

PROJECT-BASED SECTION 8 ASSISTANCE

The Deed shall include the following provisions:

The Purchaser agrees to rehabilitate/repair the Project to make the Project units decent, safe and sanitary as defined by HUD and to complete the work in accordance with the HUD approved work write up and cost estimates. Upon the acceptable completion of the Project, the Purchaser may bill for housing assistance payments to enable low income persons to occupy the (100) units assisted under the Housing Assistance Payments (HAP) Contract for the term of the HAP Contract or as long as funding is available.

**SECTION ONE**

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

**SECTION TWO**

1. Schedule of Completion.
  - a. Timely Performance of Work. The Purchaser agrees to begin work no later than by the time indicated in Part 1 of this Rider. The Purchaser shall report to HUD's Property Disposition Center the date work has commenced and shall thereafter furnish periodic progress reports (monthly unless more frequent

reporting is required by HUD). In the event the work is not commenced, diligently continued, or completed as required under this Rider, the remedies outlined in paragraph 5 of this Section shall apply.

- b. Completion of Work. The Purchaser agrees to perform repair items necessary to bring the property into compliance with 24 CFR Part 5 Uniform Physical Condition Standards or subsequent laws. These repairs may not be the total repairs required and may not constitute release of any or all Letter(s) of Credit (LOC) required under a Post Closing Repair Rider.

## 2. Construction or Rehabilitation Period

- a. Inspections. Inspections will be limited to no more than 1 per month. Upon written notification from HUD that the property or individual units are in compliance with Uniform Physical Condition Standards, the Purchaser may begin billing for HAP payments. Payments may be retroactive to the inspection date for occupied units and the effective lease date for vacant units. At no time may payments be made for units that do not meet HUD's Uniform Physical Condition Standards or subsequent laws.
- b. Increases in Contract Rents or Utility Allowance. Increases in contract rents or utility allowed during the construction or rehabilitation period are permitted only with HUD approval consistent with HUD regulations.

## 3. Project Completion.

- a. The Project shall be rehabilitated in accordance with the Uniform Physical Condition Standards 24 CFR Part 5. The purchaser shall be solely responsible for rehabilitation of the Project.
- b. The Project shall be in good and tenantable condition.
- c. The Project shall be rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

## 4. Review and Inspection.

- a. Upon receipt of the notification and the evidence of completion, HUD shall review the evidence of completion for adequacy.
- b. A HUD representative (or its designee) shall inspect the Project in a manner sufficient to enable the inspector to report that he or she has inspected the observable elements and features of the Project in accordance with professional standards of care and judgment and that, on the basis of the inspection

- i. The Project has been completed in accordance with this Rider; and
  - ii. There are no observable conditions inconsistent with the evidence of completion, including the certification of the Purchaser. If the inspection disclosed defects or deficiencies, the inspector shall report these in detail.
    - c. Unconditional Acceptance. If HUD determines from the review and inspection that the Project has been completed in accordance with this Rider, the Purchaser and the HUD Field Office (having jurisdiction over the Project) shall be promptly notified of the units deemed acceptable and the date of said inspection.
    - d. Notification of Non-acceptance. If HUD determines that, based on the review of the evidence of completion and inspection, the Project cannot be accepted, the Purchaser shall be promptly notified of this decision with a statement of the reasons.
    - e. Contract Rents. The Contract Rents by unit size, amounts of housing assistance payments, and other applicable terms and conditions shall be specified in the proposed Housing Assistance Payments (HAP) Contract signed at closing. The Contract Rents will be the amounts established by HUD and published for the sale. There will be no exceptions.
5. Defaults. Any default under this Rider constitutes a default under the HAP Contract even in the event no funds have been requested and/or paid from said Contract. Any or all remedies outlined in the in the HAP Contract and the Use Agreement are the remedies that are applicable to a default under this Rider.
6. Assignments, Sale or Foreclosure
- a. The Purchaser agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Rider, the Contract or the Project all or in part of them or any of its interest in them, without the prior written consent of HUD (and the PHA where it is the CA and/or PBCA); however, in the case of an assignment as security for the purposes of obtaining financing of the Project, HUD (and the PHA where it is the CA and/or PBCA) shall consent in writing if HUD has approved the terms of such financing.
  - b. The Purchaser agrees to notify HUD (and the PHA where it is the CA and/or PBCA) promptly of any proposed action covered by Part 2 provision 6(a). The Purchaser further agrees to request the prior written consent of HUD (and the PHA where it is the CA and/or PBCA).

c. For the purposes of this part, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:

1. Transfer by the purchaser, in whole or in part.
2. A transfer by a party having a substantial interest in the Purchaser.
3. Transfers by more than one party of interest aggregating a substantial interest in the Purchaser.
4. Any other similarly significant change in the ownership of interest in the Purchaser or in the relative distribution of interest by any other method or means, and
5. Any refinancing by the Purchaser of the Project.

i. An assignment by the Purchaser to a limited partnership, in which no limited partner has 25 percent or more interest and of which the Purchaser is the sole general partner, shall not be considered an assignment, conveyance, or transfer. As assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.

ii. The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization

d. The Purchaser, and the party executing this Rider on behalf of the Purchaser, represent that they have the authority of all of the parties having ownership interests in the Purchaser to agree to this Rider on their behalf and to bind them with respect to it.

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

- i. Of assignment, sale, or other disposition of the project or this Rider or the Contract,
- ii. Of foreclosure, including foreclosure by HUD,
- iii. Of assignment of the mortgage or deed in lieu of foreclosure, or
- iv. The PHA or HUD takes over possession, operation or ownership.

### **SECTION THREE**

1. Project-based Section 8 Assistance
  - a. A Housing Assistance Payments (HAP) Contract will be executed at closing. The HAP Contract will cover 100 units in the Property, as specified by HUD. The HAP Contract will be initially funded for a minimum of one (1) month and a maximum of twelve (12) months prior to closing. The Purchaser agrees to accept the HAP Contract.
  - b. The HAP Contract shall provide that, when a vacancy occurs in any unit in the Project requiring project-based Section 8 assistance, Purchaser shall rent the unit to a family that is eligible for said Section 8 assistance under the HAP Contract.
  - c. The Purchaser agrees that, for any property formerly insured under Section 221(d) (3) or 236 of the National Housing Act, or for which a direct loan under Section 202 of the Housing Act of 1959 was made, any unit in the Property that does not receive project-based Section 8 assistance shall remain available and affordable for a period of 25 years under the terms of the Affordability of Units Rider.
  - d. The Purchaser agrees that at anytime the HAP Contract expires, terminated, is not renewed by HUD, or funding expires; the affordability rider will become applicable to the units previously covered under the HAP Contract. The Purchaser may reduce the term of the rider for such units by the collective term(s) of the HAP Contract and any subsequent renewals effective after this sale.
2. The Purchaser cannot voucher for Section 8 HAP payments until HUD has inspected the units and determined that they meet the Uniform Physical Condition Standards (UPCS) of the HAP Contract. Section 8 assistance payments will not be made retroactive to the date of closing.  
Assistance/subsidy will only be paid from the date the unit(s) was determined to meet the Uniform Physical Condition Standards (as per Section 2 Provisions 2 and 4).
3. Prior to receipt of subsidy payments, Purchaser shall not charge Section 8 eligible tenants more than the amount of the Total Tenant Payment (per the HUD 50059) the tenant would be required to pay under the Section 8 program.
4. Other Government Assistance and Adjustments in Project-Based Section 8 Assistance
  - a. In order to comply with Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and the regulations thereunder, 24 CFR Part 12,

Purchaser covenants that it will disclose to Seller:

- i. Any Federal, State or local governmental assistance, other than the Section 8 assistance provided under the terms of this Deed, that it will receive or reasonably expects to receive prior to or during the term of the Section 8 HAP Contract.
  - ii. In cases where the Purchaser will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available for the Property. Such other assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect governmental assistance.
  - b. In order to comply with this requirement, the Purchaser, within 10 business days after receiving notice that it has been selected to purchase the Project, must complete and execute a Certification of Disclosure.
  - c. Within 30 calendar days of any changes in circumstances occurring at any time before or during the term of the Section 8 HAP Contract that affect the accuracy of the Certification of Disclosure, the Purchaser shall submit to Seller a revised Certification. The Seller may reduce the amount of Section 8 assistance provided for the Project to compensate in whole or in part, as the Seller deems appropriate, for any increases in other assistance.
5. Affordability and Availability of Project-based Section 8 Units. In order to assure compliance with 12 USC §1701z-11, the Secretary of Housing and Urban Development, pursuant to a HAP Contract, will provide housing assistance under Section 8 of the United States Housing Act of 1937 (42 USC §1437f) for the Project predicated on the availability of funds. During the term of the HAP Contract, the Purchaser shall maintain all dwelling units covered thereby after the date of this Deed in accordance with the requirements of the HAP Contract and the Section 8 Housing Assistance Payments Program (24 CFR Part 5.403). Any inconsistencies between the CFR (cited above) and the HAP Contract, the HAP Contract will prevail.

The Purchaser shall not remove any existing tenant solely due to the tenant's ineligibility for Section 8 assistance, so long as the tenant remains in good standing. However, if an existing Section 8 ineligible tenant moves/relocates

from the property, the Purchaser shall rent the unit to a Section 8 (24 CFR Part 5.403) eligible family, if the unit is assisted under the HAP Contract. This provision shall be enforceable by the Seller, Eligible Families or any other tenants on the Property.

6. The Purchaser agrees to request and accept project-based Section 8 assistance or any replacement rental assistance program, for as long as the Department of HUD offers renewal rental assistance. Should the Purchaser elect not to renew the HAP Contract or any subsequent rental assistance offered by HUD, current or future residents who are or would have been eligible for the project based assistance shall not be required to pay rent in excess of the amount that would have been required if the assistance was in place. All units that were assisted under the HAP Contract(s) are restricted for the term of the Use Agreement to occupancy by eligible families in accordance with HUD requirements under the HAP contract and this Rider and rent payments by these families shall not exceed 30% of adjusted monthly income **or the contract rent, whichever is less**. See SECTION THREE paragraph (1) (d) above for HAP Contract expiration, termination or non-renewal by HUD.

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

PURCHASER \_\_\_\_\_

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