

**Request for Proposals for Adaptive Reuse
Dempsey Apartments
523 Cherry Street, Macon GA 31201
Issue Date: November 29, 2023
Due Date: January 5, 2024 – 3:00 p.m.**

**UDA Dempsey, LLC
Macon-Bibb County Urban Development Authority**

TABLE OF CONTENTS

1.	INTRODUCTION & BACKGROUND	3
1.1	Background	3
1.2	Schedule	4
2.	PROJECT DETAILS AND ENCUMBRANCES	4
2.1	Building	4
2.2	Zoning	5
2.3	Current Debts and Encumbrances	5
2.4	Transaction Structure	5
3.	SCOPE AND DEVELOPMENT	5
3.1	Overview	5
4.	PROPOSAL SUBMISSION REQUIREMENTS	6
4.1	Structure	6
4.2	General	6
4.3	Binder 1: Technical Proposal	7
4.4	Binder 2: Conceptual Financial Proposal	11
5.	Copies and Submission	12
6.	Late Proposals	13
7.	Proposal Evaluation Criteria	13
8.	Proposal Evaluation and Selection Process	13
Exhibit A	- Building Pictures and Survey	
Exhibit B	- HAP Contract	
Exhibit C	- Use Agreement	

1. INTRODUCTION & BACKGROUND

1.1 Background

UDA Dempsey, LLC, a wholly owned subsidiary of Macon-Bibb County Urban Development Authority (the “**Owner**”), acquired the Dempsey Apartments, a 193-unit elderly/low income multifamily development located at 523 Cherry Street, Macon, Georgia 31201, including ground floor commercial space and an undeveloped parking garage (the “**Project**”). The Project is located in the heart of downtown Macon and possesses significant historical and cultural significance. The Project is currently subject to certain land use restrictions concerning the occupancy of low-income residents. See **Exhibits A, B, and C** for more information.

The Project is located in Macon-Bibb County, which is in the center of the State of Georgia, approximately one hundred and fifty miles east of the Port of Savannah and one hundred miles South of Atlanta. Given its central location and importance as a logistics, corporate, and cultural hub, Macon has experienced steady growth in recent years and anticipates continued growth moving forward. Downtown Macon has experienced a residential boon over the last several years due, in part, to urbanization trends nationally. Additionally, Downtown Macon features Mercer University Law School and Atrium Health Navicent Systems.

The Owner is seeking a development partner that specializes in low-income multifamily facilities and/or adaptive reuse of historic buildings in order to rehabilitate, repurpose and improve the Project as it now exists.

This RFP seeks to find a development partner interested in structuring a partnership with the Owner, including a variety of public/private partnership options which could include a joint venture structure, a long-term lease, or a sale with available incentives, and expects that any future development incorporates mixed-use elements. The Owner seeks to maximize long-term revenue for both parties and generate economic benefit for the local government and the potential partner. The ideal developer will have experience in a) low-income multifamily projects, b) adaptive reuse, c) tax credit financed projects and d) public/private partnerships.

In addition to the referenced economic benefit, the Owner hopes that this development will further catalyze Downtown’s economic resurgence while maintaining its distinct and historic feel. It is anticipated that the developer will be able to avail itself of the Federal Historic Tax Credit regime and Georgia’s Historic Tax Credit regime concerning the project. Additionally, if the current use is preserved, it is expected that Low Income Housing Tax Credits will also be available to fund the project.

While there is limited on-site parking (the vacant parking deck is not accessible to motor vehicles), Owner has identified several potential parking options for the Project in proximity to the building. As such, as part of the final development agreement, the Owner anticipates working with the selected developer to ascertain a permanent parking solution and is willing to also provide a deal contingency with regard to a parking solution.

The Owner’s chosen development partner will enter into a development agreement which will more fully set forth the terms and conditions of the selected developer’s development of the

Project (the “Development Agreement”). The terms and conditions of the Development Agreement are more particularly described in Section 4 of this RFP.

Owner seeks proposals from qualified developers interested in undertaking this significant project. Such developer shall possess the referenced experience and shall be encouraged to exercise creativity in response to this procurement.

The Owner will select the Selected Developer based on qualifications, references, and financial capability to execute the Project.

1.2 Schedule

Submissions in response to this Request for Proposals are due January 5, 2024 – 3:00 pm EDT. Responses received after the date and time prescribed may not be considered for contract award and shall be returned to the Offeror at the discretion of the Owner. **For a full schedule of activities and key dates, see Summary of Key Dates below. A pre-bid conference and site tour is scheduled for 10:00 a.m., December 13, 2023, at the Project, 523 Cherry Street, Macon, Georgia 31201.**

Summary of Key Dates

The overall schedule for accepting and reviewing responses and Developer selection is:

TASK	Due Date
RFP Issue Date	November 29, 2023
Mandatory Pre-Bid Conference and Site Tour	December 13, 2023, at 10:00 a.m.
Closing Date for Written Questions must be emailed to Alex Morrison at amorrison@maconbibb.us	December 21, 2023
Answers to Written Questions	December 28, 2023
Closing Date for Response Submission	January 5, 2024 – Proposals due by 3:00 pm EST
Announcement of Shortlist	January 12, 2024
Interviews of Shortlisted Firms	January 19, 2024
Anticipated Date of Developer Selection	February 2, 2024

2. PROJECT DETAILS AND ENCUMBRANCES

2.1 Building

The Project is located in the core of downtown Macon, at a busy intersection of Third Street and Cherry Street. The Project, originally constructed in 1913, contains a 9-story apartment building with an 11-story addition constructed around 1970. In 1983, the Project was renovated into multifamily apartments, which use continues today. The residential portion of the building contains approximately 97,679 square feet and there are currently 6 commercial retail spaces totaling approximately 18,985 square feet on the ground floor primarily fronting Third Street. There is alley access to the rear of the building, with limited parking accessible from the alley.

The building also includes a former parking structure that is no longer accessible due to the immobilization of the elevator formerly servicing such structure.

2.2 Zoning

The Project is currently zoned Central Business District (CBD)-1 and subject to the corresponding regulations contained in the Comprehensive Land Development Resolution for Macon-Bibb County:

https://library.municode.com/ga/macon-bibb_county/codes/comprehensive_land_development_resolution?nodeId=CH13AC-CBUDI

In addition, any redesign or redevelopment of the Project would have to comply with the Central Business District Design Guidelines:

<https://mbpz.org/wp-content/uploads/2022/10/CBD-Guidelines.pdf>

2.3 Current Debts and Encumbrances

The Project is currently encumbered by bonded indebtedness outstanding in the amount of approximately \$9,360,000, and HUD-held Mortgage Restructuring Loan and a Contingent Repayment Loan in a total amount of approximately \$6,375,000.

The Project currently benefits from a Housing Assistance Payments Contract (“**HAP Contract**”) that expires September 30, 2025, and is obligated to observe certain covenants, including the maintenance of affordability of the residential units of the Project pursuant to certain Regulatory Agreements and a Use Agreement, copies of which are provided herewith. See **Exhibit B** for more information.

2.4 Transaction Structure

The Owner is amenable to a variety of transaction structures, including an outright sale, a public-private partnership, or tax incentive structure. Any proposed structure shall be subject to satisfaction or assumption of the Debts and Encumbrances set forth in Section 2.3.

The Selected Developer shall be responsible for all engineering, design, zoning compliance, operating and maintenance costs and, shall incur all risk of development, construction and operation and maintenance of the proposed project.

3. SCOPE AND DEVELOPMENT

3.1 Overview

It is expected that the Selected Developer will preserve or redevelop a mixed use facility consisting of multifamily units with retail use on the first floor.

Owner will entertain any concept for the Project, but preference will be given for concepts that incorporate a mixed income development that provides a mix of market rate and affordable housing.

The Selected Developer must plan and execute all required activities to complete the proposed project in coordination with the Owner.

4. PROPOSAL SUBMISSION REQUIREMENTS

4.1 Structure

This RFP seeks to find a development partner interested in structuring a partnership with the Owner, which could include any of a variety of public/private partnership options such as a joint venture structure, a long-term lease, or a sale with available incentives. The Owner expects that any future development incorporates mixed-use elements.

4.2 General

Proposals must be typewritten on 8.5 by 11 inch paper and bound in two separate binders. Binder 1 contains the Technical Proposal and Binder 2 contains the Financial Proposal. The Offeror must also submit one copy of the proposal in digital format, on a USB flash drive.

It is the Offeror's responsibility to clearly describe the project it proposes to develop in response to the RFP. Offerors are cautioned that organization of their response, as well as thoroughness, is critical to the evaluation process. All RFP Forms must be completed legibly and in their entirety, and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.

Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal are not desired.

By submitting a proposal, the Offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its terms and conditions. Proposals may be submitted by mail or delivered in person.

Each Offeror responding to this Request for Proposal must supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP may result in the disqualification of the Offeror's proposal.

The Offeror's response is considered a binding offer assuming all terms are negotiated satisfactorily in the development agreement.

Responses may be withdrawn upon written request and resubmitted if received by the Owner prior to the Closing Date for Proposal Submission. Responses will be in force for a period of one hundred and eighty days following the Closing Date for Proposal Submission.

Personnel described in the response shall be available to perform the services as described. All personnel shall be considered to be, at all times, the employees or agents of the Developer and not employees or agents of the Owner.

4.3 Binder 1: Technical Proposal

The Offeror must submit the following information, arranged in the same order, and identified with headings as presented herein. This information will be considered the minimum content of the Technical Proposal.

4.3.1 Transmittal Letter

A letter signed by an authorized officer of the development team to make a binding commitment for the Developer without the consent or joiner of any other party or authority. The Transmittal Letter should state that the Proposal is valid for 180 days and that, if selected, the Developer will negotiate in good faith with the Owner.

4.3.2 Table of Contents

4.3.3 Executive Summary excluding all financial information (three pages maximum)

4.3.4 Development Team Overview and Organizational Structure – Offerors shall provide a company overview for each member of the proposed Development Team. Offerors must identify the lead Developer and the role of each member of the Development Team, as well as the proposed Project Manager and project architect.

Offerors shall provide an organizational chart and narrative description that identifies the proposed team structure clearly delineating relationships between reporting roles. Summary qualifications of key project staff should be included as well as a description of their role on this project and relevant experience.

4.3.4.1 *Past Performance* - Offeror's qualifications should demonstrate expertise, financial capacity, and proven experience in residential and/or mixed use adaptive reuse and projects as well as experience with low income development, historic tax credit development, management, and public-private partnerships.

Offerors must provide illustrative materials on three (3) recent projects of similar or comparable scope with specific emphasis on adaptive reuse and tax credit deals over the past 10 years. Past Performance examples shall include at a minimum:

- a. Name / address / location of project

- b. Development team members including lead developer, project architect, general contractor, lender(s) and equity provider(s)
- c. References including names, addresses, telephone numbers and email addresses and a letter authorizing each reference to respond to inquiries regarding the design, financing, and development of the project as well as prior projects
- d. Photographs and project renderings, if available.
- e. Development scope
 - i. Land area (square feet)
 - ii. Square footage of buildings (broken down by product type)
 - iii. Parking solutions
 - iv. Construction type (high rise, mid-rise, low rise)
- f. Development costs (excluding land costs)
 - i. Total project development costs
 - ii. Hard costs by product type (total and \$ / s.f.)
 - iii. Soft costs
 - iv. Development fees
- g. The sources and amounts of project funding
- h. Project timeline from initial planning to construction completion and lease up as well as current project status
- i. Challenges associated with the project
- j. Statement of how the project compares to the Dempsey Apartments development
- k. Development structure – if the project was a Public-Private Partnership, Offerors must provide the following information:
 - i. Whether the project was in response to an open solicitation
 - ii. Total consideration to the government including but not limited to:
 - a. Land value (initial proposal and final negotiated agreement) – amount,

- methodology for establishing amount (if applicable), timing of payments
- b. Other public benefits - list and identify the cost of each (i.e. public parking, public facilities, etc.)

- l. Any factual measures of success including but not limited to:
 - i. Initial budget vs. final cost
 - ii. Projected Net Operating Income (NOI) for first stabilized year (and projected year) vs. actual stabilized NOI (and actual year of stabilization)
 - iii. Satisfaction of public entity (where applicable, demonstrate through past performance review)

4.3.4.2 A list of any projects on which the Developer, its parent company, or any member of the Development Team has defaulted or declared bankruptcy, and an explanation of each default or bankruptcy.

4.3.4.3 Detailed information regarding any criminal indictments or felony convictions of the Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team.

4.3.5 Proposed Development Plan

The Development Plan should demonstrate an understanding of the site, market opportunities and constraints, the type and size of development best suited for the site and the market, and a realistic, market based approach to total development scope. The Development Plan must include at a minimum, the following:

- a. Narrative description of the Offeror's vision for the project
- b. Proposed Development Program – include redevelopment, rehabilitation, and any expansion, with particular focus on amount of new multifamily and retail space to be constructed (final scope of development to be determined based upon Selected Developer's successful negotiation with government and other tenants)
- c. Parking proposal –number, preferred location and type of parking stalls necessary for project completion
- d. Market support for proposed development program, with specific focus on multifamily, mixed use and adaptive reuse.

4.3.6 Conceptual Project Schedule

Offerors must submit a theoretical project schedule, detailing the duration (in number of months) and dates for key milestones beginning at initial selection (assume February 2, 2024) through stabilized occupancy of any completed additions, renovations, or improvements. The Project Schedule must address at a minimum, the following:

- a. Negotiation of development agreement
- b. Anticipated tax credit approval timing
- c. Negotiation of any transaction or incentive documents with the Owner's parent, Macon-Bibb County Urban Development Authority
- d. Concept plan preparation, review and approval by the Owner
- e. Development Plan preparation, review and approval by the Owner
- f. Local governmental approvals and actions (zoning, design review, site plan, etc.)
- g. Project financing plan approval
- h. Schematic design, design development and construction drawing preparation and approval
- i. Permitting process
- j. Project construction period
- k. Initial occupancy
- l. Final/stabilized occupancy

4.3.7 Required Statements

Offerors must submit statements identifying whether the Project's feasibility is contingent on any local, state, or federal government action or financial support (including a change in regulations; funding including guarantees, and issuance of tax-exempt bonds; financing and credit enhancements; leasing of space; and the justification and process for obtaining government support). The Owner will accept proposals that are contingent upon tax credit approval.

4.4 Binder 2: Conceptual Financial Proposal

The Offeror must submit the following information, arranged in the same order and identified with headings as presented herein. This information will be considered the minimum content of the Financial Proposal.

4.4.1 Table of Contents

4.4.2 Proposed acquisition or lease terms

4.4.3 A full construction and development pro forma including budgets, sources and uses and operating cash flows, provided in Microsoft excel format with all formulas editable and intact

4.4.4 Proposed Rental Rates: Proposed rental rates and lease terms for all tenant types

4.4.5 Conceptual Project Budget: Provide a high-level construction and development budget, based upon the Proposed Development Plan identified in 4.3.5 above.

4.4.6 Financial Plan and Transactional Instruments

Offerors shall provide a description of its strategy for financing the project on a long-term basis including anticipated financing costs, discussion of the risks and benefits of the structure, long term outlook for project financial viability, and why this strategy is the most advantageous. Proposals will address timing for execution of financing, and financing closure.

Any proposal must address and demonstrate how any financing shall be secured and shall contemplate the bond indebtedness and the HUD-held debt.

4.4.7 Historical Financials

Copies of Developer's audited financial statements for the past three fiscal years.

4.4.8 Financial Qualifications

Statements regarding the Developer's financial creditworthiness and past development experience which can be verified, including the names and addresses of at least three (3) commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries.

5. Copies and Submission

Three (3) copies of the Technical Proposal binder, and three (3) copies of the Financial Proposal binder shall be delivered to the following address:

“Request for Proposals for Adaptive Reuse”
Macon Bibb-County Urban Development Authority
Attn: Alex Morrison, Executive Director
200 Cherry Street
Suite 100
Macon, Georgia 31201

Offerors are reminded that changes to the Request for Proposal, in the form of addenda, may be issued between the issue date and within three (3) days before the closing of the solicitation. All addenda **MUST** be signed and submitted before the time and date of the closing of the bid or must accompany the bid. Notice of addenda will be posted on the solicitation webpage at <https://maconbibbuda.com/category/active-solicitations/>.

The Offeror is advised that the United States Postal Service or even Express Mail may not deliver your response in a timely manner. Offerors are cautioned to plan accordingly.

The Owner is not responsible for delays caused by any delivery service. Deliveries must arrive by 3:00 p.m. on January 5, 2024.

The Owner reserves the right to reject any or all responses considered not responsible or non-responsive; to re-advertise this RFP; to postpone or cancel this process; to waive irregularities in the solicitation process or in the responses received; and to change or modify the RFP schedule at any time. Examples of not responsible or non-responsive may include, without limitation, failed or delayed projects, financial weakness, or multiple legal actions taken by or against the firm.

Owner will not provide compensation to Offerors for any expenses incurred by the Offeror(s) for submittal preparation or for any demonstrations that may be made, unless otherwise expressly stated or required by law.

Each submission should be prepared simply and economically, providing a straightforward, concise description of your firm’s ability to meet the requirements of this RFP. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the Owner’s needs.

Owner makes no guarantee that an award will be made as a result of this RFP and reserves the right to accept or reject any or all submittals, with or without cause, waive any formalities or minor technical inconsistencies, or delete any item/requirement from this RFP or contract when deemed to be in the Owner’s best interest.

Owner will consider only representations made within the submission in response to this RFP. Owner will not be bound to act by any previous knowledge, communication, or submission by the firms other than this RFP.

Failure to comply with the requirements contained herein may result in the submission being deemed “non-responsive” or “non-responsible.” Non-responsive submissions will not be reviewed for potential award.

6. Late Proposals

Proposals received after the date and time prescribed shall not be considered for contract award and shall be returned to the Offeror.

7. Proposal Evaluation Criteria

The following evaluation factors will be used to evaluate Offerors and are listed in order of importance:

- Offeror Qualifications
- Past Performance
- Financing Plan
- Degree to which the Conceptual Development Plan meets or exceeds the Owner’s goals as set forth in this RFP

SCORING (total possible number of points = 100)

- Experience – Maximum 35 points
- Project Approach – Maximum 20 Points
- Project Timeline – Maximum 20 Points
- Price – Maximum 25 Points

Scoring will be performed by a team of reviewers utilizing the Point Allocation Guidelines.

8. Proposal Evaluation and Selection Process

8.1 A Selection Committee of the Owner has been established to review and evaluate all proposals submitted in response to this RFP. The committee will conduct a preliminary evaluation of the Technical Proposals based on the evaluation factors listed above. The selection of the Offeror will be based on the clarity and comprehensiveness of the Offeror’s response.

8.2 Based on the results of the preliminary evaluation, one or more Offerors may be invited to make an oral presentation to the Owner.

8.3 The Owner may request clarifications or best and final offers from any or all Offerors at which point the Committee will conduct a final evaluation and rank order the proposals deemed responsive and responsible.

8.4 The Owner may, at any time, request any additional information, including any omission from the original response, it deems relevant and/or necessary for the purposes of its evaluation and decision making process. The Committee may conduct discussions, interviews or require presentations to investigate the qualification of any Offeror, as it deems appropriate.

8.5 The Owner reserves the right to enter into competitive negotiations with one or more Offerors.

8.6 As part of the competitive negotiation process, Offerors may be requested to provide the Owner with more detailed designs, project specifications and cost models or other information deemed necessary by the Owner. Any additional information provided to the Owner will be at the sole risk and expense of the Offeror.

8.7 The Owner reserves the right, at its sole discretion, to reject any or all proposals it deems incomplete or unresponsive to the submission requirements.

8.8 The designation of a Selected Developer will be based on the quality, clarity and thoroughness of the proposal and the degree to which it meets or exceeds the Owner's stated vision, goals and requirements and provides the Owner with the best value.

8.9 The Owner retains the right to negotiate the final contract terms and conditions to be presented for approval with one or more of the apparent most responsive Offerors as solely determine by the Owner .

8.10 The Owner reserves the right to conduct discussions with Offerors, to request revisions of proposals and to negotiate price changes or waive minor informalities. During the discussion period, no information will be disclosed regarding either the contents of proposals or discussions.

8.11 The Owner reserves the right to waive any information or irregularities in any response and to reject any and/or all responses as may be deemed in the best interest of the Owner. The Owner further reserves the right to cancel the project at any time and pay the selected Offeror only for the costs incurred to that point as will be provided for in the development agreement.

8.12 Upon review of the proposals received from Offerors, the Committee will recommend to the Owner a preferred Offeror. Following review and approval of that selection, Owner will negotiate a development agreement with the selected Offeror. In such instance where a development agreement, acceptable to the Owner, cannot be negotiated, the Owner may, in its sole and absolute discretion terminate negotiations and undertake negotiations with the next best-qualified Offeror until an acceptable development agreement is concluded and executed by the Owner. Development agreement negotiations will include discussions related to fees and other charges, budget, insurance requirements and any other negotiable terms and conditions of a definitive contract.

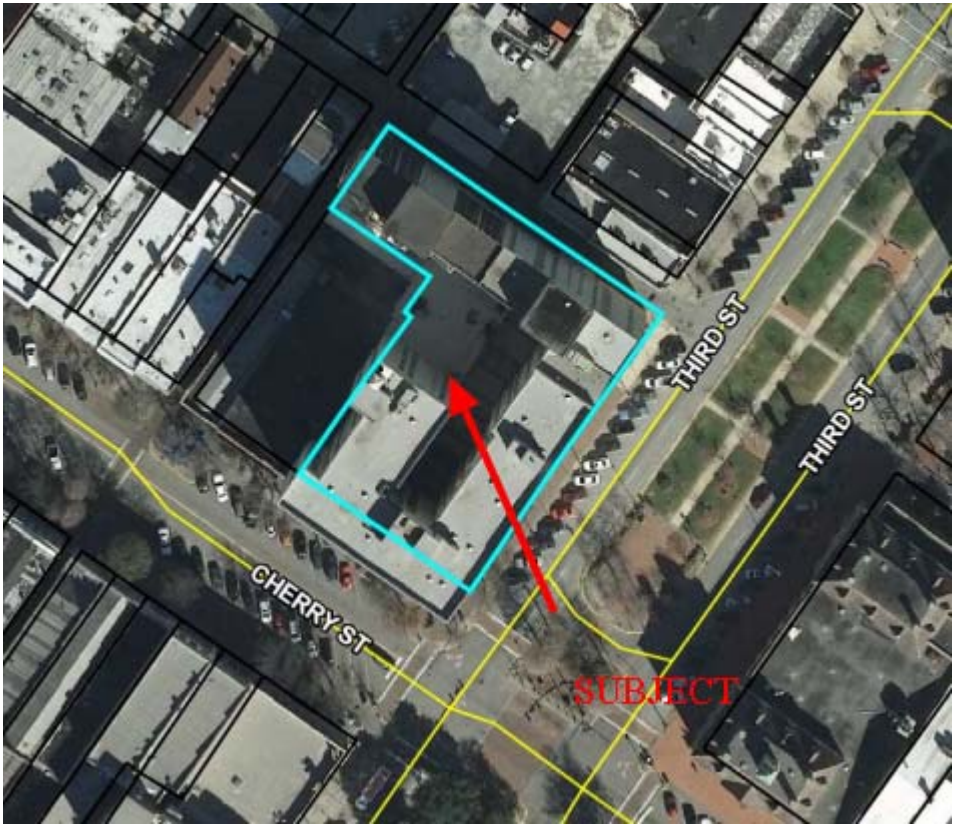
Exhibit A

Building Pictures and Survey

523 CHERRY STREET



c. 1912
FORMERLY THE
HOTEL DEMPSEY





























NOTES:

- 1. DONALDSON, GARRETT AND ASSOCIATES, INC. AND THE LAND SURVEYOR WHOSE SEAL IS AFFIXED HEREON DO NOT GUARANTEE THAT ALL EASEMENTS WHICH MAY AFFECT THIS PROPERTY ARE SHOWN.
2. THIS DRAWING HAS BEEN GENERATED ELECTRONICALLY. THIS MEDIA SHOULD NOT BE CONSIDERED A CERTIFIED DOCUMENT UNLESS IT BEARS THE ORIGINAL RAISED SEAL AND SIGNATURE OF A GEORGIA REGISTERED PROFESSIONAL SURVEYOR OF DONALDSON, GARRETT AND ASSOCIATES, INC.
3. THE LOCATION OF THE UNDERGROUND UTILITIES SHOWN ON THIS DRAWING WERE COMPILED FROM FIELD OBSERVATIONS AND/OR PHYSICAL MARKINGS FOUND ON THE SUBJECT SITE. THIS INFORMATION MAY BE INACCURATE OR INCOMPLETE. VERIFICATION OF THE UTILITY LOCATIONS SHOULD BE MADE PRIOR TO ANY CONSTRUCTION OR EXCAVATION.
4. HORIZONTAL AND VERTICAL DATA IS TIED TO THE NAD83 & NAVD88 DATUMS AND IS BASED UPON RTK GPS OBSERVATIONS UTILIZING THE LEICA GEORGIA REFERENCE NETWORK.
5. IRON PINS SET ARE 1/2" REBAR AND CAPS ENTITLED "DGA-MACON, GA", UNLESS OTHERWISE NOTED.
6. SUBJECT PROPERTY IS CURRENTLY ZONED CBD-1.
7. THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE THE MULTI LEVEL PARKING GARAGE TO BE KNOWN AS 524 MULBERRY STREET LANE & SHOWN HEREON AS TRACT "B" FROM THE ORIGINAL TAX PARCEL R073-0282.
8. THIS SURVEY IS THE SAME PROPERTY AS DESCRIBED IN THE FIRST AMERICAN TITLE INSURANCE COMPANY TITLE COMMITMENT FOR DEMPSEY-MACON ASSOCIATES, A GEORGIA LIMITED PARTNERSHIP, COMMITMENT FILE NO. 042660.168953 DATED: MARCH 16, 2018 @ 8:00 am
9. THERE ARE NO MARKED PARKING SPACES IN THE "SINGLE LEVEL PARKING" AREA LOCATED ON TRACT "A". ALL OTHER PARKING IS ALONG THE RIGHT-OF-WAY THIRD STREET AND CHERRY STREET.

APPROVAL SIGNATURES

"THE UNDERSIGNED CERTIFIES THAT HE IS THE OWNER OF THE LAND SHOWN ON THIS PLAT AND ACKNOWLEDGES THIS PLAT AND ALLOTMENT TO BE HIS FREE ACT AND DEED AND DEDICATES TO PUBLIC USE FOREVER ALL AREAS SHOWN OR INDICATED ON THIS PLAT AS STREETS, ALLEYS, EASEMENTS, OR PARKS. I ALSO UNDERSTAND THAT SAID DEDICATION DOES NOT IMPLY ACCEPTANCE BY THE APPLICABLE GOVERNING BODY FOR MAINTENANCE OF ANY STREETS, ALLEYS, EASEMENTS OR PARKS, AND THAT APPROPRIATE PETITIONS MUST BE MADE TO AND APPROVED BY THE APPLICABLE GOVERNING BODY FOR PUBLIC MAINTENANCE."

(a) *APPROVED BY MACON-BIBB COUNTY FIRE DEPARTMENT
(b) *APPROVAL SUBJECT TO THE INSTALLATION OF PROPER WATER MAINS AND FIRE HYDRANTS- MACON-BIBB COUNTY FIRE DEPARTMENT
(c) *APPROVED-LIMITED WATER SUPPLY--NO FIRE HYDRANTS WITHIN 500 FEET--IN COUNTY ONLY.

DATE: 9-25-2018 OWNER / AGENT:
MACON-BIBB COUNTY FIRE PREVENTION DESIGNEE:

(a) *APPROVAL OF THIS PLAT BY THE MACON-BIBB COUNTY HEALTH DEPARTMENT IS SOLELY FOR THE PURPOSE OF PERMITTING IT TO BE RECORDED IN THE MACON-BIBB COUNTY SUPERIOR COURT. SAID APPROVAL DOES NOT IMPLY NOR IS IT INTENDED TO GRANT PERMISSION TO ANY PERSON TO CONSTRUCT ANY BUILDING OR TO INSTALL A SEWAGE DISPOSAL SYSTEM OR WATER SUPPLY SYSTEM ON PROPERTY COVERED BY THIS PLAT.
APPROVED FOR RECORDING PURPOSES ONLY
MACON-BIBB COUNTY HEALTH DEPARTMENT

(b) THE MACON-BIBB COUNTY HEALTH DEPARTMENT APPROVAL RELATES TO GENERAL SUBDIVISION LOT LAYOUT ONLY. INDIVIDUAL APPROVAL REQUIRED FOR EACH LOT PRIOR TO CONSTRUCTION.
(c) RESTRICTED TO PUBLIC SEWERS AND PUBLIC WATER SUPPLY.
(d) APPROVED BY MACON-BIBB COUNTY HEALTH DEPARTMENT"

DATE:
MACON-BIBB COUNTY HEALTH DEPARTMENT DESIGNEE:

"I CERTIFY THAT THE FINAL PLAT LAYOUT MEETS THE PLATTING REQUIREMENTS OF THE MACON-BIBB COUNTY ENGINEERING DEPARTMENT. MACON-BIBB COUNTY DOES NOT, BY THIS APPROVAL, ACCEPT THE DEDICATION, IF ANY, OF DRAINAGE EASEMENTS AND ASSUMES NO RESPONSIBILITY FOR THEIR MAINTENANCE.
DATE:
MACON-BIBB COUNTY ENGINEERING DESIGNEE:

"I CERTIFY THAT THE SPECIFICATIONS OF THE WATER AND/OR SEWER LINES MEET THE MINIMUM REQUIREMENTS OF THE MACON WATER AUTHORITY AND THAT THE INSTALLATION MEETS WITH SUCH SPECIFICATIONS (AND PROPER FINANCIAL ARRANGEMENTS HAVE BEEN MADE TO INSURE INSTALLATION ACCORDING TO SAID SPECIFICATIONS). THEREFORE, THE FINAL PLAT IS APPROVED BY THE AUTHORITY.
DATE:
EXECUTIVE DIRECTOR OR FIELD OPERATIONS DIRECTOR:

*APPROVED BY THE MACON-BIBB COUNTY TRAFFIC ENGINEERING DEPARTMENT."
DATE:
MACON-BIBB COUNTY TRAFFIC ENGINEER DESIGNEE:

"I CERTIFY THAT ALL THE REQUIREMENTS FOR FINAL APPROVAL OF THIS PLAT HAVE BEEN FULFILLED IN ACCORDANCE WITH THE COMPREHENSIVE LAND DEVELOPMENT RESOLUTION OF MACON-BIBB COUNTY PLANNING AND ZONING COMMISSION.
DATE:
EXECUTIVE DIRECTOR OR ZONING ENFORCEMENT OFFICER:

SURVEYORS CERTIFICATION

TO: UDA DEMPSEY, LLC, REGIONS BANK, AN ALABAMA BANKING CORPORATION, AS TRUSTEE, MACON-BIBB COUNTY URBAN DEVELOPMENT AUTHORITY, & FIRST AMERICAN TITLE INSURANCE COMPANY

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 6(A), 10, & 11, OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON NOVEMBER 28, 2017.

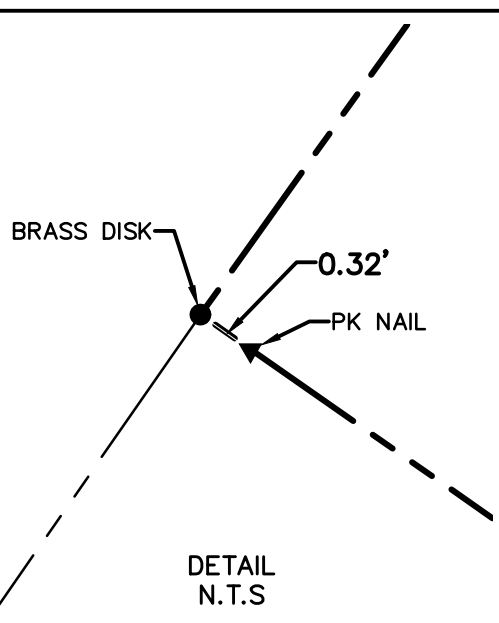
DATE OF PLAT OR MAP: 9-25-2018

CERTIFICATION

THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 131,357 FEET AND ANGULAR ERROR OF 0" PER ANGLE POINT AND WAS ADJUSTED USING THE LEAST SQUARES METHOD. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 174,343 FEET. THE LINEAR AND ANGULAR MEASUREMENTS SHOWN ON THIS PLAT WERE OBTAINED BY USING A TOPCON GHT SERIES TOTAL STATION. FIELD WORK WAS COMPLETED ON 08-01-2018.

MISCELLANEOUS NOTES:

- 1. SUBJECT PROPERTY HAS PAVED ACCESS TO THIRD STREET AND CHERRY STREET, A PUBLIC STREET.
2. NO EVIDENCE OF CURRENT EARTH WORK OBSERVED DURING THE COMMENCEMENT OF THIS SURVEY.
3. NO EVIDENCE THE SITE IS USED AS A SOLID WASTE DUMP OR LANDFILL OBSERVED DURING THE COMMENCEMENT OF THIS SURVEY.
4. NO CHANGES IN STREET RIGHT-OF-WAY EITHER COMPLETED OR PROPOSED AND AVAILABLE FROM CONTROLLING JURISDICTION, OBSERVED EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION.
5. NO EVIDENCE OF CEMETERY OR BURIAL GROUNDS OBSERVED DURING THE COMMENCEMENT OF THIS SURVEY.
6. UPC DESIGN TICKET NUMBER 09258-242-069-000 DESIGN



LINE TABLE with columns: LINE, BEARING, LENGTH. Rows: L1 N34°59'46"E 7.10', L2 N55°10'14"W 21.00', L3 S34°59'46"W 1.70', L4 N55°10'14"W 6.10'

FLOOD ZONE

THE PROPERTY DEPICTED HEREON LIES WITHIN FLOOD ZONE X (AREAS OUTSIDE 0.2% ANNUAL CHANCE FLOOD PLAIN) ACCORDING TO FEMA FLOOD INSURANCE RATE MAP 13021C0134G FOR BIBB COUNTY, GA. DATED: JUNE 7, 2018.



CALL BEFORE YOU DIG... 1-800-282-7411 UTILITIES PROTECTION CENTER OF GEORGIA IT'S THE LAW

LEGEND

- PROPERTY LINE: - - - - -
BUILDING SETBACK LINE: - - - - - B.S.L.
LAND LOT LINE: - - - - -
ORIGINAL LOT LINE: - - - - -
FENCE: - x - x -
CONCRETE: [Symbol]
SANITARY SEWER MANHOLE: [Symbol] SSMH
STORM DRAIN MANHOLE: [Symbol] SDMH
TELEPHONE MANHOLE: [Symbol] TMH
POWER MANHOLE: [Symbol] EMH
DROP INLET: [Symbol] DI
FIRE HYDRANT SIGN: [Symbol]
WATER VALVE: [Symbol]
WATER METER: [Symbol]
GAS VALVE: [Symbol]
LIGHT POLE: [Symbol]
POWER POLE: [Symbol]
PK NAIL SET: [Symbol]
PK NAIL FOUND: [Symbol]
IRON PIN FOUND (NOTED): [Symbol]
IRON PIN SET (1/2" REBAR & CAP UNLESS NOTED): [Symbol]

LEGAL DESCRIPTION

TRACT A HOTEL

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN OLD CITY SQUARE 22, LOT 1 AND PART OF LOT 2 IN MACON-BIBB COUNTY, GEORGIA, SAID TRACT OR PARCEL OF LAND CONTAINING 0.654 ACRES, MORE OR LESS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:
COMMENCING AT A PK NAIL FOUND AT THE INTERSECTION OF THE RIGHT OF WAYS FOR CHERRY STREET AND THIRD STREET, SAID PK NAIL BEING THE POINT OF REFERENCE AND POINT OF BEGINNING AND HAVING A GEORGIA STATE PLANE GRID, WEST ZONE, COORDINATE OF N:1,031,945.96', E:2,462,147.60';
THENCE RUNNING ALONG THE RIGHT OF WAY OF CHERRY STREET A BEARING OF N 54°42'31" W, A DISTANCE OF 127.94' TO A PK NAIL FOUND 0.40' OFF THE FACE OF THE BUILDING, THENCE LEAVING THE RIGHT OF WAY OF CHERRY STREET AND ALONG A COMMON PARTY WALL A BEARING OF N 34°59'45" E, A DISTANCE OF 121.46' TO THE CORNER OF THE EXISTING BUILDING, THENCE ALONG THE FACE OF THE BUILDING A BEARING OF N 55°20'32" W, A DISTANCE OF 3.33' TO THE CORNER OF THE BUILDING, THENCE CONTINUING ALONG THE FACE OF THE BUILDING A BEARING OF N 34°59'28" E, A DISTANCE OF 22.87' TO THE CORNER OF THE BUILDING, CONTINUING ALONG THE FACE OF THE BUILDING A BEARING OF N 55°06'39" W, A DISTANCE OF 76.91' TO A BRASS DISK FOUND ALONG THE 10' RIGHT OF WAY OF CHERRY STREET LANE, THENCE ALONG THE RIGHT OF WAY OF CHERRY STREET LANE A BEARING OF N 35°28'00" E, A DISTANCE OF 35.71' TO A POINT LOCATED AT THE COMMON PROPERTY LINE BETWEEN TRACT A AND TRACT B, THENCE ALONG THE FACE OF THE WALL OF THE MULTI-LEVEL PARKING DECK A BEARING OF S 55°10'14" E, A DISTANCE OF 8.10' TO THE CORNER ON THE FACE OF THE WALL DIVING THE MULTI-LEVEL PARKING DECK AND THE HOTEL, THENCE ALONG THE FACE OF THE WALL A BEARING OF N 34°59'46" E, A DISTANCE OF 1.70' TO A CORNER OF THE WALL, THENCE CONTINUING ALONG THE FACE OF THE WALL A BEARING OF S 55°10'14" E, A DISTANCE OF 21.00' TO A CORNER OF THE WALL, THENCE CONTINUING ALONG THE FACE OF THE WALL A BEARING OF S 34°59'46" W, A DISTANCE OF 7.10' TO A CORNER OF THE WALL, THENCE CONTINUING ALONG THE FACE OF THE WALL A BEARING OF S 55°10'14" E, A DISTANCE OF 34.05' TO A POINT LOCATED ON THE RIGHT OF WAY OF MULBERRY STREET LANE, THENCE ALONG THE RIGHT OF WAY OF MULBERRY STREET LANE (FORMERLY KNOWN AS WALL STREET LANE) AND HAVING A RIGHT OF WAY OF TWENTY FEET, A BEARING OF S 54°46'48" E, A DISTANCE OF 104.92' TO A MAG NAIL AND WASHER SET AT THE INTERSECTION OF THE RIGHT OF WAY OF MULBERRY STREET LANE AND THIRD STREET, THENCE ALONG THE RIGHT OF WAY OF THIRD STREET A BEARING OF S 35°04'23" W, A DISTANCE OF 208.00' TO THE POINT OF BEGINNING.

TRACT B

MULTI-LEVEL PARKING GARAGE

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN OLD CITY SQUARE 22, LOT 2 IN MACON-BIBB COUNTY, GEORGIA, SAID TRACT OR PARCEL OF LAND CONTAINING 0.077 ACRES, MORE OR LESS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:
COMMENCING AT A PK NAIL FOUND AT THE INTERSECTION OF THE RIGHT OF WAYS FOR SECOND STREET LANE AND MULBERRY STREET LANE (FORMERLY KNOWN AS WALL STREET LANE), SAID PK NAIL BEING THE POINT OF REFERENCE AND POINT OF BEGINNING AND HAVING A GEORGIA STATE PLANE GRID, WEST ZONE, COORDINATE OF N:1,032,237.25, E:2,462,097.36';
THENCE RUNNING ALONG THE RIGHT OF WAY OF MULBERRY STREET LANE A BEARING OF S 54°46'48" E, A DISTANCE OF 103.58' TO A POINT LOCATED ON THE ORIGINAL DIVISION LINE BETWEEN ORIGINAL LOT 1 AND LOT 2 OF OLD CITY SQUARE 22, THENCE ALONG THE ORIGINAL DIVISION LINE A BEARING OF S 35°13'12" W, A DISTANCE OF 34.05' TO A POINT ON THE FACE OF THE WALL BETWEEN THE HOTEL AND THE MULTI-LEVEL PARKING DECK, THENCE ALONG THE FACE OF THE WALL A BEARING OF N 55°10'14" W, A DISTANCE OF 76.57' TO A CORNER OF THE WALL, THENCE CONTINUING ALONG THE FACE OF THE WALL A BEARING OF N 34°59'46" E, A DISTANCE OF 7.10' TO A CORNER OF THE WALL, THENCE CONTINUING ALONG THE FACE OF THE WALL A BEARING OF N 55°10'14" W, A DISTANCE OF 21.00' TO A CORNER OF THE WALL, THENCE CONTINUING ALONG THE FACE OF THE WALL A BEARING OF S 34°59'46" W, A DISTANCE OF 1.70' TO A CORNER OF THE WALL, THENCE CONTINUING ALONG THE FACE OF THE WALL A BEARING OF N 55°10'14" W, A DISTANCE OF 6.10' TO A POINT LOCATED ON THE RIGHT OF WAY OF SECOND STREET LANE, THENCE ALONG THE RIGHT OF WAY OF SECOND STREET LANE A BEARING OF N 35°28'00" E, A DISTANCE OF 29.35' TO THE POINT OF BEGINNING.

RECORD LEGAL DESCRIPTION DEED BOOK 1429, PAGE 602

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE CITY OF MACON, BIBB COUNTY, GEORGIA, AND BEING ALL OF LOT 1 AND PART OF LOT 2 IN SQUARE 22 OF THE CITY OF MACON AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A NAIL SET IN THE SIDEWALK AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY OF CHERRY STREET AND THE WESTERLY RIGHT-OF-WAY OF THIRD STREET, SAID NAIL BEING THE POINT OF BEGINNING; THENCE ALONG THE NORTHERLY RIGHT-OF-WAY OF CHERRY STREET ON A BEARING OF NORTH 68 DEGREES 08 MINUTES 48 SECONDS WEST FOR A DISTANCE OF 127.95 FEET TO A NAIL ON THE NORTHERLY RIGHT-OF-WAY OF CHERRY STREET; THENCE NORTH 23 DEGREES 38 MINUTES 36 SECONDS EAST ALONG A BUILDING LINE BETWEEN TWO BUILDINGS FOR A DISTANCE OF 121.10 FEET TO A POINT ON THE BUILDING LINE; THENCE NORTH 68 DEGREES 50 MINUTES 12 SECONDS WEST ALONG A BUILDING LINE BETWEEN TWO BUILDINGS FOR A DISTANCE OF 3.33 FEET TO A BUILDING CORNER; THENCE NORTH 23 DEGREES 47 MINUTES 00 SECONDS EAST ALONG A BUILDING LINE FOR A DISTANCE OF 23.12 FEET TO A BUILDING CORNER; THENCE NORTH 66 DEGREES 31 MINUTES 24 SECONDS WEST ALONG A BUILDING LINE AND PAST THE BUILDING CORNER FOR A DISTANCE OF 77.57 FEET TO A BRASS DISK SET IN THE CONCRETE OF A 10-FOOT ALLEY, ALSO KNOWN AS SECOND STREET LANE; THENCE NORTH 24 DEGREES 01 MINUTES 44 SECONDS EAST ALONG THE EAST SIDE OF SECOND STREET LANE FOR A DISTANCE OF 65.00 FEET TO A BRASS DISK SET IN THE CONCRETE AT THE INTERSECTION OF SECOND STREET LANE AND WALL STREET; WALL STREET BEING A 20 FEET ALLEY; THENCE SOUTH 68 DEGREES 11 MINUTES 00 SECONDS WEST ALONG THE SOUTH SIDE OF WALL STREET FOR A DISTANCE OF 208.50 FEET TO A NAIL SET IN THE CONCRETE SIDEWALK AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF THIRD STREET AND THE SOUTHERLY SIDE OF WALL STREET; THENCE SOUTH 23 DEGREES 41 MINUTES 00 SECONDS WEST ALONG THE WESTERLY RIGHT-OF-WAY OF THIRD STREET FOR A DISTANCE OF 208.98 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED TRACT CONTAINS 32,040 SQUARE FEET OR 0.7355 ACRES, AND IS MORE PARTICULARLY DESCRIBED BY A PLAT OF SURVEY PREPARED BY CONNER, GOODMAN & ASSOCIATES, P.A., DATED OCTOBER 29, 1981, AND REVISED NOVEMBER 11, 1981 AND REVISED APRIL 19, 1982, REFERENCE TO WHICH PLAT OF SURVEY IS HEREBY MADE FOR ALL PURPOSES OF DESCRIPTION.

SCHEDULE B-II

7. ALL MATTERS OF SURVEY AS SHOWN ON PLAT RECORDED IN PLAT BOOK 64, PAGE 80, CLERK'S OFFICE, BIBB SUPERIOR COURT. -SHOWN HEREON-

REFERENCE DEEDS & PLATS

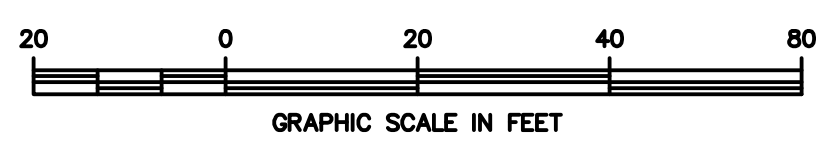
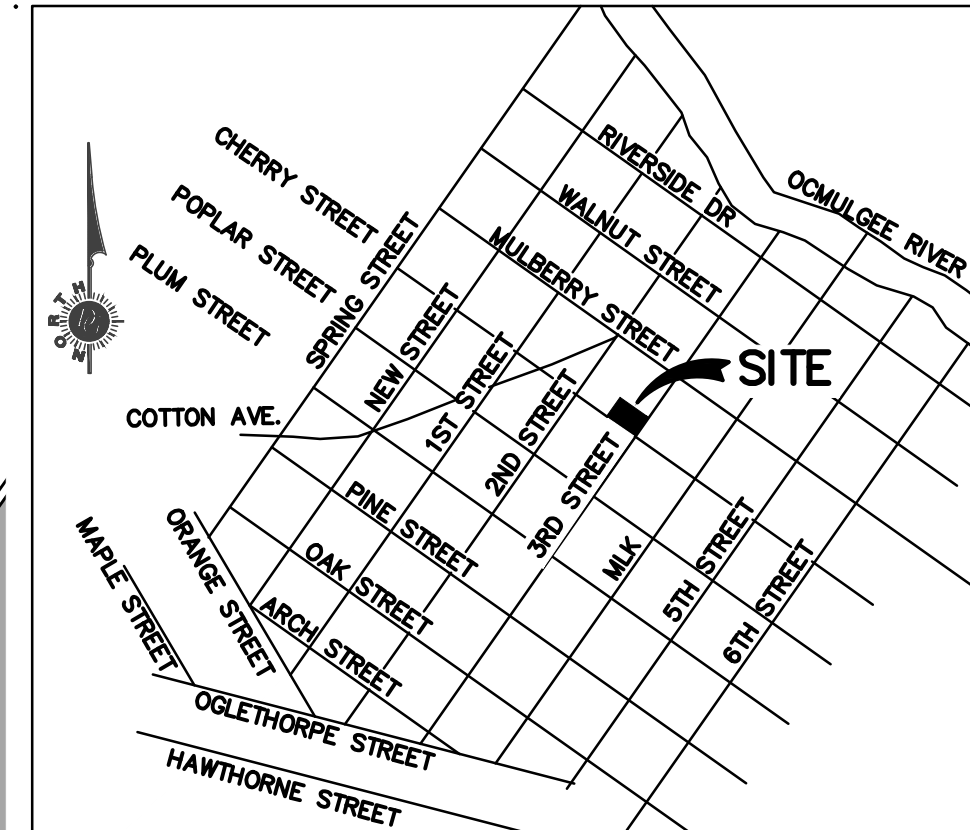
- DEED BOOK 1429 PAGE 602 PLAT BOOK 6 PAGE 8
DEED BOOK 4507 PAGE 106 PLAT BOOK 55 PAGE 8
DEED BOOK 8714 PAGE 70 PLAT BOOK 56 PAGE 55
DEED BOOK 9510 PAGE 30 PLAT BOOK 62 PAGE 120
DEED BOOK 10017 PAGE 10 PLAT BOOK 64 PAGE 80
PLAT BOOK 88 PAGE 71
PLAT BOOK 89 PAGE 60

FIRST AMERICAN TITLE INSURANCE COMPANY TITLE COMMITMENT FOR DEMPSEY-MACON ASSOCIATES, A GEORGIA LIMITED PARTNERSHIP, COMMITMENT FILE NO. 042660.168953 DATED: MARCH 16, 2018 @ 8:00 am
VINCENT'S NEW MAP OF THE CITY OF MACON 1854

SURVEYOR CERTIFICATION

AS REQUIRED BY SUBSECTION (C) OF O.C.G.A. SECTION 15-6-67, THIS SURVEY HAS BEEN APPROVED BY ALL APPLICABLE LOCAL JURISDICTIONS FOR RECORDING. THE NAMES OF THE INDIVIDUALS SIGNING OR APPROVING THIS MAP OR PLAT, THE AGENCY OR OFFICE OF THAT INDIVIDUAL, AND THE DATE OF APPROVAL IS LISTED IN THE APPROVAL TABLE SHOWN HEREON. SUCH APPROVALS OR AFFIRMATIONS SHOULD BE CONFIRMED WITH THE APPROPRIATE GOVERNMENT BODIES BY ANY PURCHASER OR USER OF THE SURVEY OR MAP AS TO INTENDED USE OF THE PARCEL. FURTHER, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS MAP, PLAT, OR PLAN COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 180-7 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN THE GEORGIA PLAT ACT OCGA 15-6-67.

SIGNATURE: [Signature] DATE: 9-25-2018



Vertical sidebar containing: DONALDSON, GARRETT & ASSOCIATES, INC. logo; UDA DEMPSEY LLC logo; ALTA / NSPS LAND TITLE SURVEY FOR... OF 523 CHERRY STREET LN. SQUARE 22, OLD CITY MACON-BIBB COUNTY; REVISIONS table; CLIENT COMMENTS table; SCALE: HORIZONTAL: 1"=20', VERTICAL: N/A; DATE: 9-25-2018; DRAWING NO. 3719-18-D; PROJ. NO.: 4064-017-D1; ALPH: C1189; DRWN: ABC / POB; CHKD: POB; APVD: POB; RLS No: 3002; SHEET 1 OF 1; C1189 BDS.DWG/20 PLOT DATE: 04/05/2018 BY: betubba

Exhibit B

HAP Contract

**ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT
OF SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACT**

THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT OF SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACT (herein called the “**Agreement**”) is made this 18th day of October, 2018, by the **UNITED STATES OF AMERICA, ACTING THROUGH THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT** (the “**Secretary**” or “**Contract Administrator**”), **DEMPSEY-MACON ASSOCIATES, LP**, a Georgia limited partnership (“**Seller**”), and **UDA DEMPSEY, LLC**, a Georgia limited liability company (“**Buyer**”).

WHEREAS, HUD or a PHA, in the capacity of contract administrator, and the Seller entered into a Section 8 Housing Assistance Payments Contract (the “**HAP Contract**”) identified as HAP Contract Number GA06-8023-006 for 194 units in Dempsey Apartments (herein called the “**Property**”), a copy of which is attached hereto as “Exhibit A,” pursuant to section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f;

WHEREAS, the Seller and an affiliate of the Buyer have entered into a Purchase and Sale Agreement, dated March 8, 2018, as amended and assigned to the Buyer, wherein the Seller agrees to sell the Property and the Buyer agrees to purchase the Property, including, without limitation, the improvements situated thereon;

WHEREAS, the Buyer has submitted to the Secretary an Application and documents in support thereof requesting the Secretary's approval of the proposed assignment of the HAP Contract to the Buyer as set forth in the aforesaid Purchase and Sale Agreement;

WHEREAS, the Seller desires to assign and the Buyer desires to assume all the rights and obligations under the HAP Contract; and

WHEREAS, HUD or a PHA, in the capacity of contract administrator, and the Buyer mutually desire to amend the HAP Contract to require physical inspections in accordance with 24 CFR Part 5, Subpart G and 24 CFR Part 200, Subpart P and financial reporting in accordance with 24 CFR Part 5, Subpart H.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to comply with the requirements of the Secretary, the United States Housing Act of 1937, and the regulations promulgated pursuant thereto, the parties hereto agree as follows:

1. The Seller hereby irrevocably assigns the HAP Contract to the Buyer together with all rights and obligations in and under said contract.
2. Effective as of the date of this Agreement, the Buyer agrees to assume the rights and obligations and is bound by said HAP Contract, as modified herein, and is responsible for filing its Annual Financial Statement (AFS) from the date of this Agreement through the end of the Buyer's fiscal year, specifically, June 30, 2019.
3. Effective as of the date of this Agreement, the Seller is released from any further liability under the HAP Contract, except that the Seller shall remain responsible for filing its AFS for the current year, up to and through the day before this Agreement is executed, if said HAP Contract includes an AFS filing requirement, as well as for any prior years' AFSs still outstanding, if the project is subject to an AFS filing requirement.
4. Part II of the HAP Contract is hereby amended to include the following provisions:

Physical Conditions Standards and Inspection Requirements. The Owner shall comply with the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5, Subpart G, including any changes in the regulation and related Directives. In addition, the Owner shall comply with HUD's Physical Condition Standards of Multifamily Properties of 24 CFR Part 200, Subpart P, including any changes in the regulation and related Directives. This obligation shall apply during both the current term of the HAP contract and each successive renewal term.

Financial Reporting Standards. The Owner shall comply with the Uniform Financial Reporting Standards of 24 CFR Part 5, Subpart H, including any changes in the regulation and related Directives. This obligation shall apply during both the current term of the HAP contract and each successive renewal term.

Failure to Comply. The failure of the Buyer or of any successor owner to comply with the obligations of the amended HAP contract, including the Physical Conditions Standards and Inspection Requirements, and Financial Reporting Standards, is a material violation of this Contract, and may subject the Buyer or any successor owner to legal and administrative remedies, including but not limited to abatement and civil money penalties (24 CFR Part 30).

5. This Agreement shall be construed under the laws of the State of Georgia and to the extent inconsistent with the laws of the State of Georgia, the laws of the United States of America. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective successors and assigns.
6. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

7. The Secretary, by the signature of his authorized representative below, consents to the assignment made hereby. Said consent shall be void ab initio if the Secretary determines that Buyer, or any principal or interested party of the Buyer, is debarred, suspended or subject to a limited denial of participation under 24 CFR Part 24, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or non-procurement programs.

NOTHING in this Agreement shall in any way impair the HAP Contract or alter, waive, annul, vary or affect any provision, condition, or covenant therein, except as herein specifically provided. Nothing in this Agreement shall in any way affect or impair any rights, powers, or remedies under the HAP Contract. It is the intent of the parties hereto that the terms and conditions of the HAP Contract shall continue in full force and effect except as amended hereby.

IN WITNESS WHEREOF, the Seller, the Buyer, and the Secretary have caused this agreement to be executed.


[Signature Pages Follow]

Project Name: Dempsey Apartments
Project Location: Macon, GA
HAP Contract No.: GA06-8023-006

SELLER:

DEMPSEY-MACON ASSOCIATES, LP,
a Georgia limited partnership

By: **Mel A. Barkan, Inc.,**
its general partner

By: 

Peter M. Barkan
Vice President


Date: 9/26/18

[SIGNATURES CONTINUE ON NEXT PAGE]

Project Name: Dempsey Apartments
Project Location: Macon, GA
HAP Contract No.: GA06-8023-006

BUYER:

UDA DEMPSEY, LLC,
a Georgia limited liability company

By: 

J. Alexander Morrison
Manager

Date: 9/27/2018

[SIGNATURES CONTINUE ON NEXT PAGE]

HUD:

**UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT**

By: Yolanda Pérez
Signature of authorized representative

Yolanda Perez, BC, AM
Name and Title (Print)

Date: 10/16/2018

[END OF SIGNATURE PAGES]

Project Name: Dempsey Apartments
Project Location: Macon, GA
HAP Contract No.: GA06-8023-006

EXHIBIT A

HAP CONTRACT

See attached.

EXHIBIT B TO AGREEMENT
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

PART I OF THE
HOUSING ASSISTANCE PAYMENTS CONTRACT

Type of Project: Private-Owner/PHA
Small Project _____ or Partially-Assisted Project _____ or Other _____
New Construction, Part 880 _____ or Substantial Rehabilitation, Part 881 X
Type of Financing: Subject to Part 811, HUD-insured

[For example: subject to Part 811, HUD-insured; GNMA tender;
State agency tax exempt loan, not HUD-insured.]

ACC/RAP CONTRACT LIST NUMBER AND DATE: A-820 41 (5/4/82)
MASTER SECTION 8 ACC NUMBER: A-3097
DATE OF ACC PART I FOR THIS PROJECT: May 12, 1982
SECTION 8 PROJECT NUMBER: GA06-8023-006
PHA PROJECT NUMBER (if applicable): 061-35325-PM-LB-WAH-SR-R

This Housing Assistance Payments Contract (Contract) is entered into by and between the HOUSING AUTHORITY OF THE CITY OF MACON, GEORGIA (PHA), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. (Act) and Dempsey-Macon Associates (Owner), and approved by the United States of America acting through the Department of Housing and Urban Development (HUD), pursuant to the Act and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq. The purpose of this Contract is to provide housing assistance payments on behalf of Eligible Families leasing decent, safe and sanitary units from the Owner.

1.1 SIGNIFICANT DATES AND OTHER ITEMS; CONTENTS AND SCOPE OF CONTRACT.

(a) Effective Date of Contract: _____, 19____.

(b) Fiscal Year. The ending date of each Fiscal Year shall be December 31. [Insert March 31, June 30, September 30 or December 31, as approved by HUD.] The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year which is not less than 12 months after the effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in section 1.1(c) will be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

(c) Maximum Annual Contract Commitment. The maximum amount of the commitment for housing assistance payments under this Contract (see section 2.3) is \$ 51,371,012 per year. [Insert amount, authorized under the ACC for housing assistance payments.] This amount may be increased or decreased by appropriate amendment in accordance with this Contract.

(d) Project Description.

Substantial rehabilitation of Dempsey Hotel in Macon Georgia consisting of 194 apartment units and commercial space.

(e) Statement of Services, Maintenance and Utilities Provided by the Owner.

(1) Services and Maintenance:

(2) Equipment:

Elec. Ranges	Laundry Facilities
Elec. Refrigerators	Carpet
Air Conditioners	
Kitchen Exhaust fan	

(3) Utilities:

Gas
Electricity
Water

(4) Other:

(f) Contents of Contract. This Contract consists of Part I, Part II (except as indicated in section 1.4), and the following exhibits:

Exhibit 1: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents").

Exhibit 2: Daily Debt Service. (If the project is not permanently financed when the Contract is executed, this exhibit should be added when the necessary information becomes available.)

Exhibit 3: The Affirmative Fair Housing Marketing Plan, if applicable.

Exhibit 4: An agreement between the parties to incorporate the Final Proposal by reference, specifying the location of the Final Proposal, and identifying each part of the Final Proposal, including any amendments.

Additional exhibits: [Specify additional exhibits, if any, such as Special Conditions for Acceptance. If none, insert "None."]

Exhibit 5

(g) Scope of Contract. This Contract, including the exhibits, whether attached or incorporated by reference, comprises the entire agreement between the Owner and the FRA with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Contract, any applicable regulations, and agreements entered into in writing by the parties which are not inconsistent with this Contract.

1.2 TERM OF CONTRACT: OBLIGATION TO OPERATE PROJECT FOR FULL TERM.

(a) Term of Contract. The term of this Contract for any unit shall be 20 years, beginning with the effective date of this Contract for such unit. [Insert number approved by HUD in accordance with the HUD regulations.] If the project is completed in stages, the term shall be separately related to the units in each stage. However, the total Contract term for all the stages, beginning with the effective date of the Contract for the first stage, shall not exceed the Contract term for any unit, plus two years.

(b) Obligation to Operate Project for Full Term. The Owner agrees to continue operation of the project in accordance with this Contract for the full term specified in paragraph (a).

1.3 ANNUAL CONTRIBUTIONS CONTRACT.

(a) Identification of Annual Contributions Contract (ACC). The PHA has entered into an ACC identified above with HUD for this project. Under the ACC, HUD agrees to provide financial assistance to the PHA pursuant to section 8 of the U.S. Housing Act of 1937 for the purpose of making housing assistance payments. A copy of the ACC shall be provided upon request.

(b) PHA Pledge of Certain ACC Payments. The PHA hereby pledges to the payment of housing assistance payments pursuant to this Contract the portion of annual contributions payable under the ACC for the housing assistance payments. The PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of the annual contributions, except as authorized in the ACC and this Contract.

(c) HUD Assurance. The approval of this Contract by HUD is an assurance by HUD to the Owner that:

(1) HUD has executed the ACC and the ACC has been properly authorized;

(2) The faith of the United States is solemnly pledged to the payment of annual contributions pursuant to the ACC;

(3) HUD has obligated funds for these payments to assist the PHA in the performance of its obligations under the Contract; and

(4) HUD and the PHA will not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable under it for housing assistance payments except as authorized in the ACC and this Contract.

1.4 APPLICABILITY OF CERTAIN PROVISIONS OF THIS CONTRACT. Applic. Not Applic.

(a) 2.4(1). Payments to Trustee by PHA Where It Is the Lender. Applicability: Applies where the Owner and the PHA as CA request. X

(b) [If the Contract Rents are adjusted under Section 2.4 of the Agreement, and either Section 2.7(f), (g) or (h) of this Contract has been checked "applicable" at the time of execution of the Agreement, it should be changed to "not applicable" when the Contract is executed.]

(1) 2.7(f). Adjustment of Contract Rents Based on Cost Certification.
Applicability: All projects unless (1) the project is subject to Part 811; or (2) the Contract Rents do not exceed comparable rents; or (3) the Contract Rents do not exceed comparable rents by more than 10 percent, for Small and Partially-Assisted Projects. X

(2) 2.7(g). Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Financing Not Subject to Part 811

Applicability: All projects where financing is by tax exempt obligations not subject to Part 811 because the issuer is a participating agency under 24 CFR Part 883. X

Applic. Not Applic.

- (3) 2.7(h). Adjustment of Contract Rents: Part B11. Applicability: All HUD-insured projects subject to Part B11. X _____
- (c) 2.13. Training, Employment and Contracting Opportunities. Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$500,000. X _____
- (d) 2.14. Flood Insurance. Applicability: All projects in special flood hazard areas. _____ X _____
- (e) 2.15. Clean Air and Federal Water Pollution Control Acts. Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$100,000. X _____

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

OWNER DEMPSEY-MACON ASSOCIATES

By [Signature]
Managing General Partner
(Official Title)

Date _____, 19__

Approved:

United States of America
Secretary of Housing and
Urban Development

THE HOUSING AUTHORITY OF THE CITY
FHA OF MACON, GEORGIA

By [Signature]
Chairman
(Official Title)

Date _____, 19__

By _____
Area Manager
(Official Title)

Date _____, 19__

* Type name of signatory under signature line.

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 1

This Contract is hereby executed with respect to the units described in Exhibit 1a.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1a is _____, 19____.

Approved:

United States of America
Secretary of Housing and
Urban Development

By _____

(Official Title)

Date _____, 19____

OWNER _____

By _____

(Official Title)

Date _____, 19____

PHA _____

By _____

(Official Title)

Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 2

This Contract is hereby executed with respect to the units described in Exhibit 1b.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1b is _____, 19____.

Approved:

United States of America
Secretary of Housing and
Urban Development

By _____

(Official Title)

Date _____, 19____

OWNER _____

By _____

(Official Title)

Date _____, 19____

PHA _____

By _____

(Official Title)

Date _____, 19____

EXHIBIT 1

SCHEDULE OF CONTRACT UNITS AND CONTRACT RENTS ¹

Number of Bedrooms	Number of Units ²	Household Type (elderly, non- elderly family, large nonelderly family)	Contract Rent
0-BR	29	Elderly	\$546
1-BR	164	Elderly	\$583
2-BR	1	Elderly	\$671

^{1/} This Exhibit must be completed and attached to the Contract at the time the Agreement is executed. It may, however, be amended in accordance with program rules before the Contract is executed. When Contract Rents are amended (e.g. at the time of an annual adjustment) this format should be used.

^{2/} If less than 100 percent of units in the project are covered by this Contract, identify specific units to be leased at initial rent-up to eligible families. See Section 2.8(c)(6).

EXHIBIT 2
DAILY DEBT SERVICE

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Daily Debt Service</u>
0	_____	\$ _____
1	_____	\$ _____
2	_____	\$ _____
3	_____	\$ _____
4	_____	\$ _____
5	_____	\$ _____

This information is used for computing assistance payments for vacant units under section 2.4(e).

(This exhibit shall be added when necessary for purposes of Section 2.4(e) of this Contract or Section 2.3(g) of the Agreement).

Exhibit 3 (p. 1 of 3)

Form HUD-903
 DATE 06-83

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
**AFFIRMATIVE FAIR HOUSING
 MARKETING PLAN**

FOR HUD USE ONLY
 APP. FILE NUMBER (Assigned Home M. Programs)

COMPLETE FORM AND SUBMIT TO: FAIR HOUSING AND EQUAL OPPORTUNITY DIRECTOR SPECIALIST
 AREA/INSURING OFFICE

1. INTRODUCTION:
 The Affirmative Fair Housing Marketing Regulations require that each applicant subject to these regulations carry out an affirmative program, prospective buyers or tenants of all minority and non-minority groups to the housing, including Whites (non-minority) and members of Negro/Black, Spanish American, American Indian, Oriental, or other minority groups in the Standard Metropolitan Statistical Area (SMSA) housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex or national origin.

2. APPLICANT AND PROJECT IDENTIFICATION.

A. APPLICANTS:
 NAME: Dempsey-Macon Associates
 ADDRESS: 1330 Boylston St. - 512
Chestnut Hill, MA 02161
 TELEPHONE NO.: 617-734-9600

C. PROJECT:
 NAME: Dempsey Apartments
 LOCATION/ADDRESS: Third & Cherry Sts.
 CITY: Macon STATE: Georgia
 COUNTY: Bibb CENSUS TRACT: _____

3. TYPE OF AFFIRMATIVE MARKETING PLAN Project Plan Area Plan
 NOTE: A separate Area Plan must be developed for each type of area in which housing is to be built. Indicate the size of the area to be covered.
 Minority Area White from minority Area Mixed Area with _____ minority and _____

4. DIRECTION OF MARKETING ACTIVITY
 Each applicant is required to carry out an affirmative marketing program in the affected housing market area of all housing units to be developed. The purpose of this program is to advise that any groups of persons, including Whites (non-minority) and members of Negro/Black, Spanish American, American Indian, Oriental, or other minority groups in the SMSA housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex or national origin, the opportunity to buy or rent. Indicate below which groups are most likely to apply for the housing without special effort.
 White (non-minority) Negro/Black Spanish American American Indian Oriental

5. MARKETING PROGRAM All advertising will include: a) methods to attract minority and non-minority persons; b) a statement of the program as checked above; and c) prominent use of the approved Equal Housing Opportunity logo type, slogan and/or statement.

A. COMMERCIAL MEDIA Check the media to be used to advertise the availability of this housing:
 Newspapers/Publications Radio TV Billboards Others (specify): _____
 For the media identified above, provide the requested information. If more space is needed attach an additional sheet.

NAME OF MEDIA	STATE IN PERCENTAGES THE RACIAL/ETHNIC IDENTIFICATIONS OF MAJOR RACIALS AUDIENCES							Other (specify)	Frequency
	White (non-minority)	Negro/Black	Spanish American	American Indian	Oriental	Other	Other		
WMAZ Macon Telegraphy & News Macon Courier	not available	not available						30 spots	
Feature length news releases will also be submitted to media.	5%	95%						at least 2 wks. prior to up.	

NOTE: Attach copy of ad or state when it will be submitted

B. BROCHURES, SIGNS AND HUD'S FAIR HOUSING POSTER: Will brochure, leaflets or handouts be used to advertise? Yes No. If yes, a copy or submit when available. For project site sign, indicate sign size _____, Logo size _____, Attach a photograph of a sign or submit when available. HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals and showings take place. Fair Housing Posters will be displayed in the Sales/Lease Offices; Real Estate Office(s); Model Unit(s); Other (specify): _____

C. COMMUNITY CONTACTS: To further inform the groups most likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations located in the housing market area or SMSA listed below. If more space is needed attach an additional sheet. Notify HUD-PHD of any changes in the list. Submit a copy of correspondence to be mailed to these groups/organizations (provide all requested information).

Name of Group/Organization	Racial/Ethnic Identification	Approximate Date of Contact or Proposed Contact	Person Contacted or to be Contacted	Address and Telephone No.	Method of Contact(s)	Indicate the specific function group/organization will undertake in implementing this plan
AARP	Black/White		R. Gamble		phone & letter	Refer prospective tenants and public development intern
Bibb County Sr. Cit.	Bl/White	90 days prior to occupancy, again 30 days prior to occupancy.	J. Tirillo			
NAACP	Black					

6. FUTURE MARKETING ACTIVITIES (Resale Units Only). Check the blocks that best describe future marketing activities to fill vacancies as they occur after the project has been initially occupied.
 Newspapers/Publications Radio TV Brochure/Leaflets/Handouts Site Signs Community Contacts
 Other (specify) Waiting list

7. ANTICIPATED OCCUPANCY RESULTS (State in number of units the racial/ethnic mix anticipated as a result of implementation of this affirmative marketing plan) 121 White (non-minority) 61 Negro/Black 35% Spanish American _____ American Indian _____ Oriental _____
 Other Minority (specify) _____

8 STAFFING AND EXPERIENCE:

(Give the information requested in the table below for your organization (the sponsor) and for the other companies/organizations identified, applicable. Provide total staffing figures, i.e., do not limit staffing to those staff persons connected with or working on this housing. HUD/FHEO should be notified of any changes in the companies named in this table.)

Name of Company, Address and Telephone No.	And Class. loc. term.	STAFFING										Company's last two years with their persons most likely to apply for housing (indicate name and address of the housing a representative of)		
		Present					Anticipated					Housing	Jobs	
		White	Minorities	Handicapped	Elderly	Other	White	Minorities	Handicapped	Elderly	Other			
I. Landlord/Owner Macon-Dempsey Assoc. 1330 Boylston St.-512 Chestnut Hill, MA 02167 617-734-9600	M													
II. Advertising (Answer if different from A)														
III. Management and Sales/Rental Staff (Answer if different from I and/or II) Barkan Mgt. Co., Inc. 1330 Boylston St.-512 Chestnut Hill, MA 02167 617-734-9600	M												Present rental/management is 10% minority. Our hire policy & procedure include outreach to minority. We attached company policy at ment.	

9 STAFF INSTRUCTIONS

I am Housing Training. All persons engaged in the sales/rental of real property have to be instructed periodically to insure that they are aware and fully knowledgeable of Fair Housing requirements.

A. Are regular sales/rental staff meetings conducted? Yes, when? Prior to rent-up No.
If yes, is Fair Housing training provided to the sales/rental staff at that meeting? Yes, No.

B. If you answered "no" for either of the questions in item 9A, when is Fair Housing training provided to the sales/rental staff?

C. Is a copy of the instructions used or proposed to be used for training sales/rental staff in Fair Housing attached to this plan? Yes, No, and date when instructions will be submitted. Policy attached; training material to be submitted prior to rent-up.

D. Do the instructions include and relate to local, state and Federal Fair Housing Laws, including Executive Order 11063, the Civil Rights Act of 1968 and this Alternative Marketing Plan? Yes, No, explain.

10 ADDITIONAL CONSIDERATIONS

Other Efforts: Please describe other efforts and plan, as part of your outreach program, to attract persons in those groups that you have designated as most likely to apply for housing in the project under consideration, that are not covered elsewhere in this plan. Efforts to attract tenant-headed households should be employed.

Every effort will be made to attract to the Dempsey Apartments elderly and handicapped minority applicants through local community contacts and advertising.

11. The applicant agrees to make any changes in a plan involving a multifamily project, which may reasonably be required, after initial review to assure compliance with Section 200.670 of HUD's Alternative Fair Housing Marketing Regulations.

FOR FHEO'S USE ONLY		SIGNATURE OF PERSON SUBMITTING PLAN	
APPROVAL BY SIGNATURE	DISAPPROVAL BY SIGNATURE	<i>Zezette C. Larsen</i>	
NAME (Type or print) Robert A. Willis	NAME (Type or print)	NAME (Type or print) Zezette C. Larsen	
TITLE Director	TITLE	TITLE AND COMPANY Vice President Barkan Management Company, Inc.	
DATE 11-17-81	DATE	DATE October 29, 1981	

EXHIBIT 4

The PHA and Dempsey-Macon Associates (Owner) agree to the following:

- 1. The Section 8 Docket contains the approved Final Proposal for the project. The Section 8 Docket is located in the Housing Programs Branch, Atlanta Area Office of HUD.**
- 2. Said approved final proposal is incorporated into the Housing Assistance Payments Contract between the parties by reference.**

EXHIBIT 5

"In the event of a refunding of the obligations issued to finance the project, the Owner agrees to a reduction in Contract Rents commensurate with the resulting decrease in mortgage debt service, and agrees that HUD may make a corresponding reduction in contract and budget authority for the project."

Attachment to Affirmative Fair Housing Marketing Plan

Re: Persons "Expected to Reside"

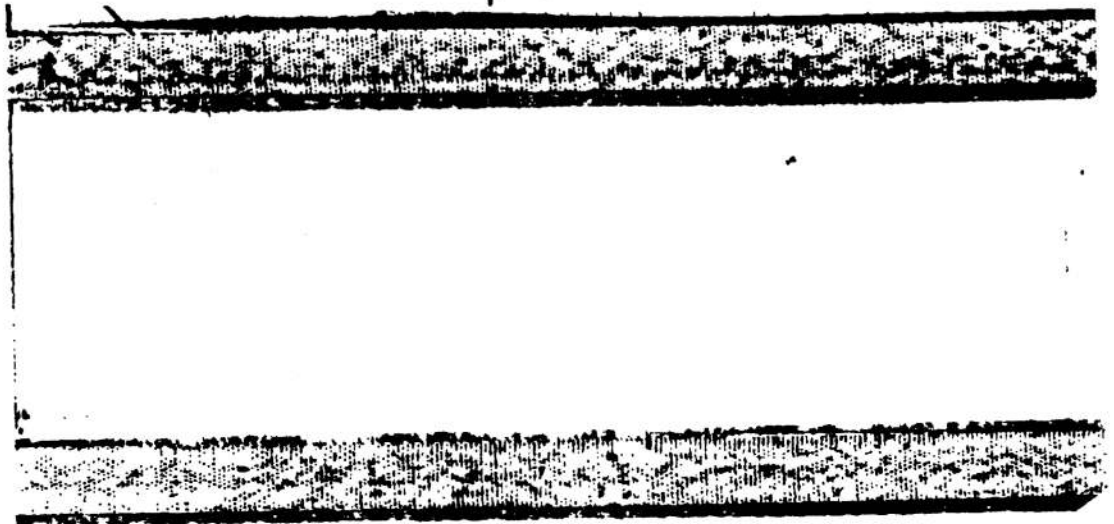
Dempsey Apartments #061-35325-PM-LB-WAH-SR-R

Affirmative marketing shall be taken to provide opportunities to rent to persons expected to reside in the community.

Outreach actions to be taken include contact with community organizations which primarily serve such persons; providing information to area businesses; distributing information to organizations which provide housing services; and establishing a referral system with the managers of public and private housing in the area.

RECEIVED
OCT 30 1981

p 3.f 3



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

PAGE 11 OF THE

HOUSING ASSISTANCE PAYMENTS CONTRACT
THE HOUSING AUTHORITY OF THE CITY OF
MACON, GEORGIA

By and between _____ (CA and
Dempsey-Macon Associates _____ (Owner .

Check Type of Project: Private-Owner HUD _____ or PHA-Owner HUD _____
(HUD is the Contract Administrator or "CA.")
or Private-Owner PHA X
(The PHA is the CA)

NEW CONSTRUCTION or SUBSTANTIAL REHABILITATION or PREVIOUSLY HUD-OWNED
Part 850 _____ Part 851 X Part 856, Subpart (_____
Part 855 _____ Part 855 _____

SECTION 8 PROJECT NUMBER: GA06-8023-006

FHA PROJECT NUMBER (if applicable): 061-35325-PM-L8-WAH-SR-R

2.1 OWNER'S WARRANTIES; AMENDMENTS.

- (a) Legal Capacity. The Owner warrants that it has the legal right to execute this Contract and to lease dwelling units covered by this Contract.
- (b) Completion of Work. The Owner warrants that the project as described in section 1.1 is in good and tenable condition and that the project has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract (Agreement) or will be completed in accordance with the Special Conditions for Acceptance (see attached exhibit, where applicable). The Owner further warrants that it will remedy any defects or omissions covered by this warranty if called to its attention within 12 months of the effective date of this Contract. The Owner and the CA agree that the continuation of this Contract shall be subject to the Owner meeting any Special Conditions for Acceptance.

2.2 FAMILIES TO BE HOUSED; CONTRACT ADMINISTRATOR (CA) ASSISTANCE.

- (a) Families To Be Housed. The Contract Units are to be leased by the Owner to eligible Lower-Income Families (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. (See also section 2.10.)

(b) CA Assistance.

- (1) The CA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable the Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act.
- (2) If there is a Utility Allowance and if the Allowance exceeds the total Family contribution, the Owner shall pay the Family the amount of the excess. The CA will pay funds to the Owner in trust solely for the purpose of making this payment. Any pledge by the Owner of payments properly payable under this Contract shall not be construed to include payments covered by this paragraph (b)(2). (See 24 CFR section 880.501(a), 881.501(a), or 886.509(a).)

2.3 MAXIMUM HOUSING ASSISTANCE COMMITMENT; PROJECT ACCOUNT.

- (a) Maximum Annual Contract Commitment. Notwithstanding any other provisions of this Contract (other than paragraph (b)(2) of this section) or any provisions of any other contract between the CA and the Owner, the CA shall not be obligated to make and shall not make any housing

assistance payments (or pay any fees where a PHA is a party to this Contract) for the purpose of authorizing terminations in the case of previously HUD-owned projects under this Contract in excess of the amount identified in section 1.1(c). However, this amount may be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents or pursuant to any other provisions of this Contract.

(b) Project Account.

- (1) A project account will be established and maintained by HUD, consistent with its responsibilities under section 8(c)(6) of the Act, as a specifically identified and segregated account for the project. The account will be established and maintained, in an amount determined by HUD, out of the amounts by which the Maximum Annual Contract Commitment under section 1.1(c) (for Private-Owner, HUD or PHA-Owner/HUD Projects) or Maximum ACC Commitment (for Private-Owner/PHA Projects) exceeds the amount actually paid out under the Contract or ACC each fiscal year. Payments will be made from the account for housing assistance payments (and fees for PHA administration) when needed to cover increases in Contract Rents or decreases in tenant rents and for other costs specifically approved by the Secretary.
- (2) If funds are available in the project account, the maximum annual contribution payable for any fiscal year will be increased by the amount, if any, as may be required for housing assistance payments (and fees where the CA is a PHA) to cover increases in Contract Rents or decreases in rents payable by Families and other costs approved by HUD.
- (3) Whenever a HUD-approved estimate of the required annual contribution for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum annual commitment, HUD will, within a reasonable period of time, take such additional steps authorized by section 8(c)(6) of the U.S. Housing Act of 1937 as may be necessary to assure that payments under the Contract and ACC (if applicable) will be adequate to cover increases in Contract Rents and decreases in rents payable by Families, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."
- (4) Any amount remaining in the account after payment of the last annual contribution with respect to the project shall be applied by HUD in accordance with law.

2.4 HOUSING ASSISTANCE PAYMENTS TO OWNERS.

(a) Housing Assistance Payments on Behalf of Families.

- (1) Housing assistance payments shall be paid to the Owner for units under lease for occupancy by Families in accordance with the Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of the rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.
 - (2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by the Family shall be subject to change by reason of changes in Family Income, Family composition, extent of exceptional medical or other unusual expenses or program rules in accordance with the HUD-established schedules and criteria; or by reason of a change in any applicable Utility Allowance approved or required by the CA. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease term.
- (b) Vacancies During Rent-up. If a Contract Unit is not leased as of the effective date of the Contract (or within 15 days of the effective date of this Contract in the case of previously HUD-owned projects), the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period

not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with section 2.2(d) of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on its waiting list, if any, requesting the FHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit in a manner specifically designed to reach eligible families, and (3) has not rejected any eligible applicants, except for good cause acceptable to the CA.

(c) Vacancies after Rent-Up. If an eligible family vacates a unit, the Owner is entitled to housing assistance payments in the amount (except as provided in paragraph (d) of this section) of 80 percent of the Contract Rent for the first 60 days of vacancy if the Owner:

- (1) Certifies that it did not cause the vacancy by violating the lease, the Contract or any applicable law or by moving a Family to another unit;
- (2) Notified the CA of the vacancy or prospective vacancy and the reasons for it immediately upon learning of the vacancy or prospective vacancy;
- (3) Has fulfilled and continues to fulfill the requirements specified in paragraphs (b)(1), (2), and (3) of this section; and
- (4) Certifies that any eviction resulting in a vacancy was carried out in compliance with section 2.9.

(d) Payments for Vacancies after Initial Occupancy in Previously HUD-Owned Projects. In the case of previously HUD-owned projects, the Owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the Family's share of the rent for this period, the payment for the vacancy period must be reduced to an amount which, when added to the Family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. Paragraphs (c)(1) through (4) apply.

(e) Vacancies for Longer than 60 Days. Except for previously HUD-owned projects not requiring substantial rehabilitation, if an assisted unit continues to be vacant after the period specified in paragraph (b), (c) or (d) of this section, the Owner may apply to receive additional payments for the vacancy period in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (see Exhibit 2) for up to 12 additional months for the unit if:

- (1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;
- (2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b), (c) or (d) of this section, as appropriate; and
- (c) The owner has demonstrated to the satisfaction of HUD that:
 - (i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and
 - (ii) The project can achieve financial soundness within a reasonable time.

(f) Prohibition of Double Compensation for Vacancies. The owner is not entitled to payments for vacant units to the extent it can collect for the vacancy from other sources (such as security deposits, other amounts collected from the Family, payments from the CA under section 2.8(b), and governmental payments under other programs). If the Owner collects any of the Family's share of the rent for a vacancy period in an amount which, when added to the vacancy payment, results in more than the Contract Rent, the excess must be reimbursed as HUD directs.

(g) CA Not Obligated for Family Rent. The CA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with section 2.8(b) of this Contract.

The financial obligation of the CA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

(h) Owner's Monthly Requests for Payments.

- (1) The Owner shall submit monthly requests to the CA or as directed by the CA for housing assistance payments. Each request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of each unit, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit 1 for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with section 2.2(b)(2)); and (v) the total amount of housing assistance payments requested by the Owner.
- (2) Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief (i) the dwelling units are in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, (iv) none of the amount claimed has been previously claimed or paid under this Contract, and (v) the Owner has not received and will not receive any payments or other consideration from the Family, the PHA, HUD, or any other public or private source for the unit beyond that authorized in this Contract and the lease.
- (3) If the Owner has received an excessive payment, the CA (or HUD where the CA is a PHA), in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.
- (4) The Owner's monthly requests for housing assistance payments are subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.
- (i) Payments to Trustee by PHA Where It is the Lender. (See section 1.4 for applicability of this paragraph.) The amount of the housing assistance payment determined in accordance with the provisions of this Contract, up to the amount of the mortgage repayments due the PHA from the Owner pursuant to the mortgage loan made by the PHA for the project, shall be credited to the Owner and transferred monthly by the PHA from the account maintained under the General Depository Agreement pursuant to the ACC to the trustee under the note or bond resolution of the PHA under which the notes or bonds to provide the mortgage loan were issued. Any amount of the housing assistance payment in excess of such credit shall be paid by the PHA directly to the Owner.

2.5 MAINTENANCE, OPERATION AND INSPECTION.

- (a) Maintenance and Operation. The Owner agrees to maintain and operate the Contract Units, unassisted units, if any, and related facilities to provide Decent, Safe, and Sanitary housing including the provision of all the services, maintenance and utilities set forth in section 1.1(e). The Owner also agrees to comply with the lead-based paint regulations at 24 CFR Part 35. If the CA determines that the Owner is not meeting one or more of these obligations, the CA shall have the right to take action under section 2.21(b).
- (b) Inspection.
- (1) Prior to occupancy of any Contract Unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed or approved by the CA, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the forms. The Owner shall keep copies of these reports on file for at least three years.
 - (2) The CA shall inspect or cause to be inspected the Contract Units and related facilities at least annually and at such other times (including prior to initial occupancy and re-renting of any unit) as may be necessary to assure that the Owner is meeting its obligation to maintain the units in Decent, Safe, and Sanitary condition including the provision of the agreed-upon utilities and other services. The CA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.
- (c) Units Not Decent, Safe, and Sanitary. If the CA notifies the Owner that it has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the CA may exercise any of its rights or remedies under the Contract, including reduction or suspension of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the CA does not have other section 8 funds for such purposes, the CA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of rent payable by the Family.
- (d) Notification of Abatement. Any reduction or suspension of housing assistance payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Family of any such abatement.
- (e) Overcrowded and Underoccupied Units. Where the CA determines a unit is larger or smaller than appropriate for an eligible family, the Owner agrees to correct the situation in accordance with HUD regulations and requirements in effect at the time of the determination.

2.6 FINANCIAL REQUIREMENTS.

(a) Submission of Financial and Operating Statements.

The Owner must submit to the CA:

- (1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and
- (2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(b) Use of Project Funds. (Not applicable to Partially Assisted or Previously HUD-Owned Projects.)

- (1) Project funds must be used for the benefit of the project, to make mortgage payments, to pay operating expenses, to make required deposits to the replacement reserve in accordance with paragraph (c) of this section and to provide distributions

to the Owner as provided in paragraph (d). To the extent HUD determines that project funds are more than needed for these purposes, the surplus project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipt account. Withdrawals from this account will be made only with the approval of HUD and for project purposes, including the reduction of housing assistance payments. Upon termination of the Contract, any excess funds must be remitted to HUD.

- (2) In the case of HUD-insured projects, the provisions of this paragraph (b) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially-assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.

(c) Replacement Reserve. (Not applicable to Partially Assisted or Previously HUD-Owned Projects.)

- (1) The Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations.

(i) The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of the Contract. For staged projects, the obligation shall commence on a pro rata basis for units in each stage on the effective date of the Contract for that stage. The amount of the deposit to the replacement reserve will be adjusted each year by the amount of the automatic annual adjustment factor. See 24 CFR Part 555.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee or trustee for the bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

- (2) In the case of HUD-insured projects, the provisions of this paragraph (c) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially-assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.

(d) Limitation on Distributions. (Paragraphs (d)(2)-(4) are not applicable to Small, Partially Assisted or Previously HUD-Owned Projects.)

- (1) Nonprofit owners are not entitled to distributions of project funds.

- (2) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(i) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.

(ii) For projects for nonelderly families, the first year's distribution will be limited to 10 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.

(3) For the purpose of determining the allowable distribution, an Owner's equity investment shall be computed in accordance with HUD regulations and requirements.

(4) Any short-fall in return may be made up from surplus project funds (see paragraph (b)(1)) in future years.

(5) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program regulations, except in the case of small, partially assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance regulations.

2.7 RENT ADJUSTMENTS.

(a) Funding of Adjustments. Housing assistance payments will be made in amounts commensurate with Contract Rent adjustments under this section up to the maximum amount authorized under section 2.3.4 of this Contract.

(b) Annual Adjustments.

(1) Upon request from the Owner to the CA, Contract Rents will be adjusted on the anniversary date of the Contract in accordance with 24 CFR 885 and this Contract. See, however, paragraph (d).

(2) In the case of previously HUD-owned projects, the Contract Rents shall be adjusted in accordance with 24 CFR 886, Subpart C and this Contract.

(3) Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the annual adjustment result in Contract Rents less than the Contract Rents on the effective date of the Contract.

(c) Special Additional Adjustments. Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, assessments, and utilities not covered by regulated rates. The Owner must demonstrate that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by annual adjustments. The Owner shall submit to HUD supporting data, financial statements and certifications which clearly support the increase. See, however, paragraph (d).

(d) Overall Limitation. Notwithstanding any other provision of this Contract, adjustments after Contract execution or cost certification, where applicable, shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD; except to the extent that the differences existed with respect to the Contract Rents set at Contract execution or cost certification, where applicable.

(e) Incorporation of Rent Adjustment. Any adjustment in Contract Rents shall be incorporated into Exhibit I by a dated addendum to the exhibit establishing the effective date of the adjustment.

(f) Adjustment of Contract Rents based on Cost Certification.
(See section 1.4 for applicability of this paragraph.)

(1) Submission by Owner. Within 60 days after HUD accepts the project (or accepts the last stage, where applicable), or any extensions approved by HUD for good cause, the Owner will certify the actual costs estimated in the Final Proposal or Purchase and Use Plan of the replacement cost, operating expenses, income, and debt service, and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

- (i) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;
- (ii) For projects not insured by HUD, a simplified form of cost certification as prescribed by HUD will be completed and submitted.
- (c) HUD Review. Cost certifications will be subject to review by HUD. As part of this review, the Owner and/or contractor may be required to submit additional documentation.
- (3) Reduction of Contract Rents. If the Owner's certified costs provided in accordance with paragraph (f)(1) of this section, as approved by HUD, are less than the cost estimates provided in the Final Proposal or Purchase and Use Plan, the Contract Rents will be reduced accordingly.
- (4) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (f)(3) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PMA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
- (g) Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Obligations Issued by a Participating State Agency Not Subject to Part 611. (See section 1.4 for applicability of this paragraph.) After the project is permanently financed, the financing agency shall submit a certification to HUD specifying the actual financing terms. If the actual debt service to the Owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents or the Contract Rents then in effect shall be reduced commensurately and the amount of savings credited to the project account. The maximum annual Contract commitment (and the maximum annual ACC commitment, in the case of Private-Owner/PMA projects) will not be reduced.
- (h) Adjustment of Contract Rents to Reflect Actual Cost for Projects Subject to Part 611. (See section 1.4 for applicability of this paragraph.)
- (1) Submission by Owner and Financing Agency. The Owner and the financing agency shall submit certified statements as to the financing and other costs as required by Part 611 prior to final endorsement. Based on the certified statements, HUD will determine whether any reduction in initial Contract Rents is required under Part 611. Promptly after HUD notification, the Owner and the financing agency agree to amend the Contract to reduce the initial Contract Rents to the extent required by HUD. See sections 2.3(b)(5) and (6) of the Agreement, as appropriate.
- (2) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (h)(1) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PMA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
- (i) Adjustment of Contract Rents Due to Property Tax Exemption or Similar Savings. The Contract Rents may be reduced to reflect real property tax exemption or similar savings where the initial Contract Rents were approved on the assumption that the project would not receive the benefit of tax abatement or similar savings. The Owner agrees to notify the CA in the event such a project begins to receive such an exemption or similar savings so that the initial Contract Rents or the Contract Rents then in effect may be reduced.

4.5 MARKETING AND LEASING OF UNITS.

- (a) Compliance with Equal Opportunity Requirements. Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan (if required), shown as an exhibit, and with all regulations relating to fair housing advertising. Projects shall be managed and operated without regard to race, color, religion, creed, sex, handicap, or national origin and in the case of previously HUD-owned projects in accordance with the tenant selection factors shown as Exhibit f.
- (b) Security Deposits. The Owner agrees to comply with applicable section 8 regulations and other requirements, as revised from time to time, regarding security deposits and to comply with all State and local law.
- (c) Eligibility, Selection and Admission of Families.
- (1) Except for those families in previously HUD-owned projects determined by HUD at the time of the sale of the project to be eligible for section 8, the Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, computation of the amount of housing assistance payments on behalf of each selected Family and of total Family contributions and recordkeeping in accordance with applicable HUD regulations and requirements.
 - (2) The Owner shall not charge any applicant or assisted Family any amount in excess of the total Family contribution except as authorized by HUD.
 - (3) In the initial renting of the Contract Units, the Owner must lease at least 30 percent to Very Low-Income Families (determined in accordance with HUD-established schedules and criteria). However, if this requirement cannot be met for substantial rehabilitation or previously HUD-owned projects because of families already residing in the project, HUD may permit the leasing of less than 30 percent of the units to Very Low-Income Families. Thereafter the Owner shall exercise best efforts to maintain (or achieve and maintain) at least 30 percent occupancy of the Contract Units by Very Low-Income Families. In addition, at all times, the Owner will use its best efforts to achieve leasing to Families with a range of incomes so that the average of incomes of all Families in occupancy is at or above 40 percent of the median income in the area.
 - (4) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by HUD.
 - (5) (i) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family at least as often as required by HUD regulations or other requirements, and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with applicable HUD regulations and requirements.
 - (ii) If a family reports a change in income or other circumstances that would result in a decrease of total family contribution between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the total family contribution. The Owner may require in its lease that families report increases in income or other changes between scheduled reexaminations.
 - (iii) In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families and what the average Family income is. If there are fewer than 30 percent Very Low-Income Families in occupancy, or the average income is below 40 percent of the median, the Owner shall report the fact to HUD and shall adopt appropriate changes in its admission policies.
 - (iv) A Family's eligibility for housing assistance payments continues until its total Family contribution equals the total housing expense for the unit it occupies. The termination of

eligibility at this point will not affect the Family's other rights under the lease nor preclude resumption of payments as a result of later changes in income or other circumstances during the term of this Contract.

- (6) Where fewer than 100 percent of the units in the project are covered by this Contract, assisted families shall be dispersed throughout. At initial rent-up, the Owner shall lease the units identified in Exhibit 1 to eligible families. Thereafter, the Owner may lease other units of appropriate size and type to eligible families in accordance with Exhibit 1. For projects with units for both elderly and non-elderly families, the respective family types may be grouped together.
- (7) The Owner shall maintain as confidential all information relating to section 8 applicants and assisted families, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- (d) Rent Redetermination after Adjustment in Utility Allowance.
In the event that the Owner is notified of a CA determination approving or requiring an adjustment in the Utility Allowance applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected families and the amount of housing assistance payments.
- (e) Processing of Applications and Complaints. The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable HUD and PHA regulations and requirements and shall maintain records and furnish such copies or other information as may be required by HUD or the PHA.
- (f) Review - Incorrect Payments. In making housing assistance payments to Owners, the PHA or HUD will review the Owner's determinations under this section. If as a result of this review, or other reviews, audits or information received by the PHA or HUD at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or HUD shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

2.9 TERMINATION OF TENANCY OR SECTION 8 ASSISTANCE BY THE OWNER.

The Owner agrees not to terminate any tenancy of or assistance on behalf of an assisted family except in accordance with all HUD regulations and other requirements in effect at the time of the termination, and any State and local law.

2.10 REDUCTION OF NUMBER OF UNITS FOR FAILURE TO LEASE TO ELIGIBLE FAMILIES.

- (a) Limitation on Leasing to Ineligible Families. Except in the case of previously HUD-owned projects, the Owner may not at any time during the term of this Contract lease more than 10 percent of the assisted units in the project to families which are ineligible under section 8 requirements at initial occupancy without the prior approval of HUD. Failure on the part of the Owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. (See also section 2.21.)
- (b) Reduction for Failure to Lease to Eligible Families - New and Rehab Projects. If, at any time beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by families eligible under section 8 requirements at initial occupancy, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the Contract. HUD or the PHA may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible families is permitted in writing by HUD under paragraph (a) of this section.

(c) Reduction -- Previously HUD-Owned Projects.

If, at any time beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have all of the assisted units leased or available for leasing by families eligible under section 8 requirements at initial occupancy, HUD may, on 30 calendar days' notice, reduce the number of Contract units to not less than the number of Contract units under lease, plus 10 percent of such number if the number is 10 or more, rounded up. Failure by the Owner to make a reasonable effort to lease the units to eligible Families shall be a violation of the Contract and grounds for all legal remedies including those specified in paragraph (a) and section 2.21.

(d) Restoration. HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) or (c) of this section if:

- (1) HUD determines that the restoration is justified by demand,
- (2) The Owner otherwise has a record of compliance with its obligations under the Contract, and
- (3) Contract authority is available. (HUD will take such steps authorized by section 8(c)(6) of the Act as may be necessary to carry out its agreement.

2.11 NONDISCRIMINATION.

- (a) General. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, national origin, or handicap.
- (b) Members of Certain Classes. The Owner shall not automatically exclude anyone from participation in, or deny anyone the benefits of, the Housing Assistance Payments Program because of membership in a class, such as unmarried mothers, recipients of public assistance, handicapped persons.
- (c) Title VIII of the Civil Rights Act of 1968. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, which prohibits discrimination in the sale, rental, financing and advertising of housing on the basis of race, color, religion, sex, or national origin, and any related rules and regulations.
- (d) Title VI of the Civil Rights Act of 1964 and Executive Order 11063. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 20002, et seq.; the HUD Regulations issued thereunder, 24 CFR, Subtitle A, Part 1; the HUD requirements pursuant to these regulations; and Executive Order 11063 and any regulations and requirements issued thereunder, to the end that, in accordance with that Act, Executive Order 11063, and the regulations and requirements of HUD, no person in the United States shall, on the grounds of race, color, creed, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of HUD, 24 CFR, Subtitle A, Part 1 issued under Title VI of the Civil Rights Act of 1964, HUD regulations issued pursuant to Executive Order 11063 and the HUD requirements pursuant to the regulations. The obligation of the Owner to comply therewith inures to the benefit of the United States of America, HUD, and the FHA (where the CA is a FHA), any of which shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Owner.
- (e) Section 504 of the Rehabilitation Act of 1973. The Owner shall comply with all the requirements imposed by section 504 of the Rehabilitation Act of 1973, as amended, and any related rules and regulations. Section 504 provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. Accordingly, the Owner (1) shall not discriminate against any qualified handicapped person on the basis of handicap and (2) shall

cause to be incorporated into all contracts executed in connection with this project a provision requiring compliance with rules and regulations issued pursuant to section 50--.

(c) Employees of Owner.

(1) In carrying out the obligations under this Contract, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. The Owner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The Owner will incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.

(3) Age Discrimination Act of 1975. The Owner shall comply with any rules and regulations issued or adopted by HUD under the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

2.12 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS.

The Owner and the PHA (where the CA is a PHA) agree to cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to or permitted by all applicable civil rights statutes, Executive Orders, and rules and regulations.

2.13 TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS. (See section 1.4 for applicability of this section.)

(a) The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(b) Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Contract. The requirements of the regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph (d) of this section in all contracts for work in connection with the project. The Owner certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

- (c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders issued thereunder prior to execution of this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to the sanctions specified by this Contract, and to such sanctions as are specified by 24 CFR, Section 135.135.
- (d) The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

- "A The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 16 U.S.C. 1701a. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- "B The parties to this Contract will comply with the provisions of section 3 and the regulations issued pursuant thereto by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- "C The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- "D The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by HUD, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- "E Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Housing Assistance Payments Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors, and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to these sanctions specified by the Housing Assistance Payments Contract, and to such sanctions as are specified by 24 CFR, Section 135.135."
- (e) The Owner agrees that it will be bound by the above section 3 clause with respect to its own employment practices when it participates in federally assisted work.

2.14 FLOOD INSURANCE. (See section 1.4 for applicability.)

The Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.15 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT. (See section 1.4 for applicability of this section.)

In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 C.F.R. Part 13, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7-21, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11735, the Owner agrees:

- (a) Not to utilize any facility in the performance of this Contract or a nonexempt subcontractor which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- (b) Promptly to notify the CA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- (c) To comply with all the requirements of section 114 of the Air Act and section 305 of the Water Act relating to inspection, monitoring, testing, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 305 of the Water Act, and all regulations and guidelines issued thereunder; and
- (d) To include or cause to be included the provisions of this Contract in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

2.16 REPORTS AND ACCESS TO PREMISES AND RECORDS.

- (a) The Owner shall furnish any information and reports pertinent to this Contract as reasonably may be required from time to time by HUD and the FHA (where the CA is a FHA).
- (b) The Owner shall permit HUD and the FHA (where the CA is a FHA) or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

2.17 DISPUTES.

(a) For Private-Owner/FHA Projects:

- (1) Any dispute concerning a question of fact arising under this Contract which cannot be resolved by the FHA and the Owner may be submitted by either party to the HUD Field Office which will promptly make a decision and furnish a written copy to the Owner and the FHA.
- (2) The decision of the Field Office will not be reviewable unless, within 30 calendar days from the date of receipt of the Field Office's determination, either party mails or otherwise furnishes to HUD a written appeal with written justification addressed to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Field Office pending resolution of the appeal.

(b) For Private-Owner/HUD or FHA-Owner/HUD Projects:

Any dispute concerning a question of fact arising under this Contract which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Field Office, pending resolution of the appeal.

- (a) No person or entity in the following classes shall have an interest, direct or indirect, in this Agreement or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter:
- (1) any member or officer of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;
 - (2) (i) any employee of the PHA (where it is the CA or the Owner) who formulates policy or influences decisions with respect to the section 8 project;
(ii) any other employee of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;
 - (3) any member of the governing body or the executive officer of the locality (city or county) in which the project is situated;
 - (4) any member of the governing body or executive officer of the locality (city or county) in which the PHA (where it is the CA or the Owner) was activated;
 - (5) any other State or local public official (including State legislators), who exercises any functions or responsibilities with respect to the section 8 project;
 - (6) any PHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the project, including an interest by reason of membership on the board of the PHA which is the CA (except an employee who does not formulate policy or influence decisions with respect to the section 8 project may have an interest as a tenant).
- (b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the section 8 program or in a section 8 project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the PHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the PHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to the HUD Headquarters, with appropriate recommendations from the Field Office, for a determination of whether a waiver will be granted.
- (c) No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to an Agreement or a Contract executed, or to be executed, on his or her behalf, or with respect to an Agreement or a Contract to which this person is a party.
- (d) The Owner shall insert in all contracts, subcontracts, and arrangements entered into in connection with the project or any property included or planned to be included in the project, and shall require its contractors and subcontractors to insert in each of the subcontracts, the provisions of paragraphs (a) through (d).
- (e) The provisions of paragraphs (a) through (d) of this section shall not apply to a utility service if the rates are fixed or controlled by a governmental agency or applicable to the Depository Agreement.

2.19 INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise from it.

The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Contract, the Agreement, the ACC (if applicable), or the project or any part of them or any of its interest in them, without the prior written consent of HUD and the FHA where it is the CA. However, in the case of an assignment as security for the purpose of obtaining financing of the project, HUD (and the FHA where it is the CA) shall consent in writing, if HUD has approved the terms of the financing.

- (b) The Owner agrees to notify HUD (and the FHA where it is the CA) promptly of any proposed action covered by paragraph (a) of this section. The Owner further agrees to request the prior written consent of HUD (and the FHA where it is the CA).
- (c) (1) For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
- (i) A transfer by the Owner, in whole or in part,
 - (ii) A transfer by a party having a substantial interest in the Owner,
 - (iii) Transfers by more than one party of interests aggregating a substantial interest in the Owner,
 - (iv) Any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution of interests by any other method or means, and
 - (v) Any refinancing by the Owner of the project.
- (2) An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer. An assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.
- (3) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.
- (d) The Owner and the party signing this Contract on behalf of the Owner represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect to it.
- (e) Except where otherwise approved by HUD, this Contract, the Agreement, and the ACC (if applicable) shall continue in effect and housing assistance payments will continue in accordance with the terms of the Contract in the event:
- (1) Of assignment, sale, or other disposition of the project or this Contract, the Agreement, or the ACC,
 - (2) Of foreclosure, including foreclosure by HUD,
 - (3) Of assignment of the mortgage or deed in lieu of foreclosure,
 - (4) The FHA or HUD takes over possession, operation or ownership,
 - (5) The Owner prepays the mortgage.

Events of Default if PMA Defaults under Contract for Private-Residence

Events of Default. The occurrence of any of the following events, if the Owner is not in default, is defined as a default under this Contract:

- (i) If the PMA fails to perform or observe any term or condition of this Contract;
- (ii) If the Contract is held to be void, voidable, or ultra vires;
- (iii) If the power or right of the PMA to enter into the Contract is drawn into question in any legal proceeding; or
- (iv) If the PMA asserts or claims that the Contract is not binding upon the PMA for any such reason.

(2) Owner Request for HUD Determination of Default.

If the Owner believes that an event as specified in paragraph (a) has occurred, and the Owner is not in default, the Owner may, within 30 days of the initial occurrence of the event:

- (i) Notify HUD of the occurrence of the event;
- (ii) Provide supporting evidence of the default and of the fact that the Owner is not in default; and
- (iii) Request HUD to determine whether there has been a default.

(3) HUD Determination of Default and Curing of Default.

HUD, after notice to the PMA giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the PMA is in default and whether the Owner is not in default. If HUD determines that the PMA is in default and that the Owner is not, HUD shall take appropriate action to require the PMA to cure the default. If necessary for the prompt continuation of the project, HUD shall assume the PMA's rights and obligations under the Contract, including any funds. HUD shall continue to pay annual contributions with respect to the units covered by this Contract in accordance with the ACC and this Contract until reassigned to the PMA. All rights and obligations of the PMA assumed by HUD will be returned as constituted at the time of the return.

- (i) When HUD is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements, or
- (ii) When the Contract is at an end, whichever occurs sooner.

(4) Enforcement by Owner. The provisions of this paragraph (a) are made for the benefit of the Owner, the lender, the PMA where it is the lender and then only in its capacity as lender, and the Owner's other assignees, if any, who have been specifically approved by HUD prior to the assignment. These provisions shall be enforceable by these parties against HUD by suit at law or in equity.

(b) Rights of PMA and HUD if Owner Defaults under Contract.

(1) Events of Default.

A default by the Owner under this Contract shall result if:

- (1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease, including failure to correct any deficiencies

identified by the CA in connection with any annual or other inspection, or

- (ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Contract or under any Lease, or
- (iii) For projects with mortgages insured by HUD or loans made by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance or loan program with the insured mortgage, or with the regulatory agreement, or the Owner has filed any false statement or misrepresentation with HUD in connection with the mortgage insurance or loan.

(2) Determination of Default.

Upon a determination by the CA that a default has occurred, the CA shall notify the Owner and the lender, with a copy to HUD where the CA is a PHA, of

- (i) The nature of the default,
- (ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner and or the lender to cure the default), and
- (iii) The time within which the Owner and or the lender shall respond with a showing that all the required actions have been taken.

If the Owner and/or lender fail to respond or take action to the satisfaction of the CA (and HUD where the CA is a PHA), the CA shall have the right to take corrective action to achieve compliance, in accordance with paragraph (b)(3) or to terminate this Contract with HUD approval, in whole or in part, or to take other corrective action to achieve compliance in its discretion, or as directed by HUD (where the CA is a PHA).

(3) Corrective Actions.

Pursuant to paragraph (b)(2) of this section the CA, in its discretion or as directed by HUD (where the CA is a PHA), may take the following corrective actions either directly or in conjunction with or acting through a FWH:

- (i) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of this Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this Contract. If the CA takes possession, housing assistance payments shall continue in accordance with the Contract.
- (ii) Collect all rents and charges in connection with the operation of the project and use these funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage or other loan documents.
- (iii) Apply to any court, State or Federal, for specific performance of this Contract, for an injunction against any violation of the Contract, for the appointment of a receiver to take over and operate the project in accordance with the Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to the PHA and/or HUD arising from a default under any of the terms of this Contract could be irreparable and the amount of damage would be difficult to ascertain.

(i) Reduce or suspend housing assistance payments

(iv) Recover any overpayments.

For Private-Owner Projects where the PHA is the landlord.

Notwithstanding any other provisions of this Contract, in the event HUD determines that the Owner is in default of its obligations under the Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the PHA giving them a reasonable opportunity to take corrective action, to proceed in accordance with paragraph (b)(3).

(ii) In the event HUD takes any action under this section, the Owner and the PHA hereby expressly agree to recognize the rights of HUD to the same extent as if the action were taken by the PHA. HUD shall not have the right to terminate the Contract except by proceeding in accordance with paragraph (b)(1), (2), and (3) of this section and with the ACC.

(c) Remedies Not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Contract or the ACC, where applicable, shall not preclude the exercise of any other remedy under this Contract or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.21 RELATIONSHIP OF PARENT ENTITY PHA AS OWNER TO AGENCY OR INSTRUMENTALITY PHA UNDER PART 811.

The Parent Entity PHA agrees to perform the functions with regard to the Agency or Instrumentality PHA required by the HUD regulations pursuant to which the relationship between the two PHAs was established and to which HUD approved the Agency or Instrumentality PHA.

EXHIBIT C

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

PROPOSED PHASING OF APARTMENTS

	<u>Est. Delivery Date - End of Month</u>	<u>Total No. of Units</u>	<u>Unit Mix</u>	<u>Apt. Nos. (Tot.No.)</u>
PHASE I	12	76	64 - 1 bd. 12 - Eff.	605-623 (19) 705-723 (19) 805-823 (19) 905-923 (19)
PHASE II	13	76	59 - 1 bd. 17 - Eff.	206-224 (19) 305-323 (19) 405-423 (19) 505-523 (19)
PHASE III	14	<u>42</u>	41 - 1 bd. 1 - 2 bd.	All remaining apartments
		194 Total		

Modification Page 2

DECISION ACASO-1062 - Mod. #1
 (LS FE 18652 - March 21, 1980)
 Bibb County, Georgia

GRANTS

Boilermakers
 Electricians

Basic Hourly Rates	Fringe Benefits Payments			
	H & V	Pensions	Vocating	Education and/or Appr. Tr.
\$14.50	1.375	1.50		.01
12.13	.60	3% + .60		$\frac{1}{2}$ of 1%

Federal Register / Vol. 47, No. 44 / Friday, March 5, 1982 / Notices

9851

Exhibit D (p. 1 of 6)

Modification Page 2

DECISION #0680-1067 - Mod. #3 (WS 78 18652 - March 21, 1980) Bibb County, Georgia	Basic Hourly Rate	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or App. Tr.
<u>CHANGE:</u> Electricians	\$11.68	.60	3% + .60		$\frac{1}{2}$ of 1%

53918
Federal Register / Vol. 48, No. 210 / Friday, October 30, 1981 / Notices

p. 2 of 6

Modification Page 8

DECISION #GAND-1967 - W-1, 2, 3 (45 FR 16691 - March 21, 1980) Bibb County, Georgia <u>GRAND</u>	Basic Monthly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Boilermakers	\$12.90	1.375	1.20		.06

Federal Register / Vol. 46, No. 113 / Friday, June 12, 1981 / Notices

31171

Modification Page 4

DECISION #G286-1042 - P.L. #1 (45 FR 16652 - March 21, 1980) Bibb County, Georgia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bulldozers	\$11.75	1.277	1.10		.01
Electricians	10.93	.52	2% + .5		1/2 of 1%

Federal Register / Vol. 45, No. 189 / Friday, September 26, 1980 / Notices 64019

Address: Labor Relations Office, AAO
 75 Spring Street, S. W., Room 620
 Atlanta, Georgia 30303

REQUEST FOR DETERMINATION (Davis-Bacon Act as Amended
 AND RESPONSE TO REQUEST (and Related Statutes)

Approving HU Representative
Gene Bowen Brown
 Gene Bowen Brown, Wage Requirements Clerk
 Signature and Title

FOR DEPARTMENT OF HOUSING AND
 URBAN DEVELOPMENT USE

Wage Determination under the Davis-Bacon and Related Acts (This Decision is effective from the date of publication in the Federal Register without limitation as to time).

Federal Register Decision
 No.

NOTE: This Decision should not be used for this project without contacting this office and requesting any current modifications or supersedeas decisions.

GA-80-1062

Federal Register Volume
 Number and Date

Requesting Official - Name, Title, Agency or Organization

Telephone Number

Vol. 45, No. 57, 3/21/80

Bert M. King
 Washington, D. C.

202/296-0238

Prior Supersedeas Decision
 No. (If Any)

Date of Request

Estimated Advertising Date

Estimated Date of Contract
 Award

GA-76-1122

2/6/80

N/A

N/A

Estimated \$ value of Contract

Estimated Construction Start
 Date

Type of Work: Bldg. Highway

\$6,000,000

6/80

Resid. Heavy

Project Number and Location (City or Other Description)

County

State

Dempsey Hotel

Macon

Bibb

Georgia

Address to Which Determination Should be Mailed

Description of Work (Be Specific) 061-35325-PM-L8
 (GA-061-8023-006, Section 8)

Bert M. King
 Milton Abrams Associates
 1025 Connecticut Avenue, N. W.
 Washington, D. C.

Rehab.; High-Rise; Type III Construction; Elevators;
 All Public Utilities.

cc: FABRAP, Architects/Planners
 Suite 1400, The Equitable Bldg, Atlanta, GA 30303

SUPERSEDES DECISION

STATE: GEORGIA COUNTY: BIRMINGHAM
 DECISION NUMBER: GA90-1062 DATE: DATE OF PUBLICATION
 Supersedes Decision Number GA76-1122, dated October 22, 1976, in 41
 FR 4680).
 DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS - (does not include
 single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits Payments		
		H & W	Pensions	Vacation Education and/or App. Tr.
AIR CONDITIONING & HEATING MECHANICS	\$ 8.03			
BOILERMAKERS	10.70	1.05	1.10	.02
BRICKLAYERS	8.07			
CARPENTERS	7.25			
CARPET LAYERS	5.00			
CEMENT MASON	8.70			
DRYWALL FINISHERS	6.00			
ELECTRICIANS	10.28	.60	14.10	4 of 14
GLAZIERS	5.80			
IRONWORKERS	9.50			
LABORERS	3.70			
LATHERS	8.25			
PAINTERS	6.00			
PLASTERERS	8.00			
PLUMBERS & PIPEFITTERS	9.50			
ROOFERS:				
ROOFERS	6.10			
WATERPROOFERS	7.35			
SHEET METAL WORKERS	6.92			
SOFT FLOOR LAYERS	6.00			
TILE SETTERS	6.00			
TRUCK DRIVERS	3.70			
<u>WELDERS - Rate for craft.</u>				
<u>POWER EQUIPMENT OPERATORS:</u>				
Asphalt spreader	4.00			
Backhoe	8.15			
Crane	9.50			
Front end loader	5.49			
Motor grader	4.45			

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (2) CFR, 5.5 (a) (1) (iii).

NOTICE: OVERTIME PAY IS REQUIRED FOR ALL WORK PERFORMED OVER 8 HOURS PER DAY AND ALL WORK OVER 40 HOURS PER WEEK.

18652

Federal Register / Vol. 45, No. 57 / Friday, March 21, 1980 / Notices

U.S. Department of Housing and Urban Development
Office of Multifamily Housing Assistance Restructuring

Project-based Section 8

HOUSING ASSISTANCE PAYMENTS

FULL MARK-TO-MARKET RENEWAL CONTRACT

Dempsey Apartments

PREPARATION OF CONTRACT

Reference numbers in this form refer to notes at the end of the contract text. These endnotes are instructions for preparation of the Full Mark-To-Market Renewal Contract. The instructions are not part of the Renewal Contract

TABLE OF SECTIONS

1 CONTRACT INFORMATION	1
PROJECT	1
TYPE OF RENEWAL	1
2 TERM OF RENEWAL CONTRACT	2
3 DEFINITIONS	3
4 RENEWAL CONTRACT	4
a Parties	4
b Statutory authority	4
c Expiring Contract	4
d Purpose of Renewal Contract	5
e Contract units	5
5 EXPIRING CONTRACT – PROVISIONS RENEWED	5
6 CONTRACT RENT	6
a Initial contract rents	6
b Contract rent adjustments	6
(1) OCAF	6
(2) Procedure for rent adjustments during renewal term	6
(3) No other adjustments	7
7 OWNER WARRANTIES	7
8 OWNER TERMINATION NOTICE	7

9 HUD REQUIREMENTS	7
10 STATUTORY CHANGES DURING TERM	8
11 PHA DEFAULT	8
12 EXCLUSION OF THIRD-PARTY RIGHTS	8
13 WRITTEN NOTICES	9
SIGNATURES	10

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

Project-based Section 8

HOUSING ASSISTANCE PAYMENTS

FULL MARK-TO-MARKET RENEWAL CONTRACT¹

1 CONTRACT INFORMATION²

PROJECT

Section 8 Project Number GA068023006

Section 8 Project Number of Expiring Contract

N/A

FHA Project Number (if applicable) 06135325

Project Name Dempsey Apartments

Project Description³

The subject property was built around 1914 and was rehabbed in 1983 for residential use. There are 194 elderly units on site. The property is located in Macon, Georgia and sits on 0.7320 acres of land.

TYPE OF RENEWAL

Check this box for a project renewed under Section 515(a) of MAHRA

PARTIES TO RENEWAL CONTRACT

Name of Contract Administrator⁴

US Department of Housing and Urban Development

Address of Contract Administrator

Atlanta Regional Office

40 Marietta Street, Five Points Plaza

Atlanta, GA 30303-2806

Name of Owner⁵

Dempsey Macon Associates, Ltd.

Address of Owner

C/O Barkan Management Inc.

24 Farnsworth, 6th Floor

Boston, MA 02210

2 TERM OF RENEWAL CONTRACT

a The term of the Renewal Contract begins on

October 1, 2005.⁶

b Subject to the availability of sufficient appropriations to make housing assistance payments for any year in accordance with the Renewal Contract, as determined by HUD, the Renewal Contract shall run for a period of **Twenty(20)years**, beginning on the first day of the term.⁷ Further, Owner hereby acknowledges and agrees that it will accept any offer of renewal or extension of the Renewal Contract if the offer is in accordance with the terms and conditions specified in the Restructuring Commitment. Section 8 housing assistance payments to the Owner during the Renewal Contract

term shall only be made from budget authority appropriated by the Congress, and available for this purpose.

3 **DEFINITIONS.**

ACC. Annual contributions contract

Anniversary. The annual recurrence of the date of the first day of the term of the Renewal Contract.

Contract units. The units in the Project which are identified in Exhibit A by size and applicable contract rents.

Contract rent. The total monthly rent to owner for a contract unit, including the tenant rent (the portion of rent to owner paid by the assisted family).

HAP contract. A housing assistance payments contract between the Contract Administrator and the Owner.

HUD. The United States Department of Housing and Urban Development.

HUD requirements. The Restructuring Commitment, HUD regulations and other requirements, including amendments to the Restructuring Commitment and changes in HUD regulations and other requirements during the term of the Renewal Contract.

MAHRA. The Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of Public Law No. 105-65, October 27, 1997, 111 Stat. 1384ff), as amended by section 531 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law No. 106-74, October 20, 1999, 113 Stat. 1109ff).

OCAF. An operating cost adjustment factor established by HUD.

PHA. Public housing agency (as defined and qualified in accordance with the United States Housing Act of 1937. 42 U.S.C. 1437 et seq.).

Project. The housing designated in section 1 of the Renewal Contract.

Restructuring Commitment. That certain executed Restructuring Commitment previously entered into by Owner and Contract Administrator in connection with the Owner's participation in the Mark-to-Market Program.

Section 8. Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)

Renewal Contract. This contract, including applicable provisions of the Expiring Contract (as determined in accordance with section 5 of the Renewal Contract).

4 RENEWAL CONTRACT

a Parties

- (1) The Renewal Contract is a housing assistance payments contract ("HAP Contract") between the Contract Administrator and the Owner of the Project (see section 1).
- (2) If HUD is the Contract Administrator, HUD may assign the Renewal Contract to a public housing agency ("PHA") for the purpose of PHA administration of the Renewal Contract, as Contract Administrator, in accordance with the Renewal Contract (during the term of the annual contributions contract ("ACC") between HUD and the PHA).
Notwithstanding such assignment, HUD shall remain a party to the provisions of the Renewal Contract that specify HUD's role pursuant to the Renewal Contract, including such provisions of section 9 (HUD requirements), section 10 (statutory changes during term) and section 11 (PHA default), of the Renewal Contract.

b Statutory authority

The Renewal Contract is entered pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), and section 515(a) of the MAHRA.

c Expiring Contract

Previously, the Contract Administrator and the Owner had entered into a HAP Contract ("expiring contract") to make Section 8 housing assistance payments to the Owner for eligible families living in the Project. The term of the expiring contract will expire or terminate prior to the beginning of the term of the Renewal Contract.

d Purpose of Renewal Contract

- (1) The purpose of the Renewal Contract is to renew the expiring contract for an additional term. During the term of the Renewal Contract, the Contract Administrator shall make housing assistance payments to the Owner in accordance with the provisions of the Renewal Contract.
- (2) Housing assistance payments shall only be paid to the Owner for contract units occupied by eligible families leasing decent, safe and sanitary units from the Owner in accordance with statutory requirements, and with all HUD regulations and other requirements. If the Contract Administrator determines that the Owner has failed to maintain one or more contract units in decent, safe and sanitary condition, and has abated housing assistance payments to the owner for such units, the Contract Administrator may use amounts otherwise payable to the Owner pursuant to the Renewal Contract for the purpose of relocating or rehousing assisted residents in other housing.

e Contract units

The Renewal Contract applies to the Contract units.

5 EXPIRING CONTRACT – PROVISIONS RENEWED

- a Except as specifically modified by the Renewal Contract, all provisions of the Expiring Contract are renewed (to the extent such provisions are consistent with statutory requirements in effect at the beginning of the Renewal Contract term).
- b Any and all provisions of the Expiring Contract concerning any of the following subjects are not renewed, and shall not be applicable during the renewal term:
 - (1) Identification of contract units by size and applicable contract rents;
 - (2) The amount of the monthly contract rents;
 - (3) Contract rent adjustments; and
 - (4) Project account (sometimes called "HAP reserve" or "project reserve") as previously established and maintained by HUD

pursuant to former Section 8(c)(6) of the United States Housing Act of 1937 (currently Section 8(c)(5) of the Act, 42 U.S.C. 1437f(c)(5)). Section 8(c)(5) does not apply to the Renewal Contract, or to payment of housing assistance payments during the Renewal Contract term.

- c The Renewal Contract includes those provisions of the Expiring Contract that are renewed in accordance with this section 5.

6 CONTRACT RENT

a Initial contract rents

At the beginning of the Renewal Contract term, and until contract rents for units in the Project are adjusted in accordance with section 6b, the contract rent for each bedroom size (number of bedrooms) shall be the initial contract rent amount listed in Exhibit A, which is attached to and, by this reference, is hereby made a part of the Renewal Contract.

b Contract rent adjustments

(1) OCAF

During the term of the Renewal Contract the Contract Administrator shall annually, on the anniversary of the Renewal Contract, adjust the amounts of the monthly contract rents in accordance with HUD requirements by using an OCAF.

(2) Procedure for rent adjustments during renewal term

- (a) To adjust contract rents during the term of the Renewal Contract, the Contract Administrator shall give the Owner notice with a revised Exhibit A that specifies the adjusted contract rent amounts.
- (b) The revised Exhibit A shall specify the adjusted contract rent amount for each bedroom size as determined by the Contract Administrator in accordance with this section. The adjustment notice by the Contract Administrator to the Owner shall specify when the adjustment of contract rent is effective.

- (c) Notice of rent adjustment by the Contract Administrator to the Owner shall automatically constitute an amendment of the Renewal Contract.

(3) No other adjustments

Except for contract rent adjustments in accordance with this section, there shall not be any other adjustments of the contract rents during the term of the Renewal Contract. Special adjustments shall not be granted.

7 OWNER WARRANTIES

- a The Owner warrants that it has the legal right to execute the Renewal Contract and to lease dwelling units covered by the contract.
- b The Owner warrants that the rental units to be leased by the Owner under the Renewal Contract are in decent, safe and sanitary condition (as defined and determined in accordance with HUD regulations and procedures), and shall be maintained in such condition during the term of the Renewal Contract.

8 OWNER TERMINATION NOTICE

- a Before termination of the Renewal Contract, the Owner shall provide written notice to the Contract Administrator and each assisted family in accordance with HUD requirements.
- b If the Owner fails to provide such notice in accordance with the law and HUD requirements, the Owner may not increase the tenant rent payment for any assisted family until such time as the Owner has provided such notice for the required period.

9 HUD REQUIREMENTS

The Renewal Contract shall be construed and administered in accordance with all statutory requirements, the Restructuring Commitment, and with all HUD regulations and other requirements, including changes in HUD regulations and other requirements during the term of the Renewal Contract. However, any changes in HUD requirements that are inconsistent with the provisions of the Renewal Contract, including the provisions of section 6 (contract rent), shall not be applicable.

10 STATUTORY CHANGES DURING TERM

If any statutory change during the term of the Renewal Contract is inconsistent with section 6 of the Renewal Contract, and if HUD determines, and so notifies the Contract Administrator and the Owner, that the Contract Administrator is unable to carry out the provisions of section 6 because of such statutory change, then the Contract Administrator or the Owner may terminate the Renewal Contract upon notice to the other party.

11 PHA DEFAULT

- a This section 11 of the Renewal Contract applies if the Contract Administrator is a PHA acting as Contract Administrator pursuant to an annual contributions contract ("ACC") between the PHA and HUD. This includes a case where HUD has assigned the Renewal Contract to a PHA Contract Administrator, for the purpose of PHA administration of the Renewal Contract.
- b If HUD determines that the PHA has committed a material and substantial breach of the PHA's obligation, as Contract Administrator, to make housing assistance payments to the Owner in accordance with the provisions of the Renewal Contract, and that the Owner is not in default of its obligations under the Renewal Contract, HUD shall take any action HUD determines necessary for the continuation of housing assistance payments to the Owner in accordance with the Renewal Contract.

12 EXCLUSION OF THIRD-PARTY RIGHTS

- a The Contract Administrator does not assume any responsibility for injury to, or any liability to, any person injured as a result of the Owner's action or failure to act in connection with the Contract Administrator's implementation of the Renewal Contract, or as a result of any other action or failure to act by the Owner.
- b The Owner is not the agent of the Contract Administrator or HUD, and the Renewal Contract does not create or affect any relationship between the Contract Administrator or HUD and any lender to the Owner or any suppliers, employees, contractors or subcontractors used by the Owner in connection with implementation of the Renewal Contract.
- c If the Contract Administrator is a PHA acting as Contract Administrator pursuant to an annual contributions contract ("ACC")

between the PHA and HUD, the Contract Administrator is not the agent of HUD, and the Renewal Contract does not create any relationship between HUD and any suppliers, employees, contractors or subcontractors used by the Contract Administrator to carry out functions or responsibilities in connection with contract administration under the ACC.

13 WRITTEN NOTICES

- a** Any notice by the Contract Administrator or the Owner to the other party pursuant to the Renewal Contract shall be given in writing.
- b** A party shall give notice at the other party's address specified in section 1 of the Renewal Contract, or at such other address as the other party has designated by a contract notice. A party gives a notice to the other party by taking steps reasonably required to deliver the notice in ordinary course of business. A party receives notice when the notice is duly delivered at the party's designated address.

SIGNATURES

Contract administrator (HUD or PHA)

Name of Contract Administrator (Print)

United States Department of Housing and Urban Development

By: *Sue N. Burns*
Signature of authorized representative

Brenda R. Mull, Director, Project Management, Atlanta Multifamily Hub
Name and official title (Print)

Date 10/7/2005

Owner

Name of Owner (Print)

Dempsey Macon Associates, Ltd.

By: *Mel A. Barkan*
Signature of authorized representative

MEL A. BARKAN, General Partner
Name and title (Print)

Date 9/16/05

EXHIBIT A

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

Number of Contract Units	Number of Bedrooms	Utility Allowance	Contract Rent
29	0 Bedroom	\$0.00	\$515
164	1 Bedroom	\$0.00	\$585
1	2 Bedroom	\$0.00	\$695
	3 Bedroom	\$	\$
	4 Bedroom	\$	\$

**CERTIFICATION OF REDUCTION OF RENTS IN ACCORDANCE
WITH MORTGAGE RESTRUCTURING**

In accordance with the provisions of the Mortgage Restructuring and/or Rent Reduction for Dempsey Apartments (Property Name), which became effective on October 1, 2005, I, Dempsey Macon Associates, Ltd. (Owner) certify that gross rent changes have been completed for all residents receiving Section 8 Housing Assistance Payments under contract number GA068023006 from the Department of Housing and Urban Development. The Voucher for Rental Assistance Payments reflects the new rental amounts.

By: Dempsey Macon Associates, Ltd.
Name of Owner (Print)

BY [Signature]
Signature of Authorized Representative

WILLIAM A. BURMAN, General Partner
Name and Official Title (Print)

9/16/05
Date

**U.S. Department of Housing and Urban Development (HUD)
Project-based Section 8 Contract Administration**

**CONSENT TO ASSIGNMENT
OF HAP CONTRACT
AS SECURITY FOR FINANCING**

OMB Control #2502-0587

"Public reporting burden for this collection of information is estimated to average 1 hour. This includes the time for collecting, reviewing, and reporting the data. The information is being collected for obtaining a signature on legally binding documents and will be used to enforce contractual obligations. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it has a currently valid OMB control number. No confidentiality is assured."

Privacy Act Notice: The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in the form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

I. IDENTIFICATION OF ACC AND HAP CONTRACT

Annual Contributions Contract Number: _____
Section 8 HAP Contract Number: <u>GA06-8023-006</u>
Section 8 Project Number: <u>061-35325</u>
Project Name: <u>Dempsey Apartments</u>
Project Location:
<u>523 Cherry Street</u>
<u>Macon, Georgia 31201</u>

Re: Dempsey Apartments

II. NAMES

Contract administrator _____

National Housing Compliance

Contract administrator address

1975 Lakeside Parkway, Suite 310

Tucker, GA 30084

Owner UDA Dempsey, LLC

Owner address

200 Cherry Street, Suite 300

Macon, GA 31201

Attn: Alex Morrison, Executive Director

Lender Regions Bank, Trustee

Lender address

1180 West Peachtree Street, Suite 1200

Atlanta, GA 30309

Attn: Richard M. Jaegle

Re: Dempsey Apartments

III. DEFINITIONS

ACC. Annual Contributions Contract.

ASSIGNMENT AS SECURITY. The creation of a security interest in the owner's interest pursuant to the HAP Contract, and a transfer of such security interest to a successor secured party.

CONTRACT ADMINISTRATOR. HUD or a PHA acting as contract administrator under an ACC with HUD.

FULL ASSIGNMENT. An assignment of the HAP contract other than an assignment as security. "Full Assignment" includes a sale, conveyance or other transfer of the HAP Contract, voluntary or involuntary, to a successor in interest.

HAP CONTRACT. The Housing Assistance Payments Contract for units in the project. The HAP Contract was entered between the owner and the contract administrator pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

PHA. Public Housing Agency.

PROJECT. The project identified in section I of the consent to assignment.

SECURED PARTY. A party that holds a security interest in the owner's interest pursuant to the HAP contract, including the lender, and successors to the lender's security interest.

SUCCESSOR. The term "successor" includes an assignee.

Re: Dempsey Apartments

IV. BACKGROUND

Pursuant to the terms of the HAP Contract, the HAP Contract (including any interest in the HAP Contract or any payments under the HAP Contract) may not be assigned without the prior written consent of HUD.

The owner has advised the contract administrator that the owner wants to grant the lender a security interest in the HAP Contract, as security for a loan by the lender to the owner with respect to the project.

V. CONSENT TO ASSIGNMENT AS SECURITY

By execution of this consent to assignment as security, the HUD consents to the assignment as security of the HAP Contract by the owner to the lender as security for a loan by the lender to the owner with respect to the project.

HUD consents to transfer of the lender's security interest to successor secured parties.

VI. EFFECT OF CONSENT TO ASSIGNMENT

The contract administrator is not a party to the loan or the loan documents, nor to any assignment of the HAP Contract by the owner to the lender as security for the loan, nor to any transfer of the HAP contract or the loan by the lender. Issuance of the consent to assignment does not signify that HUD or the contract administrator has reviewed, approved or agreed to the terms of any financing or refinancing; to any term of the loan documents; or to the terms of any assignment of the HAP contract by the owner to the lender as security for the loan, or by the lender to any transferee of the loan.

The consent to assignment of the HAP Contract as security for the loan does not change the terms of the HAP Contract in any way, and does not change the rights or obligations of HUD, the contract administrator or the owner under the HAP Contract.

Re: Dempsey Apartments

The creation or transfer of any security interest in the HAP Contract is limited to amounts payable under the HAP Contract in accordance with the terms of the HAP Contract..

**VII. EXERCISE OF SECURITY INTEREST – ASSIGNEE
ASSUMPTION OF HAP CONTRACT OBLIGATIONS**

Notwithstanding HUD's grant of consent to assignment by the owner of a security interest in the HAP Contract to the lender as security for the loan, and to further transfer of such security interest to successor secured parties, HUD's execution of this consent does not constitute consent to a full assignment of the HAP contract to any entity, including the lender or any successor secured party.

A secured party may not exercise any rights or remedies against the contract administrator or HUD under the HAP Contract, and shall not have any right to receive housing assistance payments that may be payable to the owner under the HAP Contract, until and unless:

- HUD has approved the secured party as successor to the owner pursuant to the HAP contract, and
- The secured party seeking to exercise such rights or remedies, or to receive such payments, has executed and delivered, in a form acceptable to HUD in accordance with HUD requirements, an agreement by the assignee to comply with all the terms of the HAP Contract, and to assume all obligations of the owner under the HAP Contract.

Re: Dempsey Apartments

VIII. PAYMENT TO SECURED PARTY

When a secured party notifies the contract administrator, in writing, that housing assistance payments payable pursuant to the HAP Contract should be directed to the secured party (in accordance with paragraph VII above), the contract administrator may make such payments to the secured party instead of the owner. In making such payments, the contract administrator is not required to consider or make any inquiry as to the existence of a default under the loan documents, but may rely on notice by the secured party; and any payments by the contract administrator to the secured party shall be credited against amounts payable by the contract administrator to the owner pursuant to the HAP Contract.

IX. WHEN ASSIGNMENT IS PROHIBITED

The consent to assignment as security shall be void ab initio if HUD determines that any assignee, or any principal or interested party of the assignee, is debarred, suspended or subject to a limited denial of participation under 24 CFR part 24, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

Re: Dempsey Apartments

HUD

Name of Authorized Representative (Print)

By: Yolanda Perez
Signature of authorized representative

Name and official title (Print)

Date 10/16/2018

N/A

~~CONTRACT ADMINISTRATOR~~

~~Name of Authorized Representative (Print)~~

~~By: _____
Signature of authorized representative~~


~~Name and official title (Print)~~

~~Date _____~~

Re: Dempsey Apartments

OWNER AGREEMENT TO ASSIGNMENT AS SECURITY

The owner has read the terms of HUD's consent to assignment by the owner of a security interest in the HAP Contract to the lender as security for the loan, and to further transfer of such security interest to successor secured parties. In consideration for HUD's grant of such consent to assignment, the owner agrees to all the terms of the consent to assignment, and agrees that any assignment by the owner is subject to all such terms.

<p>OWNER</p> <p>Name of Owner (Print) <u>UDA DEMPSEY, LLC, a Georgia limited liability company</u></p> <p>By  _____ Signature of authorized representative</p> <p><u>J. Alexander Morrison, Manager</u> Name and title (Print)</p> <p>Date <u>9/27/2018</u></p>

Re: Dempsey Apartments

Exhibit C

Use Agreement

2

The Form of this Instrument was prepared by the Office of General Counsel of HUD, and the material in the blanks in the Form was inserted under the direction of: (and after recording the

Instrument should be returned to):

Jeffrey Drew Butt, Esquire
Squire, Sanders & Dempsey L.L.P.
One Tampa City Center
201 N. Franklin Street, Suite 2100
Tampa, Florida 33602-5164
Telephone: (813) 202-1300

RETURN TO
MARGARET R. BEMERICK
GUSH, CROWLEY, LEVERETT & LOBBETT
P.O. BOX 732
MADON, GA 31555-2332



Doc ID: 004287630017 Type: GLR
Filed: 09/27/2005 at 09:06:00 AM
Fee Amt: \$42.00 Page 1 of 17
Bibb County Superior Court
Dianne Brannen Clerk

BK 6792 PG 218-234

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

THIS USE AGREEMENT (this "Agreement") is made, as of Sept. 27, 2005, by and between Dempsey-Macon Associates, LP, a Georgia limited partnership (the "Owner"), and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C. (the "Secretary" or "HUD").

RECITALS:

A. The Owner is the owner of that certain real property located in the City of Macon, in Bibb County, in the State of Georgia, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property"), on which is constructed that certain rental apartment project known as Dempsey Apartments, FHA Project No. 06135642, formerly known as FHA Project No. 06135325 (the "Project" and, together with the Real Property, the "Property").

B. The Property is encumbered by that certain first lien mortgage loan (the "Loan") made to the Owner, or a predecessor in interest, by SunTrust Bank or a predecessor in interest, which Loan is evidenced and/or secured by that certain Security Deed Note dated May 18, 1982 in the original principal amount of Eight Million Three Hundred Twenty-Seven Thousand Eight

Hundred and 00/100 Dollars (\$8,327,800.00), that certain Security Deed of even date therewith, that certain Security Agreement dated of even date therewith and certain other instruments executed in connection with the Loan.

C. In connection with, as a condition to and in consideration for the Owner's participation in the Mark-to-Market Program, as authorized by the "Multifamily Assisted Housing Reform and Affordability Act of 1997," Title V of the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. No. 105-65, 111 STAT. 1384, approved 10/27/97), the Owner and the Secretary entered into that certain Restructuring Commitment dated April 8, 2005 as amended through the date hereof, pursuant to which the parties have agreed, among other things, that: (i) the Loan shall be fully prepaid; and (ii) the Project shall be subject to certain rental restrictions and other requirements, as set forth herein.

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

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

2. **Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the holder of a Certificate or a Voucher under

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation (hereinafter referred to as "Section 8").

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

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

9. Civil Rights Requirements. The Owner will comply with the provisions of any applicable federal, state or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of HUD implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107, and 110, and Subparts I and M of Part 200.

10. Housing Standards. The Owner agrees that, throughout the Term, it shall (a) maintain the Project in good repair and condition in accordance with applicable local codes and the Uniform Physical Condition Standards set forth in 24 CFR Part 5, Subpart G as amended; (b) maintain and operate the Units and related facilities to provide decent, safe and sanitary housing, including the provision of all services, maintenance and utilities; and (c) comply with the lead-based paint regulations set forth in 24 CFR Part 35,

as amended. If the Secretary determines that the Owner is not fully satisfying one or more of the foregoing obligations, the Secretary shall have the right to impose any remedies, administrative actions and/or sanctions provided under or authorized by applicable law and regulations, including without limitation as provided under 24 CFR Part 24.

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

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

13. Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth

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

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

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

16. Subsequent Modifications and Statutory Amendments. The Secretary may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement. The Secretary or his or her successors or assigns may also modify this Agreement, without consent of any other party, including those having the right of enforcement, to

require that any third party obtain prior HUD approval for any enforcement action concerning preexisting or future violations of the Use Agreement.

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

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

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

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

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

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

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

[Signatures Next Page]

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

WITNESS/ATTEST:

OWNER:

Constance A. Ballou
Print Name: Constance A. Ballou

Michael F. Callahan
Print Name: Michael F. Callahan

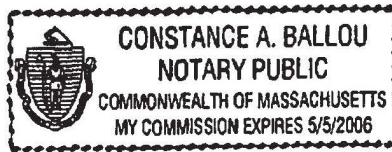
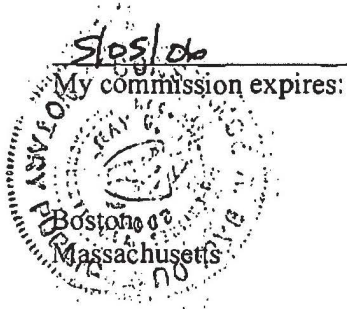
Dempsey-Macon Associates, LP, a Georgia limited partnership, formerly known as Dempsey-Macon Associates, a Georgia limited partnership d/b/a Dempsey Apartments

By: *Mel A. Barkan*
Mel A. Barkan, its sole general partner

Date: Sept. 27, 2005

Michael F. Callahan
Unofficial Witness

Constance A. Ballou
Notary Public



WITNESS:

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

Print Name: _____

By: _____
Authorized Agent
_____ Office

Print Name: _____

Date: _____, 2005

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

WITNESS/ATTEST:

OWNER:

Print Name: _____

Print Name: _____

Unofficial Witness

Notary Public

My commission expires:

Boston
Massachusetts

Dempsey-Macon Associates, LP, a Georgia limited partnership, formerly known as Dempsey-Macon Associates, a Georgia limited partnership d/b/a Dempsey Apartments

By: _____
Mel A. Barkan, its sole general partner

Date: _____, 2005

WITNESS:

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

Marilyn Murphy
Print Name: Marilyn Murphy

By: Larry D. Paik
Authorized Agent LARRY D. PAIK
Office

William Dzekashu
Print Name: WILLIAM DZEKASHU

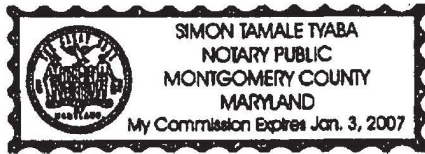
Date: Sept. 27, 2005

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I, SIMON TAMALE TYABA, a Notary Public in and for the State and County aforesaid, do certify that JERRY D. PAUK, whose name is signed to the writing above as the Authorized Agent of the Department of Housing and Urban Development, bearing date on the 21st day of SEPTEMBER, 2005, has acknowledged the same before me in my County aforesaid.

Given under my hand this 21st day of SEPTEMBER, 2005.

Simon Tamale Tyaba
Notary Public
My Commission expires: _____



[SEAL]

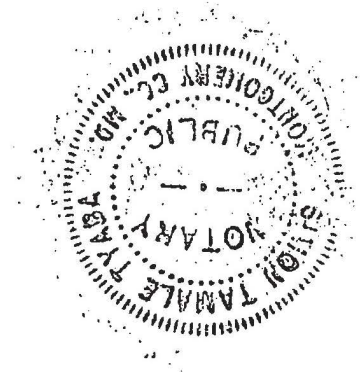


EXHIBIT A

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in the City of Macon, Bibb County, Georgia, and being all of Lot 1 and part of Lot 2 in Square 22 of the City of Macon and being more particularly described as follows:

BEGINNING at a nail set in the sidewalk at the intersection of the northerly right-of-way of Cherry Street and the westerly right-of-way of Third Street, said nail being the point of beginning; thence along the northerly right-of-way of Cherry Street on a bearing of north 66 degrees 06 minutes 48 seconds west for a distance of 127.95 feet to a nail on the northerly right-of-way of Cherry Street; thence north 23 degrees 38 minutes 36 seconds east along a building line between two buildings for a distance of 121.10 feet to a point on the building line; thence north 66 degrees 50 minutes 12 seconds west along a building line between two buildings for a distance of 3.33 feet to a building corner; thence north 23 degrees 47 minutes 00 seconds east along a building line for a distance of 23.12 feet to a building corner; thence north 66 degrees 31 minutes 24 seconds west along a building line and past the building corner for a distance of 77.57 feet to a brass disk set in the concrete of a 10 foot alley, also known as Second Street Lane; thence north 24 degrees 01 minutes 44 seconds east along the east side of Second Street Lane for a distance of 65.00 feet to a brass disk set in the concrete at the intersection of Second Street Lane and Wall Street, Wall Street being a 20 feet alley; thence south 66 degrees 11 minutes 04 seconds east along the south side of Wall Street for a distance of 208.50 feet to a nail set in the concrete sidewalk at the intersection of the westerly right-of-way of Third Street and the southerly side of Wall Street; thence south 23 degrees 41 minutes 00 seconds west along the westerly right-of-way of Third Street for a distance of 208.98 feet to the point of beginning. The above described tract contains 32,040 square feet or 0.7355 acres, and is more particularly described by a plat of survey prepared by Cowherd, Goodman & Associates, P.A., dated October 29, 1981, and revised November 11, 1981 and revised April 19, 1982, reference to which plat of survey is hereby made for all purposes of description.

EXHIBIT B

TENANT'S INCOME CERTIFICATION

Project: Dempsey Apartments

Tenant: _____

Unit: _____

Address: _____

ANTICIPATED INCOME

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

Name	Salary/Wages*	Other Income**	Total Income
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

* State the gross amount of compensation, before any payroll deductions, including any bonuses, overtime pay, tips, commissions or fees anticipated to be received during the next twelve months.

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

1. if net family assets (i.e.: the net cash value of capital investments after deducting the cost that would be incurred in disposing of the same) exceed \$5,000, the greater of (i) interest, dividends, rental income or other income derived from all such assets, and (ii) the value of such assets multiplied by the current passbook savings rate as determined by HUD;
2. if net family assets do not exceed \$5,000, interest, dividends, rental income or other income derived from all such assets;
3. net income from a profession or operation of a business;
4. regular or periodic payments received instead of earnings, such as unemployment compensation, worker's compensation and severance (but not including lump sum payments that are received only once);
5. periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits;

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

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

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

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

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

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

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

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

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

c. payments received for the care of foster children;

d. amounts that are specifically for medical expenses;

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

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

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

h. amounts received under training programs funded by HUD;

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

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

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

Executed this _____ day of _____, _____.

Tenant

EXHIBIT C

OWNER'S COMPLIANCE CERTIFICATION

Project Name: Dempsey Apartments
FHA Project #: 06135325
Owner: Dempsey-Macon Associates, LP
Total # of Units: _____

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

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

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

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

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

3. The undersigned hereby certifies that, as of the date of this Certification, (i) the Owner is not in default under any of the provisions of the Use Agreement, (ii) to the best of the Owner's knowledge, no default has occurred in the observance of any of the Owner's covenants contained in the Use Agreement which observance would have been undertaken by any person related to or controlled by the Owner, and (iii) to the best of the Owner's knowledge, no event has occurred in connection with the operation of the Project that has caused or will cause the Project to cease to meet the requirements of the Use Agreement.

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

OWNER:

**Dempsey-Macon Associates, LP, a Georgia
limited partnership, formerly known as
Dempsey-Macon Associates, a Georgia
limited partnership d/b/a Dempsey
Apartments**

**By: _____
Mel A. Barkan, its sole general partner**

Dated: _____, _____