

A regular meeting of the City Council of the City of Newburgh was held on Monday, August 8, 2011 at 7:00 P.M. in the Council Chambers at City Hall, 3rd Floor, 83 Broadway, Newburgh, New York 12550

The Prayer was led by Mayor Valentine and the Pledge of Allegiance was led by Councilwoman Bell.

Mayor Valentine announced that the Charter Review Commission will be holding a public hearing on Thursday, August 11th at 7:00 p.m. in the Activity Center at 401 Washington Street.

Present: Mayor Valentine, presiding; Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello - 4

Absent: Councilman Dillard - 1

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the regular meeting of July 11, 2011 be approved.

Ayes-Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

CARRIED

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the special meeting of July 19, 2011 be approved.

Ayes-Councilwoman Angelo, Councilwoman Bello, Mayor Valentine- 3

Abstain- Councilwoman Bell-1

CARRIED

REPORTS

Councilwoman Angelo moved and Councilwoman Bello seconded that the City Clerk's Report, the Registrar of Vital Statistics Report and the Civil Service Administrator's Report for the month of July be received, filed and made available to the Press.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

CARRIED

COMMUNICATIONS

Councilwoman Angelo moved and Councilwoman Bello seconded that the Notices of Claim, Summons & Complaints, Notice of Petition and Petitions and Notices of Application for Review of Tax Assessments & Petitions be referred to Corporation Counsel with power to act.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

CARRIED

PROPOSED PUBLIC HEARING

RESOLUTION NO.: 149 - 2011

OF

AUGUST 8, 2011

**RESOLUTION SCHEDULING A SECOND PUBLIC HEARING
FOR SEPTEMBER 12, 2011 TO HEAR PUBLIC COMMENT
CONCERNING THE ADOPTION OF THE PROPOSED
CITY OF NEWBURGH FUTURE LAND USE PLAN
AS A COMPONENT OF THE SUSTAINABLE MASTER PLAN**

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a second public hearing to receive comments concerning the adoption of the proposed City of Newburgh Future Land Use Plan as a component to the Sustainable Master Plan; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 12th day of September, 2011, in the third floor Council Chambers located at 83 Broadway, City Hall, Newburgh, New York; and

BE IT FURTHER RESOLVED, that copies of the proposed Future Land Use Plan are available for review on the 1st Floor of City Hall, Office of the City Clerk, and the 3rd Floor of City Hall, the Department of Planning and Development, 83 Broadway, Newburgh, NY 12550; and further available for review at the Newburgh Free Library, 124 Grand Street, Newburgh, NY 12550; and can also be viewed on the City of Newburgh Website at <http://www.cityofnewburgh-ny.gov/devel/index.htm>.

Councilwoman Angelo moved and Councilwoman Bell seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

PUBLIC HEARING #1

Mayor Valentine called a public hearing that was advertised for this meeting concerning a local law amending Article VIII of the City Charter entitled "Financial Procedures" Section C8.89, "Water and Sewer Bills; Relevy of Unpaid Charges with General City Tax" and a local law amending Section 248-2 entitled "When Rents Due and Payable; Filing and Confirmation of Rolls" of Chapter 248 "Sewers" of the Code of the City of Newburgh.

There being no one wishing to speak this public hearing was closed.

PUBLIC HEARING #2

Mayor Valentine called a public hearing that was advertised for this meeting concerning a local law amending Chapter 270 entitled "Taxation" to provide for the addition of Article XI entitled "Exemption of Capital Improvements to Residential Buildings".

Kippy Boyle, Grand Street, said that when this was originally brought up it was supposed to be a benefit for homeowners but the way it is written now it is limited to just one and two family. There are many owner occupied homes that are three family so she is requesting that this benefit to homeowners include owner occupied buildings that allow for a third apartment.

Fernando Gonzalez, City Assessor, responded that the law applies to owner occupied one and two family homes. They researched laws that were readily available under State Law and he feels that this will be a great exemption to promote improvements of owner occupied one and two family homes.

There being no further comments, this public hearing was closed.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Mayor Valentine noted that in regard to resolution #158-11 for the Mid-Broadway Site there has been talk amongst Council members that they don't want to take action on this tonight and it will probably be tabled until September.

Michael Gabor, Grand Street, said that just a few years ago we had someone here who was supposedly an expert who told us that if we had the opportunity then we should develop it. Here we have an opportunity to do that by making it square and building out but instead we have an Economic Development Director who is now gone so who is directing what is going on now? If it's the City Manager, he doesn't live here and he has no stake here except for a paycheck. We need to wait until we have someone here who at least has a stake in this community and he thinks that this should not just be tabled but canceled. In all fairness to the citizens of this city and the city itself, something more progressive should be sent out as an RFQ before this goes any further.

Dan, 144 Washington Street, member of Community Voices Heard said that they are also very concerned that the guy who was the Planning Director formed a secret committee of people who have nothing to do with the City of Newburgh with no guarantee that there is no kind of corruption or collusion and then he takes off. This is the way that things have always been done here and it is wrong. They would like to get some public involvement in this and they have taken a survey of the residents in the area on what they would like to see there. They would like to see a committee of residents in that neighborhood have some say on what goes in there. Right now they are very uncomfortable with the way this looks because it looks bad.

There being no further comments, this portion of the meeting was closed.

LOCAL LAW NO.: 6 - 2011

OF

AUGUST 8, 2011

A LOCAL LAW AMENDING ARTICLE VIII OF THE CITY CHARTER ENTITLED "FINANCIAL PROCEDURES" SECTION C8.89, "WATER AND SEWER BILLS; RELEVY OF UNPAID CHARGES WITH GENERAL CITY TAX" WITHIN THE CODE OF THE CITY OF NEWBURGH

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law amending Article VIII of the City Charter entitled "Water and Sewer Bills; Relevy of Unpaid Charges with General City Tax" Section C8.89, within the Code of the City of Newburgh.

SECTION 2 - AMENDMENT

Article VIII, Section C8.89, "Water and Sewer Bills; Relevy of Unpaid Charges with General City Tax" shall be amended to read as follows:

A. The Council shall establish, from time to time, the water rates to be paid by the consumers of water. Such water charges shall be a lien upon the real property on which or in connection with which the water was used. ~~Unpaid water charges in arrears for 30 days or longer shall be subject to a penalty of 10% per annum of the amount due.~~ Bills for water charges shall be prepared and sent to each owner of real property on which or in connection with water used on a quarter annual basis commencing on October 1, 1996, and thereafter on each January 1, April 1, July 1 and October 1, following in the same manner as water and sewer charges have heretofore been billed. Water bills are due and payable without penalties by the last day of the month in which the water bill is issued. Water bills that remain unpaid after 30 days will be subject to a penalty of 10% per quarter on the outstanding water bill account balance.

B. Partial Payments. Effective October 1, 2011, partial payments for water bills will be accepted by the City Collector. Partial payments will be credited against the account of the property until all arrears and penalties have been fully paid. All outstanding water bill account balances on October 1 of each year shall

be added to the real estate taxes for the following year in accordance with the provisions of Section C8.85 and C8.89(C).

C. The City Collector, on or before the second Monday in October of each year, shall report all water and sewer charges that remain unpaid as of the first day of October in any year and shall file annually with the Council a statement containing a brief description of the property upon which or in connection with which the water was used, the name of the owner and the amount chargeable to each. The Council shall then, no later than its regular meeting on the fourth Monday in November of each year, levy all amounts remaining unpaid on the date taxes are levied against the real property for which or in connection with which such water was provided. All of the provisions of the laws of the State of New York and this charter covering the enforcement and collection of unpaid city taxes or assessments for special improvements not inconsistent herewith shall apply to the collection of such unpaid water charges.

D. Sewer rents shall continue to be calculated and imposed in accordance with Local Law No. 1-1970, as amended, and shall be billed, relieved and enforced at the same times and in the same manner as provided herein for water charges.

D E. This section shall take effect on October 1, 1996 for all water and sewer bills rendered on October 1, 1996, or thereafter. Acceptance of partial payments shall take effect for water and sewer bills rendered on October 1, 2011 or thereafter.

SECTION 3 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 4 - EFFECTIVE DATE

This Local Law shall take effect on October 1, 2011 after it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Councilwoman Angelo moved and Councilwoman Bello seconded that the local law be enacted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ENACTED

LOCAL LAW NO.: 7 - 2011

OF

AUGUST 8, 2011

A LOCAL LAW AMENDING SECTION 248-2
ENTITLED "WHEN RENTS DUE AND PAYABLE;
FILING AND CONFIRMATION OF ROLLS" OF CHAPTER 248
"SEWERS" OF THE CODE OF ORDINANCES OF THE CITY OF
NEWBURGH

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law amending Section 248-2 entitled "When Rents Due and Payable; Filing and Confirmation of Rolls" of Chapter 248 "Sewers" of the Code of the City of Newburgh.

SECTION 2 - AMENDMENT

Chapter 248, Section 248-2, "When Rents Due and Payable; Filing and Confirmation of Rolls" shall be amended to read as follows:

§ 248-2. When rents due and payable; filing and confirmation of rolls.

A. The above-mentioned sewer rents shall commence on April 1, 1970, and shall be payable on a quarterly basis on the first days of July, October, January and April in each year.

B. At the same time the roll of water rents has been completed, the roll of the above-mentioned sewage rents shall be completed, and they shall be filed in the same manner in the office of the City Clerk as are rolls of water rents. These rolls shall be delivered to the Council and confirmed in the same manner as provided in § C8.85 of the Charter of the City of Newburgh, and the provisions of ~~said section~~ Sections C8.85, C8.86 and C8.89 referring to the collection of water rents and bills shall be in all ways applicable to the collection of the sewer rents herein and before referred to.

SECTION 3 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 4 - EFFECTIVE DATE

This Local Law shall take effect on October 1, 2011 after it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Councilwoman Angelo moved and Councilwoman Bello seconded that the local law be enacted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ENACTED

**LOCAL LAW NO.: 8 - 2011
OF
AUGUST 8, 2011**

**A LOCAL LAW ADDING ARTICLE XI ENTITLED
“EXEMPTION FOR CAPITAL IMPROVEMENTS TO RESIDENTIAL
BUILDINGS” TO CHAPTER 270 “TAXATION” OF THE CODE OF THE CITY
OF NEWBURGH**

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law Adding Article XI entitled ‘Exemption for Capital Improvements to Residential Buildings’ to Chapter 270 of the Code of the City of Newburgh”.

SECTION 2 - PURPOSE AND INTENT

The purpose of this local law is to adopt a real property tax exemption from general municipal taxes in the City of Newburgh for owners of one-family and two-family residential buildings that are reconstructed, altered or improved as authorized by Real Property Tax Law Section 421-f.

SECTION 3 - AMENDMENT

Chapter 270 entitled “Taxation” of the Code of the City of Newburgh is hereby amended by the addition of Article XI entitled “Exemption for Capital Improvements to Residential Buildings” to read as follows:

“ARTICLE XI

Exemption for Capital Improvements to Residential Buildings

§270-65 Purpose.

The City Council of the City of Newburgh encourages property owners of single and two-family residential dwelling to invest in improvements to one- and two-family buildings used solely for residential purposes by providing an exemption from general municipal taxes pursuant to Section 421-f of the Real Property Tax Law of the State of New York.

§270-66 Definitions.

As used in this section, the following terms shall have the following meanings:

RESIDENTIAL BUILDING - any person building or structure designed and occupied exclusively for residential purposes by not more than two families.

§270-67 Exemption.

A. Residential buildings that are reconstructed, altered or improved, pursuant to Section 421-f of the New York State Real Property Tax Law., shall be exempt from taxation and special ad valorem levies to the extent provided herein.

B. Such buildings shall be exempt for a period of one year to the extent of one hundred (100%) per centum of the increase in assessed value thereof attributable to such reconstruction alteration or improvement and for an additional period of seven years subject to the following:

1. The extent of such exemption shall be decreased by twelve and one-half (12.5%) per centum of the "exemption base" each year during such additional period. The "exemption base" shall be the increase in assessed value as determined by the initial year of the term of the exemption, except as provided in subsection 2 of this section.
2. In any year in which a change in level of assessment of fifteen (15%) per centum or more is certified for a final assessment roll pursuant to the rules of the State Board, the exemption base shall be multiplied by a fraction, the numerator of which shall be the total assessed value of the parcel on the immediately preceding final assessment roll (after accounting for any physical or quantity changes to the parcel since the immediately preceding assessment roll), and the denominator which shall be the total assess value of the parcel on the immediately preceding final assessment roll. The result shall be the new exemption base, notwithstanding the fact that the Assessor receives certification of the change in level of assessment after the completion, verification and filing of the final assessment roll. In the event the Assessor does not have custody of the roll when such certification is received, the Assessor shall certify the recomputed exemption to the local officers having custody and control of the roll, and such local officers are hereby directed and authorized to enter the recomputed exemption certified by the Assessor on the roll. The Assessor shall give

written notice of such recomputed exemption to the property owner, who may, if he or she believes that the exemption was recomputed incorrectly, apply of a correction in the manner provided by Title 3 of Article 5 of the New York State Real Property Tax Law.

3. Such exemption shall be limited to \$80,000.00 in increased market value, but not less than \$5,000.00, of the property attributable to such reconstruction, alteration or improvement, and any increase in market value greater than such amount shall not be eligible for the exemption pursuant to this section. For the purposes of this section, the market value of the reconstruction, alteration or improvement shall be equal to the increased assessed value attributable to such reconstruction, alteration or improvement divided by the Class I ratio in a special assessing unit or the most recently established state equalization rate or special equalization rate in the remainder of the state, except where the state equalization rate or special equalization rate equals or exceeds ninety-five (95%) per centum in which case the increase in assessed value attributable to such reconstruction, alteration or improvement shall be deemed to equal the market value of such reconstruction, alteration or improvement.

§270-68 Exclusions from Exemption.

A. No such exemption shall be granted for reconstruction, alterations or improvements unless:

1. Such reconstruction, alteration or improvement was commenced subsequent to the date on which this Local Law takes effect;
2. The value of such reconstruction, alteration or improvement exceeds three thousand (\$3,000.00) Dollars; and
3. The greater portion, as so determined by square footage, of the building reconstructed, altered or improved is at least five years old.

B. For purposes of this section, the terms “reconstruction,” “alteration” and “improvement” shall not include ordinary maintenance and repairs.

C. No such exemption shall be granted concurrent with or subsequent to any

other real property tax exemption granted to the same improvements to real property, except where, during the period of such previous tax exemption, payments in lieu of taxes or other payments were made in an amount that would have been equal to or greater than the amount of real property taxes that would have been paid on such improvements had such property been granted an exemption pursuant to this Article. In such case, an exemption shall be granted for a number of years equal to the twelve-year exemption granted pursuant to this Article less the number of years the property would have been previously exempt from real property taxes.

§270-69 Time to File Application.

Any exemption pursuant to this Article shall be granted only upon application by the property owner on a form prescribed by the State Board of the Office of Real Property Services. The application shall be filed with the Assessor of the City of Newburgh on or before the taxable status date of March 1 to be eligible for an exemption to be entered on the assessment roll prepared on the basis of said taxable status date.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 - EFFECTIVE DATE

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law and shall apply to assessment rolls on the basis of taxable status dates occurring on and after January 1, 2012.

SECTION 6 - FILING

In addition to the Office of the New York State Secretary of State, copies of this Local Law shall be filed with the State Board of the Office of Real Property Services and the City of Newburgh Assessor.

Councilwoman Angelo moved and Councilwoman Bello seconded that the local law be enacted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ENACTED

RESOLUTION NO.: 150 - 2011

OF

AUGUST 8, 2011

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW
YORK TO TRANSFER \$550,000.00 FROM SEWER DEPARTMENT FUND
BALANCE TO SEWER DEPARTMENT OTHER EQUIPMENT
TO PROVIDE FUNDING FOR REPLACEMENT OR REPAIR OF CRITICAL
EQUIPMENT AT THE CITY OF NEWBURGH WASTEWATER TREATMENT
PLANT**

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
Sewer Fund Balance	G.000.0911	\$550,000.00	
Sewer Department Other Equipment	G.8130.0200		\$550,000.00

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

RESOLUTION NO.: 151 - 2011

OF

AUGUST 8, 2011

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW
YORK TO TRANSFER \$90,000.00 FROM CONTINGENCY
TO WORKERS COMPENSATION TO PROVIDE FUNDING
FOR COMPENSATION CLAIMS**

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
Contingency	M.1990.0400	\$90,000.00	
Workers Compensation	M.9040.0408		\$90,000.00

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

RESOLUTION NO.: 152 - 2011

OF

AUGUST 8, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH SHAMROCK SHOWS, INC.
FOR AMUSEMENT RIDES, ATTRACTIONS AND CONCESSIONS AT
THE CITY OF NEWBURGH INTERNATIONAL FESTIVAL**

WHEREAS, the City of Newburgh will hold its annual International Festival on Friday, September 2, 2011 through Monday, September 5, 2011, dates inclusive;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into an agreement, a copy of which is annexed hereto, and in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with Shamrock Shows, Inc. for services in connection with the City of Newburgh International waterfront Festival.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of August, 2011, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the **“CITY,”** with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **SHAMROCK SHOWS, INC.**, a firm with principal offices at 338 Willow Tree Road, Milton, New York 12547, hereinafter referred to as **“VENDOR.”**

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”).

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning September 2, 2011, and ending September 5, 2011.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule A, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule A, and prepared in such form and supported by such documents as

the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant’s Certification form, and if the Claimant’s Certification form is objectionable, will notify VENDOR, in writing, of the CITY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$0.00 ZERO Dollars has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY’S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such

interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by **VENDOR** to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that **VENDOR** (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the **SERVICES** and/or supplying goods and incurring expenses under this Agreement, **VENDOR** shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the **CITY**. As an independent contractor, **VENDOR** shall be solely responsible for determining the means and methods of performing the **SERVICES** and/or supplying of the goods and shall have complete charge and responsibility for **VENDOR'S** personnel engaged in the performance of the same.

In accordance with such status as independent contractor, **VENDOR** covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the **CITY**, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the **CITY** including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the **SERVICES** to be performed by it under this Agreement, without the prior express written consent of the City Manager of the **CITY**. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any **SERVICES** provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the **CITY** shall be subject to all of the terms and conditions of this Agreement.

Failure of **VENDOR** to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the **CITY** and if so terminated, the **CITY** shall thereupon be relieved and discharged from any further liability and obligation to **VENDOR**, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the **CITY** except so much thereof as may be necessary to pay **VENDOR'S** employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by **VENDOR** for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the **CITY** to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such

policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Except for Workers' Compensation and professional liability, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
Worker's Compensation	Statutory
Employer's liability or similar insurance	\$1,000,000 each occurrence
Automobile liability	\$1,000,000 aggregate
Bodily Injury	\$2,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Comprehensive General Liability, including	\$1,000,000 aggregate
Broad form contractual Liability, bodily injury and property damage	\$2,000,000 each occurrence
Professional liability (If commercially available for your profession)	\$1,000,000 aggregate \$2,000,000 each claim

VENDOR shall attach to this Agreement certificates of insurance evidencing

VENDOR'S compliance with these requirements.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement). Whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and

tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 16. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so

terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 17. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 18. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies

otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 19. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manger of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 20. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be

entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 22. ENTIRE AGREEMENT

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

ARTICLE 24: CLOSE OUT & CLEAN UP

The parties agree that Shamrock (VENDOR) shall make its best effort to remove all property and equipment from the site no later than the end of the day, September, 7, 2011. However, in the event of unforeseen delays or other circumstances beyond the control of the parties, Shamrock shall have until September 8, 2011 to remove all such property and equipment from the site.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

SHAKROCK SHOWS, INC.

BY: _____
RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____
COLIN O'KEEFE

DATE: _____

DATE: _____

APPROVED AS TO FORM

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS,
City Comptroller

SCHEDULE A

SCOPE OF SERVICES

152-11



338 Willow Tree Rd. • Milton, NY 12547
Phone: 845-795-1263 • Fax: 845-795-2345

July 12th, 2011

Re: 23rd Annual International
Waterfront Festival
September 2nd - September 5th, 2011

To The City Of Newburgh:

Shamrock Shows, Inc is submitting a proposal to the City of Newburgh for this years 23rd Annual International Waterfront Festival.

The fees payable and services provided to the City by Shamrock Shows, Inc shall be as followed:

- E-1. 35% of the total gross receipts for all rides.
- A-2. 12-16 Adult & Children's Rides, space permitting.
- E-3. \$100.00 per game Concession.
- A-4. 7-10 Games, space permitting.
- F-5. 100 Advertising Posters.
- G-6. Tickets will be supplied by Shamrock Shows, Inc
- HJK-7. Ticket sellers will be furnished by Shamrock Shows, Inc beginning and ending numbers will be tallied daily.
- B-8. Shamrock Shows will provide a Certificate of Insurance naming the City of Newburgh as Additional Insured.
- 9. Shamrock Shows will begin set up on Wed., Aug. 31st, after 12:00 p.m., and have all rides out by 12:00 p.m. on Wed. Sept 7th, 2011.

Respectfully,

Karen O'Keefe
Karen O'Keefe

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RESOLUTION NO.: 153 - 2011

OF

AUGUST 8, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
AGREEMENTS WITH VARIOUS PARTIES TO PROVIDE PERFORMING
ARTISTS AND RELATED SERVICES IN
CONNECTION WITH THE CITY OF NEWBURGH
23RD ANNUAL INTERNATIONAL FESTIVAL**

WHEREAS, the City of Newburgh will hold its annual International Festival from Saturday, September 2, 2011 through Monday, September 5, 2011, dates inclusive; and

WHEREAS, it is appropriate and necessary to authorize the Acting City Manager to enter into agreements by which performing artists, production services and necessary equipment and facilities shall be provided; and

WHEREAS, there is \$10,000.00 available in the 2011 Festival Budget; and

WHEREAS, there is additional funding available in a Trust and Agency Account in the amount of \$9,262.00 derived from the 2010 Festival proceeds; and

WHEREAS, such agreements shall not exceed the 2011 Festival Budget and the Trust and Agency Account for a total budget of \$19,262.00;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into the referenced agreements in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with the performing artists and providers of related necessary services in connection with the 23rd Annual International Festival, with the net cost to the City of such agreements not to exceed the 2011 Festival Budget and the Trust and Agency Account proceeds in the amount of \$19,262.00.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

**RESOLUTION NO.: 154 - 2011
OF
AUGUST 8, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER ACCEPT
A GRANT FROM THE STATE OF NEW YORK DEPARTMENT OF
CRIMINAL JUSTICE SERVICES WITH NO CITY MATCH FOR THE
OPERATION IMPACT VIII PROGRAM TO ENHANCE LAW
ENFORCEMENT IN THE CITY OF NEWBURGH TO ACHIEVE
SUSTAINED, LONG-TERM CRIME REDUCTION THROUGH
CONTINUATION OF THE CRIME ANALYST POSITION, EXPANSION OF
THE FIELD INTELLIGENCE OFFICER POSITION, FOCUSED
ENFORCEMENT ON GANG CRIME PATTERNS AND RELATED
STRATEGIES, AND AUTHORIZING THE CITY MANAGER TO EXECUTE
ANY DOCUMENTS AND TAKE SUCH ACTIONS REQUIRED TO CARRY
OUT SUCH PROGRAM**

WHEREAS, the City of Newburgh Operation Impact Partnership has been awarded a Grant in an amount not to exceed \$742,500.00 under the Operation IMPACT VIII Program; and

WHEREAS, Operation IMPACT VIII is part of a comprehensive strategy to reduce crime in New York State by enhancing law enforcement by enabling local police agencies to better analyze crime patterns and data, expand the scope of the positions of Crime Analyst and Field Intelligence Officer, expand focused enforcement on Gang related activity and crime; and

WHEREAS, the Program will enhance enforcement and prosecution efforts against crime in the City of Newburgh and no City matching funds are required;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to accept a Grant award, from the New York State Department of Criminal Justice Services under the Operation IMPACT VIII Program, in an amount not to exceed \$742,500.00 with no City match required, to be used to carry out the program and implement the purposes set forth herein; and to execute all such further contracts and documentation, and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

RESOLUTION NO.: 155 - 2011

OF

AUGUST 8, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A DONATION FROM ARMOR DYNAMICS
IN CONNECTION WITH THE REINFORCEMENT OF
A CITY OF NEWBURGH POLICE DEPARTMENT VEHICLE**

WHEREAS, Armor Dynamics has offered to outfit a police vehicle with their armor product as a donation to the City of Newburgh; and

WHEREAS, such armor shall be effective and invaluable in protecting our City of Newburgh Police Officers; and

WHEREAS, this Council has determined it to be in the best interests to accept such donation from Armor Dynamics;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a donation from Armor Dynamics in connection with the reinforcement of a City of Newburgh Police Department Vehicle, with the appreciation and thanks of the City of Newburgh.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

RESOLUTION NO.: 156 - 2011

OF

AUGUST 8, 2011

**A RESOLUTION DECLARING 6,000 OLD WATER METERS
AS SURPLUS AND AUTHORIZING THE SALE
OF THE METERS ON GOVDEALS, INC.**

WHEREAS, the City of Newburgh Water Department has reported that it is in possession of 6,000 water meters which are no longer needed nor can they be of further use by or for City purposes; and

WHEREAS, it has been determined that said water meters cannot be used by any other department, and are not appropriate for transfer to the general public; and

WHEREAS, the City of Newburgh is currently under contract with GovDeals, Inc. for the sale of surplus City property;

WHEREAS, the Water Department wishes to place the surplus meters for sale on GovDeals, Inc.; and

WHEREAS, this Council has determined that disposing of the surplus meters is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that said water meters be and are hereby declared to be surplus and of no further use to the City of Newburgh; and

BE IT FURTHER RESOLVED, that said water meters shall be sold by means of GovDeals, Inc.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

ORDINANCE NO.: 18 - 2011

OF

AUGUST 8, 2011

AN ORDINANCE AMENDING CHAPTER 288, "VEHICLES AND TRAFFIC"
ARTICLE VIII ENTITLED "SCHEDULES"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 288, "Vehicles and Traffic", Article VIII, "Schedules" be and is hereby amended to read as follows:

Section 1. Chapter 288, VEHICLES AND TRAFFIC

§ 288-61. Schedule III: School Speed Limits.

In accordance with § 288-9, no person shall drive a vehicle in excess of the speeds indicated below, in the areas designated below, during school days between the hours of 7:00 a.m. and 6:00 p.m.:

Name of Street (Reserved)	Speed Limit (mph)	Location
<u>Ann Street</u>	15	<u>From South Robinson Avenue west for 400 feet</u>
<u>Chambers Street</u>	15	<u>Third Street to Farrington Street</u>
<u>Fullerton Avenue</u>	15	<u>South Street to Roe Street</u>
<u>Gidney Avenue</u>	15	<u>Chambers Street to North Miller Street</u>
<u>Gidney Avenue</u>	15	<u>Fullerton Avenue to Roe Street</u>
<u>Grand Street</u>	15	<u>From South Street north for 273 feet</u>
<u>Liberty Street</u>	15	<u>Third Street to Farrington Street</u>

<u>Monument Street</u>	15	<u>Henry Avenue to Overlook Place</u>
<u>Overlook Place</u>	15	<u>Bridge Street to Monument Street</u>
<u>Robinson Avenue</u>	15	<u>Rural Lane to Cottage Street</u>
<u>South Street</u>	15	<u>Fullerton Avenue to West Street</u>
<u>South Street</u>	15	<u>Grand Street to Montgomery Street</u>
<u>South Robinson Avenue</u>	15	<u>Ann Street to Washington Street</u>
<u>Washington Street</u>	15	<u>From William Street east for 225 fee</u>
<u>William Street</u>	15	<u>Washington Street to Hasbrouck Street</u>

Underline denotes additions

Councilwoman Angelo moved and Councilwoman Bello seconded that the ordinance be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

RESOLUTION NO.: 157 - 2011

OF

AUGUST 8, 2011

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-
ENTRY
FROM A DEED ISSUED TO WILLIAM ROSE
TO THE PREMISES KNOWN AS 29 MAPLE STREET
(SECTION 25, BLOCK 4, LOT 9)**

WHEREAS, on January 5, 2011, the City of Newburgh conveyed property located at 29 Maple Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 25, Block 4, Lot 9, to William Rose; and

WHEREAS, Mr. Rose has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4 and 5 of the aforementioned deed.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

**RESOLUTION NO.: 158 - 2011
OF
AUGUST 8, 2011**

**A RESOLUTION INVITING PROPERTY DEVELOPERS
TO PARTICIPATE IN THE CITY OF NEWBURGH'S
REQUEST FOR PROPOSALS IN CONNECTION WITH
THE DEVELOPMENT OF THE PROPERTY COMMONLY
REFERRED TO AS THE "MID BROADWAY SITE"**

WHEREAS, in April of 2011, the City of Newburgh issued Requests for Qualifications ("RFQ") for the development of the parcels commonly referred to as the "Mid Broadway Site"; and

WHEREAS, in response to the "RFQ" the City received submissions from six (6) developers; and

WHEREAS, a review committee consisting of bankers, real estate developers and City staff reviewed the six (6) responses to the RFQ; and

WHEREAS, the committee recommended three (3) (four (4)) developers present their proposed projects to the City Council; and

WHEREAS, this Council heard such presentations at the regularly scheduled Work Session held on August 4, 2011 and now wishes to invite those developers to respond to a Request for Proposals ("RFP");

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that Walison Corp., Poco Partners, LLC with the Kretchmer Companies, LLC and Mill Street Partners with RECAP and CPC Resources, Inc. (and _____) be and are hereby invited to participate in the City of Newburgh's "RFP" on such terms and conditions attached hereto and made a part hereof, and with such other terms and conditions as may be required by Corporation Counsel in connection with the development of the property commonly referred to as the "Mid Broadway Site."

Councilwoman Bell moved and Councilwoman Bello seconded that the resolution be tabled.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

TABLED

RESOLUTION NO.: 159 - 2011

OF

AUGUST 8, 2011

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2009 RELATIVE TO
179 DUBOIS STREET (SECTION 17, BLOCK 8, LOT 18)**

WHEREAS, The City of Newburgh commenced a proceeding for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2009-12857; and

WHEREAS, The Chapman Steamer Collective, LLC, by their attorney, served an Answer to such action in regard to the foreclosure of 179 Dubois Street (Section 17, Block 8, Lot 18); and

WHEREAS, the attorneys for KeyBank National Association have advised the City that they are prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its further development to settle this matter;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to withdraw the liens on the property located at 179 Dubois Street (Section 17, Block 8, Lot 18), City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Thirty Two Thousand One Hundred Ninety Seven And 90/100 (\$32,197.90) Dollars representing substantially all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2010-2011 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before August 30, 2011.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

RESOLUTION NO.: 160 - 2011

OF

AUGUST 8, 2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) FOR WATER STORAGE TANK REPAIR AND MAINTENANCE, DECLARING THE PROJECT TO BE AN UNLISTED ACTION, ADOPTING PART I OF THE ENVIRONMENTAL ASSESSMENT FORM AND ISSUING A NEGATIVE DECLARATION

WHEREAS, the City of Newburgh water system serves approximately 27,000 people through 6,675 service connections; and

WHEREAS, a recent inspection of the three storage tanks which are critical to assuring a stable water supply throughout the City has revealed several deficiencies ranging from minor items to the necessity to replace an entire roof and supporting structure; and

WHEREAS, the Water Storage Tank Project would include the professional review of the existing tank inspections, confirmation of the prioritizing the necessity of repairs, preparation of contract documents for solicitation of competitive bids and the construction and contract administration of the necessary repairs and upgrades; and

WHEREAS, the City is hopeful to utilize New York State Economic Development Assistance Program funding to supplement New York State Environmental Facilities Corporation (EFC) financing through the Drinking Water State Revolving Fund (DWSRF) and the issuance of bond anticipation notes to advance the Project in advance of EFC funding; and

WHEREAS, in compliance with the State Environmental Quality Review Act (SEQRA), the City Council of the City of Newburgh wishes to assume Lead Agency status, declare the action to be an unlisted action, approve and adopt Part I of the Environmental Assessment Form ("EAF"), and find that the project will not have any significant adverse environmental impacts; and issue a negative declaration;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York as follows:

1. That the City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6; and
2. Classifies the action as an unlisted action; and
3. Adopts Part I of the Environmental Assessment Form; and
4. Issues a Negative Declaration with respect thereto.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

160-11

617.20

Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR City of Newburgh		2. PROJECT NAME Water Storage Tank Project	
3. PROJECT LOCATION: Municipality City of Newburgh, New York County Orange			
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Water Storage Tank Locaton 141 Ellis Ave.; TM 42-2-4, Brady Ave.; TM 2-19-2 and 283 Carpenter Ave.; TM 7-2-2 (Marne Ave. Entrance to Tank).			
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration			
6. DESCRIBE PROJECT BRIEFLY: See Attached Project Description.			
7. AMOUNT OF LAND AFFECTED: Initially _____ acres Ultimately _____ acres			
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly			
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: The existing water storage tanks are located at higher elevations of the City in primarily residential or undeveloped areas.			
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: Technical approval of Orange County Health Department and Funding from DASNY and NYS EFC.			
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: Orange County Health Department Permit to operate water system facilities.			
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No			
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Craig M. Marti, PE, City Engineer</u> Date: _____ Signature: _____			

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.
 Yes No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
 Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:
 Temporary impacts may be experienced during construction only. No ongoing impacts are anticipated.

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:
 This project is the repair, upgrade or replacement of existing municipal water storage tanks. No impact is anticipated.

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:
 This project is the repair, upgrade or replacement of existing municipal water storage tanks. No impact is anticipated.

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:
 This project is the repair, upgrade or replacement of existing municipal water storage tanks. No impact is anticipated.

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:
 This project is the repair, upgrade or replacement of existing municipal water storage tanks. No impact is anticipated.

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:
 This project is the repair, upgrade or replacement of existing municipal water storage tanks. No impact is anticipated.

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:
 This project is the repair, upgrade or replacement of existing municipal water storage tanks. No impact is anticipated.

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?
 Yes No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
 Yes No If Yes, explain briefly:

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

- Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.
- Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action **WILL NOT** result in any significant adverse environmental impacts **AND** provide, on attachments as necessary, the reasons supporting this determination.

City of Newburgh

 Name of Lead Agency

 Date

Richard F. Herbeck

 Acting City Manager

 Print or Type Name of Responsible Officer in Lead Agency

 Title of Responsible Officer

 Signature of Responsible Officer in Lead Agency

 Signature of Preparer (If different from responsible officer)

Reset

**RESOLUTION NO.: 161 - 2011
OF
AUGUST 8, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A CONTRACT OF SALE WITH THE U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT AND WITH MOUNTCO
CONSTRUCTION AND DEVELOPMENT CORP. FOR THE SALE
AND REDEVELOPMENT OF REAL PROPERTY KNOWN AS
BURTON TOWERS, 36 CERONE PLACE (SECTION 33, BLOCK 6, LOT 3.1)**

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is the holder of a mortgage on the property commonly known as Burton Towers, 36 Cerone Place, Newburgh, New York, and being more accurately described as Section 33, Block 6, Lot 3.1 on the official tax map of the City of Newburgh; and

WHEREAS, Burton Towers Housing Development Fund Company, Inc., the owner of Burton Towers, is in default on the mortgage held by HUD and HUD has initiated foreclosure proceedings against the owner; and

WHEREAS, under its authority pursuant to 12 U.S.C. Section 1715z-11a, HUD has provided the City of Newburgh, as the unit of general local government, with notice of its intent to foreclose on said mortgage and offered the City a first option to purchase Burton Towers under certain terms and conditions; and

WHEREAS, the City cannot exercise the first option to purchase Burton Towers without a redevelopment partner who is ready, willing and able to assume all the terms and conditions required by HUD in the sale of the property and to take title to the property immediately upon transfer of the property from HUD to the City; and

WHEREAS, the City has solicited and received proposals from potential redevelopment partners, and has determined that Mountco Construction and Development Corp. has the resources and experience required to partner with the City in purchasing Burton Towers from HUD and repairing and renovating the property to be maintained as affordable rental housing for the elderly; and

WHEREAS, the City's exercise of the first option to purchase Burton Towers will require a contract of sale between the HUD and the City and between the City and Mountco Construction and Development Corp. or its

designated affiliate, provided such affiliate is owned or controlled by Joel B. Mouny ("Mountco"); and

WHEREAS, the City Council finds that exercising a first option to purchase Burton Towers is in the best interests of the residents of Burton Towers and the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute a contract of sale with the U.S. Department of Housing and Urban Development, in the same form as annexed hereto, and other related documents as may be required by the Corporation Counsel; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh that the City Manager be and hereby is authorized to execute a contract of sale with Mountco which shall include all the following terms, and other terms and conditions as required by Corporation Counsel:

Mountco shall:

- Assume all terms and conditions of the contract of sale between HUD and the City;
- Close on title, which shall take place on the same date, time and at the same location as the closing of title between HUD and the City;
- Make the City whole for delinquent PILOT payments and water and sewer liens due and owing the City up to the date of the closing of title;
- Provide the escrow and/or letter of credit required by HUD to purchase the property;
- Pay an impact fee of up to \$200,000.00;
- Undertake all financial and operational responsibility for Burton Towers, including but not limited to major and minor repairs, capital improvements, daily maintenance and operation on behalf of the City as required by the City's contract of sale with HUD and upon taking title to the property from HUD;
- Pre qualification by HUD.

City shall:

- Negotiate a new PILOT agreement with Mountco;
- Provide support for federal and state funding applications as may be necessary;
- Facilitate the issuance of building permits and local approvals as may be required in the rehabilitation of the property.

Mayor Valentine said that this is something that has come about rather quickly because of the time constraints of both the foreclosure from HUD and whether or not the City of Newburgh could partner with a development entity to pull this off. The Council as a whole directed the City Manager and staff that they wanted to do this. We were fortunate to get some qualified developers to respond to this request and the one chosen tonight has a very good reputation in the City of Newburgh. They come with the financial wherewithal to do this and the desire to make Burton Towers a place that is acceptable and something that we can be proud of for our seniors and low income housing residents. One line in the resolution that he thinks hit home with all of the Council members reads "The City Council finds that exercising a first option to purchase Burton Towers is in the best interest of the residents of Burton Towers and the City of Newburgh". It is not just about a developer and the money; it's about the fact that there are about two hundred and sixty people that live in that building who do not have a voice so we worked very diligently on this. This is not a done deal yet but they have certainly achieved step one and he thinks that they should all be proud of that.

Councilwoman Angelo said that she is very happy to vote yes on this tonight.

Councilwoman Bell said that she knows that the Burton Towers residents will be well spoken for and taken care of with this arrangement so she is prayerful that this moves forward.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4

ADOPTED

161-11
U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT - PROPERTY DISPOSITION PROGRAM
CONTRACT OF SALE - CASH SALE

THIS CONTRACT, made this ____ day of _____, 20__, is between the SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ("Grantor" or "HUD"), and the City of Newburgh, NY

WITNESSETH THAT

1. **PURCHASE AND SALE** - In consideration of the covenants and agreements of the respective parties, as hereinafter set forth, Grantor, subject to Grantor obtaining title, agrees to sell and Grantee agrees to purchase all of Grantor's right, title and interest in and to the real estate; Burton Towers Apartments, FHA Number: 012-EH018, situated in City of Newburgh, County of Orange, State of New York, and more particularly described in the attached Exhibit A entitled "Legal Description," together with all improvements thereon and appurtenances thereto and the articles of equipment and other personal property owned by Grantor and used in connection therewith, hereinafter referred to as the "Property".
2. **PURCHASE PRICE:**
 - (a) The purchase price of the Property is One Dollar (\$1.00) to be paid at Closing.
 - (b) There is no earnest money requirement for this sale.
 - (c) A Letter of Credit equal to twenty-five percent (25%) of the estimated cost of repairs of \$521,627, as determined by HUD or other assurance satisfactory to HUD will be required at closing.
 - (d) A Housing Assistance Payment (HAP) Contract will be executed at closing. The HAP Contract is subject to the availability of Section 8 funds. The HAP Contract will initially be funded for a minimum of one (1) month and a maximum of twelve (12) months.
3. **CLOSING, CLOSING EXPENSES AND TRANSFER OF POSSESSION**
 - (a) The sale shall be effective upon Closing.
 - (b) Grantee shall pay all closing costs and expenses irrespective of local custom.
 - (c) Transfer of title to, and possession of the Property, subject to the leases and tenancies herein referred, shall become effective as of Closing.
4. **PRORATIONS AND SECURITY DEPOSITS:**
 - (a) Prorations – No prorations of income, expenses and taxes.
 - (b) Security Deposits – To be provided by previous owner. Grantee agrees to assume all responsibility and liability under State and local law with respect to the collection, application and return of security deposits.
5. **FORM OF CONVEYANCE, INSPECTION, OBJECTIONS TO TITLE AND RIGHTS OF RECISSION:**
 - (a) The Property shall be conveyed to the Grantee by special warranty deed in the form customarily used by Grantor in the jurisdiction in which the Property is located. Title to the Property shall be good and marketable subject to existing tenancies, easements, zoning, covenants, restrictions and reservations of record. However, Grantor shall not warrant those items deemed acceptable to Grantee pursuant to subsection (d) below.
 - (b) Any title evidence or survey desired by Grantee shall be obtained at the sole expense of the Grantee.
 - (c) If any defect in title renders the Property unmarketable, or if litigation is pending challenging the sale and/or the sale is enjoined and Grantor does not cure the defect, settle the litigation or cause the injunction to be removed within a reasonable time, or Grantor notifies Grantee, in writing, that it is unable or unwilling to cure the defect, settle the litigation or remove the injunction,
 - (i) Grantee shall have the right to terminate this Contract by delivering to Grantor written notice prior to the Closing; and

- (ii) Grantor reserves the right to rescind this Contract and Grantor shall be released from all obligations and liability to Grantee.
- (d) The Property shall not be deemed unmarketable solely by reason of the existence of:
 - (i) Covenants, conventions and restrictions of record;
 - (ii) Private, public and utility easements, roads and highways;
 - (iii) Party wall rights and agreements;
 - (iv) Pending local building code violation proceedings;
 - (v) Existing leases and tenancies; and
 - (vi) Special taxes or assessments.
- (e) Grantee shall have twenty-one (21) days from the date of the execution of this Contract by Grantor to notify Grantor in writing of all defects in title appearing as of the date Grantee executes this Contract. If Grantee does notify the Grantor in writing of any alleged defects within twenty-one (21) days after execution of this Contract by Grantor, only those items in the notification will be addressed by Grantor. All other title matters will be deemed acceptable to Grantee.
- (f) At closing, Grantor shall deliver to Grantee a duly executed deed conveying Grantor's right, title and interest in the Property which Grantee immediately will present for recordation in the appropriate recorder's office.

6. **AS-IS SALE; NO REPRESENTATIONS**

- (a) Grantee shall accept the Property "as is." Grantor makes no representations or warranties concerning the physical condition of the Property. In addition, Grantor does not represent or warrant the number and occupancy of revenue producing units, or any factor bearing upon the value of the Property. It is Grantee's responsibility to assess the actual condition of the Property.
- (b) Grantee's failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Property, shall not affect the liabilities, obligations or duties of Grantor under this Contract, nor be a basis for termination of this Contract.

7. **RISK OF LOSS AND RIGHTS OF RESCISSION** - Until the Closing, Grantor assumes the risk of loss from damage to the Property by any cause including, but not limited to fire, flood, earthquake, tornado and vandalism other than willful acts of Grantee.

In the event of such damage, Grantor will provide for the restoration of the Property to its condition immediately prior thereto, except that, if Grantor determines that such damage is so extensive that Grantor is unwilling to restore the Property, Grantor may rescind this Contract.

If offered by Grantor and agreed to by Grantee, the cash due at Closing may be reduced by the estimated cost of restoration of the Property because of such damage, and such damage shall be added to the rehabilitation requirements provided for in the Rider entitled "Post-Closing Repair."

If Grantor and Grantee cannot agree on the estimated cost of restoration of the Property because of such damage, or if Grantor fails to negotiate an estimated cost of restoration of the Property because of such damage, Grantee may rescind this Contract.

8. **TIME IS OF THE ESSENCE** - Time is of the essence in the performance of this Contract. The sale shall be closed on the date HUD acquires title, at Grantor's offices, or at such other place as may be agreed on by the parties in writing.

9. **EXTENSIONS**- No extensions will be granted. This is a negotiated sale with agreements in place prior to execution of contract.

10. **GRANTEE 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 Contract, or to any benefit arising from it. However, this provision does not apply to this Contract to the extent that this Contract is made with a corporation for the corporation's general benefit.

- (b) If Grantee is, or becomes suspended, debarred, or temporarily denied from participating in HUD programs prior to closing, this Contract shall be terminated.
 - (c) Pursuant to 24 CFR Part 27 Section 20(f), the defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the mortgage on the property at the time of default resulting in acquisition of the property by HUD shall not be eligible to purchase the property. A "principal" and an "affiliate" are defined as provided at 24 CFR.200.215.
11. **CONTRACT BINDING – RESTRICTIONS ON ASSIGNMENT OF CONTRACT:**
- (a) This Contract shall be binding upon Grantee, its respective heirs, Executors, administrators, successors, successors in interest, and assigns.
 - (b) This Contract cannot be assigned to another entity.
12. **LIMITATION OF LIABILITY** - Notwithstanding any other provisions of this Contract, Grantor's liability for damage to the Property or for any breach of this Contract shall not exceed the amount of funds paid by Grantee to Grantor hereunder.
13. **CONTRACT EXECUTED ON BEHALF OF BIDDER** - If this Contract is executed on behalf of a corporation, partnership or other entity not as yet legally formed, such corporation, partnership or entity must be validly organized and legally capable of performing its obligations under this Contract prior to the Closing. If the entity is unable to become legally formed and, therefore, cannot accomplish the Closing, Grantor shall rescind this contract.
14. **FORMS** - All forms and instruments referred to in this Contract shall be the standard HUD forms and instruments prepared by Grantor and used by Grantor in the jurisdiction in which the Property is located and shall contain such additional covenants and conditions required by this Contract.
15. **ACKNOWLEDGMENT OF TERMS AND CONDITIONS OF SALE** - Grantee affirms that it has full knowledge of the terms, conditions, and requirements contained in this Contract.
16. **COMPLETE AGREEMENT** - This Contract supersedes all prior agreements and understandings related to the subject matter hereof, and may be changed, waived, discharged, or terminated only by a written document signed by the party against whom such change, waiver, discharge or termination is sought, except as otherwise provided herein.
17. **GENDER AND NUMBER** -Whenever the sense of this Contract so requires, the use of (1) the singular shall be deemed to include the plural, (2) the masculine gender shall be deemed to include the feminine or neuter gender, and (3) the neuter gender shall be deemed to include the masculine or feminine gender.
18. **SEVERABILITY** - If for any reason one or more of the provisions contained in this Contract shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, but this Contract shall be construed as if such invalid, illegal or unenforceable provision never had been included in this Contract.
19. **NOTICE** - Any notice, request, information or other document to be given hereunder to any of the parties by any other party, shall be in writing and delivered personally or sent by an overnight or express mail service, with a return receipt, postage prepaid to the person and address set forth below. Any party may change the person or address to which notices are to be sent by giving written notice of such change to the other party in the manner herein provided for giving notice. The person, address and telephone number for the Department of Housing and Urban Development is:

U.S. Department of Housing and Urban Development
Ruth E. Pompa, Acting Director, Multifamily Property Disposition Center
Five Points Plaza, 40 Marietta St.
Atlanta, GA 30303-2806
Phone: 817 978-5802.

The person, address and telephone number for the Grantee is as provided below Grantee's signature on this
Burton Towers

Contract

20. **EXHIBITS** - All exhibits described herein and attached hereto are fully incorporated into this Contract by this reference.

21. **PARAGRAPH HEADINGS** - The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope of the paragraphs hereof.

22. **MISCELLANEOUS PROVISIONS**

- (a) When the consent or approval of either party is required under the terms of this Contract, such consent or approval must be in writing.
- (b) Grantee agrees that any restrictions to be placed in the Deed referred to in this Contract will run with the land.
- (c) Whenever a number of days is referred to in this Contract, days shall mean calendar days. If any period of time expires on a non-Federal business day, Grantee or Grantor shall have until the close of business of the next Federal business day to take whatever action is to be taken within the time period.
- (d) This Contract of Sale is subject to Grantor obtaining title to the Property described in Exhibit A.

23. **RIDERS TO THIS CONTRACT** - The Riders checked and initialed by the parties are attached to and incorporated into this Contract and will be placed in the Deed to run with the land.

- | | |
|--|---|
| <input checked="" type="checkbox"/> Enforcement | <input checked="" type="checkbox"/> Asbestos Hazards |
| <input checked="" type="checkbox"/> Additional Use Restrictions | <input checked="" type="checkbox"/> Nondiscrimination Against Multifamily Section 8 Certificate and Voucher Holders |
| <input checked="" type="checkbox"/> Affordability of Units | <input checked="" type="checkbox"/> Equity Participation |
| <input checked="" type="checkbox"/> Required Rehabilitation and Relocation | |
| <input checked="" type="checkbox"/> Lead-Based Paint Hazards | <input checked="" type="checkbox"/> Redevelopment Plan |

24. **CERTIFICATION OF SUBSTANTIAL COMPLIANCE** – Grantee must also provide Certification to HUD that any other projects that are owned by Grantee or its affiliates and are located in the same jurisdiction as the Property are in substantial compliance with applicable State and/or local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the Grantee. If HUD determines in its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the Property to the Grantee.

IN WITNESS WHEREOF:

The Grantee has executed this Contract in triplicate the _____ day of _____, 20____.
PURCHASER:

By: _____
Name:
Title:

Grantor has executed this Contract in triplicate this _____ day of _____.
(This line to be executed by Grantor)

WITNESS:

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

BY: _____

EXHIBIT A
LEGAL DESCRIPTION

All that certain piece or parcel of land situate lying and being in the City of Newburgh, County of Orange, State of New York, described as following:

BEGINNING at an iron pipe set in the easterly line of Cerone Place at the northwestern most corner of land of the Grantor and the southwesterly corner of other lands now or formerly of the Grantor; said point of beginning being a distance of 169.00 feet on a course of N 20 degree 07 feet 20 inches E from the end of course No. 2 and the beginning of course No. 3 in the description of the parcel excepted from Newburgh Urban Renewal Agency Industrial parcel 1-C as same is described in Liber 1889 C.P. 47 and running thence; along the northerly line of lands of the Grantor and the southerly line of said other lands of the Grantor, S 69 degree 42 feet 40 inches E 150.21 feet to a point in Quassaick Creek and the westerly line of lands now or formerly of the Newburgh Urban Renewal Agency; thence, along the line of lands of the Grantor, the aforesaid Newburgh Urban Renewal Agency and being in the aforesaid Quassaick Creek, the following two (2) courses:

1. S18 degree 59 feet 30 inches E 21.14 feet to a point;
2. S71 degree 29 feet 30 inches E 42.00 feet to a point at the northeasterly corner of lands of the Grantor and the northwesterly corner of other lands now or formerly of the Grantor; thence, along the southeasterly line of lands of the Grantors and the northwesterly line of other lands of the Grantor, S31 degree 45 feet 10 inches W 702.11 feet to an iron pipe set, (passing over an iron pipe set at 34.07 feet and continuing along the same 472.55 feet to an iron pipe set); thence, continuing along the same, S19 degree 10 feet 00 inches W 227.53 feet to an iron pipe set on a curve in the northerly line of Lake Drive; thence, along the northerly line of said Lake Drive on a curve to the right having a radius of 686.00 feet and arc distance of 104.24 feet with a chord bearing and distance of N64 degree 20 feet 59 inches W 104.14 feet to an iron pipe set on a curve; thence, still along said Lake Drive on a curve to the left having a radius of 207.96 feet and an arc distance of 113.92 feet with a chord bearing and distance of N75 degree 41 feet 21 inches W 112.50 feet to an iron pipe set in the easterly line of aforesaid Cerone Place; thence along said line of Cerone Place, N10 degree 35 feet 56 inches W 44.17 feet to a drill hole set in a concrete sidewalk; thence, along the northeasterly line of said Cerone Place the following three (3) courses:

- 1) N35 degree 03 feet 20 inches E 574.91 feet to an iron pipe set on a curve, passing over an iron pipe found at 440.00;
- 2) Along a curve to the left having a radius of 658.70 feet and an arc distance of 171.68 feet with a chord bearing and distance of N27 degree 35 feet 20 inches E 171.20 feet to an iron pipe set;
- 3) N20 degree 07 feet 20 inches E 169.00 to the point or place of beginning.

Containing 3.88 +/- acres of land more or less.

(LEGAL DESCRIPTION IS FURNISHED AS INFORMATION ONLY. INTERESTED PARTIES MUST DETERMINE LEGAL DESCRIPTIONS THROUGH THEIR OWN DUE DILIGENCE.)

The Deed shall include the following provisions:

SECTION I: USE RESTRICTION

Pursuant to the provisions of 12 U.S.C. Section 1715z-11a(a), and the Department of Housing and Urban Development regulations thereunder at 24 C.F.R. Part 290, the Secretary has the authority to impose certain use restrictions, as set forth in this Deed.

1. **TERM OF RESTRICTION** - The provisions herein shall be in effect for twenty (20) years from the date of sale (restricted period).
2. **CONVEYANCE OF PROPERTY** - During the restricted period, any conveyance of the Property, or change in ownership of the Property to an individual or entity that holds more than a twenty-five percent (25%) interest in the ownership of the Property, must have prior written approval of HUD, including but not limited to Previous Participation Certification approval (HUD Form 2530), and Certification of Substantial Compliance. A merger, conversion, share exchange, interest exchange of corporate or partnership interest is also a transfer of the property and requires the approval of the Grantor.
The preceding provisions shall be applicable and in full force and effect notwithstanding that any applicable statutory law or case decision provide that any such merger or conversion or share (or interest) exchange transaction does not constitute or involve the occurrence of a "transfer" or "assignment" of real estate interest or other assets of a constituent party to any such transaction.
3. **MANAGEMENT OF THE PROPERTY** – During the restricted period, HUD's approval of the proposed Owner's management of the property will be based on information provided in written statements of how the Grantee (Owner), or any subsequent Grantee and management entity, in consideration of any and all existing use restrictions, will:
 - (a) implement sound financial and physical management program;
 - (b) respond to the needs of the tenants and work cooperatively with resident organizations;
 - (c) provide adequate organizational staff and resources to manage the Property;
 - (d) furnish proof of Previous Participation Certification approval.
4. **UNIT NUMBER OR USE CHANGE** - Changes to the use, number, size, or configuration of residential units in the Property; e.g., apartment units, beds in a care facility, from the use as of the date of conveyance to Grantee, must receive the written prior approval of HUD.
5. **SUBJECT TO EXAMINATION** – If used as rental housing, the Property shall at all times,
 - (a) be maintained in accordance with 24 C.F.R. 5.703; Owners of housing must maintain such housing in a manner that meets the physical condition standards to be considered decent, safe and sanitary condition to the greatest extent possible. All areas and components of the housing must be free of health and safety hazards,
 - (b) maintain full occupancy to the greatest extent possible,
 - (c) be maintained as affordable rental housing for the term of this Agreement,
 - (d) be obligated to provide annual financial statements to HUD (24 CFR parts 5 and 200)
 - (e) be subjected to periodic HUD inspections or inspections under REAC protocol (24 CFR parts 5 and 200)

At the request of the Secretary, Owner 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.

6. REMEDIES FOR NONCOMPLIANCE – Upon any violation of any provision herein by the Grantee, HUD may give written notice thereof to the Grantee by registered or certified mail. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this provision and may apply to any court, State or Federal, for specific performance of this provision, for an injunction against any violation of this provision, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this provision, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the provision would be irreparable and the amount of damage would be difficult to ascertain.

The availability of any remedy under this provision shall not preclude the exercise of any other remedy under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not construe a waiver of the right to exercise that or any other right or remedy at any time.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provision:

SECTION II: ENFORCEMENT

The covenants set forth in this Deed 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 Grantor and any/all successors in office.

The Grantor shall be entitled to:

1. Institute legal action to enforce performance and observance of these covenants,
2. Enjoin any acts which are violative of these covenants,
3. Exercise any other legal or equitable right or remedy with respect to these covenants.

In addition, the covenants, if any, set forth in this Deed 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 a part of the Contract of Sale.

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provision:

SECTION III: AFFORDABILITY OF UNITS

Use Restriction

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

Housing Assistance Payment (HAP)

As long as the HAP contract is in effect, the HAP will control the rent and eligibility requirements for the residents under the HAP.

If, during the Restricted Period, Grantor (HUD) elects not to renew the HAP due to budget appropriations, the Affordability of Units Rider will control future rent and eligibility requirements for the HAP designated dwelling units. No resident in place at the time of enactment will be forced to vacate a unit. The Affordability of Units Rider will also control future operation of the Property for those residential units not under the HAP Contract.

Eligibility Requirement at Initial Occupancy

The Grantee (Owner) will affirmatively market 125 HAP designated dwelling units to families with adjusted gross annual income that does not exceed eighty percent (80 %) of the area median income, adjusted for family size.

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

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

Affordability

- (a) Maintenance of rents at Affordable Levels For HAP designated units

If during the Restricted Period, Grantee elects not to accept or renew the HAP Contract or any replacement rental assistance program or causes the HAP to be abated or terminated because the Grantee is not in compliance with the requirements of the HAP Contract, current or future residents who are or would have been eligible for the project based assistance shall not be required to pay rent and utilities 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 Restriction to occupancy by eligible families in accordance with HUD requirements under the HAP Contract and this provision and rent payments by these families shall not exceed 30% of adjusted monthly income or the contract rent, whichever is less. Under this provision, within thirty (30) days of notice of default to the Grantee, any

lender holding a lien or security interest on the Project will be provided an opportunity to cure if the lender:

- (i) Gives written notice to Grantor (HUD) that it intends to cure the default/noncompliance of HAP, and
- (ii) Submits a plan to cure the default within thirty (30) days or within such longer periods as Grantor (HUD) may approve in writing.

If during the Restricted Period, Grantor (HUD) elects not to renew the HAP due to budget appropriations, the rents will be controlled by Section (b) below.

(b) Maintenance of Rents at Affordable Levels

- (i) For current tenants, affordable means the least of:
 - a. for a unit occupied by a very-low income family, the unit rent does not exceed thirty percent (30%) of fifty percent (50%) of the area median income, not necessarily the income of the family, as determined by Grantor (HUD), with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; or
 - b. for a unit occupied by a low-income family that is not a very low-income family, the unit rent does not exceed thirty percent (30%) of eighty percent (80%) of the area median income, (not necessarily the income of the family, as determined by Grantor (HUD), with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant; or
 - c. the Section 8 Voucher Payment Standard less the utility allowance established by the voucher provider; or
 - d. Market Rent in the immediate area established by a rent comparability study prepared, at the Grantee's (Owner's) expense, in accordance with Grantor (HUD) requirements.
- (ii) For new, or turnover tenants, affordable means the least of:
 - a. the unit rent does not exceed thirty percent (30%) of eighty percent (80%) of the area median income (not necessarily the income of the family), as determined by Grantor (HUD), with adjustments for family size, less a reasonable utility allowance for utilities paid by the tenant;
 - b. the Section 8 Voucher Payment Standard, less the utility allowance established by the voucher provider; or
 - c. Market Rent in the immediate area established by a rent comparability study prepared, at the Grantee's (Owner's) expense, in accordance with Grantor (HUD) requirements.

Annual certification

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

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Contract of Sale

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____.

The Deed shall include the following provision:

SECTION IV: NONDISCRIMINATION AGAINST SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS

Nondiscrimination

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, agrees not to 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 Grantee 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 the Grantor.

This covenant shall bind the Grantee, any/all successors, assigns and Grantees for value, for a period equal to the use restriction, which is twenty (20) years from the date of this Deed. In the event of a breach or a threatened breach of this covenant, the Grantor, 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 covenant, a third-party beneficiary shall be any person who holds a Certificate of Family Participation or a Voucher under Section 8 or any equivalent document under successor legislation.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall contain the following provision:

SECTION V: REQUIRED REHABILITATION AND RELOCATION

Rehabilitation and Relocation Restriction

The Grantee covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §17012-11(j), and the regulations thereunder, 24 CFR § 290.17, as explained in paragraphs 2 through 5, below. Additionally, the Grantee covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Grantee is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations.

1. The Grantee covenants that the Property will be rehabilitated within eighteen (18) months from the date of this Contract in accordance with all applicable State and local laws, codes, ordinances and regulations, and Physical Conditions Standards pursuant to 24 CFR Part 5, and other requirements set forth in any repair summaries and narratives, attached hereto.
 - (a) If the Grantee cannot complete the repairs within the required time, thirty (30) days prior to the expiration of the time allowed, a written request for an extension must be delivered to Grantor stating the reason for the Grantee's inability to complete the repairs.
 - (b) The granting of one or more extensions shall not obligate Grantor to grant additional extensions.
 - (c) Extensions of time to complete repairs are within Grantor's sole and absolute discretion.
2. If temporary or permanent relocation is necessary because of such rehabilitation, Grantee covenants to provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
3. If temporary relocation is necessary because of such rehabilitation, Grantee covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which, to the extent feasible, shall be in a location not generally less desirable than the 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.
 - (b) Expenses of returning to a repaired unit on the Property. Grantor will not provide the Grantee with any funds or subsidy with which to make the payments required by this paragraph.
4. If permanent relocation is necessary because of such rehabilitation, Grantee covenants to 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.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by Grantor to be reasonable considering the size of the household and the circumstances surrounding the move. Grantor will not provide the Grantee with any funds or subsidy with which to make the payments required by this paragraph.
5. The Grantee covenants not to increase the rent for any unit, from the rent Grantor is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth in paragraph 1, above.
6. To ensure completion of required repairs that are to be completed by the Grantee, the Grantee has delivered to the Grantor:

- (a) An unconditional, irrevocable and non-documentary Letter of Credit (LoC), in the amount of \$521,627, which shall remain in effect and may be drawn on by the Grantor for at least twenty-four (24) months, six (6) months past the deadline for repairs stated above, from the date of this Contract. Grantor may cash the LoC and apply the funds to complete the repairs, correct latent defects in the completed repairs or for such other project purposes as Grantor deems appropriate, or retain the funds as liquidated damages; or
- (b) A cash escrow in the amount of \$521,627, to be held by Grantor in a non-interest bearing escrow account. The cash escrow will be returned to the Grantee after repairs have been satisfactorily completed, except for ten (10) percent which will be held for an additional six (6) months. Grantor may apply the cash escrow funds to complete the repairs, correct latent defects in the completed repairs or for such other Project purposes as the Grantor deems appropriate, or retain the funds as liquidated damages; or
- (c) 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 Grantor. Evidence of the existence of payment and performance bonds each in the amount of \$2,086,508 (the total cost of repairs) must be provided to Grantor.
 - ii. Grantee must follow 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 Grantor as payee, along with Grantee's mortgagee, at the mortgagee's request. or

d) A Reverter Deed:

The Reverter Deed will be executed by Grantee at Closing and held by Grantor until such time as Letter(s) of Credit, Cash Escrow or Payment and Performance Bonds are provided.

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

In the event an extension for completion of repairs is granted, the LoC's, Cash Escrow, or Payment and Performance Bonds will be extended accordingly.

If the repairs are not completed to the satisfaction of Grantor within the time period specified in this Rider, Grantor may, in its sole discretion, cash any LoC, withdraw remaining funds in the Cash Escrow account or file a claim against the bonding company and seek remedies provided in the attached Contract of Sale, as the Grantor deems appropriate. If Grantor cashes the Grantee's LoC, or withdraws Cash Escrow funds as a remedy for the Grantee's default under this Rider, Grantor may apply the funds as set forth above.

- 7. Significant repair/rehabilitation programs may be staged upon Grantor approval. If repair/rehabilitation is staged, as agreed upon between the Grantee and Grantor prior to Closing, up to five (5) LoCs, which represent the full LoC requirement, may be permitted. The LoCs must have an expiration date that extends beyond Grantor's repair completion date by at least six (6) months. LoCs may be returned as the Grantee completes repairs and Grantor has inspected and accepted the repairs. The final LoC must represent at least ten percent (10%) of Grantor's total estimated repair costs and must have an expiration date that extends six (6) months beyond the completion of repair date.
- 8. If Grantee fails to comply with paragraph 1, above, and no extension by written agreement has been granted by Grantor, Grantor and any/all successors in office shall be entitled to:
 - (a) Enter and terminate the estate hereby conveyed, or

- (b) Cash Grantee's LoC(s) and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
- (c) Request payment and performance under any payment and/or performance bond described in SECTION V, REQUIRED REHABILITATION AND RELOCATION.

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

- 9. If the Grantee fails to repair the Property in accordance with this Contract, the Grantor will not exercise the remedies as described in Section 8 above, if any lender holding a lien or security interest on the Property:
 - (a) Gives written notice to Grantor within the period provided for repairs, that it intends to complete the repairs, and
 - (b) Completes such repairs within thirty (30) days of the notice or within such longer periods as Grantor may approve in writing.
- 10. In the event the Property is conveyed to a new Owner prior to the completion of the repairs, the new Owner will be required to post LoCs, performance and payment bonds or cash escrow in an amount agreed upon by Grantor or reverter deed that complies with the terms of this Rider. The existing bonds, LoCs or cash escrows will be released to Grantee upon the new Owner's posting of the required assurance.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provision:

SECTION VI: LEAD-BASED PAINT HAZARDS

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

Grantee shall certify to Grantor (in a form acceptable to Grantor) and Grantor shall determine, through inspection or discretion, (the inspection and certification of a local government official) that all lead based-paint hazards have been removed from the Property in accordance with the Regulations.

2. Grantee understands and agrees that Grantor's inspection and finding of satisfactory performance is not intended to and does not constitute a guarantee that all lead-based paint and all potential lead-based paint hazards have been eliminated from the Property and does not relieve Grantee of the ongoing responsibility for complying with all applicable State and local lead based-paint laws and regulations.
3. Grantee agrees to indemnify, defend, and hold the Grantor harmless from any liability arising by reason of Grantee's failure to perform Grantee's obligations under this Deed with respect to the elimination of lead-based paint health hazards, the prohibition against the use of lead-based paint, and the Grantee's responsibility for complying with state and local lead-based paint laws and regulations.
4. Grantee shall develop and maintain on the site at all times an Operations and Maintenance Plan which will identify areas which involve lead based-paint hazards and establish work/repair guidelines.
5. If temporary or permanent relocation is necessary because of such abatement, Grantee covenants to comply with paragraphs 6 through 8, below. Grantee covenants to provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
6. If temporary relocation is necessary because of such abatement, Grantee covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which, to the extent feasible, shall be in a location not generally less desirable than the 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.
 - (b) Expenses of returning to a repaired unit on the Property.
7. If permanent relocation is necessary because of such abatement, Grantee covenants to 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.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by Grantor to be reasonable considering the household size and the circumstances surrounding the move.

8. Grantee covenants not to increase the rent for any units, from the rent the Secretary is requiring a tenant to pay on the Closing date, until such unit meets all the abatement requirements set forth in the above paragraph 1. (In addition, rents for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.)
9. Grantee agrees to comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgment of Disclosure" of 24 CFR – *Lead Based Paint Poisoning Prevention in Certain Residential Structures*.
10. If Grantee fails to comply with paragraph 1, above, and no extension by written agreement has been granted by Grantor, Grantor and any/all successors in office shall be entitled to:
 - (a) Enter and terminate the estate hereby conveyed, or
 - (b) Cash Grantee's LoC(s) and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
 - (c) Request payment and performance under any payment and/or performance bond described in SECTION V, REQUIRED REHABILITATION AND RELOCATION.
 These rights and remedies may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Contract.
11. Notwithstanding 10(a) through (c) above, Grantor will not exercise those remedies, if any lender holding a lien or security interest on the Project:
 - (a) Gives written notice to the Grantor within the period provided for repairs, that it intends to complete the repairs, and
 - (b) Completes such repairs within thirty (30) days of the notice or within such longer periods that Grantor may approve in writing.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provision:

SECTION VII: ASBESTOS HAZARDS

1. Grantee agrees to indemnify defend, and hold Grantor harmless from any liability arising by reason of Grantee's failure to perform Grantee's obligations under this Deed with respect to the elimination of asbestos health hazards, the prohibition against the use of asbestos and Grantee's responsibility for complying with applicable State and local asbestos laws and regulations.
2. Purchaser shall develop and maintain on the site at all times an Operations and Maintenance Plan which will identify areas which involve asbestos hazards and establish work/repair guidelines.
3. If temporary or permanent relocation is necessary because of such rehabilitation, Grantee covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), and the regulations thereunder, 24 CFR §§290.17, as explained in paragraphs 4 through 6, below. Additionally, the Grantee covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by the Grantor. The Grantee is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Grantee covenants to provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
4. If temporary relocation is necessary because of such rehabilitation, Grantee covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which, to the extent feasible, shall be in a location not generally less desirable than the 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.
 - (b) Expenses of returning to a repaired unit on the Property.
5. If permanent relocation is necessary because of such rehabilitation, Grantee covenants to 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.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by Grantor to be reasonable considering the household size and the circumstances surrounding the move.
7. The Grantee covenants not to increase the rent for any units, for the rent that Grantor is requiring a tenant to pay on the Closing date, until such unit meets the rehabilitation requirements set forth in paragraph 1, above. (In addition, rents for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.)
8. If Grantee fails to comply with paragraph 1, above, and no extension by written agreement has been granted by Grantor, Grantor and any/all successors in office shall be entitled to:
 - (a) Enter and terminate the estate hereby conveyed, or
 - (b) Cash Grantee's LoC(s) and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
 - (c) Request payment and performance under any payment and/or performance bond described in SECTION V, REQUIRED REHABILITATION AND RELOCATION.

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

9. Notwithstanding 8(a) through (c) above, Grantor will not exercise those remedies, if any lender holding a lien or security interest on the Project:
- (a) Gives written notice to the Grantor within the period provided for repairs, that it intends to complete the repairs, and
 - (b) Completes such repairs within thirty (30) days of the notice or within such longer periods that Grantor may approve in writing.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provision:

SECTION VIII: MOLD HAZARDS

1. Grantee agrees to indemnify defend, and hold Grantor harmless from any liability arising by reason of Grantee's failure to perform Grantee's obligations under this Deed with respect to the elimination of mold health hazards, and Grantee's responsibility for complying with applicable Environmental Protection Agency's regulations and State and local laws and regulations.
 - (a) Grantee covenants that the Property will be inspected and tested for mold and mold conditions, and any hazards will be remediated. The Grantee will remediate the mold or mold conditions in accordance with the relevant provisions of the Environmental Protection Agency regulatory standards and guidelines.
 - (b) Grantee covenants that any mold hazards will be remediated in accordance with applicable federal state, and local laws, regulatory standards and guidelines, including without limitation the Environmental Protection Agency (EPA) Guidelines.
2. If temporary or permanent relocation is necessary because of such rehabilitation, Grantee covenants to comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), and the regulations thereunder, 24 CFR §290.17, as explained in paragraphs 3 through 5, below. Additionally, the Grantee covenants to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Grantee is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Grantee covenants to provide advance written notice of the expected displacement to the residents. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
3. If temporary relocation is necessary because of such rehabilitation, Grantee covenants to provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit, which to the extent feasible, shall be in a location not generally less desirable than the 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.
 - (b) Expenses of returning to a repaired unit on the Property.
4. If permanent relocation is necessary because of such rehabilitation, Grantee covenants to 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.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by Grantor to be reasonable considering the size of the household and the circumstances surrounding the move.
5. The Grantee covenants not to increase the rent for any units, from the rent Grantor is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth in paragraph 1, above. (In addition, rent for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.)
6. If Grantee fails to comply with paragraph 1, above, and no extension by written agreement has been granted by Grantor, Grantor and any/all successors in office shall be entitled to:
 - (a) Enter and terminate the estate hereby conveyed, or
 - (b) Cash Grantee's LoC(s) and apply the funds to perform or correct such work, or for such purposes as HUD deems appropriate, or
 - (c) Request payment and performance under any payment and/or performance bond described in SECTION

V, REQUIRED REHABILITATION AND RELOCATION.

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

7. Notwithstanding 6(a) through (c) above, Grantor will not exercise those remedies, if any lender holding a lien or security interest on the Project:
 - (a) Gives written notice to the Grantor within the period provided for repairs, that it intends to complete the repairs, and
 - (b) Completes such repairs within thirty (30) days of the notice or within such longer periods that Grantor may approve in writing.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provision:

SECTION IX: PROJECTS PRIMARILY OCCUPIED BY THE ELDERLY

Grantee covenants that 100% of the units in the Project will be maintained as rental housing for elderly families and individuals for a period of (25) years after the date of the Deed or such earlier time as the Secretary may specify in writing (the "Restricted Period"). Any change in the number of units for the elderly must receive the prior written approval of the Secretary.

Grantee covenants that it will market affirmatively 100% of the units in the Project to families whose head, spouse or sole member is a person aged 62 or older.

If the Grantee has made reasonable efforts to lease units to eligible families and is unable to achieve or maintain an adequate level of occupancy sufficient to operate the Project, the Purchaser may permit occupancy of units in the Project to persons aged 55 or older with the prior written approval of the Secretary.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provisions:

SECTION X: SECURITY

The Use Agreement shall include the following provisions:

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

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

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provisions:

SECTION XI: PROJECT-BASED SECTION 8 ASSISTANCE

The Grantee (Owner), successor and assigns agree(s) to rehabilitate/repair the property to make the project units decent, safe and sanitary as defined by Grantor and to complete the work in accordance with the Grantor (HUD) approved work write up and cost estimates. Upon the acceptable completion of the project, the Grantee may bill the Department for housing assistance payments for those low or very low income persons (household income below **eighty (80 %)** percent of Area Median Income, adjusted for family size) occupying the units assisted 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 date for commencement of work.
 - d. Final Inspection. Grantor (HUD or its designee) shall perform the final inspection of the completed units upon receipt of evidence of completion submitted by the Grantee.
2. HUD Assurance. The acceptance of this Rider by Grantor is an assurance by Grantor to the Grantee that:
 - a. The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract, and
 - b. Grantor (HUD) has obligated funds for these payments.
3. Grantee’s Failure to Comply with Rider. In addition to other remedies available to HUD for a default by the Grantee, the Grantee and HUD agree that if the Grantee fails to comply with the requirements of this Rider, HUD may rescind the sale of the project or take other appropriate remedial action in accordance with its authority.

4. Definitions:

<input type="checkbox"/>	Family and Elderly Family	<input type="checkbox"/>	Person With Disabilities
<input checked="" type="checkbox"/>	Elderly Family	<input type="checkbox"/>	Disabled Household
<input type="checkbox"/>	Disabled Family	<input type="checkbox"/>	Disabled (Handicapped) Family
<input type="checkbox"/>		<input type="checkbox"/>	

SECTION TWO

1. Schedule of Completion.
 - a. Timely Performance of Work. The Grantee agrees to begin work within the time indicated in Section 1 of this Rider. The Purchaser/Grantee shall report, within three business days, to the Multifamily Property Disposition (PD) Center the date work has commenced and shall thereafter furnish the PD Center with periodic progress reports (monthly unless more frequent reporting is required by the Center). 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 the PD Center 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 percent (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 ten percent (10%) requirement, the Grantee 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 letter(s) of credit required under the Post Closing Repair Rider.
2. Construction or Rehabilitation Period.
 - a. Inspections. Inspections will be limited to no more than one (1) per month. Upon written notification from the Grantee 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 Grantee 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 Grantee will be able to bill on a vacant unit after it has been added to an integral release and becomes occupied. The Grantee 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 Grantee 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 “Certification of Completion” from the Grantee, HUD shall order an inspection or notify the Grantee 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 completed in accordance with this Rider, and that
 - ii. There are no observable conditions inconsistent with the certification of the Grantee. If the inspection disclosed defects or deficiencies, the inspector shall report these in detail and HUD will notify the Grantee 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 Grantee 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 Grantee’s certification of completion and/or HUD’s inspection report, the project or portion thereof cannot be accepted, the Grantee 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 Enforcement provision are the remedies that are applicable to a default under this Rider.
6. Assignments, Sale or Foreclosure.
 - a. The Grantee 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 Grantee 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 Grantee 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 Grantee, 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 Grantee to a limited partnership, in which no limited partner has 25 percent or more interest and of which the Grantee 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 25 percent 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 25 percent or more interest in the organization or any stockholder having a 10 percent 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 Grantee and the party executing this Rider on behalf of the Purchaser/Grantee 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. Project-based Section 8 Assistance.
 - a. A Housing Assistance Payments (HAP) Contract will be executed at closing. The HAP Contract

will cover 125 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 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, Grantee shall rent the unit to a family that is eligible for said Section 8 assistance under the HAP Contract.
 - c. The Grantee 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 Grantee agrees that at anytime 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 Grantee 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.
2. The Grantee 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).
 3. Prior to receipt of subsidy payments, Grantee 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.
 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(s) 4.9 and 4.11, Grantee covenants that it will disclose to Grantor:
 - 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 Grantee 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 Grantee, 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 as required in Section 8 Rider attached hereto.
 - 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/ Grantee 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.
 5. 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 Grantee shall maintain all dwelling units covered thereby after the date of this Deed in accordance with the

The Deed shall include the following provision:

SECTION XII: RESERVE FUND FOR REPLACEMENT ACCOUNT

The Grantee will deposit at Closing \$ 126,000 into a Reserve Fund for Replacement account. After completion of all repairs, the Grantee will be required to deposit \$ 37,800 annually into the Reserve Fund for Replacement account (reserve account), payable monthly in an amount of \$ 3,150 per month, commencing the first day of the first month following completion of all repairs required by Grantor on form HUD-9552. If the terms of the sale do not require completion of specific repairs on form HUD-9552, payments must commence the second month the Grantee vouchers for Section 8 assistance.

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

The reserve account shall be subject to the control of Grantor and disbursements from such funds may be made only with the written consent of Grantor, which will not be unreasonably withheld. Grantee may request the release of funds from the reserve account for reimbursement of major capital expenditures.

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

The Grantee agrees to comply with Grantor's (HUD's) rules and regulations concerning replacement reserves.

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

The fiscal year for audit purposes is: September 30.

The Grantee, any/all successors, assigns or Grantees for value agree to comply with Grantor'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 a part of the Contract of Sale.

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provision:

SECTION IX: PROJECTS PRIMARILY OCCUPIED BY THE ELDERLY

Grantee covenants that 100% of the units in the Project will be maintained as rental housing for elderly families and individuals for a period of (25) years after the date of the Deed or such earlier time as the Secretary may specify in writing (the "Restricted Period"). Any change in the number of units for the elderly must receive the prior written approval of the Secretary.

Grantee covenants that it will market affirmatively 100% of the units in the Project to families whose head, spouse or sole member is a person aged 62 or older.

If the Grantee has made reasonable efforts to lease units to eligible families and is unable to achieve or maintain an adequate level of occupancy sufficient to operate the Project, the Purchaser may permit occupancy of units in the Project to persons aged 55 or older with the prior written approval of the Secretary.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provisions:

SECTION X: SECURITY

The Use Agreement shall include the following provisions:

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

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

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

The Deed shall include the following provisions:

SECTION XI: PROJECT-BASED SECTION 8 ASSISTANCE

The Grantee (Owner), successor and assigns agree(s) to rehabilitate/repair the property to make the project units decent, safe and sanitary as defined by Grantor and to complete the work in accordance with the Grantor (HUD) approved work write up and cost estimates. Upon the acceptable completion of the project, the Grantee may bill the Department for housing assistance payments for those low or very low income persons (household income below **eighty (80 %)** percent of Area Median Income, adjusted for family size) occupying the units assisted 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 date for commencement of work.
 - d. Final Inspection. Grantor (HUD or its designee) shall perform the final inspection of the completed units upon receipt of evidence of completion submitted by the Grantee.
2. HUD Assurance. The acceptance of this Rider by Grantor is an assurance by Grantor to the Grantee that:
 - a. The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract, and
 - b. Grantor (HUD) has obligated funds for these payments.
3. Grantee’s Failure to Comply with Rider. In addition to other remedies available to HUD for a default by the Grantee, the Grantee and HUD agree that if the Grantee fails to comply with the requirements of this Rider, HUD may rescind the sale of the project or take other appropriate remedial action in accordance with its authority.

4. Definitions:

<input type="checkbox"/>	Family and Elderly Family	<input type="checkbox"/>	Person With Disabilities
<input checked="" type="checkbox"/>	Elderly Family	<input type="checkbox"/>	Disabled Household
<input type="checkbox"/>	Disabled Family	<input type="checkbox"/>	Disabled (Handicapped) Family
<input type="checkbox"/>		<input type="checkbox"/>	

SECTION TWO

1. Schedule of Completion.
 - a. Timely Performance of Work. The Grantee agrees to begin work within the time indicated in Section 1 of this Rider. The Purchaser/Grantee shall report, within three business days, to the Multifamily Property Disposition (PD) Center the date work has commenced and shall thereafter furnish the PD Center with periodic progress reports (monthly unless more frequent reporting is required by the Center). 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 the PD Center 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 percent (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 ten percent (10%) requirement, the Grantee 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 letter(s) of credit required under the Post Closing Repair Rider.
2. Construction or Rehabilitation Period.
- a. Inspections. Inspections will be limited to no more than one (1) per month. Upon written notification from the Grantee 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 Grantee 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 Grantee will be able to bill on a vacant unit after it has been added to an integral release and becomes occupied. The Grantee 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 Grantee 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 “Certification of Completion” from the Grantee, HUD shall order an inspection or notify the Grantee 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 completed in accordance with this Rider, and that
 - ii. There are no observable conditions inconsistent with the certification of the Grantee. If the inspection disclosed defects or deficiencies, the inspector shall report these in detail and HUD will notify the Grantee 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 Grantee 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 Grantee’s certification of completion and/or HUD’s inspection report, the project or portion thereof cannot be accepted, the Grantee 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 Enforcement provision are the remedies that are applicable to a default under this Rider.
6. Assignments, Sale or Foreclosure.
 - a. The Grantee 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 Grantee 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 Grantee further agrees to request the prior written consent of HUD (and the PHA where it is the CA and/or PBCA).
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 - 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 Grantee, 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 Grantee to a limited partnership, in which no limited partner has 25 percent or more interest and of which the Grantee 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 25 percent 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 25 percent or more interest in the organization or any stockholder having a 10 percent 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 Grantee and the party executing this Rider on behalf of the Purchaser/Grantee 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. Project-based Section 8 Assistance.
 - a. A Housing Assistance Payments (HAP) Contract will be executed at closing. The HAP Contract

will cover 125 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 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, Grantee shall rent the unit to a family that is eligible for said Section 8 assistance under the HAP Contract.
 - c. The Grantee 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 Grantee agrees that at anytime 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 Grantee 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.
2. The Grantee 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).
 3. Prior to receipt of subsidy payments, Grantee 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.
 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(s) 4.9 and 4.11, Grantee covenants that it will disclose to Grantor:
 - 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 Grantee 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 Grantee, 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 as required in Section 8 Rider attached hereto.
 - 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/ Grantee 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.
 5. 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 Grantee shall maintain all dwelling units covered thereby after the date of this Deed in accordance with the

The Deed shall include the following provision:

SECTION XII: RESERVE FUND FOR REPLACEMENT ACCOUNT

The Grantee will deposit at Closing \$ 126,000 into a Reserve Fund for Replacement account. After completion of all repairs, the Grantee will be required to deposit \$ 37,800 annually into the Reserve Fund for Replacement account (reserve account), payable monthly in an amount of \$ 3,150 per month, commencing the first day of the first month following completion of all repairs required by Grantor on form HUD-9552. If the terms of the sale do not require completion of specific repairs on form HUD-9552, payments must commence the second month the Grantee vouchers for Section 8 assistance.

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

The reserve account shall be subject to the control of Grantor and disbursements from such funds may be made only with the written consent of Grantor, which will not be unreasonably withheld. Grantee may request the release of funds from the reserve account for reimbursement of major capital expenditures.

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

The Grantee agrees to comply with Grantor's (HUD's) rules and regulations concerning replacement reserves.

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

The fiscal year for audit purposes is: September 30.

The Grantee, any/all successors, assigns or Grantees for value agree to comply with Grantor'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 a part of the Contract of Sale.

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

RIDER 13 OF 15

The Deed shall include the following provision:

**SECTION XIII: ADJUSTMENT TO SECTION 8 ASSISTANCE
(and Attachment – Certification of Disclosure of Other Governmental Assistance)**

ADJUSTMENT IN SECTION 8 ASSISTANCE PURSUANT TO OTHER GOVERNMENT ASSISTANCE

1. 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, Grantee covenants that it will disclose to Grantor:
 - a. 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.
 - b. In cases where the Grantee 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.
2. In order to comply with this requirement, the Grantee, 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 (as attached).
3. 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 affect the accuracy of the Certification of Disclosure, the Purchaser/ Grantee shall submit to Grantor (HUD) a revised Certification. Grantor (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.

The requirements of this rider will terminate if the HAP Contract is terminated or expires and is not renewed.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

CERTIFICATION OF DISCLOSURE OF OTHER GOVERNMENT ASSISTANCE
(Attachment to Section 8 Rider)

TO: FHA COMMISSIONER

Project Name: Burton Towers
Project Number: 012-EH018
Project Location: Newburgh, New York

<input type="checkbox"/>	<p>I will not use any other government assistance in the acquisition, repair or operation of this project, other than the Section 8 assistance provided by HUD under the Housing Assistance Payments Contract. Other government assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.</p> <p>If prior to or during the term of the Housing Assistance Payment Contract I apply for and/or receive other government assistance, I will revise this Certification and meet the requirements set forth below.</p>
<input type="checkbox"/>	<p>I expect to receive, or have received, other government assistance prior to or during the term of the Housing Assistance Payments Contract. The Sources and Uses Statement of such assistance is attached hereto. The above Sources and Uses Statement describes the sources, use and total amount of each form of other governmental assistance that I expect to receive, or have received, and that will be used for the benefit of this project.</p> <p>Within thirty (30) days after any change to the information certified to and disclosed above, I will submit to HUD a revision of this Certification and the attached disclosure.</p>

I certify that the information supplied herein is true and correct to the best of my knowledge.

WARNING: It is a crime to knowingly make false statements to a Federal agency. I understand that the penalties upon conviction can include a fine and imprisonment not to exceed \$10,000 or five years imprisonment, or both. See Title 18 U.S. Code, Sections 1001, 1010, and 1012.

Signature

Date

Name

Title

The Deed shall include the following provision:

SECTION XIV: EQUITY PARTICIPATION

1. If the Grantee, or any/all successors, assigns or Grantees for value sells, assigns, transfers or conveys the Property (collectively, a "Sale"), the Sale proceeds, less any expenses incurred by the Grantee, as approved by Grantor, consisting of (1) reasonable transaction costs, (2) purchase price paid by the Grantee for the Property, (3) amounts previously paid by the Grantee to the Grantor under paragraph 2 of this Rider since the sale of the Property from Grantor to Grantee, (4) other costs incurred but not yet paid by Grantee related to renovation and rehabilitation other than routine maintenance and repairs, or (5) costs paid by Grantee, including Low Income Housing Tax Credit equity, as approved by Grantor, related to renovation and rehabilitation other than routine maintenance and repairs, and which are not funded by grant funds provided by the Grantor, shall be assigned to the Grantor in the following amounts:
 - (a) between the date of the Deed and five (5) years from the date of the Deed, one hundred (100%) percent; and
 - (b) between five (5) years, one (1) day and fifteen (15) years from the date of the Deed, seventy-five percent (75%); and
 - (c) between fifteen (15) years, one (1) day and twenty-five (25) years from the date of the Deed, fifty percent (50%); and
 - (d) between twenty-five (25) years, one (1) day and thirty (30) years from the date of the Deed, twenty-five percent (25%); and
 - (e) after thirty (30) years from the date of the Deed, zero percent (0%).
2. If the Grantee, any/all successors, assigns or Grantees for value, refinances without approval in writing from Grantor, including without limitation the placement of any indebtedness secured by the Property ("Refinancing"), the proceeds from the refinancing, less any expenses incurred by the Grantee consisting of (1) reasonable transaction costs, (2) any mortgage debt paid off in connection with the refinancing, (3) costs paid by Grantee, including Low Income Housing Tax Credit equity, as approved by Grantor, related to renovation and rehabilitation other than routine maintenance and repairs, and which are not funded by grant funds provided by the Grantor, or (4) amounts previously paid by Grantee to Grantor under this paragraph 2, shall be paid to the Grantor in the manner provided in Section 1, (a) - (e) above.
3. The Grantee shall keep or cause to be kept, accurate records of account of any Sale or Refinancing and of the cost of renovation and rehabilitation. The Grantor, during Grantee's normal working hours, shall have the right to enter and have free access to inspect all books and records of the Grantee. Upon the written request of the Grantor, the Grantee shall retain an independent certified public accountant who shall prepare an accounting of any Sale, Refinancing, or cost of renovation or rehabilitation.
4. A merger, conversion, share exchange, interest exchange of corporate or partnership interest is also a transfer of the property and requires the approval of the Grantor and subject the consideration of such a transfer to the provision of paragraph 1 of this rider.

The preceding provisions shall be applicable and in full force and effect notwithstanding that any applicable statutory law or case decision provide that any such merger or conversion or share (or interest) exchange transaction does not constitute or involve the occurrence of a "transfer" or "assignment" of real estate interest or other assets of a constituent party to any such transaction.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

The Deed shall include the following ~~provision~~:

SECTION XV: REDEVELOPMENT PLAN

1. The Grantee shall submit its Redevelopment and Financing Plan (Plan) for the Property to Grantor within thirty (30) days of closing. The Grantor must approve the Grantee's Plan prior to its implementation.
2. The Grantee covenants that the Property will be redeveloped in accordance with the approved Redevelopment Plan, and that redevelopment will be completed as provided in Section V, REQUIRED REHABILITATION AND RELOCATION WITHOUT SECTION 8.
3. If Grantee's Plan is substantially changed following Grantor's approval, Grantor must approve the revised Plan prior to its implementation.
4. Grantor shall have free access to the Property during normal business hours to inspect any work completed to ensure that it complies with the Plan and all applicable State and local laws, codes, ordinances and regulations.

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

GRANTEE _____ (Must be initialed at time of submission of Contract)

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

LETTER OF CREDIT (LoC) SAMPLE

(ISSUING BANK'S LETTERHEAD)

IRREVOCABLE UNCONDITIONAL LETTER OF CREDIT NO. _____
_____, 20____

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

Attention: Director, Multifamily Property Disposition Center

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 Letter of 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 Letter of 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 Letter of Credit if received on or before the expiration date at

(bank's address)

This Letter of 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: _____

SPECIAL WARRANTY DEED
(REVERTER DEED)

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

Property: _____
FHA: _____

State of _____
County of _____

This SPECIAL WARRANTY DEED made as of the _____ day of _____, 20__, by the _____ (“GRANTOR”) whose address is _____; and The SECRETARY OF HOUSING AND URBAN DEVELOPMENT (“GRANTEE”), c/o Director,

(Whenever used herein the terms “GRANTOR” and “GRANTEE” include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, partnerships, and other entities).

WITNESSETH: That the GRANTOR, for and in consideration of the sum of \$10.00 and other good and valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the GRANTEE, all that certain land situated and being in Orange County, State of New York, as more particularly described in Exhibit “A” (Legal Description) attached hereto and made a part hereof.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, THE SAME IN FEE SIMPLE FOREVER.

AND, the GRANTOR hereby covenants with said GRANTEE that the GRANTOR is lawfully seized of said land; that the GRANTOR has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said Grantor, but not otherwise.

IN WITNESS WHEREOF, the said GRANTOR by and through its undersigned Agent has hereunto set its hand and seal the day and year first above written.

GRANTOR:

By: _____
Name: _____
Title: _____

ATTEST

City Clerk

APPROVED AS TO FORM

City Attorney

STATE OF _____)

) S.S

COUNTY OF _____)

This instrument was acknowledged before me, on this _____ day of _____, 20____,
by _____, the _____ of the _____, on behalf of the City Manager on behalf of the _____, an
_____.

My Commission Expires:

Notary Public

Certification of Substantial Compliance

I Certify to the Seller and the United States Department of Housing and Urban Development (HUD) that any and all projects that are owned by the Purchaser or its affiliates and are located in the same jurisdiction as _____ are in substantial compliance with applicable state and/or local housing statues, regulations, ordinances and codes and are listed on Schedule A attached hereto.

I understand that the Seller/HUD may, in their discretion, verify the accuracy of this certification and request supporting documentation from the Purchaser. It is understood that if the Seller/HUD determines, in their sole discretion, that such other projects as listed on Schedule A are not in substantial compliance, the Seller will have the right to refuse to sell the project to the Purchaser.

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

By: _____
Purchaser Name

Verified by: _____

Title

Typed Name

Address

Title

Telephone Number

Address

Date

Phone

Date

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

GENERAL COMMENTS FROM THE AUDIENCE

Alden Link, 119 Broadway, said that we now have the Land Bank and things are improving in the City but we have to make it easy for developers to work here rather than more difficult. He feels that there are artificial layers of government that are not helpful because they are hindrances. He sent a letter to the Mayor and the City Council asking that the Historic District and the ARC be eliminated because they are not helpful to the City.

Gay Lee, City of Newburgh, said in regard to resolution #161-11 that as a commissioner on the Housing Board she thanked the Council because she is aware of the details. She has talked with the tenants about their fears and she knows that they will be happy with this. She commended Marc Starling for putting together the paperwork for HUD and she thinks he did a great job. She added that the African-American Day Parade went very well and she saw the joy on the children's faces but she also feels that it is disgusting to see young men walking around with their pants hanging down off of their waists. Even though the children looked fine it was some of the onlookers that were showing their underwear and she thinks that needs to change.

Loretta Manning, Lander Street, wished to reiterate what Dan said earlier about finding out what the people want so they went out and asked people what they would like to see. There have been applications submitted but how many of them are from Newburgh? How many of them live here in our City and have to walk between Lander and Johnston? They can have good ideas but if you don't listen to the people then it's not going to work. They didn't know what to do with the site so it was sold to someone who said they would bring the College there but the College ended up down by the river and how many jobs did that bring? It is time for a change and for someone to make a stand. You need to let people know what you are doing and that you care. She asked the Council how they feel when they drive past that empty lot on Broadway because she feels ashamed. She loves this City but sometimes she is ashamed of what this City puts us through.

Judy Kennedy, 162 Grand Street, said that tonight she wants to focus on the positive. She is very pleased that we have taken some action on Burton Towers. She applauded everyone who was a part of that and for getting it done. She feels that there is an energy finally building in the City to focus on solutions. We can begin greening up the empty lots now. If we would just level it out and plant grass, it would look like a different City and it doesn't take a lot of effort. She believes that this would give people hope and we don't have to wait to do it. Another suggestion about that lot would be to consider putting that property in the Land Bank and allowing the Land Bank

to work through with that. That would be a good solution. She added that the next big project we need to work on is the street called Broadway. It is our premier street that has potential and she would love to see us start doing something about that.

Ramona Monteverde, Liberty Street, commended the Council with the progress on Burton Towers because it is really good news. The kids just did a mural in the lot across the street from the space on Broadway. Is there anything we can do to create some green space such as a Park? It wouldn't take much money and it would really make a big difference. She agrees with Judy that we need to do some planning for Broadway because we want to attract people here. She also asked if we can do something about the phone books lying around that are littering our City.

There being no further comments, this portion of the meeting was closed.

COMMENTS FROM THE COUNCIL

Councilwoman Angelo thanked everyone for coming tonight.

Councilwoman Bell said that she is a member of the CDBG Committee and just found out that a fellow member of that Board, Mario Cipollone, passed away suddenly of a massive heart attack at fifty-nine years of age. She is shocked and reminded everyone how important it is to live our lives each day to the fullest. She added that the CDBG Committee will be releasing plans for some exciting projects that are going to be helpful to the City. She thanked everyone for coming tonight.

Councilwoman Bello said that when she first came on the Council someone told her that the wheels of government turned very, very slowly and she learned that with our finally passing Local Law #6 tonight so that people can make partial payments on water and sanitation bills. This is something she has been pushing forward for the last couple of years and she is happy to finally see it come to fruition. The tax abatement for one and two family homes will encourage homeowners to improve their properties which should be really great for the City. This was a long time coming but she thinks it was well worth the wait and is a step in the right direction. As for Mountco Construction and Burton Towers, she was absolutely delighted to support them. They have a stellar reputation and it was a very easy vote for her. She thanked everyone for coming tonight.

Mayor Valentine noted that the next City Council meeting will be on September 12th which is when the Budget for 2012 will be presented by the City Manager. We are under a 2% tax cap so all the numbers have to work and there is a gap so it's not going to be easy. What is beneficial to residents, Council members and staff is that the Budget is now released one month earlier than it used to be which gives us an extra month. For the City Council that will be the end of summer. He thanked everyone for coming tonight.

There being no further business to come before the Council, the meeting adjourned at 7:45 P.M.

LORENE VITEK
CITY CLERK

