there a living room?**
Note: If the unit is an efficiency apartment, consider the living room present.
**1.2 Electricity**
**Are there at least two working outlets or one working outlet and one working light fixture?**
In order to qualify, the outlets must be present and properly installed in the baseboard, wall or floor of the room. Do not count a single duplex receptacle as two outlets, i.e., there must be **two** of these in the room, or **one** of these **plus a permanently installed ceiling or wall light fixture**. Both the outlets and/or the light must be working. Usually, a room will have sufficient lights or electrical appliances plugged into outlets to determine workability. Be sure light fixture does not fail just because the bulb is burned out. Do not count any of the following items or fixtures as outlets/fixtures: Table or floor lamps (these are **not** permanent light fixtures); ceiling lamps plugged into socket; extension cords. If the electric service to the unit has been temporarily turned off, enter "Inconclusive" and provide your comments/findings. Contact owner or manager after inspection to verify that electricity functions properly when service is turned on.
**1.3 Electrical Hazards**
**Is the room free from electrical hazards?**
Examples of what this means: broken wiring; non-insulated wiring; frayed wiring; improper types of wiring, connections or insulation; wires lying in or located near standing water or other unsafe places; light fixture hanging from electric wiring without other firm support or fixture; missing cover plates on switches or outlets; badly cracked outlets; exposed fuse box connections; overloaded circuits evidenced

by frequently "blown" fuses (ask the tenant). If you are uncertain about severity of the problem seek expert advice. Mark "Inconclusive" and provide your comments/findings.

**1.4 Security**

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

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

**1.5 Window Condition**

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

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

**1.6 Ceiling Condition**

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

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

**1.7 Wall Condition**

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

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

**1.8 Floor Condition**

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

"Unsound or hazardous" means the presence of such serious defects that a potential exists for structural collapse or other threats to safety (e.g., stripping) or large cracks or holes allow substantial drafts from below the floor. The condition includes: severe buckling or major movements under walking stress; damaged or missing parts. Pass floors that are basically sound but have some nonhazardous defects, including: heavily worn or damaged floor surface (for ex-ample, scratches or gouges in surface, missing portions of tile or linoleum, previous water damage). If there is a floor covering, also note the condition, especially if badly worn or soiled. If there is a floor covering, including paint or sealant, also note the conditions in your comments/findings, especially if badly worn, soiled or peeling (for peeling paint, see 1.9).

**1.9 Lead-Based Paint**

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

If the unit was built January 1, 1978, or after, no child under age six will occupy or currently occupies it, is a 0-BR, elderly or handicapped unit with no children under age six on the lease or expected, has been certified lead based paint free by a certified lead-based paint inspector (no lead based paint present or no lead-based paint present after removal of lead-based paint.), mark "N/A" and do not inspect painted surfaces. This requirement applies to all painted surfaces (building components) within the unit. (Do not include tenant belongings). Surfaces to receive a visual assessment for deteriorated paint include walls,

floors, ceilings, built in cabinets (sink bases), baseboards, doors, door frames, windows systems including mullions, sills, or frames and any other painted building component within the unit. Deteriorated paint includes any painted surface that is peeling, chipping, chalking, cracking, damaged or otherwise separated from the substrate. All deteriorated paint surfaces **more than 2 sq. ft. in any one interior room or space, or more than 10% of the total surface area of an interior type of component with a small surface area (i.e., window sills, baseboards, and trim)** must be stabilized (corrected) in accordance with all safe work practice requirements and clearance is required. **If the deteriorated painted surface is less than 2 sq. ft. or less than 10% of the component, only stabilization is required. Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities, except for *de minimis level* repairs.

**2. Kitchen**

**2.1 Kitchen Area Present**

**Is there a kitchen present?**

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

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

**2.2 Electricity**

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

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

**2.5 Window Condition**

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

**2.10 Stove or Range with Oven**

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

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

**2.11 Refrigerator**

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

If no refrigerator is present, use the same criteria for marking either "Fail" or "Inconclusive" as were used for the oven and stove or range. A refrigerator is not working if it will not maintain a temperature low enough to keep food from spoiling over a reasonable period of time. If the electricity is turned off, mark "Inconclusive." Contact the owner (or tenant if unit is occupied) to get verification of working condition. If the refrigerator is present and working but defects exist, note these in your comments/findings. Possible minor defects include: broken or missing interior shelving; dented or scratched interior or exterior surfaces; minor deterioration of door seal; loose door handle.

**2.12 Sink**

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

If a permanently attached kitchen sink is not present in the kitchen or kitchen area, mark "Fail." A sink in a bathroom or a portable basin will not satisfy this requirement. A sink is not working unless it has running hot and cold water from the faucets and a properly connected and properly working drain (with a "gas trap"). In a vacant apartment, the hot water may have been turned off and there will be no hot water.

Mark this "Inconclusive." Check with owner or manager to verify that hot water is available when service is turned on. If a working sink has defects, note this in your comments/findings. Possible minor defects include: dripping faucet; marked, dented, or scratched surface; slow drain; missing or broken drain stopper.

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

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

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

**3. Bathroom**

**3.1 Bathroom Present**

**Is there a bathroom?**

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

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

**3.2 Electricity**

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

**3.3 Electrical Hazards**

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

**3.5 Window Condition**

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

**3.7 Wall Condition**

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

**3.8 Floor Condition**

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

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

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

The toilet must be contained within the unit, be in proper operating condition, and be available for the exclusive use of the occupants of the unit (i.e., outhouses or facilities shared by occupants of other units are not acceptable). It must allow for privacy. Not working means: the toilet is not connected to a water supply; it is not connected to a sewer drain; it is clogged; it does not have a trap; the connections, vents or traps are faulty to the extent that severe leakage of water or escape of gases occurs; the flushing mechanism does not function properly. If the water to the unit has been turned off, mark "Inconclusive." Obtain verification from owner or manager that facility works properly when water is turned on. If the toilet is "present, exclusive, and working," but has the following types of defects: constant running; chipped or broken porcelain; slow draining, note this in your comments/findings. If drain blockage is more serious and occurs further in the sewer line, causing backup, check item 5., "Fail," under the plumbing and heating part of the checklist. A sign of serious sewer blockage is the presence of numerous backed-up drains.

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

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

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

**3.12 Tub or Shower in Unit**

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

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

**3.13 Ventilation**

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

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

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

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

**4.1 Room Code and Room Location**

Enter the appropriate room code given below:

**Room Codes:**

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

**Room Location:** Write on the line provided the location of the room with respect to the unit's width, length and floor level as if you were standing outside the unit facing the entrance to the unit:

right/left/center: record whether the room is situated to the right, left, or center of the unit.
front/rear/center: record whether the room is situated to the back, front or center of the unit.
floor level: identify the floor level on which the room is located.
If the unit is vacant, you may have some difficulty predicting the eventual use of a room. Before giving any room a code of 1(bedroom), the room must meet all of the requirements for a "room used for sleeping" (see items 4.2 and 4.5).

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

**4.2 Electricity/Illumination**

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

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

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

**4.5 Window Condition**

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

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

**4.6 Smoke Detectors**

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

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

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

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

**Additional Notes**

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

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

If any room in the unit did not meet the requirements for "other room used for living" in Part 4, it is to be considered a "secondary room (not used for living)," Rate all of these rooms together (i.e., a single Part 5 checklist for all secondary rooms in the unit). Inspection is required of the following two items since hazardous defects under these items could jeopardize the rest of the unit, even if present in rooms not used for living: 5. 2 Security, 5. 3 Electrical Hazards. Also, be observant of any other potentially hazardous features in these rooms and record under 5.4. If there are no "Secondary Rooms (rooms not used for living)," mark "None" under "Description" and go on to Part 6.

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

**Additional Note**

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

## 6. Heating and Plumbing

### 6.1 Adequacy of Heating Equipment

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

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

### 6.2 Safety of Heating Equipment

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

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

### 6.3 Ventilation and Adequacy of Cooling

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

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

**6.4 Water Heater**

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

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

**6.5 Water Supply**

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

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

**6.6 Plumbing**

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

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

**6.7 Sewer Connection**

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

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

**7. General Health and Safety**

**7.1 Access to Unit**

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

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

**7.2 Exits**

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

Is there an acceptable fire exit from this building that is not blocked? "Acceptable fire exit" means that the building must have an alternative means of exit that meets local or state regulations in case of fire; this could include: An openable window if the unit is on the first floor or second floor or easily accessible to the ground; A back door opening on to a porch with a stairway leading to the ground; Fire escape, fire ladder, or fire stairs. "Blocked" means that the exit is not useable due to conditions such as debris, storage, door or window nailed shut, broken lock. Important note: HUD/or the HA has the final responsibility for deciding whether the type of emergency exit is acceptable, although the tenant should assist in making the decision.

**7.3 Evidence of Infestation**

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

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

**7.4 Garbage and Debris**

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

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

**7.5 Refuse Disposal**

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

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

**7.6 Interior Stairs and Common Halls**

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

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

**7.7 Other Interior Hazards**

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

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

**7.8 Interior Air Quality**

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

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

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

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

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8.1

This document prepared by and must be returned to:
Foley & Judell, L.L.P.
One Canal Place, Suite 2600
365 Canal Street
New Orleans, LA 70130-1138

# USE AGREEMENT
# FOR MULTIFAMILY PROJECTS PARTICIPATING IN THE MARK-TO-MARKET PROGRAM UNDER THE MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997

**THIS USE AGREEMENT** (this "Agreement") is made effective as of the **15th day of July, 2004**, by and between **Terrace Housing Associates, Ltd., a limited partnership** organized under the laws of the **State of Colorado** (the "Owner"), and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C. (the "Secretary" or "HUD").

## RECITALS:

**A.** The Owner is the owner of that certain real property located in the **City of Oklahoma City**, in the **County of Oklahoma**, in the **State of Oklahoma**, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property"), on which is constructed that certain rental apartment project known as **Terrace Apartments**, FHA Project No. **117-35195** (the "Project") and, together with the Real Property, the "Property").

**B.** The Property is encumbered by that certain first lien mortgage loan (the "Loan") made to the Owner, or a predecessor in interest, by **Capstone Realty Advisors, LLC**, or a predecessor in interest, which Loan is evidenced and/or secured by that certain Mortgage Note dated **June 1, 2000** in the original principal amount of **Five Million Three Hundred Eighty Thousand and No/100 Dollars ($5,380,000)**, that certain Mortgage of even date therewith, and certain other instruments executed in connection with the Loan.

**C.** In connection with, as a condition to and in consideration for the Owner's participation in the Mark-to-Market Program, as authorized by the "Multifamily Assisted Housing Reform and Affordability Act of 1997," Title V of the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. No. 105-65, 111 STAT. 1384, approved 10/27/97), the Owner, and the Secretary entered into that certain Restructuring Commitment dated **June 18, 2004** as amended through the date hereof, pursuant to which the parties have agreed, among other things, that: (i) the Loan shall be prepaid; and (ii) the Project shall be subject to certain rental restrictions and other requirements, as set forth herein.

M2MUseAgmt.Revised01/01/01

**Return To:**
**Marcia J. Chappelear**
**c/o First American Title**
**133 N.W. 8th Street**
**Oklahoma City, OK 73102**

17/45

Attachment N

**NOW, THEREFORE,** in consideration of the foregoing premises, the sum of Ten Dollars ($10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

**1. Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

**2. Definitions.**

**a.** "Closing Date" shall mean the date upon which the Transaction is consummated through the execution and recordation of binding legal instruments (the "Closing").

**b.** "Code" shall mean Section 42 of the Internal Revenue Code of 1986, as amended, and any Treasury regulations promulgated thereunder, as in effect as of the date hereof.

**c.** "Expiration Date" shall mean the thirtieth (30th) anniversary of the Closing Date of this Agreement.

**d.** "Low Income Tenants" shall mean persons or families having an income that is greater than fifty percent (50%) but not more than sixty percent (60%) of Median Income (as hereinafter defined), with adjustments for smaller or larger families.

**e.** "Median Income" shall mean the median gross income for a person or a family, as applicable, in the area in which the Project is located, as established under Section 8 of the United States Housing Act of 1937, as amended ("Section 8").

**f.** "Rent-Restricted" shall mean a gross rent (as defined in the Code) that does not exceed thirty percent (30%) of the imputed income limitation (as defined in the Code) for the applicable Units (as hereinafter defined).

**g.** "Units" shall mean all of the dwelling units in the Project.

**h.** "Very Low Income Tenants" shall mean persons or families having an income that is fifty percent (50%) or less of Median Income, with adjustments for smaller and larger families.

**3. Term.** This Agreement shall be effective from the Closing Date through the Expiration Date (such period being hereinafter referred to as the "Term").

**4. Use Requirement**. Throughout the Term, the Project shall be used solely as rental housing with no reduction in the number of residential units unless approved in writing by HUD, except to the extent that another use may have been approved by the Secretary prior to the commencement of the Term, or to the extent that such other use is approved by the Secretary during the Term.

**5. Affordability Requirement.** The Owner hereby agrees that, at any time during the Term less than 20% of the Units in the Project, receive rental assistance under a Section 8 project-based Housing Assistance Payments contract, the Owner shall comply with the affordability requirement marked below, at the time of closing, with an "X" (the "Affordability Requirement"):

**a.** _____ at least 20% of the Project's units shall be occupied by Very Low Income tenants whose annual gross incomes are equal to or less than 50% of the area median gross income, and the rental rates for such units shall not exceed 30% of the "imputed income limitation" (as defined in Section 42 of the Internal Revenue Code) for such units; or

**b.** __X__ at least 40% of the Project's units shall be occupied by Low Income tenants whose annual gross incomes are equal to or less than 60% of the area median gross income, and the rental rates for such units shall not exceed 30% of the "imputed income limitation" (as defined in Section 42 of the Internal Revenue Code) for such units.

Notwithstanding the foregoing, in the event the Owner is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low Income Tenants or Very Low Income Tenants in order to satisfy the Affordability Requirement, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of Units subject to the Affordability Requirement or otherwise modify the Affordability Requirement in a manner acceptable to the Owner and HUD. Any such modification of the

Affordability Requirement shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

**6. Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the holder of a Certificate or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation (hereinafter referred to as "Section 8").

**7. Determination of Tenant Income.** The initial determination of whether an individual or family qualifies as a Very Low Income Tenant or a Low Income Tenant shall be made no more than ninety (90) days prior to the date that the tenancy is commenced. Subsequent determinations shall be made once annually thereafter (hereafter "recertifications") as specified below, and on the basis of the then current income of the resident. For recertification purposes, each tenant's Income Certification shall be fully executed and dated no more than ninety (90) calendar days prior to the date of each anniversary of the date that the tenancy had commenced. The Owner shall obtain, and maintain on file for a period of not less than three (3) years following the Owner's receipt thereof, an executed original Tenant's Initial Income Certification and subsequent Income Recertifications, in the form attached hereto as Exhibit B, or such other form as may be prescribed or approved by the Secretary, for each Very Low Income Tenant and each Low Income Tenant.

**8. Character of Units.** Any Unit occupied by an individual or a family qualifying as a Very Low Income Tenant or a Low Income Tenant shall continue to be treated as if occupied by a Very Low Income Tenant or a Low Income Tenant, as applicable, even though such individual or family subsequently ceases to be of very low or low income so long as the income of such individual or family does not exceed 140% of the income limitation applicable under the Affordability Requirement and such Unit remains Rent-Restricted. If a Unit is no longer occupied by an individual or family that qualifies as a Very Low Income Tenant or a Low Income Tenant, such Unit shall be treated as occupied by a Very Low Income Tenant or a Low Income Tenant, as applicable, until reoccupied, at which time the character of the Unit shall be redetermined; provided, however, that such Unit shall not be treated as reoccupied for such purpose if it is occupied for one (1) temporary period of not more than 31 days. All Units leased to Very Low Income Tenants or Low Income Tenants shall have substantially the same equipment, amenities and facilities and shall be of substantially the same quality and type of construction as the other Units.

**9. Civil Rights Requirements**. The Owner will comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not

limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107, and 110, and Subparts I and M of Part 200.

**10. Housing Standards.** The Owner agrees that, throughout the Term, it shall (a) maintain the Project in good repair and condition in accordance with applicable local codes and the Uniform Physical Condition Standards set forth in 24 CFR Part 5, Subpart G as amended; (b) maintain and operate the Units and related facilities to provide decent, safe and sanitary housing, including the provision of all services, maintenance and utilities; and (c) comply with the lead-based paint regulations set forth in 24 CFR Part 35, as amended. If the Secretary determines that the Owner is not fully satisfying one or more of the foregoing obligations, the Secretary shall have the right to impose any remedies, administrative actions and/or sanctions provided under or authorized by applicable law and regulations, including without limitation as provided under 24 CFR Part 24.

**11. Violations; Secretary's Remedies.** If the Secretary determines that the Owner has violated any of the terms of this Agreement, including, but not limited to, failure to comply with any of the requirements imposed under Section 10 above, the Secretary shall notify the Owner of its determination and the Owner shall have ninety (90) calendar days after receipt of such notification in which to cure the violation. Promptly following the expiration of the foregoing ninety (90) day period, the Secretary shall reinspect the Project and/or take other investigative steps as it deems necessary in order to ensure compliance. The failure to cure any violation to the Secretary's satisfaction within such ninety (90) day period shall constitute a covenant default under the Regulatory Agreement for Projects with Mortgage Restructuring Mortgages in the Mark-to-Market Program, which may result in the acceleration of the Mortgage Restructuring Note that is held by the Secretary and the Mortgage Restructuring Mortgage secured by the Project, payment of relocation expenses to tenants admitted to the Project in violation of the Affordability Requirement; and, the imposition of any other remedies, administrative actions and/or sanctions provided under or authorized by applicable law and regulations, including those provided under 24 CFR Part 24. The parties further agree that upon any default under this Agreement, the Secretary may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against violation of this Agreement or for such other equitable relief as may be appropriate, since the injury to the Secretary arising from a violation under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

**12. Submission of Certifications.** The Owner must submit to the Secretary or the Participating Administrative Entity ("PAE"), within thirty (30) calendar days following the Secretary's request therefor, any certifications, statements or other information as the

Secretary may reasonably require relating to the monitoring of the Owner's compliance with this Agreement. During the term of this Agreement, the Owner shall submit to the Secretary (by delivery to the local HUD office), the PAE (if serving as the Use Agreement Monitor), and to the unit of local government responsible for providing affordable housing to the jurisdiction in which the Project is located (the "Affected Unit of Local Government"), within thirty (30) calendar days following each anniversary of the execution of this Agreement, an executed original of the Owner's Compliance Certification, in the form attached hereto as Exhibit C, certifying that the Owner is in compliance with the terms of this Agreement. The Owner shall maintain on file, for a period of not less than eight (8) years from the date thereof, a copy of each Owner's Compliance Certification submitted in accordance with this Section.

**13. Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Secretary hereby agrees that, upon the request of the Owner made on or after the Expiration Date, the Secretary shall execute a recordable instrument approved by the Secretary for purposes of releasing this Agreement of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**14. Superiority.** The parties hereto understand and agree that, notwithstanding any provisions contained in this Agreement, or any other instrument or agreement affecting the Property, the restrictions and covenants hereunder are not intended by the parties hereto to either create a lien upon the Property, or grant any right of foreclosure, under the laws of the jurisdiction where the project is located, to any party hereto or third party beneficiary hereof upon a default of any provision herein, rather they are intended by the parties hereto to constitute a restrictive covenant that is filed of record prior in time to any instrument or agreement granting a security interest in the Project, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**15. Third-Party Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement in any material respect, and after giving notice and a reasonable opportunity to cure, the following individuals and groups may institute proper

legal action to enforce performance of this agreement, to enjoin any conduct in violation of this agreement, to recover damages (including refunds, with interest, on rent overcharges) and reasonable attorneys' fees and/or to obtain whatever other relief may be appropriate: tenant of the property that is the subject of this Agreement, and any organization representing these tenants, or an applicant for occupancy, class of such eligible tenants and/or applicants, organizations representing project tenants, the Affected Unit of Local Government, the Participating Administrative Entity that was responsible for restructuring the property pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), and/or the Secretary, or his or her successors or assigns, may institute proper legal action to enforce performance of such provisions, to enjoin any conduct in violation of such provisions, to recover damages (including refunds, with interest, on rent overcharges) and reasonable attorneys' fees and/or to obtain whatever other relief may be appropriate.

**16. Subsequent Modifications and Statutory Amendments.** The Secretary may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement. The Secretary or his or her successors or assigns may also modify this Agreement, without consent of any other party, including those having the right of enforcement, to require that any third party obtain prior HUD approval for any enforcement action concerning preexisting or future violations of the Use Agreement.

**17. Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this Agreement and that, in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**18. Binding Effect.** Upon conveyance of the Property during the Term, the Owner shall require its successor or assignee to assume its obligations under this Agreement. In any event, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**19. Amendment.** Notwithstanding paragraph 16, this Agreement may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**20. Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**21. Headings.** The headings and titles to the sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**22. Governing Law.** This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Project is located.

**23. Counterparts.** This Agreement may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Use Agreement to be executed and made effective as of the date first above written.

WITNESSES:

Rebecca J. Jones

OWNER:

**Terrace Housing Associates, Ltd., a limited partnership,**

**By: MAKAYLA, LLC, its general partner**

**By:** _____
**David A. Jones, its manager**

STATE OF California )
) ss:
COUNTY OF San Diego )

This instrument was acknowledged before me on this 12th day of JULY, 2004, by David A. Jones, as Manager of MAKALYA, LLC, as general partner of Terrace Housing Associates, a limited partnership.

Sherylle Grace Gutierrez Francia
Notary Public

My Commission Expires:
October 3, 2007

SHERYLLE GRACE GUTIERREZ FRANCIA
Commission # 1443326
Notary Public - California
San Diego County
My Comm. Expires Oct 3, 2007

M2MUseAgmt.Revised:01/01/01

IN WITNESS WHEREOF, the parties hereto have caused this Use Agreement to be executed and made effective as of the date first above written.

WITNESS:

**SECRETARY OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C.**

By: _____
Authorized Agent
Washington Production Office

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I hereby certify that on this day, before me, an officer duly authorized in the State aforesaid to take acknowledgments, personally appeared ~~Donna L. Rosen~~ LYNDA WILLIS as the authorized agent of HUD/OMHAR, who is personally known to me to be the person described herein and who executed the foregoing instrument and who swore and acknowledged before me that he executed the same on behalf of said HUD/OMHAR.

Witness my hand and seal in the County and State aforesaid this 9th day of July, 2004.

SIMON TAMALE TYABA
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
My Commission Expires Jan. 3, 2007

Notary Public

My Commission Expires:

M2MUseAgmt.Revised:01/01/01

EXHIBIT B
**TENANT'S INCOME CERTIFICATION**

Project: **Terrace Apartments**
Tenant: _____
Unit: _____
Address: **6640 NW 10th**
**Oklahoma City, OK 73127**

**ANTICIPATED INCOME**
For each person who is expected to occupy the unit at any time during the next twelve (12) months, please provide the following information:

| **Name** | **Salary/Wages*** | **Other Income**** | **Total Income** |
|---|---|---|---|
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* State the gross amount of compensation, before any payroll deductions, including any bonuses, overtime pay, tips, commissions or fees anticipated to be received during the next twelve months.

** State any other income anticipated to be received from any source whatsoever during the next twelve months, including but not limited to:

1. if net family assets (ie: the net cash value of capital investments after deducting the cost that would be incurred in disposing of the same) exceed $5,000, the greater of (i) interest, dividends, rental income or other income derived from all such assets, and (ii) the value of such assets multiplied by the current passbook savings rate as determined by HUD;

2. if net family assets do not exceed $5,000, interest, dividends, rental income or other income derived from all such assets;

3. net income from a profession or operation of a business;

4. regular or periodic payments received instead of earnings, such as unemployment compensation, worker's compensation and severance (but not including lump sum payments that are received only once);

5. periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits;

6. periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts from persons not listed above;

7. welfare or public assistance, but if the public assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the public assistance agency in accordance with the actual cost of shelter and utilities, the amount of public assistance income to be included shall consist of:

a. the amount of the assistance that is not specifically designated for shelter and utilities, plus

b. the maximum amount which the public assistance agency could in fact allow the occupant for shelter utilities;

8. for members of the armed forces, all regular pay, special pay and allowances (except special pay for hazardous duty); and

9. any earned income tax credit that exceeds the taxes paid for that year.

Do NOT include in the amount of other income shown above the following items:

a. temporary, special or irregular payments that may be received (including gifts);

b. income earned by children under 18 years of age;

c. payments received for the care of foster children;

d. amounts that are specifically for medical expenses;

e. lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlements for personal or property losses;

f. income of a live-in aid who resides in the apartment to assist an elderly or disabled person;

g. amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment; provided that any amounts of such scholarships or payments to veterans not used for the above purposes that are available for subsistence are to be included in income;

h. amounts received under training programs funded by HUD;

i. amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency; or

j. amounts received by a participant in other publicly assisted programs that are specifically for out-of-pocket expenses incurred (ie: special equipment, clothing, transportation, child care, etc.) and that are paid to allow participation in a specific program.

I, the undersigned, certify that I have read and answered fully, frankly and personally each of the foregoing questions and requests for information for all persons who are to occupy the Unit in the Project. I consent to the disclosure of this information to the Secretary of Housing and Urban Development. I certify under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, ____.

_____
Tenant

# EXHIBIT C
# OWNER'S COMPLIANCE CERTIFICATION

**Project Name: Terrace Apartments**
**FHA Project #: 117-35195**
**Owner: Terrace Housing Associates, Ltd.**
Total # of Units: ___

THIS OWNER'S COMPLIANCE CERTIFICATION (this "Certification") is made by the undersigned, the Owner of the above referenced Project (the "Owner"), pursuant to that certain Use Agreement dated **as of July 15, 2004** by and between the Owner and the Secretary of Housing and Urban Development, Washington, D.C. (the "Use Agreement").

1. As of the date of this Certification, the following number of Units in the Project (i) are occupied by Very Low Income Tenants or Low Income Tenants (as such terms are defined in the Use Agreement) or (ii) were previously occupied by Very Low Income Tenants or Low Income Tenants and have been vacant and not reoccupied (except for a temporary period of not more than 31 days):

a. Number of Units occupied by Very Low Income Tenants: _____

b. Number of Units occupied by Low Income Tenants: _____

c. Number of Units previously occupied by Very Low Income Tenants or Low Income Tenants that have been vacated and not reoccupied (except for a temporary period of not more than 31 days): _____

Attached to this Certification, as Attachment A, is a list of the Units that are currently occupied by Very Low Income Tenants or Low Income Tenants and the names of such tenants.

2. The total number of Units occupied or previously occupied by Very Low Income Tenants or Low Income Tenants (as indicated in Section 1.c. above) is _____ % of the total number of Units.

3. The undersigned hereby certifies that, as of the date of this Certification, (i) the Owner is not in default under any of the provisions of the Use Agreement, (ii) to the best of the Owner's knowledge, no default has occurred in the observance of any of the Owner's covenants contained

in the Use Agreement which observance would have been undertaken by any person related to or controlled by the Owner, and (iii) to the best of the Owner's knowledge, no event has occurred in connection with the operation of the Project that has caused or will cause the Project to cease to meet the requirements of the Use Agreement.

**WARNING: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S.C., Sections 1001 and 1010.**

**OWNER:**

**Terrace Housing Associates, Ltd.,**
**a limited partnership,**

**By: MAKAYLA, LLC,**
**its general partner**

**By: _____**
**David S. Jones, its manager**

ATTACHMENT A
to
Owner's Compliance Certification

LIST OF UNITS OCCUPIED BY
VERY LOW INCOME TENANTS OR LOW INCOME TENANTS
AND NAMES OF TENANTS

| Unit # | Name of Tenant |
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M2MUseAgmt.Revised:01/01/01

Secretary of Housing and Urban Development acting
by and through the Director of the Office of
Multifamily Housing Assistance Restructuring

By: _____
Authorized Agent

OMHAR _____ Regional Office

Date: July 9, 2004

Rider FHA-92465 on first 09-16-03