



## **Request for Proposals**

### **LOWELL HOUSING AUTHORITY**

## **RFP 2024-3 Scattered Site Property Sale**

**Release Date: April 3, 2024**

**Question Due Date: April 23, 2024 @ 3:00 PM**

**Responses Due: May 7, 2024 @ 11:00 AM**



DIRECT ALL RFP CORRESPONDENCE TO:  
RITA V. BROUSSEAU, CHIEF PROCUREMENT OFFICER  
LOWELL HOUSING AUTHORITY  
DEPARTMENT OF FINANCE AND PROCUREMENT

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[WWW.LHMA.ORG/BIDS](http://WWW.LHMA.ORG/BIDS)

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**INTRODUCTION**

**POLITICAL SUBDIVISION STATUS**

The Lowell Housing Authority (the “LHA”) is an autonomous, public housing authority created in 1937 as a public body politic and corporate with the City of Lowell and a political subdivision of the Commonwealth of Massachusetts. Enabling legislation is Massachusetts General Laws, chapter 121B, *et seq.* The LHA is governed by a five-member appointed Board of Commissioners, which is the LHA awarding authority.

**HOUSING UNITS**

The LHA owns and/or manages 3,167 units of housing comprising of: (a) 1,625 units in federal family and elderly/disabled housing developments. The HUD-aided properties are managed under an Asset Management Project model (“AMP”). The LHA has four (4) AMPs and the state-aided portfolio. (b) 148 units in state housing developments and (c) 1,384 U.S. HUD Section 8 Housing Choice Vouchers and 42 units in HUD Multi-family new construction/substantial rehabilitation development. Images of the LHA housing units may be viewed on the website: [www.LHMA.org](http://www.LHMA.org).

**STAFF**

The LHA currently employs approximately 100 full and part-time employees, including its central administration/management, property managers for each of the five property development areas, and facilities/maintenance staff.

**FUNDING**

The LHA receives both federal and state grants that supplement its operational expenditures and support capital improvements. Annual operational spend is approximately \$44M with state and federal capital expenditures of approximately \$4M.

**BACKGROUND ON THE REQUEST FOR PROPOSAL**

In August 2018, the LHA received approval from the United States Department of Housing & Urban Development (“HUD”) under Section 18 of the 1937 Housing Act, as amended for the disposition of 87 units. The approval required LHA to offer the units first to purchasers at up to 30% below their current appraised value who are established providers of supportive service with asset management experience and would maintain income targeting for all household at 80% of AMI or lower for period of 30 years. LHA is also now offering the attached location up for market sales as well.

The property available has two units. One unit is occupied and the other vacant. Current resident has indicated a desire to remain. All current households are below 80% of AMI and will have access to a Housing Choice Voucher (HCV) tenant-based subsidy whose value will be based on the current payment standard for the unit by bedroom size.

**RFP INFORMATION AT A GLANCE:**

Agency Contact Person:	Rita V. Brousseau, Chief Procurement Officer Tel: 978-364-5341 E-Mail: <a href="mailto:rbrousseau@lhma.org">rbrousseau@lhma.org</a> 350 Moody St, PO Box 60, Lowell, MA 01854 TDD/TTY: 1-800-545-1833 x178
How to Obtain RFP Documents:	Download: <a href="http://www.lhma.org/bids">www.lhma.org/bids</a>
RFP Issue Date:	April 3, 2024
Property Site Visits (Optional):	As requested
Deadline for Written Questions:	April 23, 2024 @ 3:00 PM

How to Fully Respond to this RFP:	As instructed within Section 3 of the RFP document.
Proposal Submission Date and Time:	May 7, 2024 @ 11:00 AM
Anticipated LHA Board Approval:	June 12, 2024

\*Regularly scheduled LHA Board Meetings are held at the Armand P. Mercier Community Center Board Room, 21 Salem St, Lowell, MA on the second Wednesday of every month at 5:00 P.M.

**1.0 GENERAL INFORMATION**

**1.1 LHA RESERVATIONS OF RIGHTS**

**Informal or Ex Parte Communications.** No verbal or written information which is obtained other than through this RFP or its addenda shall be binding by the LHA. With the exception of written instructions and information from the Chief Procurement Officer (CPO) or designee, no employee of the LHA is authorized to interpret any portion of this RFP or give information as to the requirements of the RFP in addition to that contained in or amended to this written RFP document. Applicant must not make inquiry or communicate with any other LHA staff member, official (including members of the Board of Commissioners), or resident pertaining to this RFP. Failure to submit by this requirement may be cause for the LHA to not consider an application submittal received from any Applicant who has not submitted by this directive.

**Rejection & Waivers.** The LHA reserves the right to reject any or all proposals, waive technicalities and informalities in the solicitation process, or to terminate and cancel the solicitation process at any time, if deemed by the LHA to be in its best interests. The LHA reserves the right to reject and not consider any proposals that does not conform to or meet the solicitation requirements in whole or in part.

**No Award.** The LHA reserves the right not to award a purchase and sales agreement pursuant to this solicitation.

**Awards.** The LHA shall make awards in its best interest and as required by applicable law, regulation or policy, and to correct any award erroneously made as a result of a clerical error on the part of the LHA.

**Withdrawal of Proposals/Retention.** Proposals may be withdrawn anytime up until the due date and time by written notice. After the due date and time, the LHA reserves the right to retain all proposals submitted and not permit withdrawal for a period of up 180 days subsequent to the deadline for receiving proposals without the written consent of the LHA Contracting Officer.

**No Compensation.** The LHA will not compensate any potential supplier or vendor for any costs incurred in responding to this solicitation.

**Participation.** The LHA shall reserve the right to at any time during the solicitation or contract process to prohibit any further participation by a prospective Proposer or reject any proposals submitted that does not conform to any of the requirements detailed herein.

**Compliance.** By receipt of this solicitation each prospective proposer thereby agrees to abide by all terms and conditions listed within this document and with all attachments, and further agrees that he/she will inform the Chief Procurement Officer in writing within five-days of the discovery of any item listed herein or of any item that is issued thereafter by the LHA that he/she feels needs to be addressed. Failure to abide by this time frame shall relieve the LHA, but not the prospective proposer of any responsibility pertaining to such issue.

**Good Faith.** By submitting its proposal, the proposer’s representative certifies under penalties of perjury that this application, the proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**Taxes.** Pursuant to M.G.L. Chapter 62C, §49A, the prospective proposer’s representative hereby certifies, under the penalties of perjury, that, to the best of his/her knowledge and belief, he/she is in compliance with all the laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

**Indemnification.** Each Proposer, at its own expense and without exception, shall indemnify, defend and pay all damages, costs, expenses including attorney fees and otherwise hold harmless the LHA, and agents from any liability of that may arise during the proposal review process, proposal acceptance/rejection up to and through transaction closing.

**Intellectual Property.** All proposals, responses, inquiries and correspondence relating to or in reference to this RFP, and all reports, concepts, data, information, charts, and other documentation submitted shall inure for use by and become the property of the LHA when received. If copyrighted material is submitted, the LHA will presume that the proposer grants limited release to the LHA in order to make scan or copy and distribute documents as necessary for official purposes and for public record requests.

**No Conflicts.** The Proposer covenants, that (1) presently, there is no financial interest and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement or which would violate M.G.L. c.268A, as amended; and (2) no partner or employee of the firm is related by blood or marriage to any Board Member or employee of the Awarding Authority. See:

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter268A>

**Contract Terms Incorporated Into RFP.** The attached Purchase and Sales Agreement (**Attachment F**) clauses are incorporated into this RFP as part of its terms and condition requirements as well as the anticipated award and all activity there under unless otherwise amended.

## **1.2 PUBLIC INFORMATION, PROTECTION OF PERSONAL DATA**

**1.2.1.** Proposers are advised that information provided in the proposal may be subject to inspection by the public at the time of the RFP opening.

Proposers are solely responsible for redacting confidential information from each proposal.

**1.2.2.** All responses, proposals, related documentation and information submitted in response to this RFP are subject to the Massachusetts Freedom of Information Law, M.G.L. c.66 §10, and to M.G.L c.4 §7(26), regarding public access to such documents. Any statement submitted by the respondent that purport to reserve any confidentiality or privacy rights in submitted responses or that are otherwise inconsistent with these statutes will be void and disregarded.

**1.2.3.** By submitting its response to the LHA, the Proposer agrees that the LHA shall not be liable under any circumstances for the subsequent disclosure of any materials submitted to it by Proposer pursuant to this RFP and/or in connection with any contract entered into between Proposer and the LHA as a result of the RFP process.

**1.2.4.** Proposer shall comply with the laws and regulations relating to confidentiality and privacy, including any rules or regulations of the LHA. Any questions concerning issues of confidentiality, the submission of materials to the LHA, or any other questions related to these matters, should be directed to LHA's Chief Procurement Officer.

## **2.0 PROPERTY DESCRIPTION**

The Lowell Housing Authority (LHA) is selling the 2 units in 1 building within the City of Lowell and is seeking proposals from interested parties. A list of the property can be found as **Attachment A**, which includes the property location, number of units, bedroom mix, the estimated appraised value.

### **2.0.1 TENANTS**

The property is vacant and will remain vacant. LHA does not anticipate any occupancy of this property.

### **2.0.2 VIEWINGS**

Viewings will take place Monday through Friday between the hours of 8 AM – 4 PM. Exceptions to this may be granted at LHA's discretion. Additionally, if there are multiple requests, LHA will try to coordinate 1 viewing. To schedule a viewing, please call 978-364-5341 or email Rita V. Brousseau at [rbrousseau@lhma.org](mailto:rbrousseau@lhma.org).

## **2.1 USE RESTRICTIONS FOR NON-PROFITS**

Property sold under this RFP to a non-profit agency is subject to Use Agreement requiring that the units serve household with incomes of 80% of AMI or lower for 30 years. This would remain in effect even in the event of sale, default or foreclosure on the property. Additional terms of use are as follows:

- Non-Profit Agencies shall maintain ownership and operation of the property during the use restriction period. The owner shall not convey, sublease or transfer the property without prior approval from the LHA and HUD at any point during the period of use restriction;
- The use restrictions shall be covenants that run with the land, and shall bind and inure the benefit of the parties, their successors and assigns, and every

party now or hereafter acquiring any right, title, or interest therein or in any part thereof;

- Certain involuntary transfers of the property, such as to a secured lender upon default under the security documents, or pursuant to foreclosure, may occur, with the use restrictions surviving the transfer. Any subsequent transfers shall require prior written approval from the LHA and HUD.

## 2.2 REQUIRED RECORDS

Awarded proposer(s) will be required to maintain accurate records to confirm compliance with the Use Restrictions. These included, but are not limited to:

- Records of income at time of admission and recertifications
- Records of income verification

## 3.0 PROPOSAL FORMAT

### 3.1 TABBED PROPOSAL SUBMITTAL

All proposals submitted in response to this RFP must be formatted in accordance with the sequence noted within the table below. Each category must be separated by numbered index dividers (which number extends so that each tab can be located without opening the proposal) and labeled with the corresponding tab reference also noted below.

#### 3.1.1. TAB 1

This is a cover letter signed by an official authorized to bind the proposer/company, which includes an executive summary stating (a) the property or property for which a proposal is being made, (b) if willing to let tenants remain (c) any special conditions regarding financing, and (d) that the proposal is firm during the acceptance period, which expires **180 calendar days** from the proposal due date.

**Transmittal Form:** This is a 1-page form that is attached to this RFP document, as **Attachment D**.

#### 3.1.2. TAB 2

**HUD-5369-A (11/92), Representations, Certifications, and Other Statements of Bidders.** This 4-page form is attached as **Attachment B** to this RFP.

#### 3.1.3. TAB 3

**Purchaser Experience and Capacity.** Provide the following information:

- i. **Name, address, telephone number and email address** of primary contact person.
- ii. **Address(es) and location(s) of local offices and Main Office**
- iii. **A brief description of your organization**, length of time in business, and length of time as an operator of owned property housing clientele.
- iv. **A list of owned property** by address and a brief description of the property (# of units, bedroom mix, etc).

### 3.1.4. TAB 4

- A. **For Market Rate. Financial Plan and Proposal.** For the property proposed for purchase, provide a description of the financing. This description must identify the type of financing, the source of financing and any special conditions or considerations about the financing. At minimum soft commitment letters are required from third-party sources. A firm commitment letter is preferred, especially from proposers claiming a readiness to close within 90 days of accepted offer.

A **Financial Proposal** must be completed for the property. All financial proposals must be for at least the estimated appraised value for that specific property. Only one purchase price shall be offered and must be all inclusive. **The HA will not accept alternate pricing, add/deducts or any extraneous pricing not requested in this RFP.** Proposals listing anything other than the purchase price as requested will be considered conditional and your proposal will be rejected. **Attachment E.**

- B. **For Non-Profits. Technical Approach.** For the property being proposed on, a **Supportive Services Plan** and a **Property Management Plan** needs to be submitted.

**Supportive Services Plan.** A description of the Supportive Services Plan must be provided for the property. For the property a description of the funding source(s) for the provision of supportive service must be provided. The description must identify if the source is appropriated, charitable grant or other form of non-governmental fund raising, or operating cash flow.

**Property Management Plan.** A Property Management Plan must be submitted for the property. Third-Party management services are acceptable, but the management entity must be identified and either a letter on letterhead from the agent committing to the assignment or an executed agreement must be provided.

**Financial Plan and Proposal.** For the property proposed for purchase, provide a description of the financing. This description must identify the type of financing, the source of financing and any special conditions or considerations about the financing. At minimum soft commitment letters are required from third-party sources. A firm commitment letter is preferred, especially from proposers claiming a readiness to close within 90 days of accepted offer.

A **Financial Proposal** must be completed for the property. All financial proposals must be for at least 70% of the appraised value for that specific property.

### 3.1.5. TAB 5

- Other Information (OPTIONAL).** Other information the proposer believes is appropriate to assist the LHA in its evaluation.

### 3.1.6. TABBED PROPOSAL SUMMARY



Tab No.	Description
1	- <b>Proposer’s Letter of Introduction and Compliance Statement.</b> - <b>Transmittal Form.</b>
2	- <b>HUD-5369-C (8/93), Certifications and Representations of Offerors, Non-Construction Contract.</b>
3	<b>Purchaser’s Experience &amp; Capacity</b>
4	<b>Financial Plan &amp; Proposal</b>
5	<b>Other Information (OPTIONAL).</b>

If no information is to be placed under any of the above noted tabs (especially the "Optional" tabs), please place there under a statement such as "THIS TAB LEFT INTENTIONALLY BLANK." Do not eliminate any of the tabs.

**3.2 PROPOSAL SUBMISSION**

Within a single delivered package, please provide one original proposal and one (1) electronic copy on either on a DVD or thumb drive.

Any corrections to proposals prior to the submission deadline must be also sealed and delivered in the same manner as required in this section.

NOTE: Packages mailed via U.S. Postal Service will be delivered to a post office box. Arrival at the LHA Executive Offices prior to the due date and time *cannot be presumed or guaranteed*. Proposers are solely responsible for timely delivery to the LHA office:

**Lowell Housing Authority  
 Department of Finance and Procurement  
 350 Moody Street  
 Lowell, MA 01854  
 “PROPOSAL – RFP 2024-3 Scattered Site Sale DUE:  
 05/07/24”**

**3.2.1 CONTENT AND BINDING**

All proposals are to be prepared in a practical, legible, clear, concise, coherent and straightforward manner without distracting marketing material and elaborate forms or exhibits.

No redundancy. If a document supports multiple parts of the proposal, please reference its first and original location in those multiple sections.

***Please do not permanently bind or staple the submitted documents.***

Please do not submit the entire published RFP document. Only submit the completed forms and documents required by the RFP.

**3.2.2 SUBMISSION CONDITIONS**

DO NOT FOLD OR MAKE ANY ADDITIONAL MARKS, NOTATIONS OR REQUIREMENTS ON THE DOCUMENTS TO BE SUBMITTED. Proposers are

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not allowed to change any requirements or forms contained herein, either by marking or entering onto these documents or the documents submitted any revisions or additions; and if any such additional marks, notations or requirements are entered on any of the documents that are submitted to the Agency by the proposer, the Agency decides that any such entry has not changed the intent of the proposal that the Agency intended to receive, the Agency may accept the proposal and the proposal shall be considered by the Agency as if those additional marks, notations or requirements were not entered on such. By accessing these documents, each prospective proposer that does so is thereby agreeing to confirm all notices that the Agency delivers to him/her as instructed, and by submitting a proposal, the proposer is thereby agreeing to abide by all terms and conditions published herein and by addendum pertaining to this RFP.

### 3.2.3 SUBMISSION TERMS

- i. **NO CHARGES:** The LHA shall not accept charges for the requested information.
- ii. **SIGNED SUBMISSIONS:** The proposal shall be signed by an official authorized to bind the company and shall contain a statement that the proposal is firm during the acceptance period, which expires **180 calendar days** from the proposal due date.
- iii. **WITHDRAWN PROPOSALS:** Proposals may be withdrawn by the proposer via written request received by LHA no later than the time set for opening of the proposals. Any proposal that is withdrawn may nevertheless be opened and reviewed. After the due date, proposals may only be withdrawn should the financing source become unavailable. A letter from the funding source must be provided which not only indicates the withdrawal of funding but the reason(s).
- iv. **LHA’S RIGHTS: ACCEPTANCE, REJECTION, EXCEPTIONS, AMENDMENT, WAIVING INFORMALITIES, CONTRACT INCORPORATION, EXCLUSIONS, ETC.:** LHA reserves the right to accept or reject any and all proposals, to negotiate all plan-related terms and conditions with any qualified source, or to cancel or amend this RFP in part or its entirety. LHA also reserves its right to waive non-statutory or non-regulatory components and other informal (items required only by the LHA and/or unfairly limited competition) and minor informalities, if in the best interest of the LHA to do so. Proposers may be excluded from further consideration for failure to fully comply with the specifications of the RFP.
- v. **DEBARMENT AND LIMITED DENIAL OF PARTICIPATION (LDP):** LHA will reject any proposal where its proposer is debarred or under a relevant (federal) Limited Denial of Participation (LDP)<sup>1</sup> by U.S. Government agencies including the Department of Housing and Urban Development (HUD) and/or the Commonwealth of Massachusetts or its political subdivisions

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<sup>1</sup> Limited Denial of Participation: [https://www5.hud.gov/Ecpcis/main/ECPCIS\\_List/main/ECPCIS\\_List.jsp](https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp)

from providing goods or services, and reserves the right to reject the proposal of any proposer who has previously failed to perform any contract properly for any purchaser, or to complete on time, contracts of a similar nature, who are not in the position to perform the contract, or who has neglected the payment of bills or otherwise disregarded as obligations to clients, purchasers, subcontractors or employees.

Failure of the successful proposer to accept these and other terms will void the award. Acceptance of the proposal is subject to the approval of the LHA Board of Commissioners.

### **3.2.4 SUBMISSION RESPONSIBILITIES**

It shall be the responsibility of each proposer to be aware of and to abide by all dates, times, conditions, requirements and specifications set forth within all applicable documents issued by the Agency, including the RFP document, the attachments, and any addenda and required attachments submitted by the proposer. By virtue of completing, signing and submitting the complete documents, the proposer is stating his/her agreement to comply with all conditions and requirements set forth within those documents. Written notice from the proposers not authorized in writing by the CPO to exclude any of the Agency requirements contained within the documents may cause that proposer to not be considered for award.

### **3.3 CONTACT WITH THE AGENCY**

It is the responsibility of the proposer to address all communication and correspondence pertaining to this RFP process to the Chief Procurement Officer, Rita V. Brousseau (email: [rbrousseau@lhma.org](mailto:rbrousseau@lhma.org)) **only**. Proposers must not make inquiry or communication with any other Agency staff member, official (including members of the Board of Commissioners) or residents pertaining to this RFP. Failure to abide by this requirement may be cause for the Agency to not consider a proposal submittal received from any proposer who has not abided by this directive.

#### **3.3.1 ADDENDUMS**

All questions and requests for information must be addressed in writing to the CPO. The CPO will respond to all such inquiries in writing by addendum to all prospective proposers (i.e. firms or individuals that have obtained the RFP documents). Although addenda may be issued after that cut of date for questions, any written general question submitted after the cutoff date for questions will not oblige the LHA to respond. All issued addenda and RFP documents can be downloaded from [www.lhma.org/bids](http://www.lhma.org/bids).

### **3.4 RECAP OF ATTACHMENTS**

The following is a summary of the attached documents relevant to this RFP.

**ATTACHMENT A:** List of Property Available

**ATTACHMENT B:** HUD-5369-A, Representations, Certifications, and Other Statements of Bidders (Submit under Tab 2)

**ATTACHMENT C:** HUD-5369-B, Instructions of Offerors Non-Construction)

**ATTACHMENT D:** Transmittal Form (Submit under Tab 1)

**ATTACHMENT E:** Cost/Price Proposal Form (Submit under Tab 4)

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- ATTACHMENT F:** Purchase and Sales Agreement (Sample)  
**ATTACHMENT G:** DCAMM Disclosure Statement  
**ATTACHMENT H:** Draft Deed Restriction (Market Sale)  
**ATTACHMENT I:** Draft Deed Restriction (Non-Profit)  
**ATTACHMENT J:** Section 8 Housing Choice Voucher Lease and Addendum  
**ATTACHMENT K:** Draft Use Agreement

#### **4.0 PROPOSAL EVALUATION**

##### **4.1 EVALUATION FACTORS**

###### **4.1.1 Organizational Experience and Capacity to Provide Supportive Services in a Residential Setting**

Highly Advantageous (35 points): Twenty or more years providing supportive services in residential housing.

Advantageous (25 points): Ten to twenty years of providing supportive services in residential housing.

Non-Advantageous (15 points): Less than ten years of providing supportive services in residential housing.

###### **4.1.2 Depth of Experience as an Asset Manager of Residential Property**

Highly Advantageous (35 points): Twenty or more years as an owner/operator of residential housing.

Advantageous (25 points): Ten to twenty years as an owner/operator of residential housing.

Non-Advantageous (15 points): Less than ten years as an owner/operator of residential housing.

###### **4.1.3 Soundness of the Financing Plan**

Highly Advantageous (25 points): Financing Plan has firm commitment letter(s) for complete financing and not dependent on other unsecured funding or grants.

Advantageous (20 points): Financing Plan has soft commitment letter(s) for complete financing and not dependent other unsecured funding or grants.

Non-Advantageous (15 points): Financing Plan has soft commitment letter(s) for majority of the financing and has applied for other funding or grant(s) with an award expected within 3 months of proposal submission.

Unacceptable (5 points): Financing Plan has soft commitment letter(s) for less than 50% of the financing and has applied for other funding or grant(s) with an award expected within 3 months of the date of proposal submission for the difference.

#### **4.1.4 Readiness to Close on the Transaction**

Highly Advantageous (25 points): Proposal demonstrates sufficient capacity and control of resources to close within 90 days.

Advantageous (20 points): Proposal demonstrates sufficient capacity and control of resources to close within 120 days.

Non-Advantageous (15 points): Proposal demonstrates sufficient capacity and control of resources to close within 180 days.

Unacceptable (5 points): Ability to close within 180 days of award is not clear.

#### **4.1.5 Proposed Purchase Price**

Highly Advantageous (35 points): Highest proposal price per property. To be considered highly advantageous for any non-profit proposal, the highest proposal price shall be no less than 70% of the appraised value.

Points will be deducted for other pricing based on the percent difference between the submitted price and the highest price.

Example:

Highest price: \$150,000 = 35 points

Second price: \$148,500 = 34 points\*

\*  $35 - (((\text{Highest price} - \text{proposed price}) / \text{highest price}) \times 100)$

Unacceptable (0 points): Proposal price is below the estimated appraised value for market rate proposals. For non-profit proposals, the proposal price is below 70% of the appraised value.

### **4.2 EVALUATION METHOD**

#### **4.2.1 INITIAL EVALUATION FOR RESPONSIVENESS**

Each proposal received will first be evaluated for responsiveness (i.e. meets the minimum of the requirements).

#### **4.2.2 EVALUATION PACKET**

An evaluation packet will be prepared for each evaluator per property, including a Proposal Evaluation Form and all pertinent RFP documents.

#### **4.2.3 EVALUATION COMMITTEE**

The Agency anticipates that it will select a minimum of a three-person committee to evaluate each of the responsive proposals submitted in response to this RFP. PLEASE NOTE: No proposer shall be informed at any time during the RFP process as to the identity of any evaluation committee member. If, by chance, a proposer does become aware of the identity of such person(s), he/she SHALL NOT make any attempt to contact or discuss with such person anything related to this RFP. As detailed within Section 3.3 of this document, the designated CPO is the only person at the Agency that proposers shall contact pertaining to this

RFP. Failure to abide by this requirement may cause such proposer(s) to be eliminated from consideration for award.

#### **4.2.4 EVALUATION**

Proposals will be evaluated by individual property. The proposals will be ranked by the average weighted score of up to 180 points. The weighted score takes in consideration price and technical score to determine an overall ranking.

#### **4.3 RULE FOR AWARD**

A Purchase and Sales Agreement is anticipated for award for the property. The property will be evaluated and the most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other evaluation criteria set forth in the solicitation, will be selected.

### **5.0 CONTRACT DOCUMENTS AND AWARD**

#### **5.1 CONTRACT CONDITIONS FOR NON-PROFITS**

- Non-Profit Agencies shall maintain ownership and operation of the property during the use restriction period. The owner shall not convey, sublease or transfer the property without prior approval from the LHA and HUD at any point during the period of use restriction;
- The use restrictions shall be covenants that run with the land, and shall bind and inure the benefit of the parties, their successors and assigns, and every party now or hereafter acquiring any right, title, or interest therein or in any part thereof;
- Certain involuntary transfers of the property, such as to a secured lender upon default under the security documents, or pursuant to foreclosure, may occur, with the use restrictions surviving the transfer. Any subsequent transfers shall require prior written approval from the LHA and HUD; and
- The LHA is responsible for monitoring and enforcing these use restrictions during the period they are in effect.

#### **5.2 CONTRACT AWARD**

Assuming the LHA Board of Commissioners concurs with the Executive Office's recommendation, the LHA and the proposer will execute the Purchase and Sales Agreement and the clock will start on the path to closing on the transaction. Failure to comply with the requirements of the P&S and more importantly the timeframes in the P&S may result in termination of the Agreement by the LHA. Timelines may be extended by mutual consent.

##### **5.2.1 BENEFICIAL INTEREST DISCLOSURE FORM**

The awarded proposer(s) must provide a Beneficial Interest Disclosure Form (**Attachment G**) with DCAMM. This form needs to be on file with DCAMM within 30 days before of signed P&S. A copy of the disclosure form is required to be submitted to LHA.

**ATTACHMENT A**  
List of Property Available

**ATTACHMENT A**  
**Listing of Property Addresses**

<b>Address</b>	<b>2 BR</b>	<b>3 BR</b>	<b>4 BR</b>	<b>5 BR</b>	<b>6 BR</b>	<b>Total BR</b>	<b>Resident Preferences</b>	<b>Estimated Appraised Value</b>
67 West Fourth Street		1		1		2	VACANT	\$443,000.00

---

**Lowell Housing Authority**



**ATTACHMENT B**

HUD-5369-A, Representations, Certifications, and Other Statements of Bidders  
(Submit under Tab 2)

**U.S. Department of Housing  
and Urban Development**  
Office of Public and Indian Housing

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [ ] has, [ ] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

#### 7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- [ ] Black Americans
- [ ] Asian Pacific Americans
- [ ] Hispanic Americans
- [ ] Asian Indian Americans
- [ ] Native Americans
- [ ] Hasidic Jewish Americans

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

**ATTACHMENT C**

HUD-5369-B, Instructions of Offerors Non-Construction

# Instructions to Offerors Non-Construction



## 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

## 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

## 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

## 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

## 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### 7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

#### 8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

#### 9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

See the RFP or IFB to which this document is attached.  
Lowell Housing Authority  
Department of Finance and Procurement  
350 Moody Street  
Lowell, MA 01854  
Main Tel: (978) 937-3500  
TDD Tel: (800) 545-1833 ext. 178



**ATTACHMENT D**

Transmittal Form (Submit under Tab 1)

**ATTACHMENT D  
TRANSMITTAL FORM**

Required Certifications

- I. Pursuant to M.G.L. Chapter 62C, §49A, I hereby certify, under the penalties of perjury, that, to the best of my knowledge and belief, compliance with all the laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support subject to the conditions stated in the statute referenced herein.
- II. The undersigned further certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in the form, the word "person" shall mean natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.
- III. The undersigned further certifies under penalty of perjury that this entity is not presently debarred or limitation from doing work for any federal, state or local public agency or political subdivision in the Commonwealth of Massachusetts under the provisions of M.G.L. ch. 29, §29F or any other applicable debarment provisions of the federal government or under the Massachusetts General Laws.
- IV. The following Addenda are acknowledged and incorporated herein:
  - Addendum No. \_\_\_\_ Dated \_\_\_\_
  - Addendum No. \_\_\_\_ Dated \_\_\_\_
  - Addendum No. \_\_\_\_ Dated \_\_\_\_
  - Addendum No. \_\_\_\_ Dated \_\_\_\_

**Signed:** \_\_\_\_\_

**Printed Name and Title of Authorized Signatory:**

**Company Name:**

**Company Address:**

**Tel./Fax:**

**E-mail:**

**Date:**

**If a corporation, attach a Certificate of Corporate Vote authorizing proposal signatory.**

---

**Lowell Housing Authority**

**ATTACHMENT E**

Cost/Price Proposal Form (Submit under Tab 4)

**ATTACHMENT E  
COST / PRICE PROPOSAL**

Contractor shall provide the following functions as proposed and priced below.

**PROPOSER/FIRM NAME:** \_\_\_\_\_

Please use the following grid to provide prices for the property proposing. Extraneous, alternate or contingency pricing not asked for in this RFP shall be considered conditional and will result in the rejection of your proposal.

<b>Property Location</b>	<b>Price</b>
67 West Fourth Street	

Pursuant to M.G.L. Chapter 62C, §49A, I hereby certify, under the penalties of perjury, that, to the best of my knowledge and belief, compliance with all the laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support subject to the conditions stated in the statute referenced herein.

The undersigned certifies under the penalties of perjury that this bid or proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in the section the word "person" shall mean natural person, joint venture, partnership, corporation or other business or legal entity.

The undersigned certifies under penalty of perjury that this entity is not presently debarred or limitation from doing work for any federal, state or local public agency or political subdivision in the Commonwealth under the provisions of M.G.L. ch. 29, §29F, or any other applicable debarment provisions under federal statute, regulation or under Massachusetts General Laws.

**Proposer:**

**Address:**

**Telephone:**

**Fax:**

**E-Mail:**

**Web URL:**

<b>Authorized Signature:</b>
<b>Printed Name and Title:</b>
<b>Date:</b>
Corporations attach Certificate of Corporate Vote authorizing proposal signatory.

**ATTACHMENT F**  
Purchase and Sales Agreement (Sample)

**ATTACHMENT F**

**PURCHASE AND SALE AGREEMENT**  
(hereinafter referred to as the “Agreement”)

**Dated as of the \_\_\_\_ day of \_\_\_\_\_, 2021.**

1. PARTIES AND MAILING ADDRESSES  
**Lowell Housing Authority**, having an address of 350 Moody Street, Lowell, MA 01854 (hereinafter referred to as the “SELLER”) agrees to sell and \_\_\_\_\_, having an address of \_\_\_\_\_ (hereinafter referred to as the “BUYER”) (SELLER and BUYER sometimes hereinafter collectively referred to as the “Parties”), agrees to buy, upon the terms hereinafter set forth, the following described premises:
2. DESCRIPTION  
The land and the buildings and improvements thereon, known and numbered as \_\_\_\_\_ and \_\_\_\_\_, **Lowell, MA**, consisting of approximately \_\_\_\_\_ +/- square feet of land, more or less according to City of Lowell Assessors records, and being a portion of the land described in the deed recorded with the **Middlesex North District Registry of Deeds**, in **Book** \_\_\_\_\_, **Page** \_\_\_\_\_ (hereinafter referred to as the “Premises”).
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES  
Included in the sale as a part of the Premises are the buildings, structures, and improvements now thereon, and the fixtures used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants, vacuum systems, cabinets, shelves, bookcases and stereo speakers, and all appliances, including, without limitation, refrigerators, stoves, dishwashers, microwaves, washers, dryers, freezers, dehumidifiers and window treatments. It is expressly understood that any items of personal property located at the Premises and belonging to any tenant or occupant of the Premises are excluded from the Premises being conveyed.
4. TITLE DEED  
Said Premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except
  - (a) Provisions of existing building and zoning laws;
  - (b) Existing rights and obligations in party walls which are not the subject of written agreement;
  - (c) Any real estate taxes for the then current fiscal year subsequently assessed but are not due and payable on the date of the delivery of such deed;
  - (d) Any liens for municipal betterments assessed after the date of this Agreement;
  - (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises.

Any questions of title shall be resolved by reference to the Standards of the Massachusetts Real Estate Bar Association where applicable.
5. PLANS  
If said deed refers to a plan necessary to be recorded therewith the Buyer shall be responsible for preparation of such plan form adequate for recording or registration.

**ATTACHMENT F**

6. PURCHASE PRICE      The agreed to purchase price for said Premises is \_\_\_\_\_  
 \_\_\_\_\_ and 00/100 (\$ \_\_\_\_\_ .00) Dollars, of which  
 \$ \_\_\_\_\_ have been paid as a deposit this day; and  
 \$ \_\_\_\_\_ are to be paid at the time of the delivery and recording of the deed  
 by wire transfer or bank treasurer’s or certified check(s)  
 \$ \_\_\_\_\_ **TOTAL**
7. TIME FOR PERFORMANCE;  
 DELIVERY OF DEED (“CLOSING”)      Such deed is to be delivered at **11:00 o’clock AM. on the \_\_\_\_ day of \_\_\_\_\_, 2021** at the Middlesex North District Registry of Deeds or the **office of the Seller’s attorney**, unless otherwise agreed upon in writing (sometimes hereinafter referred to as the “Closing” as the same may be modified pursuant to the terms of this Agreement). It is agreed that time is of the essence of this Agreement.
8. POSSESSION AND CONDITION OF PREMISES      Full possession of said Premises (subject to the occupancy of certain all tenants and occupants as described below) is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in AS IS and WHERE IS condition, without representation or warranty of any kind and (b) in compliance with provisions of any instrument referred to in paragraph four (4) hereof. The BUYER shall be entitled to inspect the Premises within 48 hours prior to the Closing.
9. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM      If the SELLER shall be unable to give good title pursuant to paragraph four (4) above, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, in which event the Closing shall be extended for a period of up to thirty (30) calendar days, as reasonably required by the SELLER to correct the defect. Reasonable efforts to cure title shall not require SELLER to expend more than one-half of one percent of the Purchase Price pursuant to this Paragraph.
10. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.      If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the Parties hereto shall cease and this Agreement shall be void without recourse to the Parties hereto.
11. BUYER’S ELECTION TO ACCEPT TITLE      Notwithstanding the provisions of paragraph ten (10), the BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said Premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this Paragraph, if the said Premises shall have been damaged by fire, vandalism or other casualty, or in the event of a taking of all or a part of the Premises by eminent domain, then at BUYER’s option, all payments made under this Agreement shall be refunded and all other obligations of the Parties hereto shall cease and this Agreement shall be void without recourse to either Party.
12. ACCEPTANCE OF DEED      The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after or as are stated in this Agreement to survive the delivery of said deed.

**ATTACHMENT F**

13. USE OF MONEY TO CLEAR TITLE To enable the SELLER to make conveyance as herein provided, the SELLER shall, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of the deed, within a reasonable time after the delivery of said deed in accordance with local conveyancing practices. The discharge of any privately held mortgages shall be required to be delivered and recorded at or prior to Closing.
14. INSURANCE Until the delivery of the deed, the SELLER shall maintain insurance on said Premises as follows:
- | Type of Insurance          | Amount of Coverage   |
|----------------------------|----------------------|
| Fire and Extended Coverage | as presently insured |
- All risk of loss shall remain with SELLER until delivery, acceptance and recording of the Deed.
15. ADJUSTMENTS Water use charges and any other periodic municipal charges shall be apportioned and fuel value shall be adjusted (pursuant to written receipt and reading provided to BUYER's attorney at Closing), as of the day of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed. SELLER shall obtain and provide to BUYER's attorney at Closing a final water bill or reading for said apportionment/adjustment, or in the alternative, shall provide evidence of payment of same.
16. DEPOSIT All deposits made hereunder shall be held in an FDIC insured non-interest bearing escrow by SELLER's counsel, as escrow agent subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. In the event of any disagreement between the Parties, the escrow agent shall retain all deposits made under this Agreement pending written instructions mutually given by the SELLER and the BUYER or the final judgment of a court with competent jurisdiction. The delivery, acceptance and recording of the Deed shall in all cases constitute the Parties' joint authorization for the release of all deposits held hereunder and all other disbursements to be made in accordance with and as outlined on the HUD/Closing Disclosure/ALTA Settlement Statement or similar closing statement signed by the Parties pursuant to this Agreement.
17. BUYER'S DEFAULT; DAMAGES If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages hereunder. The parties acknowledge that SELLER has no adequate remedy in the event of BUYER'S default hereunder because it is impossible to compute exactly the damages which would accrue to the SELLER in such event. The parties have therefore taken these facts into account in setting the amount of the deposit hereunder and hereby agree that: (i) the deposit is the best pre-estimate of such damages which would accrue to SELLER in the event of BUYER'S default thereunder: (ii) said deposit represents damages and not any penalty against BUYER and (iii) if BUYER shall fail to fulfill BUYER'S obligations hereunder, said deposit shall be due the SELLER from the BUYER as its full damages in lieu of other rights and remedies which SELLER may have against BUYER at law or in equity.
18. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc. If the SELLER or BUYER executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
19. WARRANTIES AND REPRESENTATIONS The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing, except for the following



**ATTACHMENT F**

additional warranties and representations, if any, made by either the SELLER or the Broker(s): **NONE**. BUYER acknowledges BUYER is purchasing the Premises in “AS IS” and “WHERE IS” condition without representation or warranty of any kind.

- 20. MORTGAGE CONTINGENCY CLAUSE      The BUYER’s obligations are subject to the condition that BUYER obtains financing for BUYER’s acquisition of the Premises if such condition is set forth in BUYER’s response to the SELLER’s request for proposals for the Premises (“BUYER’s Proposal”).
  
- 21. CONSTRUCTION OF AGREEMENT      This Agreement, which may be executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the Parties, is binding upon and inures to the benefit of the Parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER or their respective attorneys. The Parties may rely upon facsimile, emailed, digitally signed, or electronically scanned copies of such written instruments. If two or more persons are named herein as BUYER and/or SELLER, their respective obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the Parties to it.
  
- 22. LEAD PAINT LAW      BUYER acknowledges that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age. BUYER shall be responsible for any required lead paint removal.
  
- 23. SMOKE/CARBON MONOXIDE DETECTORS      The SELLER shall be responsible for any necessary certificates from the local fire department of that said Premises has been equipped with approved smoke and carbon monoxide detectors and are in compliance with Massachusetts General Laws, Chapter 148, Sections 26E, 26F and 26F½.
  
- 24. NOTICES      All notices required or to be given hereunder shall be in writing and deemed duly given when placed in the US Mail, postage prepaid, or sent via facsimile, or e-mail, or delivered addressed as follows:

If to SELLERS:

Lowell Housing Authority  
350 Moody Street  
Lowell, MA 01854

With a copy to:

And, if to BUYER:

With a copy to:

or to such other address or addresses as may from time to time be designated by either party by written notice to the other. Notwithstanding the foregoing, delivery of notice to any of the Brokers or directly to the Parties identified in this Agreement shall be sufficient if service is not made upon the foregoing attorneys (for example, the fax machine and/or email server is not working properly when attempting to serve notice).

## ATTACHMENT F

25. **NO BROKERS.** BUYER warrants and represents to SELLER that BUYER has not dealt with any broker or other person entitled to a broker's commission in connection with the negotiation or execution of this Agreement or the consummation of the transaction contemplated hereby. BUYER agrees to indemnify, defend (with counsel reasonably acceptable to SELLER) and hold SELLER harmless against all damages, claims, losses and liabilities, including legal fees, incurred by the other, arising out of or resulting from the failure of its representation and warranty. The provisions of this Paragraph shall survive delivery of the Deed hereunder.
26. **TITLE INSURANCE.** Without limitation of any other provisions of this Agreement, said Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless title to the Premises is insurable, for the benefit of the BUYER, by a title insurance company reasonably acceptable to BUYER, in a fee owner's enhanced policy of title insurance, at normal premium rates, on the American Land Title Association form currently in use, subject only to the exceptions permitted under paragraph four (4) of this Agreement, those described in the RFP and BUYER's Proposal, and those printed exceptions to title normally included in the "jacket" to such form or policy requiring no indemnification documents to be signed by SELLER.
27. **EXTENSION FOR WEEKEND/HOLIDAY.** In the event that any deadline or date for performance or providing notice contained herein (including, without limitation, any contingencies or extensions of the time for performance under this Agreement), falls on a Saturday, Sunday or legal holiday, as the case may be, such deadline or other date shall be automatically extended to the immediately following business day.
28. **AUTHORITY.** SELLER warrants that SELLER has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder. BUYER warrants that BUYER has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder.
29. **LEGAL COUNSEL.** Both BUYER and SELLER hereby acknowledge that they have been offered the opportunity to seek and confer with qualified legal counsel of their choice prior to signing this Agreement. It is acknowledged and presumed that the substance and form of this Agreement have been fully reviewed by the Parties hereto and approved as to form by their respective legal counsel. It is further acknowledged and agreed that no presumption shall exist against either party hereto by virtue of this Agreement or any portion hereof being considered to have been drafted by legal counsel for either party hereto.
30. **TENANTS AND OCCUPANTS.** BUYER acknowledges that certain current tenants of the Premises have the right to remain in possession of portions of the Premises after delivery of the deed as described in the RFP, and that tenants who have expressed a desire to relocate from the Premises may not have relocated or may have changed their desire to relocate prior to delivery of the deed. For tenants who remain in possession at the time of delivery of the deed, BUYER may be eligible to obtain a temporary tenant based rental assistance voucher as described in the RFP.
31. **RFP and BUYER's RESPONSE.** BUYER acknowledges and agrees that SELLER's obligations hereunder are subject to BUYER's compliance with all applicable provisions of the RFP and BUYER's response. BUYER further acknowledges and agrees that certain requirements of the RFP, BUYER's Response, and/or any restrictions that may be imposed on the deed as described in the RFP, may require certain information to be provided by BUYER to SELLER periodically after delivery of the deed to, inter alia, demonstrate compliance with such requirements and restrictions. BUYER agrees to timely provide all such information and agrees that this provision shall survive the delivery of the deed.

**NOTICE: THIS IS A LEGAL DOCUMENT THAT CREATES BINDING OBLIGATIONS. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY.**

[remainder of page intentionally left blank; signature page to follow]

**ATTACHMENT F**

[Signature page to Purchase and Sale Agreement for property at \_\_\_\_\_, **Lowell, MA**

SELLER: Lowell Housing Authority

BUYER: \_\_\_\_\_

By: \_\_\_\_\_  
Its duly authorized signatory

By: \_\_\_\_\_  
Its duly authorized signatory

**ATTACHMENT G**

DCAMM Disclosure of Beneficial Interest Statement

**ATTACHMENT G  
DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

**INSTRUCTION SHEET**

**NOTE:** The Division of Capital Asset Management and Maintenance (DCAMM) shall have no responsibility for insuring that the Disclosure Statement has been properly completed as required by law. Acceptance by DCAMM of a Disclosure Statement for filing does not constitute DCAMM's approval of this Disclosure Statement or the information contained therein. Please carefully read M.G.L. c. 7C, s. 38 which is reprinted in Section 8 of this Disclosure Statement.

**Section (1):** Identify the real property, including its street address, and city or town. If there is no street address then identify the property in some other manner such as the nearest cross street and its tax assessors' parcel number.

**Section (2):** Identify the type of transaction to which this Disclosure Statement pertains --such as a sale, purchase, lease, etc.

**Section (3):** Insert the exact legal name of the Public Agency participating in this Transaction with the Disclosing Party. The Public Agency may be a Department of the Commonwealth of Massachusetts, or some other public entity. Please do not abbreviate.

**Section (4):** Insert the exact legal name of the Disclosing Party. Indicate whether the Disclosing Party is an individual, tenants in common, tenants by the entirety, corporation, general partnership, limited partnership, LLC, or other entity. If the Disclosing Party is the trustees of a trust then identify the trustees by name, indicate that they are trustees, and add the name of the trust.

**Section (5):** Indicate the role of the Disclosing Party in the transaction by checking one of the blanks. If the Disclosing Party's role in the transaction is not covered by one of the listed roles then describe the role in words.

**Section (6):** List the names and addresses of every legal entity and every natural person that has or will have a direct or indirect beneficial interest in the real property. The only exceptions are those stated in the first paragraph of the statute that is reprinted in Section 8 of this Disclosure Statement. If the Disclosing Party is another public entity such as a city or town, insert "inhabitants of the (name of public entity)." If the Disclosing Party is a non-profit with no individual persons having any beneficial interest then indicate the purpose or type of the non-profit entity. If additional space is needed, please attach a separate sheet and incorporate it by reference into Section 6.

**Section (7):** Check "NONE" in the box if none of the persons mentioned in Section 6 is employed by DCAMM or an official elected to public office in the Commonwealth of Massachusetts. Otherwise list any parties disclosed in Section 6 that are employees of DCAMM or an official elected to public office.

**Section (8):** The individual signing this statement on behalf of the Disclosing Party acknowledges that he/she has read the included provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts.

**Section (9):** Make sure that this Disclosure Statement is signed by all required parties. If the Disclosing Party is a corporation, please make sure that this Disclosure Statement is signed by a duly authorized officer of the corporation as required by the statute reprinted in Section 8 of this Disclosure Statement.

DCAMM's acceptance of a statement for filing does not signify any opinion by DCAMM that the statement complies with applicable law.

This completed and signed Disclosure Statement should be mailed or otherwise delivered to:

Deputy Commissioner for Real Estate  
Division of Capital Asset Management and Maintenance  
One Ashburton Place, 15<sup>th</sup> Floor, Boston, MA 02108

**ATTACHMENT G  
DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) REAL PROPERTY:

(2) TYPE OF TRANSACTION, AGREEMENT, or DOCUMENT:

(3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:

(4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY:

(5) ROLE OF DISCLOSING PARTY (Check appropriate role):

\_\_\_\_\_ Lessor/Landlord

\_\_\_\_\_ Lessee/Tenant

\_\_\_\_\_ Seller/Grantor

\_\_\_\_\_ Buyer/Grantee

\_\_\_\_\_ Other (Please describe): \_\_\_\_\_

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(7) None of the above- named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (Check "NONE" if NONE):

NONE

NAME:

POSITION:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT G  
DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

- (8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

*No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.*

*Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.*

*The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.*

- (9) This Disclosure Statement is hereby signed under penalties of perjury.

\_\_\_\_\_  
PRINT NAME OF DISCLOSING PARTY (from Section 4, above)

\_\_\_\_\_  
AUTHORIZED SIGNATURE of DISCLOSING PARTY      DATE (MM / DD / YYYY)

\_\_\_\_\_  
PRINT NAME & TITLE of AUTHORIZED SIGNER

**ATTACHMENT H**  
Draft Deed Restriction (Market Sale)



## ATTACHMENT H

### (MARKET SALE) USE RESTRICTION DEED RIDER

This Use Restriction Deed Rider (this “Restriction”) is attached to and made part of that certain deed (the “Deed”) of certain property (the “Property”) conveyed by the Lowell Housing Authority (“LHA”) to \_\_\_\_\_ (the “Owner”) dated \_\_\_\_\_, 2021 to which this Restriction is attached.

#### RECITALS

WHEREAS, the LHA is conveying that certain real property more particularly described in the Deed to the Owner; and

WHEREAS, the Property has been subsidized by the federal and/or state government under the programs and regulations administered of the United States Department of Housing and Urban Development (“HUD”), and is now being sold pursuant to approval from HUD (the “HUD Approval”), subject to certain restrictions set forth in the HUD Approval that certain existing tenants and occupants of the Property continue to have the right to lease their respective rental units for a period up to 5 years from the date hereof (the “Restriction Period”); and

WHEREAS, the LHA is required under the HUD Approval to monitor compliance with and to enforce the terms of this Deed Rider, and eligible purchasers such as the Owner may be required provide data and information to LHA until the expiration of the Restriction Period (references to the monitoring agent herein are to the LHA unless the LHA names a separate entity as the Monitoring Agent);

WHEREAS, the rights and restrictions granted herein to the LHA serve the public’s interest in the creation and retention of affordable housing for persons and households of low and moderate income.

NOW THEREFORE, as further consideration of the conveyance of the Property and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the LHA and the Owner, including his/her/their heirs, successors and assigns, hereby agree that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by LHA and/or HUD.

#### **1. Use Restriction.**

- (a) Each tenant identified by the LHA (“Approved Tenant”) shall have the right to occupy the Property during the Restriction Period subject to the provisions of this Restriction. For each Approved Tenant the LHA will provide a tenant based rental assistance voucher (a “Voucher”) for as long as the Approved Tenant remains eligible to occupy its unit until expiration of the Restriction Period. Owner agrees to annually sign a lease for each Approved Tenant eligible for a Voucher, and such other documents as may be required in order for the LHA to provide the Voucher (the “Lease Documents”). Owner shall comply with all provisions of the Lease Documents and shall not seek to remove or evict any Approved Tenant during the Restriction Period except as allowed pursuant to the terms

## ATTACHMENT H

of the Lease Documents. Any provision of the Lease Documents that allows eviction in the event Owner shall desire to occupy the Property for its own use shall not apply to the Property. Owner acknowledges that each Approved Tenant may voluntarily move out of the Property, and upon any Approved Tenant vacating the Property the Voucher for such tenant will terminate. Owner shall provide an annual certification of its compliance with this Restriction, together with such Approved Tenant data and other supporting documentation as the LHA may require.

- (b) LHA may issue to Owner or the Owner's successors and assigns a certificate (the "Compliance Certificate") indicating that the Owner (or its successor) and the Property is in compliance with the provisions hereof. The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, mortgage, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Restriction, and may record such Compliance Certificate in connection with the conveyance of the Property.

Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected purchaser, the Owner shall deliver to the Monitoring Agent a copy of the Deed of the Property, including this Restriction, together with recording information. Failure of the Owner, or Owner's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

### **2. Survival of Restrictions Upon Exercise of Remedies by Mortgagees.**

- (a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent as set forth in this Restriction (and to the holder of any Senior Mortgage, as defined below), not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Restriction.
- (b) If any Mortgagee or other party shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to a Restriction identical in form and substance to this Restriction, which the Mortgagee that has so acquired the Property agrees to annex to the deed and to record with the deed. **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the

**ATTACHMENT H**

restrictions herein.

(c) Upon satisfaction of the requirements contained in this Section 2, the Monitoring Agent shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 1(b) hereof as conclusive evidence that the conveyance of the Property pursuant to this Section 2 is in compliance with the rights, restrictions, covenants and agreements contained in this Restriction.

**3. Covenants to Run With the Property.** This Restriction, including all restrictions, rights and covenants contained herein, is an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, and the parties intend that this Restriction shall have the benefit of Section 32 of such Chapter 184, and is enforceable as such, notwithstanding that this Restriction may not have been approved by the state agency set forth in said statute.

In confirmation thereof the Owner (and the LHA if this Restriction is attached to the Deed) intend, declare and covenant (i) that this Restriction, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Property for the Restriction Period, and are binding upon the Owner and the Owner's successors in title and assigns, (ii) are not merely personal covenants of the Owner, and (iii) shall enure to the benefit of and be enforceable by the Monitoring Agent, HUD and their successors and assigns, for the Restriction Period. Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts have been satisfied in order for the provisions of this Restriction to constitute restrictions and covenants running with the land and that any requirements of privity of estate have been satisfied in full.

**4. Notice.** Any notices, demands or requests that may be given under this Restriction shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, or sent by a nationally recognized overnight courier, to the following entities and parties in interest at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Monitoring Agent[s]  
(1) \_\_\_\_\_

**ATTACHMENT H**

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(2) \_\_\_\_\_

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Others: \_\_\_\_\_

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Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed, or if sent by such overnight courier, when received.

**5. Further Assurances.** The Owner agrees from time to time, as may be reasonably required by the Monitoring Agent, to furnish the Monitoring Agent upon its request with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and other material information pertaining to the Property and the Owner's conformance with the requirements of the HUD Approval, Program and Program Guidelines, as applicable.

**6. Enforcement.**

(a) The rights hereby granted shall include the right of the Monitoring Agent to enforce this Restriction independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the Monitoring Agent, or their successors and assigns, in the event of any sale, mortgage, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Restriction, and

## ATTACHMENT H

Monitoring Agent shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Restriction;
- (ii) money damages for rent charges in excess of rents permitted to be charged under any applicable Program;
- (iii) the right to void any contract for sale or any sale, mortgage, conveyance or other transfer of the Property in violation of the provisions of this Restriction in the absence of a Compliance Certificate, by an action in equity to enforce this Restriction; and
- (iv) money damages for the cost of creating or obtaining a comparable Property.

(c) In addition to the foregoing, the Owner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Monitoring Agent in the event successful enforcement action is taken against the Owner or Owner's successors or assigns. The Owner hereby grants to the Monitoring Agent a lien on the Property, senior to the lien of any holder of a mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Monitoring Agent shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Restriction against the Owner and to assert such a lien on the Property to secure payment by the Owner of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Monitoring Agent fails to enforce this Restriction as provided in this Section, HUD, if it is not named as Monitoring Agent, shall have the same rights and standing to enforce this Restriction as the Monitoring Agent.

(d) The Owner for itself and its successors and assigns, hereby grants to the Monitoring Agent the right to take all actions with respect to the Property which the Monitoring Agent may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Restriction.

**7. Monitoring Agent Services; Fees.** The Monitoring Agent shall monitor compliance of the Project and enforce the requirements of this Restriction. As partial compensation for providing these services, a monitoring agent fee shall be payable to the Monitoring Agent pursuant to a separate Monitoring Services Agreement executed in connection herewith. Payment of any outstanding fees shall be paid as a condition of any transfer by the Owner herein as a closing cost at the time of Closing, and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, his, her or their successors or assigns, for which the Monitoring Agent shall have a lien as set forth in Section 6 herein.

**8. Actions by Monitoring Agent.** Any action required or allowed to be taken by the Monitoring Agent hereunder shall be taken by the Monitoring Agent's Chief Executive Officer or designee.

## ATTACHMENT H

**9. Severability.** If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**10. Independent Counsel.** THE OWNER ACKNOWLEDGES THAT HE, SHE, OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS, HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

**11. Binding Agreement.** This Restriction shall bind and inure to the benefit of the persons, entities and parties named herein and their successors or assigns as are permitted by this Restriction.

**12. Amendment.** This Restriction may not be rescinded, modified or amended, in whole or in part, without the written consent of the Monitoring Agent and the holder of any mortgage or other security instrument approved by Monitoring Agent encumbering all or any portion of the Property, which written consent shall be recorded with the Registry.

Executed as a sealed instrument this \_\_\_ day of \_\_\_\_\_, 2021.

**ATTACHMENT I**  
Draft Deed Restriction (Non-Profit)

## ATTACHMENT I

### (NON-PROFITS) AFFORDABLE HOUSING USE RESTRICTION DEED RIDER

This Affordable Housing Use Restriction Deed Rider (this “Restriction”) is attached to and made part of that certain deed (the “Deed”) of certain property (the “Property”) conveyed by the Lowell Housing Authority (“LHA”) to \_\_\_\_\_ (the “Owner”) dated \_\_\_\_\_, 2019 to which this e is attached. The Property is located in the City of Lowell, Middlesex County, Massachusetts (the “Municipality”).

#### RECITALS

WHEREAS, the LHA is conveying that certain real property more particularly described in the Deed to the Owner at a consideration which is less than fair market value of the Property; and

WHEREAS, the Property has been subsidized by the federal and/or state government under the programs and regulations administered of the United States Department of Housing and Urban Development (“HUD”), and is now being sold pursuant to approval from HUD dated August 30, 2018 (the “HUD Approval”), subject to certain restrictions set forth in the HUD Approval that the Property continue to be owned and operated to provide affordable housing rental units to persons with incomes at or below 80% of the area median income (“AMI”) for a period of not less than 30 years from the date hereof (the “Restriction Period”); and

WHEREAS, pursuant to the HUD Approval purchasers such as the Owner are given the opportunity to purchase the Property at less than its fair market value if the purchaser agrees to certain use and transfer restrictions, including the approval of the LHA and HUD prior to the sale, sub-leases or other or transfer of the Property to another entity and the restriction that the property be leased to persons with incomes at or below 80% of AMI for the Restriction Period; and

WHEREAS, the LHA is required under the HUD Approval to monitor compliance with and to enforce the terms of this Deed Rider, and eligible purchasers such as the Owner may be required to pay to the Monitoring Agent a monitoring fee, if any, to be set forth in a Monitoring Services Agreement and as more fully provided herein; and

WHEREAS, the rights and restrictions granted herein to the Monitoring Agent serve the public’s interest in the creation and retention of affordable housing for persons and households of low and moderate income.

NOW THEREFORE, as further consideration for the conveyance of the Property at less than fair market value, the LHA and the Owner, including his/her/their heirs, successors and assigns, hereby agree that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by, HUD and/or the Monitoring Agent.

**1. Definitions.** In this Deed Rider, in addition to the terms defined above, the following words and phrases shall have the following meanings:



## ATTACHMENT I

Area means the Primary Metropolitan Statistical Area or non-metropolitan area, as determined by HUD, that includes Lowell, Massachusetts.

Area Median Income means the most recently published median income for the Area adjusted for household size as determined by HUD. If HUD discontinues publication of Area Median Income, the income statistics used by MassHousing for its low and moderate income housing programs shall apply.

Base Income Number means the Area Median Income for a four (4)-person household.

Chief Executive Officer shall mean the Chief Executive Officer of the LHA.

Compliance Certificate shall have the meaning set forth in Section 3(a) hereof.

Foreclosure Notice shall have the meaning set forth in Section 4(a) hereof.

HUD means the United States Department of Housing and Urban Development.

Monitoring Agent means the LHA and, if the LHA appoints a designee to monitor compliance with this Restriction, the Monitoring Agent shall also be such designee.

Monitoring Services Agreement means any agreement for monitoring and enforcement of this Deed Rider among some or all of the Owner, the Monitoring Agent, the Monitoring Agent's designee (if applicable) and HUD.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 4(b) hereof.

Mortgagee shall have the meaning set forth in Section 4(a) hereof.

Non-Profit Corporation shall have the meaning set forth in Section 501(c)(3) of the Internal Revenue Code.

Program Guidelines means the regulations and/or guidelines issued for any applicable program that benefits persons of low and moderate income (a "Program") and controlling its operations, as amended from time to time.

**2. Ownership by Non-Profit Corporation/Restrictions on Use.** The Property shall be owned and used by a Non-Profit Corporation qualified under Section 501(c)(3) of the Internal Revenue Code approved by the Monitoring Agent and HUD, and shall be used for the sole and exclusive purpose of developing, redeveloping and operating residential units for residents of the Municipality with incomes at or below 80% of the Area Median Income (the "Permitted Use") for a period of not less than the Restriction Period. Any use of the Property or activity thereon which is inconsistent with such Permitted Use is expressly prohibited. Compliance with this section shall be monitored by the Monitoring Agent.

## **ATTACHMENT I**

### **3. Restrictions Against Transfer, Leasing, Financing, Refinancing and Junior Encumbrances.**

- (a) The Property shall not be sold, transferred, conveyed, or leased, rented, financed, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent and HUD. Said written consent of the Monitoring Agent and HUD shall only be granted for instruments that are subordinate to the restrictions imposed herein for the duration of the Restriction Period, so as to assure the use of the Property for the Permitted Use for the Restriction Period. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of the Monitoring Agent and HUD shall be paid upon demand by Owner to the Monitoring Agent. Any such instruments approved by the Monitoring Agent and HUD shall clearly and specifically state that the approval is subject to the restrictions set forth herein, provided that failure to comply with this sentence shall not affect the validity of the instrument or the enforceability of the restrictions herein. In addition to the forgoing, no conveyance, mortgage or other transfer of ownership of the Property or any interest therein by the Owner, or the Owner's successors and assigns, or any attempted sale shall be valid, unless a certificate (the "Compliance Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent and HUD which Compliance Certificate refers to the Property, the Owner, and the selected purchaser thereof, if any, indicating that the Owner and the Property is in compliance with the provisions hereof.
- (b) The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, mortgage, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Restriction, and may record such Compliance Certificate in connection with the conveyance of the Property.

Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected purchaser or any financing transaction, the Owner shall deliver to the Monitoring Agent a copy of the Deed of the Property, including this Restriction, and/or a copy of the mortgage and security instruments, as the case may be, together with recording information. Failure of the Owner, or Owner's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance, the security instruments, or the enforceability of the restrictions herein.

### **4. Survival of Restrictions Upon Exercise of Remedies by Mortgagees.**

- (a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent as set forth in this Restriction (and to the holder of any Senior Mortgage, as defined below), not less than thirty (30) days prior to the foreclosure sale or the acceptance of a deed in

## ATTACHMENT I

lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Restriction.

- (b) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Mortgage Satisfaction Amount, such excess shall be paid to the Monitoring Agent for and shall be applied for other purposes or properties but consistent with the Permitted Use. The legal costs of obtaining any such excess shall be deducted from the excess prior to payment to the Monitoring Agent. Owner, for itself, its successors and assigns, hereby agrees that the Monitoring Agent is entitled to such excess and to the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Monitoring Agent under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Monitoring Agent.

The Mortgage Satisfaction Amount shall be equal to the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (a "Senior Mortgage"), plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and the holder of any senior Mortgage(s) are entitled to recover pursuant to the terms of such mortgages. (

- (c) If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to a Restriction identical in form and substance to this Restriction, which the Mortgagee that has so acquired the Property agrees to annex to the deed and to record with the deed. **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the restrictions herein.

- (d) if any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to a Restriction identical in form and substance to this Restriction, which the foreclosing Mortgagee agrees to annex to the deed and to record with the deed. **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to such third party purchaser or the enforceability of the restrictions herein.

- (e) Upon satisfaction of the requirements contained in this Section 4, the Monitoring Agent shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 3(b) hereof as conclusive evidence that the conveyance of the Property pursuant to this Section 4 is in compliance with the rights, restrictions, covenants and agreements contained in this Restriction.

**ATTACHMENT I**

**5. Covenants to Run With the Property.** (a) This Restriction, including all restrictions, rights and covenants contained herein, is an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, and the parties intend that this Restriction shall have the benefit of Section 32 of such Chapter 184, and is enforceable as such, notwithstanding that this Restriction may not have been approved by the state agency set forth in said statute.

In confirmation thereof the Owner (and the LHA if this Restriction is attached to the Deed) intend, declare and covenant (i) that this Restriction, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Property for the Restriction Period, and are binding upon the Owner and the Owner's successors in title and assigns, (ii) are not merely personal covenants of the Owner, and (iii) shall enure to the benefit of and be enforceable by the Monitoring Agent, HUD and their successors and assigns, for the Restriction Period. Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts have been satisfied in order for the provisions of this Restriction to constitute restrictions and covenants running with the land and that any requirements of privity of estate have been satisfied in full.

**6. Notice.** Any notices, demands or requests that may be given under this Restriction shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, or sent by a nationally recognized overnight courier, to the following entities and parties in interest at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Monitoring Agent[s]  
(1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(2) \_\_\_\_\_

**ATTACHMENT I**

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Others:

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Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed, or if sent by such overnight courier, when received.

**7. Further Assurances.** The Owner agrees from time to time, as may be reasonably required by the Monitoring Agent, to furnish the Monitoring Agent upon its request with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and other material information pertaining to the Property and the Owner's conformance with the requirements of the HUD Approval, Program and Program Guidelines, as applicable.

**8. Enforcement.** (a) The rights hereby granted shall include the right of the Monitoring Agent to enforce this Restriction independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the Monitoring Agent, or their successors and assigns, in the event of any sale, mortgage, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Restriction, and Monitoring Agent shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Restriction;
- (ii) money damages for rent charges in excess of rents permitted to be charged under any applicable Program;
- (iii) the right to void any contract for sale or any sale, mortgage, conveyance or other transfer of the Property in violation of the provisions of this Restriction in the absence of a Compliance Certificate, by an action in equity to enforce this Restriction; and
- (iv) money damages for the cost of creating or obtaining a comparable

## ATTACHMENT I

Property.

(c) In addition to the foregoing, the Owner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Monitoring Agent in the event successful enforcement action is taken against the Owner or Owner's successors or assigns. The Owner hereby grants to the Monitoring Agent a lien on the Property, senior to the lien of any holder of a mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. Such lien may be enforced under Chapter 24 of the Massachusetts General Laws or by any other legally permissible method. The Monitoring Agent shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Restriction against the Owner and to assert such a lien on the Property to secure payment by the Owner of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Monitoring Agent fails to enforce this Restriction as provided in this Section, HUD, if it is not named as Monitoring Agent, shall have the same rights and standing to enforce this Restriction as the Monitoring Agent.

(d) The Owner for itself and its successors and assigns, hereby grants to the Monitoring Agent the right to take all actions with respect to the Property which the Monitoring Agent may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Restriction.

**9. Monitoring Agent Services; Fees.** The Monitoring Agent shall monitor compliance of the Project and enforce the requirements of this Restriction. As partial compensation for providing these services, a monitoring agent fee shall be payable to the Monitoring Agent pursuant to a separate Monitoring Services Agreement executed in connection herewith. Payment of any outstanding fees shall be paid as a condition of any transfer by the Owner herein as a closing cost at the time of Closing, and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, his, her or their successors or assigns, for which the Monitoring Agent shall have a lien as set forth in section 8 herein.

**10. Actions by Monitoring Agent.** Any action required or allowed to be taken by the Monitoring Agent hereunder shall be taken by the Monitoring Agent's Chief Executive Officer or designee.

**11. Severability.** If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**12. Independent Counsel.** THE OWNER ACKNOWLEDGES THAT HE, SHE, OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS,

**ATTACHMENT I**

HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

**13. Binding Agreement.** This Restriction shall bind and inure to the benefit of the persons, entities and parties named herein and their successors or assigns as are permitted by this Restriction.

**14. Amendment.** This Restriction may not be rescinded, modified or amended, in whole or in part, without the written consent of the Monitoring Agent, HUD, and the holder of any mortgage or other security instrument approved by Monitoring Agent encumbering all or any portion of the Property, which written consent shall be recorded with the Registry.

Executed as a sealed instrument this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTACHMENT J**

Section 8 Housing Choice Voucher Lease and Addendum



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**ATTACHMENT J**  
**Model**  
**Section 8 Housing Choice Voucher Lease**

The parties to this Agreement are \_\_\_\_\_ (referred to herein as Landlord or Owner) and \_\_\_\_\_ (referred to herein as Tenant) for the following dwelling unit:

Street \_\_\_\_\_  
Unit/Apt \_\_\_\_\_  
City, State \_\_\_\_\_  
Zip Code \_\_\_\_\_

**A. TERM**

The term of this Lease is ONE year, beginning on \_\_\_\_\_ and continuing through \_\_\_\_\_ or until and unless there is an earlier termination pursuant to the terms and conditions of this Lease. This Lease shall automatically self-extend from \_\_\_\_\_ under the same terms and conditions as the initial Lease and shall continue in full force and effect from \_\_\_\_\_ after the expiration of the initial term of the Lease, unless and until either the Landlord or the Tenant gives the other party THIRTY days prior written notice of intention to terminate this Lease on the last day of the initial term or the last day of any extended term. In the event that either party elects to terminate this Lease, a copy of the written notice of intention to terminate the Lease shall be provided by said party to the \_\_\_\_\_ **Lowell** \_\_\_\_\_ Housing Authority.

**B. RENT**

- (1) The Rent to Owner (the total monthly rent payable to the Landlord during the term of the Lease) is \$ \_\_\_\_\_ which is due and payable on or before the first day of every month in advance. Rent to Owner includes payment for any services, maintenance, and utilities to be provided by the Owner in accordance with the Lease.
- (2) The portion of the Rent to Owner payable by the Tenant ("tenant rent") shall be an amount determined by the PHA in accordance with HUD regulations and requirements. The amount of the tenant rent is subject to change as determined by the PHA during the term of the Lease. Any change in the amount of the tenant rent will be stated in a written notice by the PHA to the Tenant and the Landlord, stating the new amount and the effective date of the change. Initially and until such change the Tenant agrees to pay \$ \_\_\_\_\_ per month to the Landlord as the tenant rent.
- (3) The tenant rent as determined by the PHA is the maximum amount the Landlord can require the Tenant to pay as rent for the dwelling unit, including all services, maintenance and utilities to be provided by the Landlord in accordance with this Lease.

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**ATTACHMENT J**

- (4) Each month, the PHA will pay a housing assistance payment to the Landlord on behalf of the Tenant Family in accordance with the Housing Assistance Payment Contract. The monthly housing assistance payment at initial occupancy is \$ \_\_\_\_\_

**C. SECURITY DEPOSIT**

- (1) The Landlord will comply with Massachusetts law regarding security deposits from a Tenant, and shall not collect a security deposit which is more than the general community practice.
- (2) The Landlord will hold the security deposit during the period the Tenant Family occupies the dwelling unit under the Lease. The Landlord shall comply with State and local laws regarding interest payment on security deposits. Landlord understands that Mass. General Law Chapter 186 shall apply to all security deposits taken hereunder.
- (3) After the Tenant Family has moved from the dwelling unit, the Landlord may (subject to State and Local law) use the security deposit, including any interest on the deposit, as reimbursement for any unpaid tenant rent or other amounts which the Tenant owes under the Lease. The Landlord will give the Tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the Landlord, the Landlord shall promptly refund the full amount of the balance to the Tenant.

**D. HOUSING ASSISTANCE PAYMENTS CONTRACT**

The Landlord will enter into a Housing Assistance Payments contract (“Contract”) with a Public Housing Agency (“PHA”) under the Section 8 Rental Voucher Program of the U.S. Department of Housing and Urban Development. Under the Contract, the PHA will make housing assistance payments to the Landlord to assist the Family, of which the Tenant is the representative, to lease the dwelling unit from the Landlord.

**E. CONFLICT WITH OTHER PROVISIONS OF LEASE**

In case of any conflict between the provisions of the Lease, the attached Lease Addendum (Form HUD 52641A) shall prevail.

**F. TERM OF LEASE**

The term of the Lease shall begin on \_\_\_\_\_ and shall continue until (1) a termination of the Lease by the Landlord in accordance with the provisions of this Lease, (2) a termination of the Lease by the Tenant in accordance with the Lease or by mutual agreement during the term of the Lease, or (3) a termination of the Contract by the PHA.

**ATTACHMENT J**

**G. UTILITIES AND APPLIANCES**

The Landlord shall provide and pay for the following utilities, as indicated below under Landlord. Tenant shall pay for and maintain the connection of utilities indicated below under Tenant.

(Please specify under the appropriate column the person who will pay for the utility, and/or the utility type.)

<b>Utility</b>	<b>Landlord (Lessor)</b>	<b>Tenant (Lessee)</b>
Electricity		
Cooking (specify type)		
Heat (specify type)		
Hot Water		
Garbage Collection		
Trash Removal		
Refrigerator		
Range		

The Tenant agrees not to unreasonably waste any fuel or utility service provided by the Landlord.

**H. OCCUPANTS**

The Landlord and Tenant agree that the only persons authorized to occupy the premises are as listed below:

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The parties agree that no other persons will be allowed to occupy said premises unless specific written approval is granted by both the Landlord and the Housing Authority. The Tenant hereby represents and agrees that the persons listed as occupants herein are also listed with the Housing Authority on the Application and/or the most recently updated Continued Occupancy update with the Authority.

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## ATTACHMENT J

### I. LANDLORD AGREES:

- (1) To maintain the dwelling unit, equipment and appliances, and common areas and facilities, to provide decent, safe and sanitary housing in accordance with the housing quality standards (24 CFR Section 982.401) for the Section 8 Rental Voucher Program, including the provision of all the services, maintenance and utilities set forth in the Lease, and to comply with Chapter II of the Massachusetts State Sanitary Code.
- (2) To complete repairs by dates specified in notice by the Section 8 Housing Assistance Payments Program.
- (3) Not to discriminate against the Tenant Family in the provision of services or in any manner, on the grounds of age, race, color, creed, religion, sex, handicap or national origin.
- (4) Not to enter the dwelling unit except to inspect the premises, make repairs, or show the unit to a prospective mortgagee, insurer, tenant or purchaser. The Landlord will contact the Tenant before such entry so as not to unreasonably disturb the Tenant, who will not be unreasonable in denying entry. Only in case of an emergency may entry be made without prior consent. If such emergency entry is made, the Tenant shall be notified.

### J. TENANT AGREES:

- (1) To pay the Tenant Rent on the first day of each month unless otherwise agreed by the Landlord.
- (2) To maintain the premises in clean, sanitary and neat condition, free of garbage and rubbish, and at all times comply with the provisions of HUD Housing Quality Standards and Chapter II of the Massachusetts State Sanitary Code, and the requirements of the Housing Authority.
- (3) To make no alteration, addition or improvement in or to the dwelling unit without prior written consent to the Landlord. Such consent shall not be unreasonably withheld, but maybe conditioned upon Tenant's agreeing to restore the dwelling unit to its prior condition before moving out.
- (4) Not to allow on the property or premises any disorderly conduct, excessive noise or other activity which disturbs the peace and quiet of other residents or tenants in the building, and to refrain from any conduct, action, inaction, or omission which is detrimental to the safety, cleanliness, and care of the property.
- (5) To use the dwelling unit solely for residence by the Tenant, and as the principal place of residence; and shall not assign the Lease or transfer the unit, or sublet the premises.
- (6) Not to permit the leased premises to be occupied by anyone except those individuals specifically named as household members on the Housing Assistance Program

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## ATTACHMENT J

application. Guests may be accommodated, for reasonable short periods of time provided said occupancy is authorized by the Landlord, and in accordance with the regulations of the U.S. Department of Housing and Urban Development, the provisions of the Housing Assistance Payments contract and the policies of the Housing Authority.

- (7) To vacate the premises at the expiration of the Lease, remove all personal belongings, return the keys to the Landlord and leave the premises as clean and in as good condition as he found them (normal wear and tear excepted).
- (8) To allow the Housing Authority and/or Landlord to inspect the dwelling unit at reasonable times and after reasonable notice.
- (9) To be responsible for and pay all damages beyond normal wear and tear.
- (10) That parking is NOT allowed on the premises or property without the Landlord's express written permission.
- (11) That no dogs, cats, birds or other animals may be kept in the apartment or on the premises or property without the Landlord's express written permission, such permission is subject to revocation if the Landlord has reason to revoke said permission because of problems resulting from said pet.
- (12) That the Tenant is responsible for the actions, conduct, and behavior of any and all family members, co-tenants, friends, relatives, guests, visitors or any other persons who are invited or allowed on the premises or property. Failure to properly regulate any of the above persons will subject the Tenant to eviction and /or costs for damages, expenses, other losses.
- (13) That the Tenant may NOT change or replace locks or add any new locks without the Landlord's permission, and whenever a lock is changed, replaced or added, the Tenant must immediately give the landlord a duplicate key.
- (14) That the Tenant shall exercise reasonable care to avoid damage to all equipment, fixtures, materials, utilities, floors, ceilings, walls, windows, plumbing, and appliances in the premises including, but not limited to, reporting to the Landlord leaks, damage, and other problems with the property which could create damage thereto and also including sufficient heat to the premises (if the Tenant is required to supply heat hereunder) to avoid damage, expense, or jeopardy to the property.
- (15) That the Tenant will not do anything to destroy or negate the good appearance of the property including, but not limited to, hanging anything outside the apartment.
- (16) That the Tenant will not place, maintain, or allow to remain any object or item on stairways, passageways, or hallways in or around the building, or in any way obstruct, impede, or impair any exit, egress, or fire or safety device, or violate any federal, state or local laws, regulations, ordinances or by-laws relating to occupancy, health or safety.
- (17) That the Tenant will not use or allow the premises to be used for any illegal or improper purpose or in any way which violates federal, state, or local statutes, laws, regulations or

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## **ATTACHMENT J**

ordinances relating to any criminal or penal law, code, sanctions, or enforcement.

### **K. DESTRUCTION OF PREMISES**

If the premises are rendered uninhabitable by fire, flood or other natural disaster during the term of this agreement, this agreement is thereupon terminated.

### **L. OWNER TERMINATION OF TENANCY**

Owner may terminate the tenancy for “grounds” as set forth in Paragraph 8 of the Lease Addendum in accordance with the provisions of Massachusetts state law.

### **M. ADDITIONAL PROVISIONS**

If any, they should be attached, initialed and dated by both parties, and be part of this Lease.

### **N. CHANGES**

No changes or additions to this Lease shall be made except by written agreement between Landlord and Tenant. This Lease and the Lease Addendum and any other attachments represent the entire agreement between Landlord and Tenant.

### **O. LEASE ADDENDUM**

The attached Lease Addendum (form HUD 52641-A) which is annexed hereto is hereby incorporated herein and made a part hereof. If there is any conflict between any of the provisions of the Lease and the provisions contained in said lease Addendum, the provisions of the Lease Addendum (form HUD 52641-A ) shall prevail and take precedence over any other such provision.

### **P. BREACH OF LEASE**

Landlord and tenant understand that violation of any of the terms of this lease maybe considered a breach of said Lease, which breach may result in termination of the Lease.

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**ATTACHMENT J**

WHEREOF, we the undersigned agree to this Lease, by signing three copies (one to be kept by the Landlord, one by the Tenant and one by the Housing Authority).

<b>LANDLORD (LESSOR)</b>	
Print Name	
Signature	
Date	
Address	
Telephone	
Email	

<b>TENANT (LESSEE)</b>	
Print Name	
Signature	
Date	
Address	
Telephone	
Email	

**TENANCY ADDENDUM**  
**Section 8 Tenant-Based Assistance**  
**Housing Choice Voucher Program (To**  
be attached to Tenant Lease)

**U.S. Department of Housing  
and Urban Development**  
Office of Public and Indian Housing  
OMB Approval No. 2577-0169  
Exp. 09/30/2017

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**1. Section 8 Voucher Program**

- a. The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD).
- b. The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

**2. Lease**

- a. The owner has given the PHA a copy of the lease, including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
- b. The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

**3. Use of Contract Unit**

- a. During the lease term, the family will reside in the contract unit with assistance under the voucher program.
- b. The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c. The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profit making activities incidental to primary use of the unit for residence by members of the family.
- d. The tenant may not sublease or let the unit.
- e. The tenant may not assign the lease or transfer the unit.

**4. Rent to Owner**

- a. The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b. Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.
- c. During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:

- (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements, or
- (2) Rent charged by the owner for comparable unassisted units in the premises.

**5. Family Payment to Owner**

- a. The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b. Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
- c. The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- d. The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e. The owner may not charge or accept, from the family or from any other source, any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided and paid by the owner in accordance with the lease.
- f. The owner must immediately return any excess rent payment to the tenant.

**6. Other Fees and Charges**

- a. Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b. The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c. The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

**7. Maintenance, Utilities, and Other Services**

- a. **Maintenance**
  - (1) The owner must maintain the unit and premises in accordance with the HQS.
  - (2) Maintenance and replacement (including



## ATTACHMENT J

redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

### b Utilities and appliances

- (1) The owner must provide all utilities needed to comply with the HQS.
- (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to:
  - (a) Pay for any utilities that are to be paid by the tenant.
  - (b) Provide and maintain any appliances that are to be provided by the tenant.

### c Family damage. The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest.

### d Housing services. The owner must provide all housing services as agreed to in the lease.

## 8. Termination of Tenancy by Owner

### a Requirements. The owner may only terminate the tenancy in accordance with the lease and HUD requirements.

### b Grounds. During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

- (1) Serious or repeated violation of the lease;
- (2) Violation of Federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
- (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
- (4) Other good cause (as provided in paragraph d).

### c Criminal activity or alcohol abuse.

- (1) The owner may terminate the tenancy during the term of the lease if any member of the household, a guest or another person under a resident's control commits any of the following types of criminal activity:
  - (a) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
  - (b) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
  - (c) Any violent criminal activity on or near the premises; or
  - (d) Any drug-related criminal activity on or near the premises.
- (2) The owner may terminate the tenancy during the term of the lease if any member of the household is:
  - (a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that

is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(b) Violating a condition of probation or parole under Federal or State law.

(3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

### d Other good cause for termination of tenancy

(1) During the initial lease term, other good cause for termination of tenancy must be something the family did or failed to do.

(2) During the initial lease term or during any extension term, other good cause may include:

- (a) Disturbance of neighbors,
- (b) Destruction of property, or
- (c) Living or housekeeping habits that cause damage to the unit or premises.

(3) After the initial lease term, such good cause may include:

- (a) The tenant's failure to accept the owner's offer of a new lease or revision;
- (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
- (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent).

(4) The examples of other good cause in this paragraph do not preempt any State or local laws to the contrary.

(5) In the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease, requiring the tenant to vacate the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner: (a) will occupy the unit as a primary residence; and (b) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice. This provision shall not affect any State or local law that provides for longer time periods or addition protections for tenants. **This provision will sunset on December 31, 2012 unless extended by law.**

## ATTACHMENT J

### e. Protections for Victims of Abuse.

- (1) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of such a victim.
- (2) Criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of domestic violence, dating violence, or stalking.
- (3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, a PHA, owner or manager may “bifurcate” a lease, or otherwise remove a household member from a lease, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of the violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the housing choice voucher program.
- (4) Nothing in this section may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.
- (5) Nothing in this section limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant’s household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.
- (6) Nothing in this section may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, to any tenant if the owner, manager, or public

housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted or terminated from assistance.

- (7) Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

**f. Eviction by court action.** The owner may only evict the tenant by a court action.

### g. Owner notice of grounds

- (1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
- (2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
- (3) Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law.

### 9. Lease: Relation to HAP Contract

If the HAP contract terminates for any reason, the lease terminates automatically.

### 10. PHA Termination of Assistance

The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

### 11. Family Move Out

The tenant must notify the PHA and the owner before the family moves out of the unit.

### 12. Security Deposit

- a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Any such PHA-required restriction must be specified in the HAP contract.)
- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit or any other amounts that the tenant owes under the lease.
- c. The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.

## ATTACHMENT J

- d. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

### 13. Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease.

### 14. Conflict with Other Provisions of Lease

- a. The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation, as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
- b. In case of any conflict between the provisions of the tenancy addendum as required by HUD, and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

### 15. Changes in Lease or Rent

- a. The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
- b. In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:
  - (1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
  - (2) If there are any changes in lease provisions governing the term of the lease;
  - (3) If the family moves to a new unit, even if the unit is in the same building or complex.
- c. PHA approval of the tenancy, and execution of a new HAP contract, are not required for agreed changes in the lease other than as specified in paragraph b.
- d. The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

### 16. Notices

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

### 17. Definitions

**Contract unit.** The housing unit rented by the tenant with assistance under the program.

**Family.** The persons who may reside in the unit with assistance under the program.

**HAP contract.** The housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

**Household.** The persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is a person with disabilities.)

**Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

**HUD.** The U.S. Department of Housing and Urban Development.  
**HUD requirements.** HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

**Lease.** The written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

**PHA.** Public Housing Agency.

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

**Program.** The Section 8 housing choice voucher program.

**Rent to owner.** The total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.

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

**Tenant.** The family member (or members) who leases the unit from the owner.

**Voucher program.** The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

**ATTACHMENT K**  
Draft Use Agreement

**ATTACHMENT K**

**USE AGREEMENT**

This USE AGREEMENT (this “**Agreement**”), dated as of \_\_\_\_\_, 20 \_\_, is made by and between LOWELL HOUSING AUTHORITY, a body politic and corporate, organized and operated under the provisions of \_\_\_\_\_, as amended (the “**Enabling Act**”), having an address of 350 Moody Street, Lowell, Massachusetts 01854 (“**LHA**”), and \_\_, a Massachusetts\_, having an address of \_\_\_\_\_ (the “**Owner**”).

**RECITALS**

WHEREAS, Owner is the owner of the property located at \_\_\_\_\_, Lowell, Middlesex County, Massachusetts (the “**Development**”), as more particularly described on Exhibit A attached hereto;

WHEREAS, the United States Department of Housing and Urban Development (“**HUD**”) approved of the sale of the Development to Owner for less than fair market value conditioned upon, *inter alia*, the Development being made available to provide housing to persons with incomes not more than 80% of the Area Median Income (as defined in the Deed referred to below; capitalized terms not defined herein shall have the meaning as set forth in such Deed) in compliance with the approval issued by HUD dated on or about August 30, 2018 (the “**HUD Approval**”); and

WHEREAS, the Owner has agreed to enter this Agreement pursuant to the deed of the Development by LHA to Owner dated \_\_\_\_\_ and recorded in the Middlesex North District Registry of Deeds herewith/in Book \_\_\_\_\_, Page \_\_\_\_\_ (the “**Deed**”).

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LHA and Owner hereby agree as follows:

**1. USE OF DEVELOPMENT, RENTALS AND REPORTING.**

Owner shall use 100% of the residential apartments (“**Affordable Units**”) in the Development to provide housing to persons or families with incomes not more than 80% of the Area Median (“**Eligible Persons or Families**”) as set forth in the Deed between Owner and LHA, dated as of the date hereof and recorded herewith (the “**Deed**”), upon the terms and conditions set forth in the Deed and this Agreement. In fulfilling the foregoing requirement, Owner may accept tenants pursuant to any applicable state or federal housing subsidy program providing rental or other subsidy to the Development (such programs, “**Housing Subsidy Programs**”). Owner shall offer supportive services to Eligible Persons or Families pursuant to a supportive services plan submitted to and approved annually by the LHA as set forth in Section 6 below. Owner shall not, without prior written approval of LHA (and HUD, if required), change the number of Affordable Units or permit the use of the dwelling accommodations of the Development for any

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## **ATTACHMENT K**

purpose except residences and any other use permitted by the Deed, if any. Owner shall obtain income certifications (in a form reasonably satisfactory to LHA) at least annually for all tenants who are Eligible Persons or Families or more frequently if required by any applicable Housing Subsidy Program; such income certifications shall be retained by or on behalf of Owner, be reported to the LHA no later than February 1 of each year (or such other annual date as the LHA may assign), together with the data required in Sections 5 and 6 below, and be otherwise available to LHA upon request. The foregoing provisions shall not relieve Owner of any other obligations it may have under any applicable Housing Subsidy Program.

### **2. TENANT SELECTION AND OCCUPANCY.**

- A. Owner will use its best efforts to maintain the Development at full occupancy, consistent with Owner's compliance with applicable Housing Subsidy Programs and other legal restrictions affecting the Development. Owner will comply with the Tenant Selection Plan prepared by Owner and approved by LHA, as modified with the approval of LHA. Owner's approved Tenant Selection Plan is incorporated herein by reference with the same force and effect as if set out in this Agreement.
- B. Occupancy agreements for the Affordable Units will be in a form approved by LHA or HUD, subject to any requirements of any applicable Housing Subsidy Program, and, unless otherwise approved by LHA, will contain clauses, among others, wherein each adult resident of an Affordable Unit:
- i. certifies the accuracy of the statements made in the application and income survey;
  - ii. agrees that the family income, family composition and other eligibility requirements, are substantial and material obligations of his or her occupancy; that he or she will comply promptly with all requests for information with respect thereto from Owner or LHA; and that his or her failure or refusal to comply with a request for information with respect thereto will be a violation of a substantial obligation of his or her occupancy; and
  - iii. agrees that at such time as Owner or LHA may direct, he or she will furnish to Owner certification of then current family income, with supporting documentation as LHA reasonably requires; and agrees to such charges as LHA has previously approved for any facilities and/or services that may be furnished by Owner or others to the resident upon his or her request, in addition to the facilities and services, if any, included in the rentals for such Affordable Units.

### **3. REPLACEMENT RESERVE.**

## **ATTACHMENT K**

- A. Owner has established and will continue to maintain a reserve fund for replacements as typically required for similar properties operated in a prudent manner and as otherwise may be permitted or required by any applicable Housing Subsidy Program.
- B. If during the Term of this Agreement, the HUD Agreement is not applicable or no longer in effect, the Owner will continue to maintain the replacement reserve in a segregated account (the “**Replacement Reserve**”), with any additional deposit and monthly funding amounts as agreed to by Owner and LHA at such time based on a capital needs assessment for the Development (which shall be completed at Owner’s expense). The monthly funding amounts for the Replacement Reserve shall increase by three percent (3%) each year, and LHA may further adjust the Replacement Reserve amount from time to time and otherwise in compliance with the Enabling Act. Disbursements from the Replacement Reserve will be made in accordance with prudent management practices developed by owner and approved by LHA.

### **4. MANAGEMENT OF THE DEVELOPMENT.**

- A. Owner will maintain the Development in good physical and financial condition in accordance with the requirements and standards of LHA and of any applicable Housing Subsidy Program. Owner will provide for the management of the Development in a manner that is consistent with accepted practices and industry standards for the management of multifamily rental housing.
- B. Owner will ensure that any management agreement for the Development contains the following provision: “This Management Agreement is subject to termination by LHA, upon ninety (90) days’ written notice to HUD and Owner, if (1) the management agent fails to use its reasonable best efforts to rent the Affordable Units to Eligible Persons and Families (as set forth in the HUD Agreement and Deed, and in accordance with the procedures set forth in the Tenant Selection Plan), or (2) the Development is not kept in a decent, safe and sanitary condition, unless (in either instance) before the expiration of such 90-day period, either (a) the Owner demonstrates that the problems identified in LHA’s notice have been cured or (b) HUD directs LHA not to so terminate or commences action to bring about cure. LHA is an intended third-party beneficiary of this provision and shall be entitled to enforce it at law or in equity.”

### **5. MONITORING AND ENFORCEMENT**

- A. The Owner agrees to comply with any monitoring plan, guidelines, procedures, or requirements as may be adopted or amended from time to time by the LHA or HUD in accordance with HUD requirements or regulations (the "applicable regulations") or in order to monitor compliance with the provisions of this Agreement. The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the

**ATTACHMENT K**

requirements of the applicable regulations or this Agreement. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the LHA or HUD) to comply fully with all applicable regulations, rules, rulings, policies, procedures, or other official statements promulgated or proposed by the LHA or HUD from time to time pertaining to Owner's obligations affecting the Development.

- B. The Owner will permit, during normal business hours and upon reasonable notice, any duly authorized representative of HUD or the LHA (or their authorized delegate) to inspect any books and records of the Owner regarding the Development that pertain to compliance with the applicable regulations and this Agreement. The Owner further agrees to cooperate with any on-site inspection of the Development by HUD or the LHA (or their authorized delegate) during normal business hours and upon reasonable notice.
- C. The Owner will take any and all actions reasonably necessary and required by the LHA or HUD to substantiate the Owner's compliance under the applicable regulations and this Agreement. The Owner shall at least annually (or more frequently as required by the LHA or HUD) submit to it, as applicable, a Certification concerning program compliance in such form, including such documentation, and within such timeframe, as may be required by the LHA or HUD pursuant to any monitoring plan, guidelines, or procedure adopted or amended by the LHA or HUD. At the LHA's or HUD's request, the Owner will submit any other information, documents, forms or certifications which the LHA or HUD deems reasonably necessary to substantiate the Owner's continuing compliance with the applicable regulations and this Agreement.
- D. The Owner covenants and agrees to inform the LHA or its designee responsible for oversight of the Development, by written notice of any violation of the Owner's obligations hereunder, or the imposition of any lien on the Development, within seven (7) business days of first discovering such violation or lien. In accordance with the provisions of any monitoring plan, guidelines, or procedures as then may be in effect, LHA shall inform the Owner by written notice of any violation of the Owner's obligations hereunder and to provide the Owner a period of time in which to correct such violation. If any violation is not corrected to the satisfaction of LHA within the period of time specified by the LHA in a notice, or within such further time as LHA determines is necessary to correct the violation, but not to exceed any time limitation set by applicable regulations, then without further notice, LHA may declare a default under this Agreement effective on the date of such declaration of default, and LHA may apply to any court, state or federal, for specific performance of this Agreement, or any other remedies at law or in equity, or take any other action as may be necessary or desirable to correct noncompliance with this Agreement. The foregoing is not intended to limit in any way LHA's right or obligation to notify HUD, pursuant to applicable regulations, of a noncompliance on the part of the Owner. If HUD has assumed oversight of the Development all remedies available to the LHA under this



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Agreement shall be available to HUD.

- E. The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Development and the Owner with the applicable regulations, and by reason thereof, the Owner in consideration for purchasing the Development at below fair market value hereby agrees and consents that the LHA or HUD shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Agreement in a court of competent jurisdiction. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. In the event of a breach of this Agreement, the Owner shall reimburse the LHA and HUD, as applicable, for all costs and attorneys' fees incurred associated with such breach.
- F. The Owner agrees to pay an annual monitoring fee in such amount and by such method as may be selected by the LHA and/or HUD pursuant to the applicable policies adopted by the LHA or HUD as applicable, as such provisions may be amended from time to time. The LHA and HUD reserves the right to charge a reasonable monitoring fee to perform compliance monitoring functions under this Agreement and to impose fines and penalties consistent with LHA and/or HUD policies, as applicable, for failure to comply with the provisions of this Agreement for the full term of this Agreement.

During the Term of this Agreement the Owner will retain records in accordance with the requirements of the applicable regulations, LHA monitoring plan and/or guidelines. After the end of the compliance period, the Owner will retain records adequate to demonstrate compliance with the terms and conditions of this Agreement, including, but not necessarily limited to, income and rent records pertaining to tenants.

**6. ANNUAL REPORTING AND DATA COLLECTION**

- A. Annual Report Annually, no later than February 1 of each year (or such other annual date as the LHA may assign), the Owner shall submit to the LHA, electronically if requested, an annual report consisting of the following in a form approved by the LHA and containing such supporting documentation as the LHA shall reasonably require:
- i. Operating budget for the Development;
  - ii. A copy of the tax return and 990 filing for the Owner;
  - iii. A supportive services plan and budget for the Development certified by the Owner that the services described in the plan will be available for the coming year;

## ATTACHMENT K

- iv. Certification by the Owner that it has verified the income of each resident of the Development and that based on such verified income each resident is eligible to reside at the Development;
  - v. Certification by the Owner with accompanying documentation that any residents whose income exceeds applicable limits has moved out or is in the process of being moved out of the Development in compliance with applicable law;
  - vi. Annual adjusted income of each Family occupying a unit in the Development;
  - vii. The data required by Massachusetts regulations set forth at 760 CMR 61.00, as modified by any applicable LHA directives, guidelines and forms as may be amended from time to time. The Owner shall collect said data for the express purpose of reporting to the LHA, and the collection and reporting of said data shall comply with any applicable LHA regulations, directives, guidelines and forms.
  - viii. Rental assistance data on all residents of the Development.
- B. Confidentiality. LHA and the Owner shall treat as confidential any of the foregoing information relating to a specific resident or unit in compliance with all applicable state and federal statutes and regulations, including M.G.L. c. 66A, and shall implement adequate systems and procedures for maintaining the confidentiality of such information (but LHA and the Owner may release general statistical and other information about the Development, so long as the privacy rights and interests of the individual residents are protected); LHA and the Owner shall not use any of the foregoing information in Paragraph A(3) for any purpose described in Section 603(d)(1) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(d)(1)) or in any manner that would cause LHA or the Owner to be considered a "consumer reporting agency" under Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).
- C. Additional Reports. The Owner shall prepare and submit to LHA such additional reports as the LHA may deem necessary to ensure compliance with the requirements of Deed Restriction and of the Housing Subsidy Programs.
- D. Records. The Owner shall maintain as part of its records (i) copies of all leases of units in the Development; (ii) all initial and annual income certifications by residents of the Development and (iii) such additional records as LHA may deem necessary to ensure compliance with the requirements of this Restriction and of the Housing Subsidy Programs.

## 7. NO DISCRIMINATION.

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- A. There shall be no discrimination upon the basis of race, color, religion, sex, national origin, genetic information, ancestry, sexual orientation, age, familial status, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, or physical or mental disability in the lease, use, or occupancy of the Development (provided that if the Development qualifies as elderly housing under applicable state and federal law, occupancy may be restricted to the elderly in accordance with said laws) or in connection with the employment or application for employment of persons for the operation and management of the Development. If Owner has entered into an Equal Opportunity Contract for Occupancy and Minority Business Development with LHA, Owner and its management company shall comply with Owner’s obligations under such contract.
  
- B. There shall be full compliance with the provisions of all state or local laws prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, genetic information, ancestry, sexual orientation, age, familial status, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, or physical or mental disability, and providing for nondiscrimination and equal opportunity in housing. Failure or refusal to comply with any such provisions shall be a proper basis for LHA to take any corrective action it may deem necessary.
  
- C. Owner will take reasonable steps to ensure that persons with limited English proficiency have meaningful access to the Development’s programs and services (including application for occupancy). In furtherance of this requirement, Owner will develop and maintain a Language Access Plan in accordance with HUD guidelines (“Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons,” published at 72 Fed. Reg. 2732 (January 22, 2007), as the same may be supplemented, amended or otherwise modified from time to time).
  
- D. Owner has modified, or will modify as soon as reasonably practicable, at least one (1) unit to meet the accessible unit standards of the Americans with Disabilities Act and the Massachusetts Architectural Access Board.

**8. NOTICES.**

Any notice or other communication in connection with this Agreement shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, addressed as follows:

If to Owner: \_\_\_\_\_

**ATTACHMENT K**

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

Attn: \_\_

with copies by regular mail or hand delivery to:

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

If to LHA: Lowell Housing Authority  
350 Moody Street  
Lowell, MA 01852  
Attention: Executive  
Director

Any such addressee may change its address for such notices to any other address in the United States as such addressee shall have specified by written notice given as set forth above.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

**9. TERM.**

This Agreement shall bind, and the benefits shall inure to, respectively, Owner and its successors and assigns, and LHA and its successors and assigns, for 30 years from the date of the recording of the Deed (the “**Term**”). Upon expiration of the Term, this Agreement, and the rights and obligations of LHA and Owner under this Agreement, shall automatically terminate without the need of either party executing any additional document.

**10. REMEDIES; LIMITED LIABILITY.**

- A. Upon Owner’s breach of any representation, warranty, covenant or agreement in this Agreement, LHA may pursue any available legal or equitable remedy against Owner notwithstanding the availability of any other remedy. As

**ATTACHMENT K**

LHA has required Owner to enter into this Agreement due to LHA's public purpose of providing affordable housing, Owner agrees that specific performance is an appropriate remedy for violations of this Agreement and Owner agrees and stipulates that any violation of this Agreement will cause irreparable harm to LHA for which a remedy at law, including damages, shall not be adequate, such that LHA shall be entitled to injunctive relief without having to post a bond.

- B. The execution of this Agreement shall impose no personal liability upon Owner or the managers, members, directors, officers, advisors or employees of Owner (the "Owner Individual Parties"), and in the event of a default hereunder, LHA shall look solely to the Development in satisfaction of such default and will not seek or obtain any deficiency or personal judgment against Owner or the Owner Individual Parties.

**11. MISCELLANEOUS CONTRACT PROVISIONS.**

- A. This Agreement may not be modified or amended except with the written consent of LHA or its successors and assigns and Owner or its successors and assigns.
- B. Owner warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth in this Agreement and supersede any other requirements in conflict therewith. The provisions of this Section 14(b) do not apply to the HUD Regulatory Agreement or to the "Program Obligations" as defined therein.
- C. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- D. Any titles or captions contained in this Agreement are for reference only and shall not be deemed a part of this Agreement or play any role in the construction or interpretation hereof. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.
- E. This Agreement may be executed in any number of counterparts, each to be an original, but all of which shall constitute one and the same instrument, and it shall be sufficient if any party hereto signs any such counterpart, so long as each of the parties hereto executes at least one such counterpart.

*[Remainder of page intentionally left blank. Signature pages follow]*

**ATTACHMENT K**

**OWNER SIGNATURE PAGE TO USE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Regulatory Agreement as an instrument under seal as of the date set forth above.

OWNER:

-

\_\_\_\_\_  
, a Massachusetts  
\_\_\_\_\_

By: Name:  
Title:

**COMMONWEALTH OF MASSACHUSETTS**

County of Suffolk, ss.  
\_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_,

\_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, being: [ ] a driver's license or other state or federal governmental document bearing a photographic image, [ ] the oath or affirmation of a credible witness known to me who knows the above signatory, or [ ] my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity, before me

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ATTACHMENT K**

**LHA SIGNATURE PAGE TO REGULATORY AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Regulatory Agreement as an instrument under seal as of the date set forth above.

LHA:

**LOWELL HOUSING AUTHORITY**

By:

COMMONWEALTH OF  
MASSACHUSETTS

County of Middlesex, ss.  
\_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_, the \_\_\_\_\_ of the Lowell Housing Authority, proved to me through satisfactory evidence of identification, being: [ ] a driver's license or other state or federal governmental document bearing a photographic image, [ ] the oath or affirmation of a credible witness known to me who knows the above signatory, or [ ] my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as his/her free act and deed, in such capacity, before me

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**Attachments:**  
Exhibit A – Legal Description

**EXHIBIT A**

Legal Description