

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

AHMED HALIM,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2019-1478

Appeal from the United States Court of Federal Claims
in No. 1:12-cv-00005-EDK, Judge Elaine Kaplan.

Decided: May 12, 2020

CARL COAN, III, Coan & Lyons, Washington, DC, for
plaintiff-appellant.

TANYA KOENIG, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, for defendant-appellee. Also represented by
JOSEPH H. HUNT, KENNETH DINTZER, ROBERT EDWARD
KIRSCHMAN, JR.

Before O'MALLEY, BRYSON, and CHEN, *Circuit Judges*.

BRYSON, *Circuit Judge*.

In 2006 and 2007, plaintiff Ahmed Halim purchased several apartment complexes from the Department of Housing and Urban Affairs ("HUD") at foreclosure sales in various cities. Mr. Halim entered into a series of contracts with HUD relating to his purchase and operation of the properties. Disputes arose with regard to Mr. Halim's proposal to self-manage one of the properties and his failure to complete repairs at the other three properties and to maintain the housing units at those properties in habitable condition. Based on its determination that Mr. Halim had breached his contractual obligations regarding the repair and maintenance of three of the properties and his failure to make satisfactory arrangements for the management of the fourth property, HUD retained funds that Mr. Halim had deposited pursuant to the contracts. Mr. Halim filed this action in the United States Court of Federal Claims ("the Claims Court") challenging HUD's retention of those funds. The Claims Court granted summary judgment to the government with respect to Mr. Halim's claims relating to all four properties. We affirm.

I

The first of the four properties addressed by the Claims Court was a 24-unit apartment complex in Flushing, Ohio, called the Nichols Townhomes Apartments. HUD held a foreclosure sale for the property in 2006. HUD advertised the foreclosure sale through a "bid kit."

The bid documents provided that the successful bidder would be required to submit a \$50,000 earnest money deposit immediately after the foreclosure sale. The bid documents also provided that the successful bidder would be required to submit certain forms relating to the bidder's ability to manage the property appropriately. If HUD

HALIM v. UNITED STATES

3

determined that the bidder/owner was unqualified to self-manage the property, HUD could require the bidder/owner to obtain the services of a qualified property management firm. If the bidder/owner failed to retain those services, HUD was entitled to reject the bid and retain the bidder's earnest money deposit. The successful bidder was required to sign a copy of an agreement entitled "Terms and Requirements of Foreclosure Sale—Acknowledgement by Bidder" that mirrored those requirements described in the bid documents.

Mr. Halim was the high bidder on the property. He signed the "Terms and Requirements of Foreclosure Sale—Acknowledgement by Bidder" agreement and submitted the \$50,000 earnest money deposit.

Mr. Halim advised HUD that he intended to self-manage the property, and he submitted various forms in support of his request to be permitted to manage the property without an independent management firm. After receiving the forms, HUD advised Mr. Halim that he had failed to demonstrate that he or his management company had the experience required to manage the property. Among other problems, HUD advised Mr. Halim that several of the forms were "incomplete or . . . in need of correction/clarification." In addition, HUD noted that Mr. Halim's statement in support of his intention to self-manage the property "does not indicate any previous experience in Project Based Section 8 [federally subsidized] housing, nor did you include any experience of company staff." HUD therefore advised Mr. Halim that he needed to retain a property management firm and that if he did not, HUD would reject his bid and retain his earnest money deposit.

Mr. Halim did not retain a property management firm as directed. Instead, he submitted revised forms to HUD in support of his request to self-manage the property. HUD concluded that the submitted documents, even as revised, failed to demonstrate that he was qualified to manage the

property. HUD therefore rejected his bid and retained his earnest money deposit.

The parties filed cross-motions for summary judgment. Mr. Halim argued that HUD acted in bad faith when it refused to permit him to self-manage the Nichols Townehomes property and canceled the sale. For that reason, he argued, HUD breached the contract's implied covenant of good faith and fair dealing.

The Claims Court rejected that argument. It noted that in order to demonstrate bad faith, Mr. Halim was required to show by clear and convincing evidence that HUD had the specific intent to injure Mr. Halim. The court held that Mr. Halim had not pointed to any evidence of bad faith on HUD's part. In addition, the court noted that Mr. Halim offered no evidence in support of his "bald assertion" that the forms he submitted in support of his request to self-manage the Nichols Townehomes property were "essentially the same" as the forms he had submitted in connection with other properties that he had been permitted to self-manage. The court added that Mr. Halim had offered no evidence that the contexts in which the forms were submitted in connection with the other properties were comparable to the Nichols Townehomes. The court therefore denied Mr. Halim's summary judgment motion and granted summary judgment to the government with respect to that property.

Before this court, Mr. Halim has not pressed his "bad faith" claim. Instead, he argues that HUD's rejection of his request to self-manage the property was arbitrary and capricious because HUD had allowed him to self-manage other properties. Before the Claims Court, however, Mr. Halim did not advance his current argument that HUD's actions were arbitrary and capricious. To be sure, at one point in his opposition Mr. Halim stated that HUD's actions were "arbitrary and made in bad faith." But the "arbitrary and capricious" argument was wholly undeveloped.

And Mr. Halim has not addressed the government's contention that in the trial court he argued that HUD had acted in "bad faith," while on appeal he argues that HUD acted "arbitrarily and capriciously." As such, we deem that argument waived. *See Fresenius USA, Inc. v Baxter Int'l, Inc.*, 582 F.3d 1288, 1296 (Fed. Cir. 2009) ("If a party fails to raise an argument before the trial court, or presents only a skeletal or undeveloped argument to the trial court, we may deem that argument waived on appeal.").

We also reject the "arbitrary and capricious" argument on the merits. Mr. Halim's entire argument is based on a short declaration created in connection with the litigation. In that declaration, Mr. Halim stated that HUD had approved him to self-manage five other properties, and that he was managing two of those properties at the time he submitted his bid on the Nichols Townehomes Apartments. He also stated that at least two of the forms he submitted to HUD to demonstrate his qualifications to self-manage the other properties were "essentially the same" as the version of those forms he submitted for the Nichols Townehomes Apartments.

Mr. Halim contends that because HUD allowed him to self-manage other HUD properties, it was required to permit him to self-manage this one. We disagree. The picture Mr. Halim paints, even viewed in the light most favorable to him, is not one of unfair conduct of the sort necessary to make out his claim of breach of an implied covenant. Mr. Halim does not address the merits of HUD's decision not to permit him to self-manage the Nichols Townehomes, except to argue that HUD's action in the case of the Nichols property was inconsistent with its actions in the case of other properties that he was allowed to self-manage. Yet the contract made clear that the decision whether to allow an owner to self-manage a property was within HUD's discretion. Rather than proving improperly restrictive conduct on HUD's part, Mr. Halim's declaration may simply

show that HUD treated him more leniently than it was required to with respect to those other properties.

Contrary to Mr. Halim's argument, HUD's decisions with respect to each property must be assessed based on the circumstances relating to that particular property. Mr. Halim has not provided any evidence that the circumstances relating to the Nichols property are comparable to the circumstances relating to any of the other properties.

Moreover, the fact that HUD may have permitted an owner to self-manage in one case cannot, in effect, estop the agency from concluding in another case that the owner should not be permitted to self-manage the property, where there is no evidence of affirmative misconduct on the part of the agency. See, e.g., *United States v. Ford Motor Co.*, 463 F.3d 1267, 1278–79 (Fed. Cir. 2006); *Dantran, Inc. v. U.S. Dep't of Labor*, 171 F.3d 58, 66–67 (1st Cir. 1999).

In short, Mr. Halim failed to demonstrate that HUD's decision with respect to this particular property was an impermissible exercise of its discretion. The Claims Court correctly ruled that the government was entitled to summary judgment that the government did not breach its agreement with Mr. Halim when it exercised its right to insist that he designate a management firm to manage the property rather than allowing him to manage the property himself.¹

¹ In passing, Mr. Halim says that because he did not submit one of his forms on time, his bid should have been rejected and his earnest money deposit refunded. According to Mr. Halim, that is another example of how HUD acted arbitrarily and breached its contract with him. It is not clear to us that Mr. Halim preserved that argument because it directly contradicts his allegations in the complaint. See Fourth Amended Complaint at 5, *Halim v. United States*, Case No.1:12-cv-00005 (Fed. Cl. Jan. 9, 2015) ("Plaintiff timely submitted all of the documents he

II

The second property addressed by the Claims Court was a 40-unit apartment complex in Schenectady, New York, known as the Schenectady 40 Apartments. HUD held a foreclosure sale for the property on May 31, 2006. The bid documents explained that the successful bidder would have to make certain specified repairs to the property to HUD's satisfaction within 24 months after closing. The attachment detailing the required repairs explained that the repairs would be considered completed only after (1) the purchaser provided written certification that the repairs were complete; (2) the purchaser requested a final inspection by HUD; and (3) HUD verified in writing that completion and compliance had been achieved. HUD estimated that the repairs would cost \$1,614,336 and required the purchaser to deposit \$403,584 in escrow as security for the repairs. In addition to requiring that certain enumerated repairs be completed, the bid documents separately said the purchaser would be responsible for making any other repairs necessary to meet applicable state and local codes.

Mr. Halim was the high bidder on the property at the HUD foreclosure sale. After the award, Mr. Halim entered into a Foreclosure Sale Use Agreement with HUD in July 2006. He agreed to complete the required repairs by July 2008 and secured a letter of credit for \$403,584 to cover the repair escrow deposit. The agreement stated that "HUD may cash the [letter of credit] and apply the funds to correct latent defects in the completed repairs if the purchaser is unable or unwilling to make such repairs" within the required timeframe.

was required to submit to HUD . . ."). In any event, Mr. Halim has not identified any authority requiring HUD to refund his deposit under those conditions.

In addition, Mr. Halim entered into a Housing Assistance Payment (“HAP”) contract with HUD. As part of that arrangement, Mr. Halim agreed to bring all the units into compliance with HUD’s Uniform Physical Condition Standards (“UPCS”). Unlike the other repairs Mr. Halim agreed to make, any UPCS repairs needed to be completed within 180 days. The parties’ agreement, however, required that after the initial 180-day grace period all the units had to be maintained “in good and tenantable condition, and in accordance with the UPCS” at all times during the HAP contract. Once the UPCS repairs were completed, Mr. Halim could begin billing HUD for HAP payments, which are subsidies that cover a portion of the tenants’ rent. HUD could inspect the units whenever it deemed it necessary to assure itself that the units were being maintained in compliance with the UPCS. If HUD determined that a single unit was not in compliance with the requirements of the UPCS, HUD could exercise any of its remedies under the parties’ agreement for “all or any” units subject to the HAP agreement. Those remedies included termination of the HAP agreement and recovery of any overpayments.

An inspector designated by HUD conducted several inspections of the property to determine whether the post-closing repairs had been completed and whether the units complied with the UPCS.² By March 2008, only 32 percent of the required post-closing repairs had been done.

² HUD’s inspector created two types of reports. In his “post-closing inspection” reports, he detailed how many of the repairs specified in the Foreclosure Sale Use Agreement had been completed. In his “UPCS inspection” reports, he detailed the extent of compliance with the UPCS, as required by the HAP agreement. We will likewise refer to “post-closing” repairs and UPCS inspection results separately.

In November 2008, HUD issued a formal notice that Mr. Halim was in breach of the Foreclosure Sale Use Agreement. HUD gave him an additional 12 months to perform the necessary repairs, but it added a condition to obtaining that extension. HUD required Mr. Halim to submit within 10 days of the letter a schedule for the satisfactory completion of all required repairs. HUD said that if it did not receive a response and/or schedule that was acceptable to the department within 10 days, HUD would take legal action, including retention of the cash held in the repair escrow.

In response to the notice, Mr. Halim offered to schedule a follow-up inspection, but he apparently did not offer a proposed schedule of repairs. HUD's inspector completed a two-day follow-up inspection on April 1, 2009. Only one of the 40 apartments passed the UPCS inspection. With respect to the post-closing repairs, the inspector noted that there had not been any substantial improvements since the previous inspection that had occurred more than a year earlier.

On June 22, 2009, HUD sent Mr. Halim a notice of default on the HAP agreement that directed him to correct all deficiencies within 30 days. A follow-up inspection in August 2009 determined that none of the 40 apartments passed the UPCS inspection. Only 38 percent of the post-closing repairs had been completed by that time.

HUD subsequently terminated the HAP contract with Mr. Halim. HUD also retained \$248,856 from the repair escrow, based on HUD's estimate that Mr. Halim had completed only 38 percent of the required post-closing repairs. In his complaint before the Claims Court, Mr. Halim alleged that HUD's retention of those funds breached the Foreclosure Sale Use Agreement. The complaint also alleged that Mr. Halim had maintained the Schenectady 40 property in accordance with UPCS, and that HUD had therefore improperly terminated the HAP agreement.

The government moved for summary judgment based on Mr. Halim's failure to complete the contractually required repairs by the specified deadline and his failure to maintain the units in compliance with the UPCS. Mr. Halim's opposition again rested almost entirely on the short declaration that he filed in connection with this litigation. In that declaration, Mr. Halim asserted, without any corroborating evidence, that he "completed all of the required repairs [at the Schenectady 40 property] by October 2009." He also stated that all the Schenectady 40 units had passed a UPCS inspection and that HUD was sending him subsidy payments for all 40 units. Mr. Halim also pointed to an October 2009 letter from the City of Schenectady's Bureau of Code Enforcement that stated that the units comprising the Schenectady 40 property had passed the city's inspection and had no outstanding code violations.

The Claims Court granted the government's motion, ruling that Mr. Halim's declaration was insufficient to avoid summary judgment as to the Foreclosure Sale Use Agreement, because his declaration was "conclusory and uncorroborated by any supporting documentation." Even if the declaration were credited, the court added, it would not be enough to avoid summary judgment. Mr. Halim stated in the declaration that he completed the repairs by October 2009. The Claims Court found that assertion to be immaterial because the deadline for completing post-closing repairs was in July 2008.

The court also granted the government's motion for summary judgment as to Mr. Halim's claim under the HAP contract, which required that each of the units be maintained in accordance with the UPCS at all times. Because the facts were not in dispute that the property was not in compliance with the UPCS as of the final deadline set by HUD in July 2009, the court held that HUD was entitled to terminate the HAP contract at that time.

1

We first address Mr. Halim's argument regarding the post-closing repairs. He contends that the Claims Court erred in granting summary judgment for the government, because his declaration that he had completed all the repairs by October 2009 created a genuine issue of material fact. In addition, he relies on the letter from the city Bureau of Code Enforcement, which stated that as of October 9, 2009, the Schenectady 40 properties had "no outstanding violations" and that "every property has passed inspections."

Neither of those documents creates a disputed issue of material fact as to whether Mr. Halim timely completed the post-closing repairs. First, we agree with the trial court that Mr. Halim's conclusory assertion in his declaration that he completed the work by October 2009 is not sufficient to create a genuine issue of material fact, in light of the substantial evidentiary showing to the contrary made by the government. *See Barmag Barmer Maschinenfabrik AG v. Murata Machinery, Ltd.*, 731 F.2d 831, 836 (Fed. Cir. 1984). Second, Mr. Halim was required to complete certain enumerated post-closure repairs to HUD's satisfaction, and he was separately required to make any repairs necessary to meet applicable state and local codes. The fact that the property may have complied with particular unspecified local code requirements does not speak to whether Mr. Halim had completed the repairs enumerated in the Foreclosure Sale Use Agreement to HUD's satisfaction.

Even if Mr. Halim had completed the post-closing repairs by October 2009, that fact was not material. The Foreclosure Sale Use Agreement required Mr. Halim to complete the post-closing repairs by July 2008. Mr. Halim's assertions in his declaration provide no basis for denying summary judgment to the government, because it contains no representation that the post-closing repairs were completed before October 2009, long after the July

2008 contractual deadline for those repairs to be completed.

We agree with the trial court that the July 2008 deadline was not extended. Although HUD's November 2008 notice of default on the Foreclosure Sale Use Agreement provided Mr. Halim with the opportunity to obtain a 12-month extension, that extension was conditioned on the receipt of a satisfactory plan for the schedule of the remaining repairs. Mr. Halim did not present any evidence that he ever submitted a proposed schedule of repairs.³

Mr. Halim argues that the fact that HUD conducted inspections after July 2008 "raised an inference that the deadline was extended." That argument is a non sequitur. HUD set a deadline to correct certain deficiencies. The fact that HUD inspected the property after the deadline to see if Mr. Halim had complied with the contractual requirements does not raise an inference that the deadline was extended.

In sum, HUD was within its rights to retain funds from the repair escrow because Mr. Halim did not timely complete the required post-closing repairs. The government was therefore entitled to summary judgment that Mr. Halim breached the Schenectady 40 Foreclosure Sale Use Agreement.

2

We also agree with the Claims Court that there was no disputed issue of material fact regarding Mr. Halim's asserted failure to maintain the Schenectady 40 property in accordance with HUD's Uniform Physical Condition

³ Even if the deadline were assumed to run from the notice of default on the HAP contract, Mr. Halim's alleged post-closing repairs would still be untimely. The letter declaring a default on the HAP contract set a deadline of July 2009.

Standards. The government points to numerous inspections that revealed a failure to comply with those standards throughout the entire period from the closing in 2006 until late 2009, in violation of the HAP agreement. In response, Mr. Halim relies on the letter from the City of Schenectady's Bureau of Code Enforcement regarding the absence of city code violations as of October 2009.

That document does not address the question whether the property was in compliance with HUD's Uniform Physical Condition Standards during the three-year period leading up to that date. As the trial court explained, HUD's Uniform Physical Condition Standards differ from local housing codes; even if the property complied with some unspecified city housing code requirements as of October 2009, that does not establish that the property was in compliance with the UPCS as of that date or throughout the period between 2006 and 2009. Furthermore, the date of the letter is October 9, 2009, well after the thirty-day deadline set by the June 22, 2009 notice of default on the HAP agreement.⁴

Moreover, Mr. Halim's allegation that all units had passed "an inspection" and that HUD was making HAP subsidy payments on all 40 units before HUD terminated the HAP agreement does not give rise to a genuine issue of material fact. HUD's remedies under the HAP agreement included the "recovery of overpayments." Thus, even if HAP did pay a subsidy for a unit, that does not lead to the conclusion that the unit was in compliance with the UPCS. We also agree with the government that Mr. Halim's conclusory assertions in his declaration that all units had

⁴ Mr. Halim also contends that HUD breached the implied covenant of good faith and fair dealing by not conducting another investigation after the city's letter in October 2009. We disagree. HUD had no obligation to reinspect the premises after it determined that Mr. Halim had failed to comply by the relevant deadline.

passed “an inspection” and that he was receiving subsidy payments are not sufficient to create a genuine issue of material fact, in light of the substantial evidentiary showing to the contrary made by the government. *Barmag*, 731 F.2d at 836.

Mr. Halim asserts in passing that HUD was not entitled to terminate the HAP agreement “until HUD provided the tenants at Schenectady 40 an opportunity to comment on the proposed termination of the HAP contract,” which HUD allegedly has not done. Mr. Halim waived that argument by not raising it below, *Fresenius*, 582 F.3d at 1296, and in any event, any violation of the tenants’ rights does not somehow negate the effect of his breach.

We therefore uphold the trial court’s ruling that the government was entitled to summary judgment that HUD’s termination of the HAP contract on the Schenectady 40 property was not a breach of Mr. Halim’s rights under that contract.

III

The third property addressed by the trial court was the Meadowbrook Apartments, a 51-unit apartment complex in Meridian, Mississippi. Mr. Halim was the successful bidder on that property at a HUD foreclosure sale. The parties closed on the property in January 2007. The Foreclosure Sale Use Agreement that the parties executed required Mr. Halim to complete certain repairs to HUD’s satisfaction within 24 months of closing. HUD estimated the cost of repairs to be \$2,003,276. Mr. Halim obtained a letter of credit in the amount of \$513,967 as security for his performance of the repair requirements. In addition, the parties entered into a HAP contract that required Mr. Halim to keep all units for which he would be receiving housing assistance payments in “good and tenantable condition” and in compliance with the UPCS requirements at all times. The HAP contract also provided that if HUD determined that any unit was not in accordance with the

UPCS, HUD could exercise its remedies under the contract for all or any of the units, including terminating the contract and the HAP payments.

The HUD-designated inspector conducted more than two dozen inspections of the property over the course of several years following Mr. Halim's purchase of the property in January 2007. The inspections included post-closing repair inspections and UPCS inspections. No more than 24 of the 51 units ever passed the UPCS inspections, and none of the inspection reports reflected that Mr. Halim completed all the required post-closing repairs.

In early 2009, HUD served Mr. Halim with a notice of violation of the Foreclosure Sale Use Agreement for failing to meet the 24-month repair deadline. In the notice, HUD stated that it was aware that the City of Meridian had declared Meadowbrook unfit for habitation and that the city intended to demolish the apartment complex if Mr. Halim did not show an "earnest intent to correct the property" to meet the minimum requirements of the city's housing code. On May 4, 2009, HUD issued a notice of default and stated that it was prepared to cash Mr. Halim's letter of credit.

In response, Mr. Halim requested a one-year extension, stating that he had retained a new contractor and promising to complete the work within that period. The Chief Administrative Officer of the City of Meridian contacted HUD to support the one-year extension request. Based on that endorsement and Mr. Halim's response, HUD agreed to grant an extension until January 31, 2010. HUD conducted regular inspections of the property during that one-year period. It determined that while some progress was made, much remained undone. Based on a final inspection six days before the expiration of the one-year extension, HUD determined that only 38 percent of the required post-closing repairs had been completed. At no point did all the units pass a UPCS inspection.

In March 2010, Mr. Halim requested, and HUD granted, a second one-year extension, until January 15, 2011, to complete the repairs. HUD granted that second extension in part based on the fact that the City of Meridian had granted Mr. Halim until that date to bring the property into compliance with the city's housing codes. Both the city and HUD told Mr. Halim that no further extensions would be granted.

During that year, Mr. Halim made some progress on the repairs, and HUD released a substantial portion of the funds it held in the repair escrow on account of that progress. An inspection on December 20, 2010, however, showed that while some progress had been made, a substantial amount of the required post-closing repairs remained undone. And only 24 of the 52 units passed the UPCS inspection at that time. A city official and Mr. Halim were present at that inspection, and the city official reminded Mr. Halim that he had to complete work by January 15, 2011, because the city would not grant Mr. Halim any further extensions.

Following the expiration of the second one-year extension, the City of Meridian issued a stop-work order on the property. HUD subsequently notified Mr. Halim that he violated the Foreclosure Sale Use Agreement and the HAP contract. Shortly thereafter, HUD terminated the HAP contract and retained the remaining portion of the escrowed funds.

In his complaint, Mr. Halim alleged that he had completed the post-closing repairs and that he had maintained the property in full compliance with HUD's Uniform Physical Condition Standards. In response to the government's motion for summary judgment, Mr. Halim abandoned his contention that he had completed the required repairs and argued, instead, that the stop-work order by the City of Meridian had rendered his performance impossible.

The parties filed cross-motions for summary judgment. The Claims Court granted the government's motion and denied Mr. Halim's motion. The court rejected Mr. Halim's impossibility argument on the ground that he had failed to show that it was objectively impossible to complete the repairs during the four-year period that he was given by HUD, including the two one-year extensions. In addition, the court explained that the defense of impossibility requires a demonstration of lack of fault on the part of the party asserting it. The court concluded that the un rebutted evidence showed that the stop-work order that Mr. Halim claims made it impossible for him to complete the repairs "was issued as a consequence of his own failure to meet the contractually imposed deadlines even after they were twice extended by a year."

On appeal, Mr. Halim continues to press his impossibility theory. He contends that because HUD did not issue its final notice of violation until December 2, 2011, he had until January 2, 2012, to complete the repair work. Because the stop-work order was in effect throughout much of the year leading up to that date, Mr. Halim argues that he was prevented, by causes beyond his control, from complying with his contractual obligations and therefore cannot be found to have been in breach of those obligations.

We disagree. The trial court was correct to conclude that Mr. Halim was directly responsible for the event that he claims rendered his performance impossible. That is, Mr. Halim's failure to complete the repairs at the property in a timely manner was what precipitated the city's stop-work order. His plea of impossibility is therefore not a viable defense to liability on the contracts. *See Seaboard Lumber Co. v. United States*, 308 F.3d 1283, 1294 (Fed. Cir. 2002).

Mr. Halim makes a further argument that there was a disputed issue of material fact as to whether he maintained the Meadowbrook property in accordance with HUD's

Uniform Physical Condition Standards. Mr. Halim's only evidence in support of that contention is that the Meadowbrook buildings received a certificate of occupancy from the city in early 2012. Whatever significance that fact may have had as to the property's compliance with city housing codes, it did not create a disputed issue of material fact as to whether all the units on the property complied with the separate requirements of the UPCS by the January deadline.

The trial court therefore properly granted summary judgment with regard to the Meadowbrook property.

IV

The fourth of the properties as to which Mr. Halim has appealed was the Beacon Light—Goodwill Baxter Apartments ("Beacon Light"), a 108-unit apartment complex located in Henderson, North Carolina. HUD held a foreclosure sale for that property in June 2007. At the time of the sale, the property was vacant and in distressed condition. The bid documents warned bidders of the poor physical condition of the property, noting that it had been damaged by fire and vandalism. Although the bid documents identified numerous issues with the physical condition of the property, the documents warned that bidders were expected to arrive at their own conclusions as to the physical condition of the property as well as "any other factors bearing upon valuation of the property." HUD advised prospective bidders that the condition of the property and the need to repair it should be factored into the bid price.

Mr. Halim was the high bidder on the Beacon Light property and completed the purchase in August 2007. He entered into a Foreclosure Sale Use Agreement with HUD at that time. The agreement required Mr. Halim to make certain repairs on the property within 24 months of closing, to convert the property from rental units into home ownership, and to sell the repaired homes to income-eligible purchasers.

Following the sale, city officials in Henderson complained to HUD that Mr. Halim had not done any significant work on the property and that there had been several fires at the site. HUD subsequently contacted Mr. Halim in March 2009 and threatened to declare him in default of the Foreclosure Sale Use Agreement if the required repairs were not completed by the August 2009 deadline. Mr. Halim requested an extension to complete the required repairs. HUD informed Mr. Halim that it would consider a request for an extension only if he submitted a work plan indicating the date by which the repairs would be completed. The record does not reflect that Mr. Halim submitted such a plan.

Immediately before the expiration of the 24-month period for making the required repairs, the city's mayor contacted HUD again to complain that the property had been allowed to deteriorate significantly during the previous two years. The mayor explained that no plans had been submitted to bring the property into compliance with the city's housing code and that no work had begun on repairing the property. The city notified HUD that it had adopted an ordinance to condemn the property and would begin demolition unless the property could be brought into compliance with the housing code requirements.

After the 24-month deadline for repairs had passed, Mr. Halim applied to the city for a special use permit and a zoning variance. The Beacon Light buildings were set back 18 feet from the street, in violation of the applicable local code requiring that they be set back at least 35 feet. The city denied his requests. In so doing, the city zoning board noted that the setback requirement was "reasonably discernible at the time that the applicant purchased the property" and that "the Applicant has done nothing to remove the burned out buildings or attempted to remedy or repair the buildings since the fires . . . thus making the conditions worse."

Shortly before the city denied Mr. Halim's zoning requests, Mr. Halim sought to return the property to HUD and requested that his escrow deposit be returned to him. HUD, however, declined his request and instead notified him that he was in default of the Foreclosure Sale Use Agreement. HUD advised him that it intended to exercise its rights under the contract and to retain the deposited funds. HUD subsequently released approximately \$400,000 from the escrowed funds to the city for the purpose of demolishing the property.

In his complaint, Mr. Halim alleged he was entitled to a refund of the purchase price of the property and the return of the repair escrow. He asserted that in light of the city's zoning ordinance regarding the setback requirements, he should be relieved of his contractual obligations under the doctrine of mutual mistake of fact.

The parties filed cross-motions for summary judgment. The Claims Court granted the government's motion and denied Mr. Halim's motion, rejecting Mr. Halim's mutual mistake argument. First, the court ruled that Mr. Halim's lack of due diligence made the doctrine of mutual mistake unavailable to him. Due diligence, the court concluded, would have led Mr. Halim to discover the setback ordinance and adjust his expectations, or decline to enter into the contract, particularly in light of Mr. Halim's experience in purchasing apartment complexes from HUD in foreclosure sales. Second, the court ruled that in connection with the Beacon Light purchase, the risk of encountering impediments such as zoning restrictions was placed on the purchaser. In particular, the court pointed out, the bid documents provided that prospective purchasers were "expected to acquaint themselves with the property, and to arrive at their own conclusions as to; physical conditions . . . and any other factors bearing upon the valuation of the property."

In his opposition to the government's summary judgment motion, Mr. Halim also argued that he was excused from the requirement of performance of his contractual obligations by the doctrine of impossibility. His performance under the contract was impossible, he contended, because the city's denial of a variance precluded him from performing. The Claims Court rejected that contention on two grounds. First, the court noted that Mr. Halim had not even applied for a variance until after the deadline for his performance had expired. Second, the court ruled that under his contractual arrangement with HUD, Mr. Halim "bore the risk that Beacon Light might not be in compliance with local zoning ordinances."

On appeal, Mr. Halim reprises his mutual mistake and impossibility arguments. As to mutual mistake, we agree with the trial court that with the exercise of due diligence Mr. Halim would have become aware of the zoning regulations. See *ConocoPhillips v. United States*, 501 F.3d 1374, 1380 (Fed. Cir. 2007) (citing *Restatement (Second) of Contracts* § 154 (1981)) ("a party bears the risk of a mistake when the party is aware, at the time the contract is made, that the party has only limited knowledge with respect to the facts to which the mistake relates but treats that limited knowledge as sufficient"); *Griffin & Griffin Exploration, LLC v. United States*, 116 Fed. Cl. 163, 175 (2014) ("[A] party cannot rely upon a mutual mistake of fact to avoid enforcement of a contract where, as here, the 'mistake' is a result of that party's failure to exercise due diligence."); see also *Collins v. United States*, 532 F.2d 1344, 1348 (Ct. Cl. 1976) ("Ignorance is never sufficient to constitute a ground of relief if it appears that the requisite knowledge might have been obtained by reasonable diligence.").

Moreover, the risk of unknown factors such as zoning regulations was expressly allocated to the purchaser. Zoning restrictions such as Henderson's fall within the category of "any other factors bearing upon the valuation of the

property.” Where the parties have allocated the risk of mistake to one of the parties, that party may not invoke the doctrine of mutual mistake to avoid its contractual obligations. *See Dairyland Power Co-op v. United States*, 16 F.3d 1197, 1202 (Fed. Cir. 1994). Mr. Halim’s impossibility argument fails on the same ground. *Seaboard*, 308 F.3d at 1295 (citations omitted) (“[N]o impossibility defense will lie where the ‘language or the circumstances’ indicate allocation of the risk to the party seeking discharge.”).

The Claims Court therefore properly granted summary judgment to the government with regard to the Beacon Light property.

AFFIRMED

In the United States Court of Federal Claims

No. 12-05C

(Filed: November 19, 2018)

AHMED HALIM,)	Keywords: Breach of Contract;
)	Department of Housing and Urban
)	Development; Foreclosure Sale; Section 8
Plaintiff,)	Housing; Statute of Limitations; Summary
)	Judgment; Mutual Mistake of Fact;
v.)	Impossibility
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

Carl A.S. Coan, III, Coan & Lyons, Washington, D.C., for Plaintiff.

Tanya B. Koenig, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, for Defendant, with whom were *Kenneth M. Dintzer*, Deputy Director, *Robert E. Kirschman, Jr.*, Director, and *Chad A. Readler*, Acting Assistant Attorney General. *Stacey E. Singleton*, Trial Attorney, U.S. Department of Housing and Urban Development, Of Counsel.

OPINION AND ORDER

KAPLAN, Judge.

Plaintiff Ahmed Halim purchased four apartment complexes from the Department of Housing and Urban Development (“HUD”) at four separate foreclosure sales. Under the foreclosure sales contracts, he was obligated to make specified repairs to the properties within two years of closing. He was also required to ensure that the properties were continuously kept in compliance with HUD’s Uniform Physical Condition Standards (“UPCS”). Compliance with the UPCS was also a condition of Mr. Halim’s receipt of Section 8 housing assistance payments pursuant to the Housing Assistance Payment (“HAP”) contracts he entered.

The claims in this case arose out of HUD determinations that Mr. Halim failed to meet these obligations. As a result of those determinations, HUD retained moneys that Mr. Halim had left in escrow to guarantee that the repairs would be done. It also terminated his entitlement to continued receipt of housing assistance payments.

In addition to his purchase of the four properties that are the primary subject of this action, Mr. Halim was the high bidder with respect to the sale of a fifth property but, for reasons set forth in detail below, HUD cancelled the sale. Mr. Halim claims that HUD acted in bad faith and in breach of contract when it retained the earnest money deposit it had collected from him as the successful bidder.

There are eleven counts in Mr. Halim's complaint. He seeks damages based on HUD's retention of the escrow money and its termination of rental assistance payments at two of the complexes he purchased. He requests rescission of the sales agreements for two other properties he purchased based on the doctrines of impossibility and mutual mistake of fact. And finally, he seeks damages to compensate him for HUD's retention of his earnest money deposit for the property sale that never closed.

The government has moved for summary judgment as to all eleven counts in Mr. Halim's complaint. Mr. Halim opposes the government's motion and has cross-moved for summary judgment as to eight of the eleven counts.

For the reasons set forth below, the government's motion for summary judgment as to Counts I through VIII in the complaint is **GRANTED**. Counts IX through XI are **DISMISSED** for lack of subject matter jurisdiction. Mr. Halim's motion for summary judgment is **DENIED**.

BACKGROUND

I. Procedural Background

As noted above, Mr. Halim's claims in this case relate to his interests in five apartment complexes that HUD offered for purchase at foreclosure sales. Mr. Halim purchased four of the properties. These are the Schenectady 40 complex in New York, the Meadowbrook apartment complex in Mississippi, the Beacon Light Apartments in North Carolina, and the Highland Village Apartments in Alabama. Each of these properties was in a significant state of disrepair at the time of purchase, and required substantial repairs to meet the obligations imposed by the foreclosure sales and HAP contracts Mr. Halim entered with HUD. As noted above, the legal disputes in this action concern the extent to which Mr. Halim met those obligations and, with respect to two of the properties, whether he was excused from meeting them by the doctrines of impossibility or mutual mistake of fact.

The fifth property is the Nichols Townhomes project in Ohio. Mr. Halim was the high bidder for the Nichols Townhomes, but HUD determined that Mr. Halim did not establish his qualifications to self-manage that property. When Mr. Halim failed to retain an independent property management firm as HUD had directed, the agency cancelled the sale and retained his earnest money.

Mr. Halim initiated this lawsuit on November 8, 2010, by filing a complaint against HUD in the United States District Court for the District of Columbia. In that complaint, he alleged breaches of the foreclosure sales and/or HAP contracts that covered the Schenectady 40 apartments, the Nichols Townhomes, and the Beacon Light Apartments. Compl. for Breach of Contract ¶¶ 4-21, ECF No. 1-1. Because he requested over \$1.5 million dollars in damages for those alleged breaches, the district court transferred the case to this court on October 11, 2011. Order, ECF No. 1-1 (citing 28 U.S.C. § 1346(a) (Tucker Act provision giving the Court of Federal Claims exclusive jurisdiction over contract claims against the United States that seek more than \$10,000 in damages)).

Mr. Halim filed a transfer complaint in this Court on February 8, 2012. Am. Compl. for Breach of Contract, ECF No. 5. In that complaint, he again alleged breaches of contract related

to the Schenectady 40 apartments, Nichols Townhomes, and the Beacon Light property. Id. ¶¶ 4–21. A few months later, on May 30, 2012, Mr. Halim filed an amended complaint, which added allegations of breach of contract related to the Meadowbrook apartment complex. 3d Am. Compl. for Breach of Contract ¶¶ 28–33, ECF No. 9; see also Order, ECF No. 10.

In the meantime, two months earlier, on March 9, 2012, Mr. Halim had filed a related pro se complaint in the United States District Court for the District of Columbia. See Halim v. United States, 106 Fed. Cl. 677, 680 (2012) (citing Compl., Halim v. Donovan, No. 12-384 (D.D.C. Mar. 9, 2012)); see also Halim v. Donovan, No. 12-384, 2013 WL 595891, at *1 (D.D.C. Feb. 15, 2013). In that action, he alleged that the Secretary of HUD as well as the city council, city manager, and mayor of Henderson, North Carolina had discriminated against him based on national origin and in violation of the Civil Rights Act of 1964, in connection with certain transactions related to the Nichols Townhomes, Beacon Light, and Schenectady 40. Halim, 106 Fed. Cl. at 683; see also Mot. to Dismiss, App. at A11–15, ECF No. 13-1.

On September 24, 2012, Chief Judge Emily Hewitt (who was then presiding over the present case) denied the government’s motion to dismiss for lack of subject matter jurisdiction but entered a stay of proceedings pending a decision in the discrimination case. Halim, 106 Fed. Cl. at 688–89. The district court dismissed Mr. Halim’s suit on July 1, 2013. See Halim v. Donovan, 951 F. Supp. 2d 201 (D.D.C. 2013). Judge Thomas C. Wheeler, who was presiding over the case after reassignment on June 26, 2013 (ECF Nos. 19, 20), lifted the stay on September 5, 2013. Order Lifting Stay, Docket Entry on September 5, 2013.

Thereafter, on November 25, 2013, the case was transferred to the undersigned. ECF No. 28. On March 24, 2014, Mr. Halim moved to substitute new counsel, and the Court granted that motion. ECF Nos. 30, 31. On January 9, 2015, Mr. Halim filed another amended complaint, which is the current operative pleading and which added claims related to a fifth property, the Highland Village Apartments. 4th Am. Compl., ECF No. 38.

II. The Claims Before the Court

In Count I of the current operative pleading, Mr. Halim alleges that HUD breached the Schenectady 40 Foreclosure Sale Use Agreement by failing to return his repair escrow. Id. ¶ 64. In Count II he alleges that HUD breached the Schenectady 40 HAP Contract by terminating it “on the erroneous basis that Plaintiff failed to maintain the [] Project in accordance with HUD’s UPCS.” Id. ¶ 68. Mr. Halim makes similar allegations with respect to the Meadowbrook Foreclosure Sale Use Agreement and HAP Contract in Counts III and IV. Id. ¶¶ 70–78. In Count V, Mr. Halim alleges that HUD breached the Nichols Townhomes sales agreement by cancelling the sale “on the erroneous basis that Plaintiff was not qualified to manage the [] Project.” Id. ¶ 82.

Counts VI, VII, and VIII all relate to Mr. Halim’s purchase of the Beacon Light Apartments in North Carolina. Id. ¶¶ 84–101. In Count VI, Mr. Halim seeks rescission of the Foreclosure Sale Use Agreement based on what he alleges was a mutual mistake of fact regarding whether the repairs required under the contract could be performed. Id. ¶ 84–88. Count VII alleges breach of an oral contract for the transfer of the Beacon Light property back to HUD. Id. ¶ 89–94. And in Count VIII, Mr. Halim alleges that HUD breached the Foreclosure Sale Use

Agreement when it gave his escrow funds to the City of Henderson to fund the demolition of the apartment complex. Id. ¶¶ 84–101.

Finally, Counts IX, X, and XI concern the Highland Village complex. Id. ¶¶ 102–118. In these Counts, Mr. Halim seeks rescission of the Foreclosure Sale Use Agreement on alternative grounds which include misrepresentation of fact by HUD, a unilateral mistake of fact by Mr. Halim, and mutual mistake of fact by the parties. Id.

III. The Cross-Motions Before the Court

On February 17, 2017, the government moved for summary judgment as to all eleven counts in the fourth amended complaint. Def.’s Mot. for Summ. J. (“Def.’s Mot.”) at 1, ECF No. 60. As to Counts I through VIII, the government contends that the material facts are not in dispute and that it is entitled to judgment as a matter of law. Id. at 7–8. With respect to Counts IX, X, and XI, the government contends that Mr. Halim’s claims are barred by the Tucker Act’s six-year statute of limitations, and should accordingly be dismissed. Id. at 9.

Mr. Halim opposes the government’s motion for summary judgment as to Counts I, II, and IV on the grounds that there is a genuine dispute of material fact regarding the condition and repair status of the Schenectady 40 and Meadowbrook properties. See Pl.’s Opp’n to Def.’s Mot. for Summ. J. & Cross-Mot. for Summ. J. (“Pl.’s Mot.”) at 5–6, ECF No. 73. He has cross-moved for summary judgment as to Count III, relating to the Foreclosure Sale Use Agreement at the Meadowbrook apartments. Id. at 26–28. He claims that he was relieved from his contractual obligations by the doctrine of impossibility and seeks return of his escrow money on that basis. He has also moved for summary judgment as to Counts V–VIII. Id. at 7–24.

Finally, because Mr. Halim and his attorney were not in agreement regarding the pursuit of Counts IX, X, and XI (see Pl.’s Unopposed Mot. for an Extension of Time, ECF No. 74), the Court gave Mr. Halim permission to file a response and cross-motion for summary judgment on those counts pro se. See Order, ECF No. 75; Pl.’s Opp’n to Def.’s Mot. for Summ. J. & Cross-Mot. for Summ. J. on Counts IX, X and XI of the Compl. (“Pl.’s Mot. IX–XI”), ECF No. 80.

The Court held oral argument on the cross-motions on October 16, 2018.

DISCUSSION

I. Summary Judgment Standards

In accordance with Rule 56(a) of the Rules of the Court of Federal Claims (“RCFC”), the court may grant summary judgment to a party “if the movant shows that there is no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law.” See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In ruling on a motion for summary judgment, all evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable factual inferences should be drawn in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 158–59 (1970).

“Once the moving party has satisfied its initial burden, the opposing party must establish a genuine issue of material fact and cannot rest on mere allegations, but must present actual evidence.” Crown Operations Int’l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citing Anderson, 477 U.S. at 248); see also Dairyland Power Co-op. v. United States, 16 F.3d 1197, 1202 (Fed. Cir. 1994) (citing Celotex, 477 U.S. at 325) (observing that the moving party “may discharge its burden by showing the court that there is an absence of evidence to support the nonmoving party’s case”). A fact is material if it “might affect the outcome of the suit under the governing law.” Anderson, 477 U.S. at 248 (1986). An issue of material fact is in genuine dispute if it “may reasonably be resolved in favor of either party.” Id. at 250.

II. Motion for Summary Judgment as to Count V: Nichols Townhomes

A. Material Facts Not In Dispute

The Nichols Townhomes is a twenty-four-unit apartment complex in Flushing, Ohio. Def.’s Mot., App. at A1. HUD held a foreclosure sale for the property on May 12, 2006. Id.

Pursuant to Section 1 of the bid kit provided to prospective purchasers at the foreclosure sale, HUD reserved the right to reject the bid of any prospective purchaser whom HUD determined “lacks the experience, ability or financial responsibility needed to own and manage the project.” Id. at A3. To facilitate HUD’s consideration of the purchaser’s qualifications, the successful bidder was required to complete and submit certain forms within ten days of the foreclosure sale. See id. at A4–5. The forms included, among others, the Bidder’s Property Management Statement; HUD Forms 9832 and 9839 (Management Entity Profile and Management Certification); and HUD Form 935.2 (the Affirmative Fair Marketing Plan). Id.

As pertinent to Mr. Halim’s claims regarding the Nichols Townhomes, the bid documents stated that “[i]f HUD determines that the Bidder/Owner entity is unqualified to self-manage the Project, HUD may require the Bidder/Owner entity to obtain the services of a qualified property management firm.” Id. at A13. In those circumstances, “[t]he Bidder/Owner entity must then provide HUD with evidence that a qualified property management firm has been retained prior to Closing.” Id. The bid documents warned that “[i]f [the] Bidder/Owner entity does not meet this obligation, HUD may reject the bid and retain the Bidder’s earnest money deposit.” Id.; see also id. at A123 (Attachment B – “Terms and Requirements of Foreclosure Sale”).

At the foreclosure sale for the Nichols Townhomes, Mr. Halim was the high bidder with an offer of \$266,000. Id. at A113, A128. HUD accepted his bid and deposited the \$50,000 earnest money check Mr. Halim had supplied. Id. at A114.

Pursuant to the terms of Rider 1 of the Foreclosure Sale Use Agreement for the Nichols Townhomes, Mr. Halim was required to complete and submit HUD forms to “demonstrate [his] ability to meet HUD requirements for purchase of the Project” by May 26, 2006. Id. at A123, A129. Further, consistent with the warnings in the bid documents, the Rider provided that “[i]f HUD determines that the Bidder/Owner entity is unqualified to self-manage the Project, HUD may require the Bidder/Owner entity to obtain the services of a qualified property management firm.” Id. at A123. If Mr. Halim failed to retain those services, the Rider provided, “HUD may reject the bid and retain the Bidder’s earnest money deposit.” Id.

On June 9, 2006, Ruth Pompa, Chief of the Sales Team at HUD's Fort Worth Multifamily Property Disposition Center, informed Mr. Halim that his Form 935.2 (the Affirmative Fair Marketing Plan), his Form 9832 (the Management Entity Profile), his Form 9839-A (the Project Owner's Certification for Owner-Managed Multifamily Housing Projects), and his Bidder's Property Management Statement were "incomplete or . . . in need of correction/clarification." Id. at A148. Specifically, she noted that on Mr. Halim's "Management Entity Profile" form, he had failed to "identify any professional memberships, licenses, certificates or accreditations which are related to property management activities." Id. at A148; see also id. at A136 ("Management Entity Profile"). Ms. Pompa advised that "[t]his indicates that there are no Certified Property Managers within [his] management company." Id. at A148. She also pointed out that Mr. Halim did not identify "any manuals or guides for staff" on the part of the form designed to inform HUD what "management procedures or operating manuals are used by on-site or supervisory staff." Id. In addition, Ms. Pompa advised Mr. Halim that his "Bidder's Property Management Statement [id. at A140] indicate[d] that [he was] proposing to self-manage the property" but that it did "not indicate any previous experience in Project Based Section 8 housing." Id. at A149.

Ms. Pompa notified Mr. Halim that "[b]ased upon [his] submission" HUD had determined that he had not proven that either he or his management company had "the experience required to manage the property." Id. In accordance with the terms of the bid documents and Rider 1 of the Foreclosure Sale Use Agreement, Ms. Pompa advised Mr. Halim, he "should immediately retain a property management firm and have them complete the required forms . . . no later than June 19, 2006." Id. She warned Mr. Halim that if he did not do so, "HUD may reject [his] bid and retain the Earnest Money Deposit." Id.

Notwithstanding this admonition, Mr. Halim did not retain a property management firm. Therefore, instead of having an independent firm complete the required forms, Mr. Halim submitted revised forms on his own behalf in late June 2006. See id. at A151-73; id. at A174.

Ms. Pompa found Mr. Halim's submission inadequate for three reasons. First, she observed that "[e]ven though our letter of June 9, 2006, specifically instructed you to obtain professional management, you still propose to self-manage." Id. at A174. Second, she concluded that the management documents Mr. Halim had submitted were still flawed. Id. In particular, she determined that "[t]he Statement of the services, maintenance and utilities does not comply with the services identified in the bid kit, specifically, Exhibit B of the HAP Contract." Id. In addition, she advised Mr. Halim, "pages 3 and 4 of the Management Certification form are missing." Id. Finally, Ms. Pompa stated that "[t]he revised Affirmative Fair Housing Marketing Plan is still not completed properly" as "[t]he responses are too general and must contain full and complete responses as required by the form." Id.

Ms. Pompa concluded that Mr. Halim did "not have the experience necessary to self-manage a Project-based Section 8 property based on [his] inability to complete the required HUD management forms according to printed instructions." Id. Because Mr. Halim had failed to "provide[] evidence that a qualified property management firm ha[d] been retained," HUD rejected his bid and retained his earnest money. Id.

B. Merits of Motions for Summary Judgment as to Nichols Townhomes

In Count V of his complaint, Mr. Halim seeks the return of his \$50,000 earnest money deposit. 4th Am. Compl. ¶ 83. He claims that HUD breached the foreclosure sale contract when it cancelled the sale based on what he claims was an “erroneous conclusion” that he lacked the qualifications to manage the Nichols Townhomes project. *Id.* ¶ 82.

The government has moved for summary judgment as to Count V. It contends that the undisputed facts demonstrate that Mr. Halim failed to hire an independent firm to manage the property, as HUD had directed. Def.’s Mot. at 13–14. Therefore, according to the government, HUD’s cancellation of the sale and its decision to retain Mr. Halim’s earnest money deposit were consistent with the terms of the sales agreement and the bid documents. *Id.*

Mr. Halim, in response, does not dispute that HUD had the discretion to determine whether or not he was qualified to self-manage the Nichols Townhomes project. Pl.’s Mot. at 22–23. He also does not deny that HUD had the discretion to retain his earnest money deposit if he declined to hire an independent management firm after being directed to do so. *See id.* He argues, however, that there exists a genuine issue of material fact as to whether HUD acted in bad faith in making those determinations. *Id.* Specifically, he contends: 1) that HUD had approved him to self-manage eight other projects, five before and three after he submitted his bid on Nichols Townhomes; and 2) that the “Management Entity Profile” and “Management Certification” he submitted as to those properties were “essentially the same” as the forms he submitted for the Nichols Townhomes project. *Id.* at 23 (citing Decl. of Ahmed Halim ¶¶ 19–20, ECF 73-2).

Mr. Halim has failed to introduce evidence sufficient to create a triable issue as to whether or not HUD acted in good faith when it cancelled the sale and retained his earnest money. The Federal Circuit and its predecessor court “have long upheld the principle that government officials are presumed to discharge their duties in good faith.” *Rd. & Highway Builders, LLC v. United States*, 702 F.3d 1365, 1368 (Fed. Cir. 2012) (citing *Am-Pro Protective Agency v. United States*, 281 F.3d 1234, 1239 (Fed. Cir. 2002); *T & M Distributions, Inc. v. United States*, 185 F.3d 1279, 1285 (Fed. Cir. 1999); *Torncello v. United States*, 681 F.2d 756, 770–71 (Ct. Cl. 1982); *Schaefer v. United States*, 633 F.2d 945, 948–49 (Ct. Cl. 1980); *Kalvar Corp. v. United States*, 543 F.2d 1298 (Ct. Cl. 1976); *Librach v. United States*, 147 Ct. Cl. 605, 614 (1959); *Knotts v. United States*, 121 F. Supp. 630, 631 (Ct. Cl. 1954)). Further, the court of appeals has held that “‘a high burden must be carried to overcome this presumption,’ amounting to clear and convincing evidence to the contrary.” *Id.* (quoting *Am-Pro*, 281 F.3d at 1239–40).

As noted above, “[a] nonmoving party’s failure of proof concerning the existence of an element essential to its case on which the nonmoving party will bear the burden of proof at trial necessarily renders all other facts immaterial and entitles the moving party to summary judgment as a matter of law.” *Dairyland Power Co-op*, 16 F.3d at 1202. In this case, Mr. Halim has fallen far short of providing proof that would enable a reasonable factfinder to conclude, based on preponderant—much less clear and convincing—evidence that HUD acted in bad faith when it found him unqualified to self-manage the Nichols Townhomes.

First, Mr. Halim's assertion that HUD approved his qualifications for other projects where he submitted "Management Entity Profile" and "Management Certification" forms that were "essentially the same" as those he submitted in connection with Nichols Townhomes is merely a bald assertion. Mr. Halim did not submit the forms into evidence so that the Court might determine whether or not they were, in fact, "essentially the same." Without the forms to review as a point of comparison, Mr. Halim's assertions that they were "essentially the same" are, at best, an expression of his opinion, not a fact.

Further, even assuming that the forms submitted in the other transactions were "essentially the same" as those submitted here, Mr. Halim has provided no evidence that would show that the contexts in which those forms were considered were comparable. The other foreclosure sales involved different properties and determinations made by other individuals and regional offices. For all the Court can tell, those decision-makers might have had before them other information which compensated for the deficiencies in the two forms which Mr. Halim alleges were "essentially the same" as those submitted in connection with the Nichols Townhomes project.

In any event, and perhaps most importantly, "[a] challenger seeking to prove that a government official acted in bad faith in the discharge of his or her duties must show a 'specific intent to injure the plaintiff' by clear and convincing evidence." *Id.* (quoting *Am-Pro*, 281 F.3d at 1240). In this case, Mr. Halim appears to be suggesting that HUD officials fabricated excuses to cancel the sale notwithstanding that he was the high bidder on the Nichols Townhomes. But he has not provided any evidence that the HUD officials considering his qualifications to purchase the Nichols Townhomes harbored any animus at all toward him, much less that they acted on such animus. *See Am-Pro*, 281 F.3d at 1241 (granting summary judgment as to allegation of bad faith where nothing in the plaintiff's affidavit suggested that the government had a specific intent to injure plaintiff or that its decisions were motivated by animus).

In short, the undisputed evidence shows that HUD's decision to withhold Mr. Halim's escrow money was entirely consistent with the foreclosure sale agreement and the bid documents. HUD determined that the forms Mr. Halim submitted did not establish his qualifications to self-manage the Nichols Townhomes. Mr. Halim then failed to take advantage of the opportunity HUD gave him to complete the sale by hiring an independent property management firm. The government is, accordingly, entitled to summary judgment as to Count V of the complaint.

III. Motion for Summary Judgment as to Counts I and II (Schenectady 40 Apartments)

A. Material Facts as to Which There Is No Genuine Dispute

1. Mr. Halim's Purchase of the Complex and His Agreements with HUD

The Schenectady 40 property is an apartment complex located in Schenectady, New York. Def.'s Mot., App. at A175. HUD held a foreclosure sale for the property on May 31, 2006. *Id.* Section 1 of the bid kit stated, under a heading in bold font entitled "Post-Closing Required Repairs," that "[r]epair requirements that must be completed after closing . . . are included in the Form HUD-9552, Post-Closing Repair Requirements, and Exhibits, Attachment E, to this

Invitation.” Id. at A177. It further provided that “[t]he repair requirements listed in Attachment E survive the sale and will be recorded with the Deed.” Id. The bid kit also notified prospective purchasers that they would be required to provide a letter of credit in the amount of \$403,584 to cover the cost of the required repairs, which was \$1,614,336. Id. at A180–82. In addition, it required that the repairs be completed “to HUD’s satisfaction within 24 months after closing.” Id. at A182.

Mr. Halim, the high bidder on Schenectady 40, entered a Foreclosure Sale Use Agreement with HUD on July 25, 2006. Id. at A188. Rider 1 to the agreement required Mr. Halim to maintain the property as affordable rental housing for a period of twenty years. Id. at A195. The agreement included a number of provisions governing Mr. Halim’s obligations to make necessary repairs to the property and to maintain its physical condition consistent with HUD standards.

Under the caption “Subject to Examination,” the agreement stated that “[t]he Project shall at all times . . . be maintained in decent, safe and sanitary condition to the greatest extent possible.” Id. at A188. Rider 2 to the agreement is entitled “Post-Closing Repair Escrow Requirements.” Id. at A196. In Rider 2, Mr. Halim “covenant[ed] to complete required repairs within twenty-four (24) months of Closing.” Id. Rider 2 also provided that “[t]o ensure completion, the Purchaser shall provide to HUD . . . an unconditional, irrevocable and non-documentary Letter of Credit” with an expiration date no sooner than six months past the deadline for completion of repairs. Id. It continued that “HUD may cash the LOC and apply the funds to correct latent defects in the completed repairs if the Purchaser is unable or unwilling to make such repairs within the six month period, or for such purposes as HUD deems appropriate.” Id.

Rider 7 concerned entitlement to Section 8 housing assistance payments. Id. at A201.¹ As a condition of receiving such payments, Mr. Halim agreed to “rehabilitate/repair the property to make the project units decent, safe and sanitary as defined by HUD and to complete the work in accordance with the HUD approved work write up and cost estimates.” Id. More specifically, he

¹ As the court of appeals explained in Haddon Hous. Assocs., Ltd. P’ship v. United States, 711 F.3d 1330, 1332–33 (Fed. Cir. 2013):

Section 8 of the Housing Act created a housing assistance program through which HUD subsidizes the rents of low-income individuals and families living in privately-owned homes and apartments. See 42 U.S.C. § 1437f. Building owners enter into HAP Contracts that obligate HUD to pay rent subsidies on behalf of low-income occupants. Id. Each HAP Contract establishes the maximum monthly rent, otherwise known as the “contract rent,” that a building owner is entitled to receive for a particular housing unit. 42 U.S.C. § 1437f(c)(1); 24 C.F.R. § 880.201. The tenants are obligated to pay a portion of the established monthly rent based on particular income guidelines, see 42 U.S.C. § 1437a, while the government pays a subsidy to the building owner to bridge the difference between the tenant obligation and contract rent. See 42 U.S.C. § 1437f.

agreed that he would begin rehabilitation within fourteen days after closing and that all contract units would be brought into compliance with HUD's UPCS within 180 days. Id.²

Rider 7 also reiterated Mr. Halim's obligation to complete the repairs specified in Attachment E (id. at A207–11) within twenty-four months, and stated that “[i]n the event the work is not commenced, diligently continued, or completed as required under this Rider, HUD reserves the right to rescind the sale or take other appropriate action it determines acceptable and within its authority.” Id. This Rider also provided that “[a]ny default” under the aforementioned provisions would also “constitute[] a default under the Housing Assistance Payments (HAP) Contract” that the parties simultaneously entered. Id. at A202.

The Foreclosure Sale Use Agreement contained a clause setting forth “remedies for noncompliance.” Id. at A188. It stated that “upon any violation of any provision of this Agreement” HUD could give notice of the violation to the purchaser, who would then have either thirty days or such further time as the Secretary identified, to correct the violation “to the satisfaction of the Secretary.” Id. at A188–89. If the violation was not corrected, then HUD could declare a default under the agreement, and seek appropriate remedies. Id.

Finally, in the HAP Contract, Mr. Halim agreed that he would “at all times during the term of the . . . contract” ensure that “[a]ll contract units . . . are in good and tenantable condition, and in accordance with the UPCS.” Id. at A225. Similarly, the HAP Contract required Mr. Halim to “maintain and operate the contract units and premises to provide decent, safe and sanitary housing in accordance with the UPCS.” Id. at A226. HUD was authorized to inspect the contract units and the premises on an annual basis, “and at any time [HUD] deems necessary to assure that the contract units and premises are in accordance with the UPCS.” Id. If HUD “determine[d] that a contract unit [was] not in accordance with the UPCS, [it could] exercise any of its remedies under the HAP contract for all or any contract units.” Id. Those remedies included “termination, suspension or reduction of housing assistance payments, and termination of the HAP contract.” Id.; see also id. at A228 (providing that an owner's failure “to comply with any obligation under the HAP contract, including the owner's obligations to maintain the units in accordance with the UPCS” is considered a default by the owner).

2. HUD's Inspections of Schenectady 40 and Its Determinations of Noncompliance

HUD contracted with Applied Engineering Solutions, Inc. (hereinafter “the HUD inspector”) to perform both the post-closing repair and UPCS inspections for the Schenectady 40 complex. The first UPCS inspections took place in August and November 2006. Id. at A242. Six

² By regulation, purchasers of property at HUD foreclosure sales must ensure that the property remains in compliance with the “physical condition standards for HUD housing that is decent, safe, sanitary and in good repair” which are set forth at 24 C.F.R. § 5.703. The property must be inspected at least annually to determine compliance with the standards and the inspections must be conducted “in accordance with HUD-prescribed physical inspection procedures.” 24 C.F.R. § 5.705.

of the thirty-three apartments inspected in August failed the inspection. Id. at A243. Those six apartments (as well as an additional five) failed inspection in November. Id.

The next month, in December, the HUD inspector conducted a post-closing inspection to determine Mr. Halim's progress on the completion of the repairs specified in the closing documents. Id. at A257. He noted that "[t]he majority of the work accomplished was only as necessary for the units to pass the UPCS." Id. at A258. He further observed that "[n]o major modernization program has been attempted" and that "[c]onsiderable work" was "still necessary to meet the Post-Closing requirements." Id.

HUD determined that Mr. Halim had completed 21% of the required repairs on the basis of the December report. Id. at A268. Therefore, HUD released \$86,144 from the letter of credit repair escrow to Mr. Halim in January 2007. Id.

On March 13, 2008, approximately four months before the expiration of the twenty-four-month contract repair deadline, the HUD inspector conducted both a UPCS and post-closing inspection. Id. at A271–89.³ The inspector checked the two apartments that had failed the prior UPCS inspections. Id. at A272. He concluded that they met the standards, but that "the work was of questionable quality" and he "instructed [Mr. Halim's new management agent] to complete some of the flooring and painting with better workmanship prior to leasing the units." Id.

As to the post-closing portion of the inspection, the HUD inspector again found that the "majority of the work accomplished to date . . . was only as necessary for the units to pass the UPCS inspection." Id. at A276. He also again noted that "[n]o major modernization program ha[d] been attempted" and that "[c]onsiderable work . . . [was] still necessary to meet the Post-Closing requirements." Id. The HUD inspector also recorded that Mr. Halim reported replacing certain roofs and completing "handicap modifications," but that the roofs had in fact only been "patched at best" and that "extensive work [was] required" on the handicap units "to meet the requirements of the Uniform Federal Accessibility Standards." Id.

3. HUD Notice of Breach

In November 2008, HUD sent Mr. Halim "official notice that [he was] in breach of the Foreclosure Sale Use Agreement," because the required post-closing repairs had not been completed within two years of closing. Id. at A290. HUD determined that only 32% of the required repairs had been completed as of the March 2008 inspection. Id. It noted that its inspector had contacted Mr. Halim on numerous occasions after March 2008 to schedule follow-up inspections, but that Mr. Halim had not agreed to a date and time. Id.

In its November 2008 notice, HUD gave Mr. Halim ten days to submit a schedule for the "satisfactory completion" of all repairs within the next twelve months. Id. HUD cautioned Mr. Halim that if it did "not receive a response and/or a schedule acceptable to the Department . . . [it

³ The cover letter for this UPCS inspection which is dated March 14, 2008, id. at A272, incorrectly identifies the inspection date as December 13, 2008. The attached inspection report is dated March 13, 2008.

would] take appropriate legal action, including, but not limited to, retaining the \$400,000 cash held in escrow by HUD to ensure acceptable completion of the repairs.” Id.

Mr. Halim appears to have responded to this notification by offering to schedule a follow-up inspection. See id. at A291. That inspection took place over two days, on March 31 and April 1, 2009. Id. at A292. On this occasion, only one of the forty apartments passed the UPCS inspection. Id. at A293. Among other things, stairs and walls were damaged, smoke detectors were missing, and doors were improperly secured or not latching. Id. at A293–94.

With respect to whether Mr. Halim had completed the required post-closing repairs, the inspector wrote that “it does not appear that any substantial improvements have been made since the time of . . . last inspection over a year ago.” Id. at A390. He further observed that “[t]he condition of many of the apartments and common spaces has deteriorated with many being damaged by vandals and water infiltration” and that “[m]ultiple apartments will remain uninhabitable without significant expenditures.” Id. “Because of the additional deterioration,” the inspector stated, “the amount of funds indicated in the attached Cost Estimate and HUD Form 9552 will in no way be sufficient to accomplish the needed repairs.” Id.

Approximately two months after the preparation of this report, on June 22, 2009, HUD sent Mr. Halim a notice of default, advising him that he was “in violation of the Housing Assistance Payments Contract.” Id. at A406. It stated that he was not “maintain[ing the property] in accordance with the terms of the Use Agreement and/or the HAP Contract.” Id. HUD directed Mr. Halim to take corrective action, including correcting all deficiencies, within thirty days. Id.

HUD’s inspector then conducted another follow-up inspection on August 11, 2009. Id. at A408. This time, all forty apartments failed the UPCS portion of the inspection. Id. at A409. With respect to the required post-closing repairs, the inspector noted that the plumbing had been replaced in the vandalized units, drywall repairs were in progress in all but two of those units, and “[s]ignificant upgrades had been accomplished in six apartments other than those vandalized.” Id. A504. Nevertheless, he noted that “more repairs [were] needed in those apartments to meet the Post-Closing Requirements.” Id. He described what he called “[s]elective work” that had been undertaken without a formal modernization program and characterized the repairs as “random in nature with no logical order.” Id. The inspector also reported that Mr. Halim was “continu[ing] to patch components and finishes such as roofs, cabinets, floors, etc. in lieu of replacing them as needed.” Id. at A504–05.

On October 6, 2009, HUD advised Mr. Halim that it was abating the HAP Contract because the August 11, 2009 inspection found that the violations referenced in its June 22, 2009 notice of default “ha[d] not been corrected.” Id. at A520. HUD subsequently sent Mr. Halim a formal “Notice of Abatement of Housing Assistance Payments and Termination of Section 8 Housing Assistance Payment Contract” dated October 30, 2009. Id. at A521. In that second letter, HUD wrote that “[d]ue to your continued failure to maintain the subject property in accordance with the Owner Certification section of the HAP Contract, you are hereby notified that [HUD] will be abating HAP payments,” and that once all eligible tenants were relocated, “the HAP contract [would] be terminated.” Id. at A521–22.

On July 7, 2010, HUD released \$68,584 to Mr. Halim from the repair escrow. It based the release of the funds on its inspector's last report, which had concluded that 38% of required repairs had been completed. Id. at A523. HUD thus retained \$248,856. See id.

B. Merits of Motions for Summary Judgment as to Schenectady 40

1. Count I—Failure to Timely Complete Repairs

Because the parties closed on the sale of Schenectady 40 on July 25, 2006, Mr. Halim was required to complete repairs on the property by July 24, 2008. See id. at A189, A196. He was formally advised on June 22, 2009 to take corrective action within thirty days. The record is undisputed, however, that as of at least August 11, 2009, the repairs had not been completed. The government has therefore moved for summary judgment as to Count I, which seeks damages for HUD's retention of the remaining \$248,856 in the repair escrow account.

Mr. Halim opposes the government's motion for summary judgment. Pl.'s Mot. at 31. He claims that there exists a genuine dispute of material fact with respect to whether all repairs had been completed as of October 2009. Id. at 33–36. To support the existence of such a dispute, he cites an assertion in his own affidavit that he “completed all of the required repairs by October 2009.” Pl.'s Mot., Decl. of Ahmed Halim ¶ 30.

The assertion in Mr. Halim's affidavit that he completed the repairs by October 2009 is insufficient to defeat the government's motion for summary judgment because it is conclusory and uncorroborated by any supporting documentation. See Barmag Barmer Maschinenfabrik AG v. United States, 731 F.2d 831, 836 (Fed. Cir. 1984) (party opposing summary judgment must show evidentiary conflict in the record and cannot rely upon mere denials or conclusory statements). But even were the Court to credit Mr. Halim's bald assertion, it does not create a genuine dispute of material fact because Mr. Halim was contractually obligated to complete the repairs by July 2008. See Anderson, 477 U.S. at 248 (defining material facts as those “that might affect the outcome of the suit under the governing law”). That deadline was never extended.

In short, the material facts are not in dispute. HUD was within its rights to retain the funds from Mr. Halim's letter of credit escrow account because it is undisputed that he did not timely complete the repairs. The government is therefore entitled to summary judgment as to Count I.

2. Count II—Failure to Ensure Continuous Compliance with UPCS

As described above, the HAP Contract contains an owner certification which states that “[t]he owner certifies that at all times during the term of the HAP contract [a]ll contract units . . . are in good and tenantable condition, and in accordance with the UPCS.” Def.'s Mot., App. at A225. If any unit was “not in accordance with the UPCS,” HUD could “exercise any of its remedies . . . for all or any contract units,” which included “termination of the HAP contract.” Id. at A226. If Mr. Halim defaulted in this regard, HUD was required to notify him in writing and could require him to take action by a certain date prior to exercising its right to terminate the contract. Id. at A229.

As explained above, after the HUD inspector determined on March 31 and April 1, 2009 that thirty-nine of the forty apartments failed UPCS inspection, HUD informed Mr. Halim in June 2009 that he was in violation of the HAP Contract. Id. at A406. It directed him to take corrective action within thirty days. Id. When HUD's inspector returned in August 2009, however, all forty apartments failed the UPCS inspection. Id. at A408–09. There is no dispute in the record as to this fact. HUD then abated the HAP Contract by letter of October 6, 2009. Id. at A520.

In opposing the government's motion for summary judgment as to Count II, Mr. Halim again contends that there is a genuine dispute of material fact, this time with respect to whether he was in compliance with the UPCS standards during the operative time period. Pl.'s Mot. at 35. He relies upon a letter from the City of Schenectady's Bureau of Code Enforcement dated October 9, 2009. Pl.'s Mot, App. at A–9, ECF No. 73-1. The letter, which bears the signature of Elisa B. Wickham, the city's code enforcement coordinator, is addressed “[t]o [w]hom [i]t [m]ay [c]oncern.” Id. In it, Ms. Wickham stated that the purpose of the letter was “to inform you that the . . . referenced properties have no outstanding violations and have a rental inspection certificate for all tenants living there.” Id. Further, Ms. Wickham stated that “all permits have been obtained for any and all work or violations if any, all complaints have been addressed within 48 hours and every property has passed inspections.” Id.

The letter from Ms. Wickham does not create a dispute as to any material fact at issue with respect to Count II of the complaint. The HUD inspector's determination that all forty apartments were out of compliance with the UPCS as of August 2009 is unrebutted. Even crediting as accurate the observations in the letter regarding compliance with municipal requirements, such observations do not bear on whether the apartments were also in compliance with the UPCS, which are HUD-administered standards. And HUD's regulations, as well as the contracts at issue, make it clear that property owners must meet both its physical condition standards and the standards set forth in state and local codes. See 24 C.F.R. § 5.703(g) (stating that “[t]he physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply” and that HUD housing must continue to adhere to these codes). Further, the date of Ms. Wickham's letter is October 9, 2009, which is well after the thirty-day deadline HUD gave Mr. Halim in its June 22, 2009 notice of default and almost two months after the August inspection by the HUD inspector which found that none of the forty apartments were in compliance with the UPCS.

In short, the facts are not in dispute as to Mr. Halim's noncompliance with the UPCS as of the final deadline set by HUD—which was July 22, 2009. Under the contract, HUD was entitled to terminate the housing assistance payments after the thirty-day notice period expired. HUD's termination of the HAP Contract was not a breach of contract. The government is therefore entitled to summary judgment as to Count II.

IV. Motion for Summary Judgment as to Counts III and IV (Meadowbrook)

A. Material Facts as to Which There Is No Genuine Dispute

1. Contract Provisions

Meadowbrook Apartments is a fifty-one-unit apartment complex located in Meridian, Mississippi. Def.'s Mot., App. at A529, A536. It consists of thirteen buildings. Id. at A536. HUD auctioned the property at a foreclosure sale on August 4, 2006. Id. at A529. In the bid kit, HUD estimated that the required post-closing repairs would cost \$2,003,276, and required a letter of credit for those repairs in the amount of \$500,819.⁴ Id. at A536–37, A547. As with the Schenectady 40 property, HUD required post-closing repairs to be completed to its satisfaction “within 24 months after closing.” Id. at A537.

Mr. Halim was the successful bidder on Meadowbrook and the parties closed on the sale of the property on January 19, 2007. See id. at A584; see also id. at A599–600. The closing transaction included the execution of a Foreclosure Sale Use Agreement and a HAP Contract. Id. at A584; id. at A599–600.

Rider 1 to the Foreclosure Sale Use Agreement required Mr. Halim to maintain Meadowbrook as affordable rental housing for a period of twenty years. Id. at A602. As with the Schenectady 40 HAP Contract, the Meadowbrook HAP Contract required Mr. Halim to keep all units for which he would receive housing assistance payments in “good and tenantable condition” and in compliance with the UPCS requirements “at all times” during the term of the contract. Id. at A588. It also provided, as had the Schenectady 40 contract, that if the contracting authority “determines that a contract unit is not in accordance with the UPCS, the [contracting authority] may exercise any of its remedies under the HAP Contract for all or any contract units,” including “termination, suspension or reduction of housing assistance payments, and termination of the HAP contract.” Id. at A589.

Similarly, the Foreclosure Sale Use Agreement required the Meadowbrook project to “be maintained in decent, safe and sanitary condition . . . at all times” and required Mr. Halim “to complete the required repairs within twenty-four (24) months of Closing.” Id. at A599, A603. The use agreement also included the same Rider 2 covering the post-closing repair and letter of credit requirements as discussed above with respect to Schenectady 40. See id. at A603.

Rider 6 to the Meadowbrook use agreement provided that “[i]n the event” the required repair work was “not commenced, diligently continued, or completed as required . . . HUD reserve[d] the right to rescind the sale or take other appropriate action it determine[d] acceptable and within its authority.” Id. at A607. And the Foreclosure Sale Use Agreement stated that “upon any violation of any provision of this Agreement” HUD may give notice of the violation to the purchaser, who would then have either thirty days or such further time as the Secretary identified to correct the violation “to the satisfaction of the Secretary.” Id. at A599. If the violation was not so corrected, then HUD could declare a default under the agreement, and seek appropriate remedies. Id.

2. Meadowbrook Fails UPCS and Post-Closing Repair Inspections

⁴ The property was vandalized after closing, necessitating additional repairs; as a result, HUD ultimately required a letter of credit in the amount of \$513,967.56. Def.'s Mot., App. at A581.

As it did with Schenectady 40, HUD retained Applied Engineering to perform post-closing and UPCS inspections of Meadowbrook. On January 27, 2008, approximately one year after closing, the inspector performed a UPCS inspection. Id. at A612. He found that “none of the buildings were in reasonable condition with substantial work remaining to be completed to consider the buildings livable.” Id. at A613. Therefore, none of the thirteen buildings passed the inspection. Id.

Approximately seven months later, on August 13, 2008, the HUD inspector conducted a combined UPCS and post-closing inspection. Id. at A629, A646. All units inspected failed the UPCS inspection. Id. at A630, A646. The inspector described the repair work that had been performed as “sporadic,” noting that “[n]o wholesale organized modernization program ha[d] been attempted”; that the “floor . . . was patched with multiple different styles” and “installed over unlevel subflooring that needed to be replaced”; and that “[n]ew countertops were provided on base cabinets that will not remain serviceable.” Id. at A630–31. He also described the work quality as “poor to fair at best.” Id. at A646.

3. HUD Serves Mr. Halim with Notices of Violation and Default Based on His Failure To Make the Post-Closing Repairs

In a February 6, 2009 letter, HUD provided Mr. Halim with a notice of violation concerning the expiration of the twenty-four month post-closing repair deadline. Id. at A677. HUD directed Mr. Halim to provide it with an “immediate” notification “as to the status of the [required] repairs.” Id. It stated that “if the repairs have not been completed, [if] the inspector determines that the repairs have not been made properly or [if] the inspector is not permitted to assess the property, you shall be in default of the Agreement.” Id.

In its notice of violation, HUD informed Mr. Halim that it was aware that on December 17, 2008, the City of Meridian had declared Meadowbrook unfit for habitation, and that the City had announced its intent to demolish the apartment complex if Mr. Halim did not show an “earnest intent to correct the property” to meet the minimum requirements of the City’s housing code. Id. HUD directed Mr. Halim to respond within ten days of its letter, warning that if he did not, it would cash and retain his letter of credit in the amount of \$513,967. Id. at A678. Although not in the record, Mr. Halim apparently responded to HUD by a letter of February 16, 2009, in which he advised HUD that he was having difficulty securing the funds he needed to perform the repairs required. See id. at A680.

On May 4, 2009, HUD sent Mr. Halim a notice of default. Id. at A679–80. Responding to Mr. Halim’s February 16, 2009 letter, HUD advised that “the funding and execution of the necessary repairs are the sole responsibility of the owner.” Id. at A679. It wrote that “[s]ince the necessary repairs have not been made [by] th[e] contractually agreed upon deadline,” Mr. Halim was “in default of the Deed and the Use Agreement.” Id. HUD further explained that “due to [Mr. Halim’s] lack of significant progress, and due to the City’s impending condemnation of the property, HUD is not able to grant you a time extension to complete the necessary repairs.” Id. at A680. Accordingly, it “declare[d] [him] in default” and stated that it was “prepared to cash in [his] LOC.” Id.

4. HUD Grants Mr. Halim a One-Year Extension of Time To Complete the Post-Closing Repairs

On May 26, 2009, Mr. Halim sent a letter to HUD in which he requested a one-year extension of time to complete the post-closing repairs. Id. at A683. Mr. Halim advised that he had hired a new contractor, and provided a timeline under which the work would be completed by January of 2010. Id. at A683–85.

The Chief Administrative Officer of the City of Meridian expressed his support for Mr. Halim's extension request in a June 1, 2009 email to HUD. Id. at A681–82. He stated that after a meeting with Mr. Halim and his contractor, he was "convinced that they will be able to finish" the repairs if given a twelve-month extension. Id.

Based on this endorsement and the timeline provided by Mr. Halim's contractor, on June 18, 2009, HUD extended Mr. Halim's time to complete repairs by twelve months, to January 31, 2010. Id. at A686. HUD nevertheless cautioned Mr. Halim that "[t]he approval of this 12-month extension is conditioned upon the immediate initiation of work and continual positive construction progress in an orderly and professional workmanship manner." Id. "Failure to show monthly progress [would] result in the Department's immediate cancellation of the extension." Id.

5. Mr. Halim Fails To Complete the Repairs by the First Extended Deadline

Thereafter, between July and December 2009, HUD's inspector conducted monthly inspections of the Meadowbrook property. Id. at A687–A892. The inspection reports noted some progress in certain areas, but much work left to be done. See id. At no time during that period did all of the inspected units pass a UPCS inspection. See id.

On January 25, 2010, six days prior to the expiration of HUD's extended deadline, HUD's inspector returned to Meadowbrook for a final visit. See id. at A894. He noted that "[v]ery little work ha[d] been accomplished since the time of the last inspection" in December. Id. at A895. Only five of thirteen buildings were "nearing completion." Id. Those buildings on which work had not yet started were continuing to deteriorate. Id. Additionally, units that had been "virtually complete" but which were not occupied and were not being supplied with heat or air conditioning were deteriorating and had "stippled ceiling texture . . . falling loose and floor tile that is no longer properly attached." Id. Sixteen of twenty apartments inspected for UPCS purposes passed while four failed. Id. at A921. As a result of this inspection, HUD concluded that 38% of the required repairs had been completed and on January 28, 2010, it released \$185,905 from Mr. Halim's letter of credit escrow amount. Id. at A941.

During a March 1, 2010 follow-up inspection, the inspector noted that little additional work had taken place since his January 2010 visit. Id. at A944. The inspector did note, however, that the four apartments that had failed inspection in January had now passed UPCS inspection. Id. at A961.

6. HUD Grants Mr. Halim a Second One-Year Extension of Time To Complete Post-Closing Repairs

On March 8, 2010, Mr. Halim requested permission from HUD to demolish Building Four at Meadowbrook due to its “extremely poor structural condition.” Id. at A975. HUD granted that request in an April 5, 2010 letter. Id. In that same letter, HUD extended the deadline for completion of post-closing repairs for a second additional year, to January 15, 2011. Id. It did so based on the fact that Mr. Halim had by then completed 40% of the repairs, and because the City of Meridian had agreed to grant him such an extension with respect to compliance with its housing codes. Id. at A975. HUD advised Mr. Halim that “positive progress must be made each month and all of the HUD required repairs must be completed in a professional manner within the extended timeframe.” Id. In addition, it warned Mr. Halim that “no further extensions will be granted.” Id.

HUD continued to conduct monthly inspections from April 2010 through December 2010. Id. at A976–69. Progress was made during this time period. Thus, on June 3, 2010, HUD released to Mr. Halim an additional \$45,640 from the letter of credit escrow based upon 44% completion, leaving a balance of \$282,422. Id. at A1007. Again on July 26, 2010, it released \$45,187 from the escrow based on its determination that 56% of the required repairs had been completed. Id. at A1042. On September 29, 2010, HUD released another \$30,279, based on completion of 59% of the required repairs. Id. at A1062. It informed Mr. Halim, however, that it would not release any more than \$6,629 of the remaining \$206,956 until six months after completion of all repairs. Id. In November 2010, HUD determined that 87% of the required repairs had been completed and it released that \$6,629. Id. at A1137.

The HUD inspector visited Meadowbrook again on December 20, 2010 for an eighteenth post-closing inspection. Id. at A1125, A1140. At that time, the inspector noted that over the course of the past few months, twenty-four apartments had passed a UPCS inspection.⁵ Id. at 1125. On December 20, however, all four units that he inspected failed. Id. In addition, the inspector reported, a number of other units were not ready for inspection because they were missing a significant number of required fixtures, such as lighting and toilets. Id. He also warned that units that had previously passed UPCS inspection should be reinspected due to the possibility of deterioration in the interim. Id. at A1126. With respect to post-closing requirements, the inspector found that repairs on eight of the property’s thirteen buildings were “complete or nearly complete on the interior with exterior repairs nearing completion as well.” Id. at A1140.

On January 26, 2011, HUD’s inspector informed HUD that the City of Meridian had issued a stop-work order preventing Mr. Halim from continuing work at Meadowbrook because

⁵ The inspector’s report stated that “[t]o date, twenty-four of the fifty-two dwelling units have been found to meet the necessary requirements.” Def.’s Mot., App. at A1125. HUD’s bid kit, however, described the Meadowbrook complex as having only fifty-one units. Id. at A529.

he had failed to complete the project by the January 15, 2011 deadline. Id. at A1170.⁶ At that point, HUD apparently suspended the performance of further inspections. Id.

7. The Property Remains in Disrepair Some Five Years After the Closing; HUD Notifies Mr. Halim of Default

HUD's inspector returned to Meadowbrook on September 13, 2011—some eight months after the expiration of the second extended deadline—accompanied by, among others, the City's building inspector. Id. at A1173–74. He reported that the City had not issued any new permits since the stop-work order the preceding January and that, other than replacing some flooring in one building, Mr. Halim had performed no additional work since the inspector's December 2010 report. Id. at A1173. Additionally, the inspector reported that a termite infestation had been discovered in Building Two. Id. at A1173–74.

On September 23, 2011, Paula M. Carruth, the Director of HUD's Jackson, Mississippi Multifamily Program Center, prepared a memorandum for the Acting Director of HUD's Atlanta Multifamily Property Disposition Center. Id. at A1190. The memorandum described the condition of Meadowbrook and the state of its repairs based on the most recent inspection report. Id. Ms. Carruth noted that as of the date of the last inspection, "the project rehab had been on-going for 57 months with 24 of the 52 units having passed UPCS inspection." Id. She observed that "the quality of the repair work was found to be poor, with occupied units appearing not to meet Quality Housing Standards." Id. Further she stated that "[d]ue to the duration of the rehab and the buildings being exposed to the elements, the property appears to have deteriorated to the point that the existing structures can no longer be brought into compliance with HUD requirements and the City of Meridian code requirements." Id. Ms. Carruth recommended that the property be inspected by HUD's Real Estate Assessment Center and that, "if supported by the inspection, the section 8 contract be abated." Id. She further noted her understanding that the City of Meridian was planning to conduct an inspection to determine if the property should be condemned and demolished. Id.

By letter of December 2, 2011, HUD formally notified Mr. Halim that he was in violation of the Foreclosure Sale Use Agreement and the HAP Contract, based on a "failure to complete the repairs required by the Use Agreement and the HAP Contract and for failure to maintain units in a decent, safe and sanitary condition." Id. at A1191. If Mr. Halim did not correct these violations within thirty days, HUD warned, it would "terminate the HAP Contract and retain the balance of the cash repair escrow." Id.

HUD's inspector returned to the complex on January 25, 2012. Id. at A1194. Some work had been completed and the termite infestation had been addressed, but problems remained with all twelve remaining buildings, seven of which were vacant. Id. at A1195–98. Four of the nineteen occupied units in the five occupied buildings failed UPCS inspection. Id. at A1198. The inspector concluded that 89% of the originally required post-closing repairs had been completed,

⁶ The stop-work order itself is not in the record.

but that this percentage did not account for additional repairs that would be needed as a result of intervening damage and deterioration. See id. at A1199.

On February 2, 2012, Scott Bearden, the Acting Director of HUD's Atlanta Multifamily Property Disposition Center, sent Mr. Halim a notice of default on both the Foreclosure Sale Use Agreement and the HAP Contract. Id. at A1219. He observed that "although the Department has given you ample time to complete the repairs, the property remains uninhabitable." Id. at A1220. He advised Mr. Halim that HUD was "initiating action to terminate the HAP Contract and relocate eligible residents" and that HUD intended to retain the balance of his cash repair escrow. Id. On February 8, 2012, HUD wrote to Mr. Halim notifying him that as a result of his violations and default, the HAP Contract was abated "effective immediately." Id. at A1221.

B. Merits of Summary Judgment Motion

In Counts III and IV of his fourth amended complaint, Mr. Halim alleges that he in fact completed the required repairs at Meadowbrook, that HUD breached the use agreement by failing to release the funds from the repair escrow account, and that he has been damaged in the amount of "at least \$328,062." 4th Am. Compl. ¶¶ 72–74. Additionally, he alleges that he maintained the property in compliance with the UPCS, and that HUD breached the HAP Contract by terminating it. Id. ¶¶ 76–77. Mr. Halim seeks "monetary damages as a result." Id. ¶¶ 76–78.

In his summary judgment motion, however, Mr. Halim takes a different tack. He no longer claims that he timely completed the required post-closing repairs. Instead, he argues that he "made steady progress" until it became impossible for him to finish making the repairs because the City of Meridian issued a stop-work order against him in January 2011. Pl.'s Mot. at 25. He argues that he is entitled to rescission of the Meadowbrook Foreclosure Sale Use Agreement based on the doctrine of impossibility. Id. at 26–28.

With respect to the HAP Contract, Mr. Halim similarly argues that the stop-work order made it impossible for him to maintain the property in accordance with the UPCS. Id. at 29. He also points out that the City of Meridian eventually issued certificates of occupancy for three of the buildings on the property. These certificates are dated February 16, 2012; March 23, 2012; and May 22, 2012. Pl.'s Mot., App. at A-6–8. According to Mr. Halim, the issuance of these certificates creates a factual dispute regarding whether he ultimately brought the complex into compliance with the UPCS standards. Pl.'s Mot. at 28–31.

Mr. Halim's arguments lack merit. First, "[p]erformance is only excused under [the impossibility] doctrine when it is objectively impossible." Seaboard Lumber Co. v. United States, 308 F.3d 1283, 1294 (Fed. Cir. 2002). As the party asserting impossibility, Mr. Halim has the burden of proof. See Mass. Bay Transp. Auth. v. United States, 254 F.3d 1367, 1373 (Fed. Cir. 2001). Yet Mr. Halim has introduced no evidence to establish that it was objectively impossible for him to complete the required repairs or maintain the properties in compliance with the UPCS at any time during the four-year period after he closed on the property and before the City issued its stop-work order in January 2011.

Further, proving impossibility requires a demonstration of lack of fault on the party asserting it. Id. at 1373–74; see also United States v. Winstar Corp., 518 U.S. 839, 920 (1996) (Scalia, J., concurring) (“Generally, contract law imposes upon a party to a contract liability for any impossibility of performance that is attributable to that party’s own actions.”). Mr. Halim was granted two extensions to comply with his contractual obligations and with the City’s requirements. The stop-work order which he claims made it impossible for him to complete the repairs was issued as a consequence of his own failure to meet the contractually imposed deadlines even after they were twice extended by a year.

In short, Mr. Halim’s invocation of the impossibility doctrine as a grounds for avoiding his contractual obligations to make the required repairs and maintain the properties in compliance with the UPCS is unavailing. Further, the fact that the City of Meridian issued him certificates of occupancy for three buildings between February and May of 2012 is immaterial. For one thing, the property consisted of twelve buildings. Def.’s Mot., App. at A536. In addition, Mr. Halim was obligated to maintain the property in compliance with the UPCS on an ongoing basis. The numerous reports of the HUD inspector over a five-year period are unrebutted and show Mr. Halim did not meet these compliance requirements.

In short, in light of the undisputed facts, HUD was within its rights to retain the escrow amounts and to terminate the housing assistance payments for the Meadowbrook Apartments. The government is therefore entitled to judgment as a matter of law on Counts III and IV.

V. Motion for Summary Judgment as to Counts VI Through VIII (Beacon Light Property)

A. Material Facts Not in Dispute

1. The Bid Kit

Beacon Light-Goodwill Baxter Apartments (hereinafter “Beacon Light”) is a 108-unit apartment complex in Henderson, North Carolina. Id. at A1222. At the time of the HUD foreclosure sale (June 12, 2007), the property was vacant. Id. at A1265. Its residents had been relocated after HUD closed the apartment complex in 2006 due to the distressed condition of the property. See id. (Letter from Mayor of City of Henderson, observing that the complex had been “a source of consternation . . . for quite some time” and that HUD closed it in 2006 “due to serious sanitation and minimum housing code violations”).

The bid kit provided in connection with the foreclosure sale contained warnings and disclaimers regarding the physical condition of the complex. For instance, at the top of the cover page of the bid kit, in bold font, it stated that “[p]otential bidders should be aware that building ‘9’, located at 432 Boddie Street, was damaged by fire and that there may have been some vandalism at the property.” Id. at A1222. Also in bold font, the cover page provided that “[t]he high bidder will be required to complete all of the repairs noted in Attachment E Post Closing Repair Requirements plus repair to State and local code all fire damage/vandalism that has occurred or may occur prior to closing on the sale,” and advised that “[t]his requirement should be factored into the bid.” Id.

The bid kit also forewarned prospective purchasers that they bore the burden of determining for themselves whether there were any matters related to the property that might bear on their decision to purchase. Section 1 of the bid kit contained a paragraph entitled “Bidder’s Due Diligence.” Id. at A1224. It stated, again in bold font, that “[b]idders are encouraged to perform their own due diligence to gain a full understanding of the project and the conditions of sale before submitting a bid.” Id. Similarly, Section 6 of the bid kit, entitled “Disclaimers,” provided that “[b]idders interested in purchasing this project are expected to acquaint themselves with the property, and to arrive at their own conclusions as to physical condition, number and occupancy of revenue producing units, estimates of operating costs, repair costs (where applicable), and any other factors bearing upon valuation of the property.” Id. at A1227.

Similarly, the bid kit stated, also in all bold font, that “all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as might interest them in its purchase, and HUD makes no warranty as to the accuracy of such information.” Id. Further, prospective purchasers were advised that their “failure . . . to inspect, or be fully informed as to the condition of all or any portion of the property being offered, or condition of sale, will not constitute grounds for any claim, demand, adjustment, or withdrawal of a bid.” Id.

2. The Purchase of the Complex

Mr. Halim purchased the Beacon Light complex at the foreclosure sale for \$54,000. Id. at A1259.⁷ Closing took place on August 28, 2007. Id. at A1251–52. HUD estimated that the repairs required at Beacon Light would cost over \$5 million. Id. at 1245–48. The Foreclosure Sale Use Agreement required a letter of credit in the amount of \$1,292,567 to guarantee their completion. Id. at A1228.

Unlike the other properties at issue in this case, which were to be maintained as affordable rental housing, the Beacon Light complex was sold with the understanding that it would be converted to home ownership for sale to income-eligible purchasers. Thus, under Rider 1 of the agreement, entitled “Conversion to Home Ownership,” Mr. Halim was obligated to “complete the required repairs within twenty-four (24) months of closing, convert the property from rental to homeownership and sell the repaired homeownership units to income-eligible qualified purchasers for use as their primary residence.” Id. at A1238, A1254.

⁷ On August 10, 2007, Mr. Halim assigned all his “rights, title and interest in, to and under the Bid” to his son, named in the assignment document as “Sharif Halim.” Def.’s Mot., App. at A1262. The younger Mr. Halim ultimately executed a quitclaim deed assigning his rights in the Beacon Light complex back to his father on June 26, 2012. Id. at A1380–82. For ease of reference, the Court will not distinguish between father and son when discussing the Beacon Light claims but will refer to both as “Mr. Halim.”

3. Mr. Halim Fails To Perform Any Repairs Within the Twenty-Four-Month Post-Closing Deadline

Notwithstanding the terms of the Foreclosure Sale Use Agreement, Mr. Halim performed no significant repair or renovation of the property after the purchase. His inaction drew the ire and concern of local officials in the City of Henderson.

In a March 11, 2009 letter, William Melvin, the Director of HUD's Atlanta Multifamily Property Disposition Center, wrote to Mr. Halim reminding him of his obligation to complete all repairs to the complex by August 28, 2009. Id. at A1263. Mr. Melvin observed that the City of Henderson had notified HUD that since Mr. Halim's purchase "there ha[d] been no significant work initiated and that there ha[d] been several fires at the property." Id. Mr. Melvin advised Mr. Halim that he "must immediately notify HUD as to the status of the repairs," warning that if they were not completed by the deadline, he would be in default and HUD would take action "including retention of [the] cash escrow." Id.

Five days later, on March 16, 2009, Mr. Halim requested an extension of time to complete the repairs. Id. at A1264. Mr. Melvin responded by letter of June 3, 2009. Id. He told Mr. Halim that HUD would only consider his request for an extension if he submitted a work plan identifying the expected completion date for the repairs. Id. The record does not contain any indication that Mr. Halim responded to this letter or otherwise submitted a work plan.

Some five additional months elapsed, again without any significant progress in the performance of the required repairs or conversion of the property to homeownership. On August 12, 2009, a few weeks before the expiration of the twenty-four-month deadline, the mayor of the City of Henderson elevated the City's concerns by sending a letter to HUD Secretary Shaun Donovan, requesting his intervention. Id. at A1265–68. The mayor characterized the Beacon Light Apartments as "a major source of blight within the neighborhood in which it is located and within the city-at-large." Id. at A1265. The mayor reported to Secretary Donovan that since the sale of the property to Mr. Halim in 2007, "the property ha[d] further deteriorated, and significantly so," due to fire and vandalism. Id. In fact, as of the date of his letter, the mayor observed, no plans had been submitted to the City to bring the property into compliance with its housing code, even though HUD's two-year compliance deadline was about to expire. Id.

The mayor also advised Secretary Donovan that the Henderson City Council had passed an ordinance to condemn the property and that it was prepared to enforce an ordinance to demolish the property unless it could be brought into compliance with the City's minimum housing code requirements and with deed restrictions requiring conversion of the property to homeownership. Id. at A1266. The mayor further advised that the City Council had passed a resolution requesting that a portion of the repair escrow held by HUD be provided to the City to cover the costs of demolition. Id. He noted, however, that the City still hoped to work with HUD and Mr. Halim to avoid demolition and to rehabilitate the property. Id. at A1266–68.

4. With the Twenty-Four-Month Deadline Expired, the City Denies Mr. Halim's Requests for a Special Use Permit and Variance

On October 9, 2009, Mr. Halim applied to the City for a special use permit and a zoning variance. Id. at A1272–73. Beacon Light was set back eighteen feet from the street, which meant that it was out of compliance with a city ordinance requiring a setback of at least thirty-five feet. See id. at A1273–76. The special use permit was requested “[t]o allow a[] unified residential development to be established.” Id. at A1272. The variance was sought “[t]o modify setback requirements.” Id. at 1273.

Mr. Halim was apparently unaware before he purchased the property that it failed to meet local setback and density requirements. He testified that the purpose of his request for a special use permit and variance was to allow him to perform the repairs required to comply with his obligations under the sale agreement. Id. at A1544; see also Pl.’s Mot., Halim Decl. ¶¶ 5–7 (observing that the City refused to issue permits needed to make repairs because Beacon Light did not meet the City’s density and setback requirements).

While Mr. Halim’s requests were pending, on October 30, 2009, the mayor again wrote to a HUD official in Washington, D.C.—this time Janet Golrick, Associate Deputy Assistant Secretary in the Multifamily Housing Division. Def.’s Mot., App. at A1277. He complained about the “continuing dilapidated and blighted conditions of th[e] apartments.” Id. He reported that “[o]ther than mowing the weeds that were three to five feet tall, after an order for mowing was issued by the city, and installing a gate to secure the property . . . nothing has happened with the property other than the fires that have heavily damaged and/or destroyed four buildings.” Id. at A1278. The mayor provided photographs showing the proximity of the Beacon Light Apartments to a well-maintained single-family neighborhood. Id. at A1279. He expressed frustration about what he viewed as a lack of cooperation on Mr. Halim’s part evidenced by, among other things, Mr. Halim’s failure to demonstrate that he had obtained a construction loan sufficient to renovate the property. Id. at A1278.

Finally, the mayor requested HUD’s assistance in “bringing Beacon Light into compliance with City building codes and conversion to home ownership.” Id. at A1279. To that end, he stated, and given Mr. Halim’s lack of cooperation, “the City Council is requesting HUD to provide an amount of funds from Mr. Halim’s \$1.2M cash bond to demolish the property in order to remove the blight [fro]m the neighborhood.” Id.

On December 8, 2009, the City denied Mr. Halim’s requests for a special use permit and a zoning variance. Id. at A1272–76, A1354. As to the special use permit, the zoning board concluded that “the proposed use will materially and adversely affect public health, safety and welfare and will further substantially injure the value of adjoining and abutting properties and is not in harmony with the area in which it is located.” Id. at A1275. The board noted that “the subject property constitutes an area of high crime and drug activity,” that “the existing buildings (which do not comply with the present building setback requirements of the Zoning Ordinance) have been the subject of at least three fires in the last three years,” and that “there is raw sewage on the ground, which sewage had spilled over into the adjoining properties.” Id. Accordingly, the board concluded that “[f]ire and police, street and sewer facilities could all be better used to serve the property if it were converted to single family residences.” Id.

As to the variance, the board concluded, among other things, that the setback was “reasonably discernible at the time that the applicant purchased the property, [and that] the Applicant has done nothing to remove the burned out buildings or attempted to remedy or repair the buildings since the fires . . . thus making the conditions worse.” Id.

Mr. Halim was formally notified of the City’s decision by letter of December 14, 2009. Id. at A1354. In that letter, the City advised Mr. Halim that its Code Compliance Department intended to “move towards bringing the property into compliance through demolition.” Id.

5. Mr. Halim’s Communications with HUD Officials Regarding the Resale of the Property to HUD

In the meantime, on December 1, 2009, while his requests for a special use permit and variance were pending, Mr. Halim met with Howard Mayfield and Courtland Wilson, officials in HUD’s Washington, D.C. headquarters. See id. at A1350. After the meeting, Mr. Halim wrote two letters. First, on December 4, 2009, he wrote a brief letter to William H. Melvin, the Director of HUD’s Atlanta Multifamily Property Disposition Center. Id. In that letter, Mr. Halim stated that “[p]er [his] discussion with Mr. Mayfield and Mr. Wilson on December 1st, 2009 . . . [he was] giving back the NC property aka B[e]acon Light Apartments to HUD.” Id. He continued that “[t]he transfer of ownership to HUD is subject to the following conditions: I) Full refund of the purchase price. II) Full refund of the cash escrow held by HUD in lieu of the LOC. III) Full Release of the present owner of the record from any liability regardless of its nature associated with the subject property.” Id.

A few days later, on December 7, 2009, Mr. Halim wrote a second letter, this time directly to Mr. Mayfield and Mr. Wilson. In this letter, he offered what he characterized as a “summary of [the] conversation at the [December 1] meeting in writing.” Id. at A1351–53. The summary referenced Mr. Halim’s grievances against HUD regarding the Nichols Townhomes, Schenectady 40, and Meadowbrook Apartments. It did not include any discussion of the Beacon Light Apartments. See id.

On February 3, 2010, Robert G. Iber, HUD’s Acting Director of Asset Management, wrote to Mr. Halim “in follow-up to [his] recent meeting with HUD staff to discuss the Department’s foreclosure requirements for the subject projects.” Id. at A1355. In this letter, Mr. Iber referenced Mr. Halim’s disputes concerning the Nichols Townhomes, Schenectady 40, and the Beacon Light Apartments. Id. at A1355–56. As to Beacon Light, Mr. Iber stated, among other things, that “HUD’s discussion regarding the possible acceptance of the deed on this property has not been decided.” Id. at A1356.

6. Notice of Default—Demolition of Property

On June 29, 2010, Mr. Iber wrote to Mr. Halim notifying him that he was in default of his obligations under the Foreclosure Sale Use Agreement. Id. at A1358. Mr. Iber noted that under the agreement, Mr. Halim was obligated to make specified repairs by August 28, 2009, but that “no major repairs to the Project or corrections to violations of the Use Agreement have been made.” Id. He also noted that the City had informed HUD that Beacon Light had “suffered from fire damage and ha[d] been found to be hazardous to the public health, safety and welfare of the

residents of the City.” Id. Because “the repair period ha[d] expired and no major repairs ha[d] been made and the city ha[d] condemned the Project as a public hazard,” Mr. Iber informed Mr. Halim, HUD intended to exercise its rights under the foreclosure sale agreement to use the funds from the letter of credit “in a manner which [HUD] deems appropriate.” Id. This might include, Mr. Iber stated, “reimbursing the City for actions associated with remediation of the conditions at the Project.” Id.

On October 27, 2010, HUD entered into a Memorandum of Understanding with the City, in which it agreed to use the proceeds from the letter of credit Mr. Halim provided to reimburse the City for its reasonable costs in demolishing the Beacon Light Apartments. Id. at A1359–61. HUD released \$399,900 from the escrowed funds to the City for the demolition on September 6, 2011. Id. at A1368. The City notified HUD that the property had been demolished on September 14, 2011. Id.

B. Merits of Motion for Summary Judgment

1. Mutual Mistake of Fact (Count VI)

In Count VI of his complaint, Mr. Halim claims that he is entitled to rescission of the Beacon Light use agreement and a refund of his escrow funds because of a mutual mistake of material fact regarding his ability to make repairs on the property. 4th Am. Compl. ¶ 88. He alleges that—because the complex did not comply with the City’s density and setback requirements—he was denied the permits he needed to make the repairs. Id. ¶¶ 42–43. The “mistake of fact,” according to Mr. Halim, was the parties’ assumption that Beacon Light was not out of compliance with those requirements. Id.

It is well established that “[w]here there has been a mutual mistake of material fact, resulting in a contract which does not faithfully embody the parties’ actual intent, reformation, [and] rescission . . . may be available to the party adversely affected.” Dairyland Power Co-op, 16 F.3d at 1202. In this case, however, Mr. Halim’s mutual mistake of fact claim fails as matter of law. A party “cannot rely upon a mutual mistake of fact to avoid enforcement of a contract where . . . the ‘mistake’ is a result of that party’s failure to exercise due diligence.” Canpro Invs. Ltd. v. United States, 130 Fed. Cl. 320, 342 (2017); see also Griffin & Griffin Expl., LLC v. United States, 116 Fed. Cl. 163, 175 (2014) (same). “Ignorance is never sufficient to constitute a ground of relief if it appears that the requisite knowledge might have been obtained by reasonable diligence. He who averts knowledge to himself cannot later claim lack of knowledge.” Collins v. United States, 532 F.2d 1344, 1348 (Ct. Cl. 1976) (citation omitted).

Mr. Halim’s lack of due diligence here is fatal to his mutual mistake of fact claims. Mr. Halim appears to be in the business of purchasing apartment complexes from HUD at foreclosure sales. The Court would expect, therefore, that he would have undertaken the steps necessary to familiarize himself with whatever local ordinances might bear upon his ability to repair and renovate the complex. See Edwards v. United States, 19 Cl. Ct. 663, 672 (1990) (rejecting misrepresentation claim and observing that “one would assume that reasonable and prudent business people would operate through a lawyer to assist them in those matters relative to zoning laws, title, and other related municipal matters”); see also id. at 674 (observing that relief is rarely provided for mistakes of law because “both parties are generally held to have knowledge

of the laws and regulations affecting their business dealings”) (quoting C & L Constr. Co. v. United States, 6 Cl. Ct. 791, 798 (1984)).

In any event, “[w]here the party seeking reformation alleges an innocent mutual mistake, that party must establish . . . that the contract did not place the risk of mistake upon the party seeking reformation.” Roseburg Lumber Co. v. Madigan, 978 F.2d 660, 668 (Fed. Cir. 1992). Here, the contractual documents clearly placed the risk of mistake as to the property’s conformity with local ordinances on the purchaser. Specifically, the bid kit encouraged bidders “to perform their own due diligence to gain a full understanding of the project and the conditions of sale before submitting a bid.” Def.’s Mot., App. at A1224. It also warned that a “[b]idder’s failure to inspect or to be fully informed as to any factor bearing upon the valuation of the property, shall not affect the liabilities, obligations, or duties of HUD, [and shall] not be a basis for termination of this sale or for the return of any extension fees paid.” Id. at A1231. Prospective purchasers were “expected to acquaint themselves with the property, and to arrive at their own conclusions as to; physical condition . . . and any other factors bearing upon the valuation of the property.” Id. at A1227 (emphasis added).

A property’s compliance (or noncompliance) with a local zoning ordinance is clearly a factor that bears on its valuation. And the bid documents placed the risk of Mr. Halim’s “failure . . . to be fully informed” as to that factor squarely with him. For these reasons, the Court rejects Mr. Halim’s claims based on mutual mistake of fact. The government is therefore entitled to judgment as a matter of law as to Count VI.

2. Plaintiff’s Claim Regarding HUD’s Breach of an Oral Contract (Count VII)

Mr. Halim alleges that on December 1, 2009, he entered into an oral agreement with Courtland Wilson, HUD’s then-Acting Director of Asset Management. Pursuant to this oral agreement, Mr. Halim alleges that HUD agreed to refund the purchase price and return the funds in escrow for Beacon Light in exchange for Mr. Halim and his son returning the deed for the property to HUD. 4th Am. Compl. ¶¶ 90–91. Mr. Halim further alleges that HUD is in breach of this oral agreement because it has refused to refund the purchase price or the funds held in escrow. Id. ¶ 93.

Mr. Halim’s claim fails as a matter of law. Even assuming that there was, in fact, an oral agreement for the resale of the property by Mr. Halim and a HUD employee with authority to enter such a contract (a claim that is dubious at best), such a contract would be unenforceable under state law.

Both parties agree that North Carolina law governs whether there exists a valid contract for the repurchase of the property by HUD. See Def.’s Mot. at 61; Pl.’s Mot. at 13. Under North Carolina law, when a promise involves the sale or transfer of land, it must satisfy the Statute of Frauds. N.C. Gen. Stat. § 22-2 (2016); see also Restatement (Second) of Contracts § 125 (1981) (“A promise to transfer to any person any interest in land is within the Statute of Frauds.”). To satisfy the Statute of Frauds, all material terms of a contract must be contained in a writing that is signed by the party against whom enforcement is sought. See id. at § 131; see also Lamle v. Mattel, Inc., 394 F.3d 1355, 1361 (Fed. Cir. 2005). It is undisputed, however, that there is no such writing regarding the transfer of Beacon Light back to HUD.

Mr. Halim argues nevertheless that he can enforce the alleged oral contract on the grounds that the doctrine of promissory estoppel is an exception to the Statute of Frauds under North Carolina law. Pl.'s Mot. at 13. In support of that proposition, he cites Allen M. Campbell Co. v. Virginia Metal Industries, Inc., 708 F.2d 930, 934 (4th Cir. 1983); see id. at 14. But contrary to Mr. Halim's argument, North Carolina does not recognize claims based on promissory estoppel as exceptions to the Statute of Frauds. See Rice v. Vitalink Pharmacy Servs., Inc., 124 F. Supp. 2d 343, 347 (W.D.N.C. 2000) (observing that "Campbell has been expressly rejected by the courts of North Carolina" and "declin[ing] to accept the plaintiff's invitation to adopt the reasoning of Campbell in favor of the clear controlling law of North Carolina," under which "promissory estoppel may not be used as an affirmative cause of action").

Further, to the extent that Mr. Halim intends to pursue a claim based on promissory estoppel, this Court would have no jurisdiction to consider it. See Twp. of Saddle Brook v. United States, 104 Fed. Cl. 101, 111 (2012) ("[P]romissory estoppel theory does not fall within the jurisdiction granted to the court by the Tucker Act."). Accordingly, the government is entitled to summary judgment as to Count VII of the complaint.

3. Plaintiff's Claim Regarding HUD's Breach of Beacon Light Use Agreement (Count VIII)

Finally, Mr. Halim alleges that HUD breached the Beacon Light use agreement by agreeing to the property's demolition and by providing funds from the escrow account to pay for the demolition. 4th Am. Compl. ¶ 100. He does not challenge HUD's contractual authority, in the event of a breach, to retain the escrow funds and devote them to an appropriate use as it sees fit. Instead, he contends that he was excused from his obligation to perform the repairs required under the contract by the doctrine of impossibility. Pl.'s Mot. at 19. Specifically, he contends that the City's denial of his request for a variance precluded him from doing so. Id. at 19–20. This claim also fails as a matter of law.

First, the variance request was not even presented to the City for determination until after Mr. Halim's deadline to complete repairs had expired. Additionally, the doctrine of impossibility cannot be employed "where the 'language or the circumstances' indicate allocation of the risk to the party seeking discharge." Winstar, 518 U.S. at 908 (citing Restatement (Second) of Contracts § 261)). Here, as explained above, Mr. Halim bore the risk that Beacon Light might not be in compliance with local zoning ordinances. Accordingly, the government is entitled to summary judgment as to Count VIII of the complaint.

VI. Motion for Summary Judgment as to Counts IX, X, and XI (Highland Village)

A. Material Facts Not in Dispute

Highland Village is a 300-unit apartment complex in Montgomery, Alabama. Def.'s Mot., App. at A1383. HUD held a foreclosure sale for the property on September 14, 2006. Id. HUD was unable to close with the successful bidder at that sale. It therefore put the property up for sale again on March 22, 2007. See id. at A1424–25.

The bid kit for the second foreclosure sale contained a warning at the top of the cover page, stating in bold font that “[p]otential bidders should be aware that there has been on-going vandalism at the property.” Id. at A1425. It further stated that “[t]he high bidder will be required to complete all of the repairs noted in Attachment E Post Closing Repair Requirements plus repair to State and local code all vandalism that has occurred or may occur prior to closing on the sale.” Id. “This requirement,” HUD cautioned, “should be factored into the bid.” Id. Further, the kit stated, bidders were “encouraged to perform their own due diligence to gain a full understanding of the project and the conditions of sale before submitting a bid.” Id. at A1427.

In paragraph eight of Section 1 of the bid kit, HUD repeated the warning from the cover page, again in bold font. Id. The bid kit also contained a disclaimer provision that stated, among other things, that “[a]ny bid submitted shall be deemed to have been made with full knowledge of all the terms, conditions and requirements contained in this Invitation for Bid and in any Addendum hereof,” and that “[w]hile care has been exercised to assure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as might interest them in its purchase, and HUD makes no warranty as to the accuracy of such information.” Id. at A1430.

HUD informed potential bidders that the estimated repair costs totaled \$5,623,991. Id. at A1432. It also included in the bid kit multiple photographs of the property that revealed its then-existing condition. Id. at A1461–64.

Mr. Halim visited Highland Village prior to the first foreclosure sale in September 2006, and he drove by the apartments again prior to the second sale six months later. See id. at A1534. He testified at his deposition that on his first visit, the property was “livable” and so he made an offer on it, but was not the high bidder. Id. According to Mr. Halim, he did not get out of his car the second time because he feared for his safety. Id. He testified that on this second visit “obviously, for whatever reason, the [owner] of the property [had] some issues with HUD and he was trying to do something with them, so he completely was kind of violent, [and took] all the windows off.” Id.; see also id. at 1547 (observing that the complex looked different on the outside when he drove by because “apparently there was a lot of bad people vandalization” and “the ex-owner apparently was angry”).

Mr. Halim submitted the high bid at the second foreclosure sale. See id. at A1466. He and HUD executed a document entitled, “Terms and Requirements of Foreclosure Sale – Acknowledgement by Bidder.” Id. at A1467–70. It stated “As-Is Sale; No Representations” and continued that the “[b]idder shall accept the property ‘as is.’ HUD makes no representations or warranties concerning the physical condition of the Property.” Id. at A1468. It further stated that “[b]idder acknowledges that the purchase price set forth in this Acknowledgement is based on Bidder’s evaluation of the project and not upon any representations by HUD. Bidder’s failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Property, shall not affect the liabilities, obligations or duties of HUD.” Id.

Closing took place on June 22, 2007, at which time Mr. Halim again executed a Foreclosure Sale Use Agreement. Id. at A1476; see also id. at A1501. Under Rider 2 of the agreement, Mr. Halim was required to maintain all 300 units of the property as affordable rental

housing for a period of twenty years. Id. at A1494. The Agreement required Mr. Halim to make the specified post-closing repairs within twenty-four months of closing. Id. at A1481.

By July 26, 2010, more than a year after the twenty-four-month repair deadline had passed, HUD had determined that Mr. Halim had completed only 6% of the required repairs at the property. Id. at A1505. It released \$85,336 to Mr. Halim from the cash escrow for repairs, leaving a balance of \$1,320,662. Id. After an inspection in August 2010 revealed that Mr. Halim had completed only 10% of the required repairs, HUD released another \$46,560. Id. at A1506. The record does not reveal any further progress at Highland Village or further release of the cash escrow.

B. Jurisdiction

The Tucker Act provides the United States Court of Federal Claims with “jurisdiction to render judgment upon any claim against the United States founded . . . upon any express or implied contract with the United States.” 28 U.S.C. § 1491(a)(1) (2012). Each claim in Mr. Halim’s fourth amended complaint is founded upon a contract with HUD relating to the sale or purchase of HUD properties and therefore falls within this Court’s general subject matter jurisdiction.

The government asserts, however, that Mr. Halim’s claims relating to Highland Village are barred by the Court of Federal Claims’ six-year statute of limitations. Def.’s Mot. at 71–74. Thus, 28 U.S.C. § 2501 states that “[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.” A cause of action accrues under the Tucker Act when “all events have occurred to fix the Government’s alleged liability, entitling the claimant to demand payment and sue here for his money.” Martinez v. United States, 333 F.3d 1295, 1303 (Fed. Cir. 2003) (en banc) (quoting Nager Elec. Co. v. United States, 368 F.2d 847, 851 (Ct. Cl. 1966)).

Here, Counts IX, X, and XI of the complaint seek rescission of the Highland Village contract and a return of the amount held in escrow based on alleged misrepresentations of fact and/or unilateral or mutual mistakes of fact concerning the deterioration in the condition of the property between the first and second foreclosure sales. 4th Am. Compl. ¶¶ 102–18. These claims are based on the theory that HUD knew or should have known that the apartments at Highland Village “had been gutted”; that the tenants had moved out between the first and second foreclosure sales; and that at the time of the sale Mr. Halim was unaware that conditions at the complex had changed so significantly between the two sales. Id.

The causes of action set forth in Counts IX, X, and XI accrued when Mr. Halim became aware of or should have become aware of the alleged misrepresentations and/or mistakes. See Cambridge Plating Co. v. Napco, Inc., 85 F.3d 752, 763–64 (1st Cir. 1996); Harvey v. Martin, 714 F.2d 650, 653 (6th Cir. 1983). In this case, as described above, Mr. Halim testified at his deposition that within one month of closing (i.e., around July 2007) he realized that the property was in worse condition than he had expected at the time of bidding. Id. at A1547.⁸ Yet Mr.

⁸ In a declaration submitted with his response to the government’s motion for summary judgment, Mr. Halim states, contrary to his earlier deposition testimony, that “[s]ince all the

Halim did not file his fourth amended complaint adding causes of action with respect to the Highland Village property until January 9, 2015, nearly seven-and-a-half years later.

Mr. Halim argues that his claims regarding Highland Village are nonetheless timely because he filed his first complaint in this case within six years of when he knew or should have known of the alleged mistakes or misrepresentations made with respect to Highland Village. Pl.'s Mot. IX–XI at 1–2. This argument lacks merit.

Rule 15(c) of the Rules of the Court of Federal Claims (“RCFC”) provides that an amendment to a complaint “relates back to the date of the original pleading when,” among other things, “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading.” RCFC Rule 15(c)(1). In determining whether an amendment relates back, the court looks to the “notice given by the general fact situation set forth in the original pleading.” See Barron Bancshares, Inc. v. United States, 366 F.3d 1360, 1369 (Fed. Cir. 2004) (quoting Snoqualmie Tribe v. United States, 372 F.2d 951, 960 (Ct. Cl. 1967)).

Here, the Highland Village claims do not arise out of the same “conduct, transaction, or occurrence” as those set out in the earlier pleadings. The Highland Village claims relate to different sales, different contracts, and different properties. The operative facts underlying the claims of misrepresentation and mistake of fact regarding Highland Village are unrelated to those involving the claims made regarding the other properties. The government could not have known until Mr. Halim amended the complaint to add the Highland Village claims that he would do so. The additional claims in Mr. Halim’s fourth amended complaint therefore do not relate back to any of the earlier complaints.

Finally, Mr. Halim argues that, for a variety of reasons, the running of the limitations period should be equitably tolled with respect to Counts IX, X, and XI. Pl.’s Mot. IX–XI at 2–3. This argument also lacks merit. The limitations period set forth in the Tucker Act is jurisdictional. Shoshone Indian Tribe of Wind River Reservation v. United States, 672 F.3d 1021, 1029 (Fed. Cir. 2012) (citing John R. Sand & Gravel Co. v. United States, 552 U.S. 130,

events took place almost eleven years ago, the exact date that I was physically at Highland is difficult to remember now,” and that “[i]t could [have] been around the end of 2007 or the beginning of 2008.” Pl.’s Mot. IX–XI, 2d Decl. of Ahmed Halim ¶ 28, ECF No. 80-1. But assuming that the passage of time makes it difficult for Mr. Halim to now recall when he realized the alleged “misrepresentations” or mistakes of fact, his deposition testimony was provided more than two years ago, and thus closer in time to the events at issue. And in any event, “[a] party cannot create an issue of fact by supplying an affidavit contradicting his prior deposition testimony, without explaining the contradiction or attempting to resolve the disparity.” Sinskey v. Pharmacia Ophthalmics, Inc., 982 F.2d 494, 498 (Fed. Cir. 1992), abrogated in part on other grounds by Pfaff v. Wells Elecs., Inc., 525 U.S. 55 (1998), as recognized by Invitrogen Corp. v. Biocrest Mfg., L.P., 424 F.3d 1374, 1379–80 (Fed. Cir. 2005); see also Burns v. Bd. of Cty. Comm’rs, 330 F.3d 1275, 1281–82 (10th Cir. 2003) (“[Courts] will disregard a contrary affidavit . . . when it constitutes an attempt to create a sham fact issue.”) (quotation omitted); Grand Acadian, Inc. v. United States, 87 Fed. Cl. 193, 206–07 (2009).

136–39 (2008)). Compliance with the six-year limitations period is a “condition of the government’s waiver of sovereign immunity, and as such, must be strictly construed.” Hopland Band of Pomo Indians v. United States, 855 F.2d 1573, 1576–77 (Fed. Cir. 1988). Accordingly, the Court’s statute of limitations is not subject to equitable tolling. See John R. Sand & Gravel Co., 552 U.S. at 133–34; see also Young v. United States, 529 F.3d 1380, 1384 (Fed. Cir. 2008).

CONCLUSION

For the foregoing reasons, Counts IX through XI are **DISMISSED** without prejudice for lack of subject matter jurisdiction. Additionally, Plaintiff’s motion for summary judgment as to Counts III, V, VI, VII, and VIII is **DENIED** and the government’s motion for summary judgment as to all remaining counts (Counts I through VIII) is **GRANTED**. The Clerk is directed to enter judgment accordingly. Each side shall bear its own costs.

IT IS SO ORDERED.

s/ Elaine D. Kaplan
ELAINE D. KAPLAN
Judge

UNITED STATES COURT OF FEDERAL CLAIMS

AHMED HALIM,)	
)	
Plaintiff)	
)	
v.)	No. 12-5 C
)	(Judge Kaplan)
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant)	
_____)	

DECLARATION OF AHMED HALIM

I, Ahmed Halim, declare as follows:

1. I am over the age of twenty-one and I am competent to testify to the matters specified below.
2. I was the winning bidder on the foreclosure sale by the Department of Housing and Urban Development ("HUD") of Beacon Light Apartments (Beacon Light).
3. Before I closed on the sale of Beacon Light, I assigned my ownership interest in Beacon Light to my son, Sharif Abdel Halim, with HUD's approval. Accordingly, my son executed all of the documents at the closing on the sale of Beacon Light.
4. One of the documents executed by my son in connection with the purchase of Beacon Light was a Foreclosure Sale Use Agreement. This agreement required my son to complete the repairs specified in the Agreement within two years of the closing on Beacon Light.
5. My son was unable to complete the required repairs at Beacon Light because the City of Henderson ("Henderson"), the city in which Beacon Light is located, refused to issue the

permits that were needed to make the repairs. Henderson refused to issue the required permits because Beacon Light did not meet Henderson's density and setback requirements.

6. When I submitted my bid on Beacon Light I did not know that Beacon Light did not meet Henderson's density and setback requirements. The Bid Kit issued by HUD in connection with the foreclosure sale by HUD of Beacon Light did not contain any information regarding the fact that Beacon Light did not meet Henderson's density and setback requirements.

7. After Henderson refused to issue the permits that were needed to make the repairs at Beacon Light, my son submitted a request for a special use permit and a zoning variance to address the fact that Beacon Light did not meet the Henderson density and setback requirements.

8. Henderson denied my son's request for both the special use permit and zoning variance.

9. On December 1, 2009, I met with Howard Mayfield and Courtland Wilson at HUD headquarters in Washington, DC to discuss the problems at Beacon Light and other projects I had purchased at other HUD foreclosure sales.

10. At this meeting, Mr. Mayfield and Mr. Wilson offered to refund the purchase price I had paid for Beacon Light and the money I gave to HUD for a repair escrow that HUD required to ensure the completion of the repairs at Beacon Light in return for reconveying Beacon Light to HUD.

11. I accepted the offer made by Mr. Mayfield and Mr. Wilson.

12. To process and implement the agreement I made with Mr. Mayfield and Mr. Wilson, Mr. Mayfield and Mr. Wilson told me to submit the agreement in writing to William Melvin who, at that time, was the Director of the HUD Atlanta Property Disposition Office.

13. As instructed by Mr. Mayfield and Mr. Wilson, I sent a letter to Mr. Melvin on December 4, 2009, informing Mr. Melvin that I would, as agreed at the December 1, 2009 meeting with Mr. Mayfield and Mr. Wilson, reconvey Beacon Light to HUD in return for a full refund of the purchase price and the repair escrow I paid to HUD. I was ready, willing and able to reconvey Beacon Light to HUD whenever HUD was ready to refund the purchase price and repair escrow to me.

14. Because of the agreement I made with Mr. Mayfield and Mr. Wilson, I did not pursue any other options with respect to Beacon Light, including any legal action. As a result, Henderson demolished Beacon Light.

15. I was the high bidder at the May 12, 2006 foreclosure of Nichols Townehomes ("Nichols") located in Flushing, Ohio.

16. In accordance with the terms of the foreclosure sale, I was required to submit several documents to HUD by May 26, 2006, including a "Management Entity Profile" and a "Management Certification."

17. I did not submit any of the required documents until June 1, 2006.

18. HUD had approved me to self-manage five projects that I purchased from HUD at a foreclosure sale before I submitted my bid on Nichols. Of the five projects, I was managing two of projects when I submitted my bid on Nichols. Although HUD approved me to self-manage the other three projects, I never managed them because I did not close on the sale of the projects.

19. The "Management Entity Profile" and "Management Certification" I submitted in connection with my request to self-manage these five projects were essentially the same as the "Management Entity Profile" and Management Certification" I submitted for Nichols.

20. I was also approved by HUD to self-manage three other projects, including Schenectady 40 Apartments ("Schenectady 40") and Meadowbrook Apartments (Meadowbrook"), I bought at a HUD foreclosure sale after HUD denied my request to self-manage Nichols. The "Management Entity Profile" and "Management Certification" I submitted in connection with my request to self-manage these three projects were essentially the same as the "Management Entity Profile" and "Management Certification" I submitted for Nichols.

21. In connection with my purchase of Meadowbrook from HUD, I was required to complete certain specified repairs within twenty-four months of the closing on my purchase.

22. I received two extensions from HUD to complete the required repairs. The last extension required that I complete the repairs by January 15, 2011.

23. By the end of December 2010, I had completed 89% of the required repairs at Meadowbrook.

24. In January 2011, the City of Meridian ("Meridian"), the city in which Meadowbrook is located, issued a stop-work order for all of the work that was needed to complete the repairs at Meadowbrook.

25. In addition, the city manager for Meridian threatened to have me arrested if I disobeyed the stop-work order.

26. Because I did not want to be arrested, I stopped the work on the repairs at Meadowbrook in January 2011.

27. I was able to resume making the required repairs at Meadowbrook in 2012 after the city manager for Meridian who had threatened to have me arrested was fired. I then completed the repairs that I had agreed to make at Meadowbrook as soon as practicable in 2012.

28. After I completed the repairs, Meridian issued a certificate of occupancy for all of the units at Meadowbrook after Meridian inspected the units.

29. I was the high bidder at HUD's May 31, 2006 foreclosure sale of Schenectady 40.

30. In connection with my purchase of Schenectady 40, I agreed to make certain repairs that were specified in Attachment E to the Foreclosure Sale Use Agreement I executed in connection with my purchase of Schenectady 40. I completed all of the required repairs by October 2009.

31. On October 13, 2009, I received a letter dated October 9, 2010 from the Code Enforcement Coordinator for the City of Schenectady ("Schenectady") notifying me with respect to Schenectady 40 that: (1) there were no violations for any of the units; (2) all of the units had passed an inspection by Schenectady; and (3) Schenectady had issued a rental certificate, which is the equivalent of a certificate of occupancy, for all of the units.

32. On October 14, 2009, I sent a copy of the October 9, 2009 letter from the Code Enforcement Coordinator via email to several persons at HUD, including William Melvin and Lisa Pugliese who was the Supervisory Project Manager for Schenectady 40.

33. In connection with my purchase of Meadowbrook, I executed a HAP contract with HUD ("Meadowbrook HAP Contract").

34. Before HUD terminated the Meadowbrook HAP Contract in 2012, 24 of the 51 units had passed an UPCS inspection.

35. HUD had approved a subsidy payment for 20 the 24 units that had passed an UPCS inspection. Each of these 20 units was occupied by an income-eligible tenant, a 100 percent occupancy rate for the units for which HUD had approved a subsidy, and I was receiving subsidy payments from HUD for each of the 20 units.

36. Without a HAP contract, I can only rent to tenants who can afford to pay rent without a subsidy. However, Meadowbrook is located in a low-income area where all of the multifamily housing rental projects are projects that provide a subsidy to their tenants. Therefore, I am at a severe disadvantage in competing with the projects that offer a subsidy to their tenants. As a result, the average occupancy rate at Meadowbrook has been less than 30 percent since HUD terminated the Meadowbrook HAP Contract in 2012.

37. Because of the low occupancy level at Meadowbrook since HUD terminated the Meadowbrook HAP Contract, the income I have derived from Meadowbrook has been reduced by a significant amount.

38. In connection with my purchase of Schenectady 40, I executed a HAP contract with HUD ("Schenectady 40 HAP Contract").

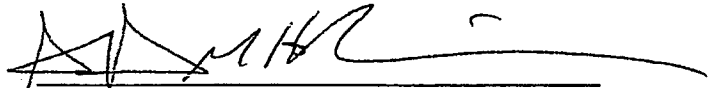
39. Before HUD terminated the Schenectady 40 HAP Contract in 2009, all 40 of the units had passed an UPCS inspection. All 40 of the units were occupied by an income-eligible tenant, a 100 percent occupancy rate, and I was receiving subsidy payments from HUD for each of the 40 units.

40. Without a HAP contract, I can only rent to tenants who can afford to pay rent without a subsidy. However, Schenectady 40 is located in a low-income area where many of the multifamily housing rental projects are projects that provide a subsidy to their tenants. Therefore, I am at a disadvantage in competing with the projects that offer a subsidy to their tenants. As a result, the average occupancy rate at Schenectady 40 has been less than 50 percent since HUD terminated the Schenectady 40 HAP Contract.

41. Because of the lower occupancy level at Schenectady 40 since HUD terminated the Schenectady 40 HAP Contract in 2009, the income I have derived from Schenectady 40 has been reduced by a significant amount.

I declare under the penalty of perjury that the foregoing statements are based on my personal knowledge and are true to the best of my knowledge, information and belief.

1/15/18
Date


Ahmed Halim

BEACON LIGHTS

ATTACHMENT C
FORECLOSURE SALE USE AGREEMENT

This Agreement is entered into by Sharif Abdelhaim ("Purchaser") and the Secretary of Housing and Urban Development ("Secretary" or "HUD").

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. Sections 3701 *et seq.* (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, or pursuant to a judicial foreclosure the Secretary has elected to apply Section 367(b) of the Act, with respect to Beacon Light-Goodwill Baxter Apartments, HUD Project No. 053-35031, (the "Project" or the "Property") a legal description of which is attached as Exhibit "A"; and

WHEREAS, pursuant to the Act and to provisions of 12 U.S.C. Section 1701z-11 *et seq.* Management and Preservation of HUD-Owned Multifamily Housing Projects, and the Department of Housing and Urban Development regulations thereunder at 24 CFR Part 290, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the property subject to a mortgage held by the Secretary that is sold at foreclosure to a purchaser other than HUD; and

WHEREAS, by Deed executed this 28 day of August, 2007, by Bruce C. Houff, the Project has been conveyed to the Purchaser; and

NOW THEREFORE, in consideration of the mutual promises set forth herein and in further consideration of the sale of the Project to the Purchaser, the parties agree as follows:

1. **TERM OF AGREEMENT** - This Agreement shall be in effect, ☒ twenty years from the date of this Agreement or ☐ until
2. **CONVEYANCE OF PROJECT**
This paragraph ☒ is ☐ is not applicable for this property
During the term of this Agreement, any conveyance of the project must have prior written approval of HUD. HUD's approval of conveyance and/or the proposed purchaser's management of the property will be based on information provided in written statements of how the purchaser, or any subsequent purchaser, in consideration of any and all existing use restrictions, will:
 - (a) implement sound financial and physical management program;
 - (b) respond to the needs of the tenants and work cooperatively with resident organizations;
 - (c) provide adequate organizational staff and resources to manage the project.
3. **NON-DISCRIMINATION REQUIREMENTS** - The Purchaser will comply with the provisions of all Federal, State, or local laws prohibiting discrimination in housing.
4. **HAZARD INSURANCE** - Hazard Insurance shall be maintained in an amount to ensure that the Purchaser is able to meet the requirements described in this Agreement. This requirement shall terminate upon the sale of all homeownership units to income-eligible qualified purchasers in accordance with Rider 1 of this Agreement.
5. **DESTRUCTION OF PROJECT** - In the event that any or all of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Project shall be applied to rebuild or replace the property destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
6. **DEMOLITION OF PROJECT PROPERTY** - The Purchaser will not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs), without the prior written approval of HUD.
7. **REMEDIES FOR NONCOMPLIANCE** - Upon any violation of any provision of this Agreement by the Purchaser, HUD may give written notice thereof to the Purchaser by registered or certified mail, addressed to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary, may be designated by the Purchaser as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of this agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain.
The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

Use Agreement

1

GOV002014

Appx147

62a

8. **SUCCESSORS AND ASSIGNS** - This Agreement is binding upon the Purchaser's heirs, successors and assigns. The Purchaser agrees that if title to the Project is conveyed during the term of this Agreement, the Purchaser will require its purchaser to assume in writing its obligations under this Agreement.
9. **RESTRICTIONS** - No Member of Congress or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of the benefits of the Use Agreement, but this provision shall not be construed to extend to this Use Agreement if the Use Agreement is made with a corporation for its general benefit.
10. **CONTRADICTORY AGREEMENTS** - The Purchaser certifies that it has not, and agrees that it will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict with this Agreement.
11. **SEPARABILITY** - The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
12. **AMENDMENT** - This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.

IN WITNESS WHEREOF:

The Purchaser has executed this Use Agreement in triplicate this 24 day of August, 2007.

WITNESS:

Robert T. [Signature]
Notary Public
Wake County, NC

PURCHASER:

[Signature]
By: Signature
SHARVE ABOELHALIM
Typed Name of Purchaser
740 ALEXAN DR APT 103
Street Address
DURHAM NC 27707
City, State, Zip Code

The U.S. Department of Housing and Urban Development (HUD) has executed this Use Agreement in triplicate this 21st day of August, 2007.

WITNESS:

Jennifer H. [Signature]
Jennifer H. Henry

FOR: THE SECRETARY OF HOUSING
AND URBAN DEVELOPMENT

BY: [Signature]

Official's Typed Name

Title
WILLIAM H. MELVIN
DIRECTOR, ATLANTA MULTIFAMILY
PROPERTY DISPOSITION CENTER

Exhibit A to Attachment C

Legal Description

BEGINNING at a new Iron pipe located in the southern right-of-way of Mill Street, said point being located North 86 deg. 48 min. West 66.17 feet as measured along the southern right-of-way of Mill Street from the center line of Robertson Street, thence along the southern right-of-way of Mill Street South 86 deg. 48 min. East 481. 17 feet to a point at the junction of right-of-way of Mill Street and Boddle Street, thence along the property of Sam Southerland South 86 deg. 48 min. East 299. 00 feet to an existing Iron pipe, thence along the property line of C. F. Ayscue South 02 deg. 57 min. West 784. 05 feet to an existing Iron pipe at a Branch, thence along the Branch North 53 deg. 20 min. West 441. 32 feet to a new Iron pipe at the Branch, thence North 44 deg. 04 min. West 116.13 feet to a new Iron pipe, thence North 55 deg. 26 min. West 378.91 feet to an existing Iron pipe at the Branch, thence leaving the Branch North 01 deg. 26 min. West 50. 00 feet to a new Iron pipe, thence North 02 deg. 29 min. East 214.68 feet along the property line of Imperial Properties to the point of beginning, containing 9.27 acres.

GOV002016

RIDER 1 OF 5
CONVERSION TO HOMEOWNERSHIP

The Use Agreement shall contain the following provisions:

- (1) The Purchaser covenants to complete the required repairs within twenty-four (24) months of Closing, convert the property from rental to homeownership and sell the repaired homeownership units to income-eligible qualified purchasers for use as their primary residence. Qualified purchasers are defined as families or individuals whose income does not exceed 80 percent of the area median income, with adjustments for smaller or larger families.
- (2) The Purchaser covenants that the monthly mortgage payment (PITI) for qualified purchasers will not exceed 30 percent of 80 percent of area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families. The determination of purchaser eligibility and adherence to monthly payment guidelines will be made prior to execution of a Contract of Sale for each homeownership unit.
- (3) The Purchaser covenants that the deed-of-conveyance for the initial sale of each homeownership unit will prohibit renting the homeownership unit for a period of twenty (20) years.
- (4) The Purchaser covenants not to rent any units, except to income-eligible qualified purchasers for a specified period of time not to exceed twenty-four (24) months under a lease-purchase contract of sale. The monthly rents under a lease-purchase contract of sale cannot exceed 30 percent of 80 percent of area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families.
- (5) The Purchaser covenants that the deed-of-conveyance for the initial sale of each homeownership unit will restrict subsequent conveyances to income eligible qualified purchasers who are at or below 80 percent of area median income, with adjustments for smaller and larger families, in accordance with the requirements of Rider 2 of this deed.
- (6) The Purchaser covenants that the deed-of-conveyance for the initial sale of each homeownership unit will set an upper limit on monthly mortgage payments (PITI) on future conveyances to qualified purchasers at 30 percent of 80 percent of area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families, in accordance with the requirements of Rider 2 of this deed.
- (7) The Purchaser shall certify to HUD annually that the requirements in the above paragraphs have been fulfilled until all of the homeownership units have been sold.

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

PURCHASER SAT

SECRETARY OF HOUSING AND URBAN DEVELOPMENT lm

GOV002017

RIDER 2 OF 5
AFFORDABILITY OF UNITS

The Use Agreement shall contain the following provisions:

Use Restriction (applicable if checked)

☒ The Purchaser covenants that one hundred and eight (108) units in the Property will be converted to homeownership and sold to income eligible families and individuals and maintained as *affordable homeownership housing* for a period of twenty (20) years after the date of this Deed or such earlier time as the Seller may specify in writing (the "Restricted Period"). Any change in this number of units must receive the prior written approval of the Seller.

☐ The Purchaser covenants that it will market affirmatively _____ of the units in the project to very low-income families, whose income at the time of initial occupancy does not exceed 50 percent of the area median income with adjustments for smaller or larger families.

Income Eligibility Limitation

The Purchaser may only sell the number of units required to be *affordable units* to families who qualify as low-income and/or very low-income, as defined in Section 813 of the Housing Act of 1937, as amended, with adjustments for smaller and larger families. The determination of whether the annual income of a qualified purchaser exceeds the applicable income limit shall be made prior to execution of a contract for sale for each homeownership unit.

☐ Of the total number of affordable units, _____ units may be targeted to families with annual incomes between 80 and _____ percent of the area median income, with adjustments for smaller and larger families.

Affordability of Mortgage Payments

Affordable mortgage payments means the monthly payment (PITI) does not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller and larger families.

Additional Purchaser Covenants

- (1) The Purchaser covenants that it will not unreasonably refuse to sell units to, or otherwise discriminate against, very low-income families.
- (2) The initial deed-of-conveyance for each unit sold to each qualified purchaser will restrict all subsequent sales of each unit to income-eligible purchasers as defined in this Rider for a term of twenty (20) years from the date of initial conveyance.
- (3) The initial deed-of-conveyance for each unit sold to each qualified purchaser will require that the monthly mortgage payment (PITI) for all subsequent sales to income-eligible purchasers must not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by the Department, with adjustments for smaller or larger families, for a term of twenty (20) years from the date of initial conveyance.
- (4) The Purchaser shall certify to HUD annually that the requirements in the above paragraphs have been fulfilled until all of the units have been sold.

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

PURCHASER SAW

SECRETARY OF HOUSING AND URBAN DEVELOPMENT mm

GOV002018

RIDER 3 OF 5
POST-CLOSING REPAIR ESCROW REQUIREMENTS

The Use Agreement shall include the following provisions:

1. Purchaser covenants to complete required repairs within twenty-four (24) months of Closing. To ensure completion, the Purchaser shall provide to HUD, at Closing, one of the following, as determined by HUD:
 - a. Unconditional, Irrevocable and non-documentary Letter of Credit (LOC):
 - (1) an unconditional, irrevocable and non-documentary Letter of Credit (LOC) in the amount of \$1,292,567, with an expiration date at least six (6) months beyond HUD's estimated date for completion of repairs. In the event an extension for completion of repairs is granted, the LOC will be extended accordingly. HUD may cash the LOC and apply the funds to correct latent defects in the completed repairs if the Purchaser is unable or unwilling to make such repairs within the six month period, or for such purposes as HUD deems appropriate; or,
 - (2) if repairs are performed in stages, as agreed between Purchaser and HUD prior to Closing, up to five (5) LOCs may be provided to HUD. The first LOC will be equal to at least ten percent (10%) of the total estimated repair costs and such LOC shall remain in effect for a period of six (6) months after the work has been completed to HUD's satisfaction. If the Purchaser is unable or unwilling to make such repairs within the six-month period, HUD may cash this LOC and apply the funds to correct latent defects in the completed repairs, or for such purposes, as HUD deems appropriate. The remaining LOCs provided to HUD will be in equal dollar amounts, the sum of which will equal the total required LOC amount specified in paragraph (1) less the first LOC detailed above. Each of these remaining LOCs will have an expiration date at least six (6) months beyond the estimated completion date for repairs. The LOCs shall be returned to the Purchaser after the repairs have been completed to HUD's satisfaction.
 - b. Performance and payment bonds meeting State and local codes as assurance of completion for post-closing repair requirements, as listed on Form HUD-9552 and its exhibits, or form HUD 9822. Purchaser must use HUD Form-92452 for the payment bond and a form for the performance bond that is acceptable to HUD.
 - (1) Evidence of the existence of payment and performance bonds each in the amount of \$5,170,269 [the total cost of repairs] must be provided to HUD.
 - (2) Purchaser must follow the following requirements:
 - i. The surety entity issuing the bonds must be included on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1 of each year;
 - ii. The payment and performance bonds must not exceed limits listed in the Circular;
 - iii. The payment and performance bonds must show HUD as payee, along with Purchaser's mortgagee, at the mortgagee's request.
2. If the Purchaser fails to complete repairs in accordance with this Agreement, the Secretary will not exercise the remedies as described in paragraph 1a(1), or request payment on the bonds secured under paragraph 1b, above, if any lender holding a lien or security interest on the Project:
 - a. Gives written notice to HUD within the period provided for repairs, that it intends to complete the repairs, and
 - b. Completes such repairs within 30 days of the notice or within such longer periods that HUD may approve in writing.

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

PURCHASER SAT

SECRETARY OF HOUSING AND URBAN DEVELOPMENT LM

GOV002019

RIDER 4 OF 5
ASBESTOS HAZARDS

The Use Agreement shall include the following provisions:

- (1) Purchaser agrees to indemnify defend, and hold Seller harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of asbestos health hazards, the prohibition against the use of asbestos and Purchaser's responsibility for complying with applicable State and local asbestos laws and regulations.
- (2) If Purchaser fails to comply with (1), above, and no extension by written agreement has been granted by Seller, Seller and his successors in office shall be entitled to enter and terminate the estate hereby conveyed.

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

PURCHASER SMH

SECRETARY OF HOUSING AND URBAN DEVELOPMENT km

GOV002020

RIDER 5 OF 5
LEAD-BASED PAINT HAZARDS

The Use Agreement shall include the following provisions:

- (1) In order to comply with 42 USC 554821-4886 and the regulations thereunder, 24 CFR Part 35 (the "Regulations"), (applicable as checked)
☐ Purchaser covenants that the Property will be inspected and tested for lead-based paint, and any hazards will be abated in accordance with the Regulations.
☒ Purchaser covenants that any lead-based paint hazards will be abated in accordance with the Regulations. Purchaser shall certify to Seller (in a form acceptable to Seller) and Seller shall determine, through its inspection (or at its discretion, the inspection and certification of a local government official) that all lead based-paint hazards have been removed from the Property in accordance with the Regulations.
- (2) Purchaser understands and agrees that Seller's inspection and finding of satisfactory performance is not intended to and does not constitute a guarantee that all lead based-paint and all potential lead-based paint hazards have been eliminated from the Property and does not relieve Purchaser of its ongoing responsibility for complying with all applicable State and local lead based-paint laws and regulations.
- (3) Purchaser agrees to indemnify, defend, and hold Seller harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of lead based-paint health hazards, the prohibition against the use of lead based-paint, and Purchaser's responsibility for complying with applicable State and local lead based-paint laws and regulations.
- (4) Purchaser agrees to comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgment of Disclosure" of 24 CFR - *Lead-Based Paint Poisoning Prevention in Certain Residential Structures*.
- (5) If Purchaser fails to comply with (1), above, and no extension by written agreement has been granted by Seller, Seller and his successors in office shall be entitled to enter and terminate the estate hereby conveyed.

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

PURCHASER SPH

SECRETARY OF HOUSING AND URBAN DEVELOPMENT LM

GOV002021

buildings underway were still in progress.” *Id.* The remaining repairs were estimated at \$252,541.82. A1102. On November 18, 2010, based on the November 1, 2010 post-closing inspection, HUD released the remaining available \$6,629 to Mr. Halim from his repair escrow. A1137. In total, Mr. Halim had received \$313,640 from his \$513,967 escrow. HUD explained to Mr. Halim that the remaining funds “may not be released prior to completion of the latent defect period,” after all repairs were completed. The remaining balance \$200,327, represented 10 percent of the original repair estimate in the Bid Kit.¹⁷ *Id.*

A UPCS inspection, A1157-69, and a post-closing inspection, A1139-56, were performed at Meadowbrook prior to the January 15, 2011 final repair deadline on December 20, 2010. A1158. A City building official at the inspection “reminded Mr. Halim of the City’s requirement that all work be completed at the reference development by January 15, 2011.” *Id.* The UPCS inspection report noted that only twenty-four of the units had passed UPCS inspection (approximately half of the units) and all four units that were inspected that day failed to meet the UPCS requirements. *Id.* Four additional units were not officially inspected because they were “missing toilets and lavatories, PTAC units, and light fixtures.” *Id.* The report also noted the unoccupied units that were previously completed on the interior remained without power and conditioned air with resulting on-going problems with the flooring and ceilings. *Id.* According to the inspection report, the repair estimate was \$221,264.65, which represented approximately 89 percent completion. A1142.

¹⁷ Although the letter indicates that the balance was \$206,956, that amount was the previous balance in the September 29, 2010, letter. *See* GOV000869. The actual balance was \$6,629 less, or \$200,327. In addition, the 10 percent that was retained is of the original repair estimate, not the updated repair estimate on which Mr. Halim’s \$513,967 letter of credit was based. *See* A581.



U.S. Department of Housing and Urban Development

Atlanta Multifamily Property Disposition Center
Five Points Plaza
40 Marietta St.
Atlanta, Georgia 30303-2806

November 19, 2008

Mr. Alunad Halim
213 Saint Helena Ave.
Baltimore, MD 21222-4219

Dear Mr. Halim:

Subject: Schenectady 40 Apartments
FHA No.: 013-35106
Schenectady, NY

This letter is official notice that you are in breach of the Foreclosure Sale Use Agreement (Use Agreement) on Schenectady 40 Apartments (the Project). On July 6, 2006 you purchased the Project and agreed to the conditions of the sale, including the terms of Rider 2, Post-Closing Repair Escrow Requirements (Rider). The Rider requires that the redevelopment of the property be completed within 24 months of closing. However, this has not been done.

The latest post-closing inspection of Schenectady 40 Apartments conducted by the U.S. Department of Housing and Urban Development's (HUD) A/E Contractor on March 13, 2008 reflects that only 32 percent of the total required repairs have been completed. HUD's A/E Contractor has contacted you on several occasions to try and schedule another inspection, but you have not agreed to an acceptable date and time.

You must submit to HUD's Atlanta Multifamily Property Disposition Center within 10 days of the date of this letter, a schedule for the satisfactory completion of all required repairs. Repairs must be completed within twelve (12) months from the date of this letter. Any extension of time to complete the repairs must be approved by HUD. If HUD does not receive a response and/or a schedule acceptable to the Department within 10 days from the date of this letter, HUD will take appropriate legal action, including, but not limited to, retaining the \$400,000 cash held in escrow by HUD to ensure acceptable completion of the repairs.

If you have any questions regarding this letter, contact Jan W. Haber, Attorney, Office of Counsel at (678) 732-2079

Sincerely,

William H. Melvin
Director
Atlanta Multifamily Property
Disposition Center

Five Points Plaza • 40 Marietta Street • Atlanta, GA 30303-2806 • www.hud.gov • espanol.hud.gov

GOV001223

A290

Appx548

71a



U.S. Department of Housing and Urban Development

Atlanta Multifamily Property Disposition Center
Five Points Plaza
40 Marietta St.
Atlanta, Georgia 30303-2806
<http://www.hud.gov/cact/atl/index.html>

December 2, 2011

Mr. Ahmad Halim
213 St. Helena
Baltimore, MD 21222

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Dear Mr. Halim:

SUBJECT: Notice of Violation
Project Name: Meadowbrook Apartments
Project Number: 065-35587
Project Location: Meridian, MS

This letter constitutes formal notice by the U.S. Department of Housing and Urban Development ("HUD") that you, as the owner of Meadow Brook Apartments ("Project," or "Property"), are in violation of the Foreclosure Sale Use Agreement (Use Agreement") that you executed on or near January 19, 2007. As a result, you are also in violation of the Housing Assistance Payment (HAP) Contract for the Project that was executed on the same date. Copies of the Use Agreement and HAP Contract are attached.

You have performed some repairs after HUD, in 2009, declared you in default of the Use Agreement and cashed the Letter of Credit ("LOC") held by HUD to assure completion of the repairs. Subsequently, HUD granted you an extension of time to complete the repairs until January 31, 2010. The proceeds of the LOC have been held in escrow since May, 2009 and HUD has released some of the funds to you as repairs were performed. However, you are currently in violation of the Use Agreement and the HAP Contract for failure to complete the repairs required by the Use Agreement and the HAP Contract and for failure to maintain units in a decent, safe and sanitary condition. This violation notice supersedes violation and default notices previously sent to you on or before February 1, 2010.

You are in violation of Section 1, paragraphs 1.c. and 1.d. of Rider 6 of the Use Agreement, because nearly 2 years after the time extension deadline, you have failed to complete the required repairs. As you know, two HUD staff members conducted an inspection in the Project on November 16, 2011. During their inspection, they observed that approximately 10 of the units in the Project are occupied. Many of the unoccupied units are uninhabitable as they lack, among other things, certificates of occupancy, plumbing, electrical work, and appliances. The occupied units are similarly deficient in that many have no heat and also have faulty electric service, leaking gas, and other safety hazards. Based on the findings of HUD's inspection, it is obvious that extensive repairs are necessary to bring the Project into

A1191

GOV025346

Appx1459
72a

compliance with HUD's Uniform Physical Condition Standards and that you are in material violation of your repair obligations.

You are also in violation of Section 2, paragraph 3.c. of Rider 6. The City of Meridian has condemned two of the buildings in the Project which shows that the Project has not been repaired in accordance with applicable local codes, ordinances, and regulations. You are in further violation of this requirement because the repair work at the Project is, in many instances, being done in violation of local building codes by unlicensed workmen.

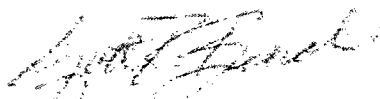
These violations under the Use Agreement are also violations under the HAP Contract. See Section 2, paragraph 5 of Rider 6. Therefore, if the violations are not corrected to HUD's satisfaction, HUD will impose one or more of the remedies outlined in the HAP Contract. These remedies include termination or reduction of housing assistance payments, and termination of the HAP Contract. You must correct the violations described above within 30 days of the date of this Notice. If you do not make these corrections to the satisfaction of HUD, HUD intends to terminate the HAP Contract and retain the balance of the cash repair escrow. Further, HUD reserves the right to take any remedy available under the Use Agreement or any other remedy available under law or equity.

For the reasons described in this Notice, HUD will flag the Owner in HUD's Active Partners Performance System (APPS). This flag may adversely affect the Owner's eligibility for participation in HUD programs, under HUD's Previous Participation Certification procedure, by constituting a standard for disapproval.

HUD may continue its review of all contractual agreements between the Owner and HUD beyond the matters identified in this Notice. If HUD determines that there are additional contractual violations or defaults, HUD's subsequent declaration of any such violations or defaults will not affect the requirements set out in this Notice.

If there are any questions concerning this matter, please contact Anthony Osborn, Sales Chief, at 678.732.2760.

Sincerely,



Scott R. Bearden
Acting Director
Atlanta Multifamily Property
Disposition Center

Enclosures

A1192

GOV025346

Appx1460

73a

<p style="text-align: center;">LISA PUGLIESE 30(b)(6)</p> <p style="text-align: right;">06/17/2016 42:43</p> <p>AHMAD HALIM vs. UNITED STATES</p> <p>1 disbursements of the escrow account, and were there</p> <p>2 any other disbursements from that escrow account?</p> <p>3 A. There was a \$45,000 disbursement that was</p> <p>4 provided at closing for the deposit that Mr. Halim</p> <p>5 put down with the bid package.</p> <p>6 Q. So there was one \$45,000 disbursement and</p> <p>7 then the two that you looked at in these exhibits?</p> <p>8 A. That's correct.</p> <p>9 Q. And so what is the final balance of the</p> <p>10 escrow approximately?</p> <p>11 A. Approximately \$203,000.</p> <p>12 Q. According to the Final Inspection Report</p> <p>13 that was done in approximately August 2009,</p> <p>14 approximately what percentage of the repairs had been</p> <p>15 completed?</p> <p>16 A. About 30 percent.</p> <p>17 Q. So Mr. Halim actually received a larger</p> <p>18 percentage of the escrow than the repairs that were</p> <p>19 completed?</p> <p>20 A. That's correct.</p> <p>21 Q. Now, just ask you to look back at Exhibit</p> <p>22 3 for a minute. Now, this is a UPCS inspection;</p> <p>23 right?</p> <p>24 A. Correct.</p> <p>25 Q. Was there also a post-closing inspection</p>	<p>1 done the same day?</p> <p>2 A. Yes, there was.</p> <p>3 Q. Although only two units were inspected as</p> <p>4 part of the UPCS, right, on this day?</p> <p>5 A. Correct.</p> <p>6 Q. But as part of the post closing, would</p> <p>7 more of the units and also the general condition of</p> <p>8 the building be inspected?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall approximately what</p> <p>11 percentage of the repairs were complete as of that</p> <p>12 post closing in March of 2008?</p> <p>13 A. It was still only 30 percent.</p> <p>14 Q. And if I could just have you look back at</p> <p>15 Exhibit 5 for a minute. Now, this letter was issued</p> <p>16 in June of 2009; right?</p> <p>17 A. Correct.</p> <p>18 Q. And it followed an inspection that was</p> <p>19 done in March of 2009; right?</p> <p>20 A. Correct.</p> <p>21 Q. And that inspection, do you recall how</p> <p>22 many of the units were inspected as part of the March</p> <p>23 2009 inspection?</p> <p>24 A. I believe all of them.</p> <p>25 Q. And the previous inspection had been in</p>
<p style="text-align: center;">Page 44</p> <p>1 early March of 2008; right?</p> <p>2 A. Yes.</p> <p>3 Q. So this March inspection in 2009 was more</p> <p>4 than a year later?</p> <p>5 A. Correct.</p> <p>6 Q. And do you recall approximately how many</p> <p>7 of the units passed at that time?</p> <p>8 A. None of them.</p> <p>9 Q. Do you recall approximately what</p> <p>10 percentage of the repairs were complete in the</p> <p>11 post-closing inspection at that time?</p> <p>12 A. Still only about 30 percent.</p> <p>13 Q. So in between March of 2008 and March of</p> <p>14 2009, had there been much work completed in terms of</p> <p>15 the post-closing repairs?</p> <p>16 A. No.</p> <p>17 Q. Turning to Exhibit 6, this is the letter</p> <p>18 from Lou. Now there was an inspection in August</p> <p>19 2009; right?</p> <p>20 A. Yes.</p> <p>21 Q. So would that inspection have verified</p> <p>22 whether or not the work that Mr. Magliocca talked</p> <p>23 about had been completed?</p> <p>24 A. It would.</p> <p>25 Q. Do you recall approximately how many of</p>	<p style="text-align: center;">Page 45</p> <p>1 the repairs were completed or how many of the units</p> <p>2 passed in the August of 2009 inspection?</p> <p>3 A. None of them.</p> <p>4 Q. And approximately what percentage of the</p> <p>5 repairs were complete at that time?</p> <p>6 A. Still only around 30 percent.</p> <p>7 Q. And so from March of 2008 until August of</p> <p>8 2009, how much of the post closing work had been done</p> <p>9 approximately?</p> <p>10 A. Overall total, about 33 percent.</p> <p>11 Q. Specifically sort of between the March</p> <p>12 2008 inspection and the August 2009, like</p> <p>13 approximately?</p> <p>14 A. Less than 10 percent.</p> <p>15 Q. So how likely is it that, from August 2009</p> <p>16 until October of 2009, that all of the -- all of the</p> <p>17 units could have passed inspection?</p> <p>18 A. They could.</p> <p>19 MR. COAN: Objection, Objection. Calls</p> <p>20 for speculation.</p> <p>21 Q. (By Ms. Roenig) I mean in your</p> <p>22 understanding and experience, how likely is it that</p> <p>23 those repairs could have been completed in the few</p> <p>24 months between August and October?</p> <p>25 A. Unrealistic.</p>

Zoning & Inspection Division
www.meridianms.org

(601) 485-1900

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10647

ISSUE DATE: 2/16/2012

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS
located at 4311 5TH STREET BUILDING #9
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No: 55747
Building Permit No: 55828
Building Permit No: 55909
Building Permit No: 56764
MS Power Co/EMEPA No: 22114
Atmos Enery Co No: 3064
Mechanical Permit No: 8936
Meridian Water & Sewer No: 10411
Meridian Water & Sewer No: 10690

Building Official: *Robert J. Smith*

By: *DS*

A-6

PLTF 000121

Appx1763

75a

Zoning & Inspection Division
www.meridianms.org

(601) 485-1900

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10653

ISSUE DATE: 3/23/2012

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS
located at 4311 5TH STREET BUILDING #6
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No:	55827
Building Permit No:	55907
MS Power Co/EMEPA No:	22112
MS Power Co/EMEPA No:	23255
Atmos Enery Co No:	3041
Atmos Enery Co No:	3130
Mechanical Permit No:	8981
Mechanical Permit No:	9223
Meridian Water & Sewer No:	10389
Meridian Water & Sewer No:	10815

Building Official: _____

By: _____

A-7

PLTF 000123

Appx1764

76a

Zoning & Inspection Division
www.meridianms.org

(601) 485-1900

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10659

ISSUE DATE: 5/22/2012

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS

located at 4311 5TH STREET BUILDING 5

according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No: 55747
Building Permit No: 55826
Building Permit No: 55906
Building Permit No: 56596
MS Power Co/EMEPA No: 22431
MS Power Co/EMEPA No: 23301
Atmos Energy Co No: 3052
Atmos Energy Co No: 3131
Mechanical Permit No: 8980
Meridian Water & Sewer No: 10442
Meridian Water & Sewer No: 10819

Building Official: Ricky J. Shala

By: 12

A-8

PLTF 000118

Appx1765

77a

In accordance with HUD's process of declaring a default, a party's actual deadline for a default is the time specified in a Notice of Violation to correct any alleged default. In this case, Plaintiff would normally have had between January 15, 2011, the original deadline, and January 1, 2012, thirty days from the December 2, 2011 Notice of Violation, to complete the repairs at Meadowbrook. Except, however, even though Plaintiff had been making steady progress in completing the repairs at Meadowbrook such that Plaintiff had completed 89% of the repairs by December 20, 2010, A1142, Plaintiff could not make any of the remaining 11% of the repairs after January 15, 2011 until 2012 because Meridian⁹ had issued a stop-work order and had threatened Plaintiff with arrest if he violated the order. Dec. ¶¶ 24-27, App. 4.

Defendant observes that the certificates of occupancy issued by Meridian "are all dated after HUD terminated Mr. Halim's Use Agreement and HAP contract on February 8, 2012."¹⁰ Resp. 19. Therefore, according to Defendant, "the certificates of occupancy have no bearing on whether Mr. Halim completed the repairs by the contractual deadline." *Id.*

Plaintiff does not claim that the certificates of occupancy are evidence that Plaintiff completed the repairs by January 15, 2011. Rather, Plaintiff asserts that the certificates of occupancy are evidence that Plaintiff would have completed the remaining 11% of the required repairs by the actual January 1, 2012 deadline if Plaintiff had not been precluded from completing the repairs by the stop-work order.

With respect to Plaintiff's impossibility argument, Defendant argues that "Mr. Halim cannot shirk his obligations under the contract for four years, then claim impossibility to be

⁹ Meridian refers to Meridian, Mississippi, the city in which Meadowbrook is located.

¹⁰ As noted by Defendant, Plaintiff only provided certificates of occupancy "for only three of the 12 buildings." Resp. 19. Plaintiff intends to provide certificates for the other buildings if there is a trial.

Case 1:12-cv-00005-EDK Document 90-1 Filed 08/09/18 Page 17 of 20

To: Gordon-Benson, Cynthia[Cynthia.GordonBenson@hud.gov]
Cc: Wallace, Wil'win[Wil'win.Wallace@hud.gov]; Grego, Edward C[Edward.C.Grego@hud.gov]
From: Bearden, Scott
Sent: Fri 8/9/2013 9:04:08 PM
Subject: FW: Compliance Monitoring Review Summary Report (Beacon Light-Goodwill Baxter Apartments)
Beacon Light-Goodwill Baxter Apartments.PDF
Beacon Light -Timeline.docx

Thanks Cynthia, great comments. An NOV and NOD is the first thing that should occur. Let me get Eddie and Wil'win involved as well to ensure they do not have anything further and we can move forward with the NOV.

Thanks

From: Gordon-Benson, Cynthia
Sent: Tuesday, August 06, 2013 8:45 AM
To: Bearden, Scott
Subject: FW: Compliance Monitoring Review Summary Report (Beacon Light-Goodwill Baxter Apartments)

Hi Scott,

I've completed my review of the file documentation for Beacon Light. I've attached a timeline of events that appeared to be significant. Based on my review I don't feel we are ready to refer this property to DEC. I have found no record where we have sent to the owner a NOV or NOD letters. I'm assuming the owner has not been flagged in APPS if the NOV and NOD letters have not been sent. I only saw one letter dated March 11, 2009 that could be considered as a possible warning letter. It does not appear there has been any communication with the owner since a letter dated June 28, 2011.

I'm uncertain if there is still pending litigation regarding the property. I don't know the details of the litigation. However, there appears to be a remaining cash escrow funds:

A15

GOV003859

Appx1886

79a

CO Number: 10558

Owner: VALLEYVIEW APARTMENTS

Address: 4311 5TH STREET BUILDING 2

..... Building Permit No.: 55317
..... MS. Power Co/EMEPA No.: 21613
..... MS. Power Co/EMEPA No.: 21614
..... MS. Power Co/EMEPA No.: 21615
..... MS. Power Co/EMEPA No.: 21616
..... MS. Power Co/EMEPA No.: 21791
..... Atmos. Enery Co. No.: 2995
..... Atmos. Enery Co. No.: 3029
..... Mechanical Permit No.: 8838
Meridian Water & Sewer No.: 10148
Meridian Water & Sewer No.: 10360
.....
.....
.....
.....
.....

F1=Help F2=Cancel Enter to Confirm
The end of the file was reached.

issued
6/23/2010
RSS

1,2,4,9,13

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10692

ISSUE DATE: _____

This will certify that a business has been constructed/remodeled for
APARTMENTS VALLEY VIEW
located at 4311 5TH STREET BUILDING #3
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No: 55912
Building Permit No: 57847
MS Power Co/EMEPA No: 22271
MS Power Co/EMEPA No: 23719
Atmos Enery Co No: 3051
Atmos Enery Co No: 3171
Mechanical Permit No: 9417
Meridian Water & Sewer No: 10361
Meridian Water & Sewer No: 10441
Meridian Water & Sewer No: 11026

Building Official: RJS

By: _____

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY


NO: 10653

ISSUE DATE: 3/23/2012

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS
located at 4311 5TH STREET BUILDING #6
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No: 55827
Building Permit No: 55907
MS Power Co/EMEPA No: 22112
MS Power Co/EMEPA No: 23255
Atmos Enery Co No: 3041
Atmos Enery Co No: 3130
Mechanical Permit No: 8981
Mechanical Permit No: 9223
Meridian Water & Sewer No: 10389
Meridian Water & Sewer No: 10815

Building Official: 

By: 

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10715

ISSUE DATE: 4/10/2014

This will certify that a residence has been constructed/remodeled for
APARTMENTS VALLEY VIEW
located at 4311 5TH STREET BUILDING 7
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No:	55669
Building Permit No:	58244
MS Power Co/EMEPA No:	22259
MS Power Co/EMEPA No:	23960
Atmos Enery Co No:	3046
Atmos Enery Co No:	3205
Mechanical Permit No:	9526
Meridian Water & Sewer No:	10401
Meridian Water & Sewer No:	11140

Building Official: RS

By: _____

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10647

ISSUE DATE: 2/16/2012

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS
located at 4311 5TH STREET BUILDING #9
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No: 55747
Building Permit No: 55828
Building Permit No: 55909
Building Permit No: 56764
MS Power Co/EMEPA No: 22114
Atmos Enery Co No: 3064
Mechanical Permit No: 8936
Meridian Water & Sewer No: 10411
Meridian Water & Sewer No: 10690

Building Official: _____

Reed J. Shores

By: _____

U

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10659

ISSUE DATE: 5/22/2012

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS
located at 4311 5TH STREET BUILDING 5
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No: 55747
Building Permit No: 55826
Building Permit No: 55906
Building Permit No: 56596
MS Power Co/EMEPA No: 22431
MS Power Co/EMEPA No: 23301
Atmos Energy Co No: 3052
Atmos Energy Co No: 3131
Mechanical Permit No: 8980
Meridian Water & Sewer No: 10442
Meridian Water & Sewer No: 10819

Building Official: _____

Richy Joe Shuck

By: _____

DS

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10677

ISSUE DATE: 12/11/2012

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS
located at 4311 5TH STREET BUILDING #10
according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No:	55910
Building Permit No:	57625
MS Power Co/EMEPA No:	23394
Atmos Enery Co No:	3053
Atmos Enery Co No:	3140
Mechanical Permit No:	9312
Mechanical Permit No:	9386
Meridian Water & Sewer No:	10366
Meridian Water & Sewer No:	10443
Meridian Water & Sewer No:	10930

Building Official:

Ricky Joe Shirley

By: AB

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10682

ISSUE DATE: 2/26/2013

This will certify that a residence has been constructed/remodeled for
VALLEY VIEW APARTMENTS

located at 4311 5TH STREET BUILDING 11

according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No: 55830
Building Permit No: 57810
MS Power Co/EMEPA No: 23628
MS Power Co/EMEPA No: 23643
Atmos Enery Co No: 3160
Meridian Water & Sewer No: 10365
Meridian Water & Sewer No: 10999

Building Official: Phil Pierce

By: IF

the City of **MERIDIAN**

CERTIFICATE OF OCCUPANCY

NO: 10589


ISSUE DATE: 3/11/2011

This will certify that a residence has been constructed/remodeled for
VALLEYVIEW APTS BLDG 12

located at 4311 5TH STREET BUILDING 12

according to the Building Code of the City of Meridian and is your authority to
connect your utilities according to your final inspection certificate number.

Building Permit No:	54983
MS Power Co/EMEPA No:	21416
MS Power Co/EMEPA No:	21423
MS Power Co/EMEPA No:	22324
MS Power Co/EMEPA No:	22342
Atmos Enery Co No:	3030
Atmos Enery Co No:	3063
Mechanical Permit No:	8935
Meridian Water & Sewer No:	10068
Meridian Water & Sewer No:	10336
Meridian Water & Sewer No:	10364

Building Official: 

By: 

TABLE OF CONTENTS

Joint Appendix

Page:

Judgment

filed November 21, 2018..... Appx1

Opinion and Order

filed November 19, 2018..... Appx2

Docket Entries. Appx34

Fourth Amended Complaint,

With Exhibits,

filed January 9, 2015. Appx42

Exhibits:

3. Meadowbrook Foreclosure Sale Use Agreement
dated December 6, 2006..... Appx108

6. Beacon Light Foreclosure Sale Use Agreement
dated August 28, 2007..... Appx147

**Defendant's Motion for Summary Judgment,
With Appendix,
filed February 17, 2017..... Appx165**

Appendix:

Nichols Townhomes (The Ohio Property)

**Nichols Townhomes Bid Kit
dated May 12, 2006. Appx259**

**Nichols Foreclosure Sale Documents
dated May 12, 2006. Appx371**

**Letter to Mr. Halim re: Closing date
dated May 23, 2006. Appx387**

**Mr. Halim's Management Documents
dated June 1, 2006. Appx389**

**Letter to Mr. Halim re: Management Documents
dated June 9, 2006. Appx406**

**Letter to Mr. Halim Rejecting Bid
dated June 23, 2006. Appx432**

Schenectady 40 Apartments (The New York Property)

**New York Use Agreement
dated July 25, 2006..... Appx446**

**Schenectady 40 Bid Kit Attachments E & F
dated May 31, 2006. Appx465**

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Schenectady 40 Apartments (The New York Property), Continued:

UPCS Inspection dated November 10, 2006.....	Appx500
Post-Closing Inspection dated March 13, 2008.	Appx533
Notice of Breach dated November 19, 2008.....	Appx548
Letter to Mr. Halim re: Inspection dated March 16, 2009.	Appx549
UPCS Inspection dated March 31-April 1, 2009.	Appx550
Post-Closing Inspection dated March 31-April 1, 2009.	Appx647
Notice of Default dated June 22, 2009.	Appx664
UPCS Inspection dated August 11, 2009.....	Appx666
Post-Closing Inspection dated August 11, 2009.....	Appx761

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Schenectady 40 Apartments (The New York Property), Continued:

Notice of Abatement
dated October 6, 2009..... Appx778

Notice of Abatement and Termination of HAP Contract
dated October 30, 2009..... Appx779

Letter to Mr. Halim re: Escrow Release
dated July 7, 2010..... Appx781

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Meadowbrook Apartments (The Mississippi Property)

Meadowbrook Bid Kit
dated August 4, 2006..... Appx792

UPCS Inspection
dated January 25, 2008. Appx875

Post-Closing Inspection
dated August 13, 2008..... Appx892

UPCS Inspection
dated August 13, 2008..... Appx908

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Meadowbrook Apartments (The Mississippi Property), Continued:

Notice of Violation dated February 6, 2009.	Appx940
Notice of Default dated May 4, 2009.	Appx942
Post-Closing Inspection dated January 25, 2010.	Appx1157
UPCS Inspection dated January 25, 2010.	Appx1183
Letter to Mr. Halim re: Escrow Release dated January 28, 2010.	Appx1204
Letter to Mr. Halim re: Granting Extension dated April 5, 2010.	Appx1238
Post-Closing Inspection dated July 22, 2010.....	Appx1289
UPCS Inspection dated September 29, 2010.	Appx1351
UPCS Inspection dated November 1, 2010.....	Appx1383

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Meadowbrook Apartments (The Mississippi Property), Continued:

UPCS Inspection	
dated December 20, 2010.....	Appx1425
Email from Mr. Roberts to HUD re: Repair Deadlines	
dated January 26, 2011.	Appx1438
Internal HUD Memo re: abatement	
dated September 23, 2011.	Appx1458
Notice of Violation	
dated December 2, 2011.....	Appx1459
Post-Closing Inspection	
dated January 25, 2012.	Appx1462
Notice of Default	
dated February 2, 2012.	Appx1487

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Beacon Lights Apartments (The North Carolina Property)

Beacon Light Bid Kit	
dated June 12, 2007.	Appx1490
North Carolina Use Agreement	
dated August 28, 2007.....	Appx1519

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Beacon Lights Apartments (The North Carolina Property), Continued:

Letter to Mr. Halim re: Repairs dated March 11, 2009.	Appx1531
Letter to Mr. Halim re: Extension dated June 3, 2009.	Appx1532
Letter to HUD from City re: August Resolutions dated August 12, 2009.....	Appx1533
Mr. Halim's Application for Special Use Permit and Variance and the City's Decision dated October 9, 2009.....	Appx1540
Letter to HUD from City with Attachments dated October 30, 2009.....	Appx1545
Letter to Mr. Halim re: Nichols, Schenectady, and Beacon Light dated February 3, 2010.	Appx1623
Letter to Mr. Halim Denying Reconsideration dated March 31, 2010.	Appx1625
Letter to Mr. Halim Stating HUD's Intention to Use the Repair Escrow "In a Manner it Deems Appropriate" dated June 29, 2010.	Appx1626

Appendix to
Defendant's Motion for Summary Judgment
filed February 17, 2017, Continued:

Beacon Lights Apartments (The North Carolina Property), Continued:

MOU between HUD & City re: Demolition
dated October 27, 2010..... Appx1627

Letter to HUD from City re: MOU
dated September 14, 2011. Appx1636

Deed Transfer from Sharif Halim to Mr. Halim
dated June 26, 2012. Appx1648

Transcripts

Excerpts of Deposition of Tim Roberts
taken on March 15, 2016..... Appx1651

Excerpts of Deposition of Lisa Pugliese
taken on June 17, 2016..... Appx1712

Plaintiff's Opposition to Defendant's Motion for Summary
Judgment and Cross-motion for Summary Judgment,
With Appendix and Attachment,
filed January 16, 2018. Appx1715

Appendix:

Email from Conley Andrews to Alvin E. Braggs
dated July 13, 2006..... Appx1762

Appendix and Attachment to
Plaintiff's Opposition to Defendant's Motion for Summary
Judgment and Cross-motion for Summary Judgment
filed January 16, 2018, Continued:

Certificate of Occupancy issued by the
City of Meridian, Mississippi
dated February 26, 2012. Appx1763

Certificate of Occupancy issued by the
City of Meridian, Mississippi
dated March 23, 2012 Appx1764

Certificate of Occupancy issued by the
City of Meridian, Mississippi
dated May 22, 2012 Appx1765

Letter from Elisa B. Wickham, City of Schenectady,
New York Code Enforcement Coordinator
dated October 9, 2009. Appx1766

Excerpts of deposition of Lisa M. Pugliese
taken on June 17, 2016. Appx1767

Attachment:

Declaration of Ahmed Halim
sworn on January 15, 2018. Appx1772

**Plaintiff's Reply to Defendant's Response to
Plaintiff's Cross-Motion for Summary Judgment,
With Reply Appendix,
filed August 9, 2018..... Appx1837**

Appendix:

**HUD Email Chain
various dates in 2011..... Appx1886**



City of Schenectady, New York

BUREAU OF CODE ENFORCEMENT
Room 17A - City Hall - 105 Jay Street
Schenectady, New York 12305-1938
Tel. No. (518) 382-5199 Ext 5470

Keith Lamp
Building Inspector

October 9, 2009

Schenectady Forty Properties

RE: 748 Albany Street	953 Albany Street	308 Schenectady Street
752 Albany Street	958 Albany Street	3132 Schenectady Street
760 Albany Street	17 Grove Place	
779-783 Albany Street	599 Hamilton Street	

To Whom It May Concern:

This letter is to inform you that the above referenced properties have no outstanding violations and have a rental inspection certificate for all tenants living there. Since Mr. Gibson has been managing the properties all permits have been obtained for any and all work or violations if any, all complaints have been addressed within 48 hours and every property has passed inspections. Keep up the good work, and thank you for being so cooperative.

If you have any questions please do not hesitate to call me at (518) 382-5199 ext. 5470. Thank you for your immediate attention in this matter.

Sincerely,

Elisa B. Wickham
Code Enforcement Coordinator
City of Schenectady

A-9

Appx1766

99a

GOV026677

LISA PUGLIESE 30(b)(6)
AHMAD HALIM vs. UNITED STATES

06/17/2016

1	IN THE UNITED STATES COURT OF FEDERAL CLAIMS
2	
3	AHMAD HALIM,
4	Plaintiff,
5	vs.
6	THE UNITED STATES OF
7	AMERICA,
8	Defendant.
9	
10	VIDEO TELECONFERENCE 30(b)(6) DEPOSITION OF
11	LISA M. PUGLIESE
12	
13	June 17, 2016
14	10:30 a.m.
15	
16	40 Marietta Street, S.W.
17	3rd Floor
18	Atlanta, Georgia
19	
20	L. Lynn Howell, CCR-B-992
21	
22	
23	
24	
25	

ORIGINAL

LISA PUGLIESE 30(b)(6)
AHMAD HALIM vs. UNITED STATES

06/17/2016
35

1 A. Correct.

2 MR. COAN: Would you give Ms. Pugliese
3 Exhibit 8, please.

4 (Plaintiff's Pugliese Exhibit 8 was marked
5 for identification.)

6 THE WITNESS: Okay.

7 Q. (By Mr. Coan) Okay. And this is a letter
8 dated October 9, 2009, from Elisa Wickman -- Wickham,
9 code enforcement coordinator for the City of
10 Schenectady; is that correct?

11 A. Yes.

12 Q. This letter states that there are no
13 outstanding violations at the Schenectady 40 Project;
14 is that correct?

15 A. It does.

16 Q. And that there was a rental inspection
17 that the city -- the City of Schenectady had issued a
18 rental inspection certificate for all the tenants
19 living at the project; is that correct?

20 A. Yes.

21 Q. And that all permits have been obtained
22 for any and all work or violations, if any, and all
23 complaints have been addressed within 48 hours and
24 every property has passed inspections; is that
25 correct?

LISA PUGLIESE 30(b)(6)
AHMAD HALIM vs. UNITED STATES

06/17/2016
36

1 A. Yes.

2 Q. And this letter is dated approximately two
3 months after the reinspection of Schenectady by
4 Mr. Roberts; is that correct?

5 A. Yes.

6 Q. So did you receive this letter?

7 A. I believe we did.

8 Q. And what -- how did it -- how did it --
9 how was -- how did it -- take that back.

10 And once you received this letter, it did
11 not indicate to you that -- any problems that had
12 been identified at the August 11th inspection had
13 been remedied or resolved?

14 A. No. Based on the inspection report that
15 we had, it showed differently.

16 Q. Yeah, but that inspection was August 11,
17 2009. This letter is dated October 9. It's almost
18 two months later. Is it -- would it have been
19 impossible for Mr. Halim to remedy the deficiencies
20 identified in the August 11th inspection in two
21 months?

22 A. He could have.

23 Q. So why -- why -- why did you proceed with
24 the abatement when the city -- it's the city's
25 residents that are living in the project, which would

LISA PUGLIESE 30(b)(6)
AHMAD HALIM vs. UNITED STATES

06/17/2016
37

1 seem to have a vested interest in making sure the
2 residents are adequately housed. If the city is
3 telling you that in its view everything is fine with
4 the project, why wouldn't you take that into
5 consideration with respect to Mr. Halim's HAP
6 contract?

7 A. Because we take our inspections as
8 verification.

9 Q. But, again, it's a work in progress; is it
10 not? It's just like -- it's like when you are doing
11 the repairs, you make progress over time. And as
12 you -- as you -- as you continue to make progress,
13 funds are released from the repair escrow. Nothing
14 is done all at once, but it's done on a continuum so
15 to speak. I -- I understand that you are saying that
16 as of August 11 there was problems, but the city is
17 saying as of October 9, there were no problems.

18 A. But we -- we don't use this as part of our
19 protocol when we make that determination.

20 Q. I understand that, but wouldn't it seem to
21 suggest that it might have been a good idea to have
22 another reinspection to see whether the city --
23 whether what the city was saying was accurate or not?

24 A. Could have.

25 Q. So just to confirm, the decision to abate

LISA PUGLIESE 30(b)(6)
AHMAD HALIM vs. UNITED STATES

06/17/2016
48

1 is that correct?

2 A. At certain points in time, they did, yes.
3 But they need --

4 Q. Okay. That's my question. That's my
5 question. So the answer is, yes, at some point they
6 all passed before the March 2009 inspection?

7 A. No, because based -- when they were there
8 again, it showed that some of the units were not in
9 passing condition. It gave --

10 Q. Okay. No, I'm not -- my question is:
11 Before March of 2009, at some point before that date,
12 all the units had passed the UPCS inspection at some
13 point; is that correct? Before March 2009? Not on
14 March 31, 2009. Before that date.

15 A. Yes.

16 Q. If -- if -- if an inspector came out and
17 inspected a unit in the morning and it passed, and
18 the inspector came back in the afternoon and the
19 battery was taken out of the smoke detector, would
20 that unit then fail UPCS?

21 A. It would fail EH&S, exigent health and
22 safety issues, yes.

23 Q. It's possible to have a unit pass in the
24 morning and then a few hours later fail; is that
25 correct?

USE RESTRICTIONS

20 Years affordable housing. N/A Years rent cap protection for N/A residents.

TERMS OF SALE

The project will not be sold with any tenant or project based Section 8 assistance.

The purchaser must complete the repairs to HUD's satisfaction within 24 months after closing. The repairs are estimated to cost \$5,170,269. Closing is to be held 30 days after HUD accepts the bid. If HUD authorizes an extension of the closing, the purchaser must pay a fee which is the greater of 1.5% of the purchase price or HUD's holding costs of \$48.68 per unit per day for each 30 day period.

Potential bidders should be aware that building "9", located at 432 Boddie Street, was damaged by fire and that there may have been some vandalism at the property. The high bidder will be required to complete all of the repairs noted in Attachment E Post Closing Repair Requirements plus repair to State and local code all fire damage/vandalism that has occurred or may occur prior to closing on the sale. This requirement should be factored into the bid.

The purchaser must certify to HUD that any projects that are owned by the purchaser or its affiliates and are located in the same jurisdiction as Beacon Light-Goodwill Baxter Apartments are in substantial compliance with applicable State and/or local housing status, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the high bidder. If HUD determines at its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the project to the high bidder and retain the Earnest Money Deposit (See Attachment G).

For questions about APPS contact the Multifamily Housing Systems Help Desk at 1-800-767-7588.

PROSPECTIVE BIDDERS SHOULD READ AND THOROUGHLY UNDERSTAND ALL INFORMATION PROVIDED HEREIN AND IN THE BID KIT PRIOR TO SUBMITTING A BID.

This is an "All Cash - As Is" sale. HUD is providing no financing for this sale. The purchaser must provide for payment of the full purchase price in cash at closing.

Submission of Bids: Bids for this property can only be considered for acceptance if submitted on the specific forms listed in the Bid Kit for this property, along with required earnest money. A Bid Kit may be obtained as indicated below.

Suspended or Debarred Parties: No consideration will be given to a bid submitted by any party currently suspended or debarred from participating in HUD programs. AS PROVIDED FOR IN 24 CFR, SEC. 27, THE DEFAULTING MORTGAGOR, OR ANY PRINCIPAL, SUCCESSOR, AFFILIATE, OR ASSIGNEE ON THE MORTGAGE AT THE TIME OF DEFAULT SHALL NOT BE ELIGIBLE TO BID ON OR OTHERWISE PURCHASE THIS PROPERTY. (Principal and Affiliate are defined at 24 CFR 24.105.)

INSPECTION OF PROPERTY AND BIDDING INSTRUCTIONS

Prospective bidders are urged and invited to inspect the property prior to submitting a bid. Note: If this is a foreclosure sale, HUD may not have access to the property. Bids for this property can only be considered if properly submitted by following the bidding instructions provided in the FREE INFORMATION and BID KIT.

The FREE INFORMATION and BID KIT may be viewed or printed at <http://www.hud.gov/offices/hsg/mfh/pd/multifam.cfm>

You may also sign up for our electronic mailing list at this web address. If you do not have access to the internet or can not download a PDF file, you may obtain a bid kit by calling (719) 550-9291, or faxing (719) 550-1622, or by email to:

"usa0567@kinkos.com" <mailto:usa0567@kinkos.com>

BIDS for Beacon Light-Goodwill Baxter
MUST BE PRESENTED ON: **June 12, 2007**

at: 2:00 pm local time
at: Vance County Courthouse
156 Church St, Suite 101
Henderson, NC 27536

HUD OFFICE:
Atlanta MFPD Center
Five Points Plaza
40 Marietta St.
Atlanta, GA 30303

REALTY SPECIALIST:
Bob Doran
Phone: (404) 331-5001 ext. 2053
mailto:robert_e_doran@hud.gov

Affirmative Fair Housing Marketing Plan

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0013
(exp. 11/30/2006)

1a. Applicant's Name, Address (including city, state & zip code) & Phone Number AHMAD HALIM 213 Saint Helena Ave. Baltimore, MD 21222 Ph 443 320 3717 Fax 410 482 4201		1c. Project/Application Number 06244007	1d. Number of Units 300
		1e. Price or Rental Range From \$ 400 To \$ 500	1f. For Multifamily Housing Only <input type="checkbox"/> Elderly <input checked="" type="checkbox"/> Non-Elderly
		1g. Approximate Starting Dates (mm/dd/yyyy) Advertising 5/1/2007 Occupancy 0.0%	
1b. Project's Name, Location (including city, State and zip code) Highland Village Apartments		1h. Housing Market Area Montgomery	1i. Census Tract ALC1001020200
		1j. Managing/Sales Agent's Name & Address (including City, State and Zip Code) Same as applicant name	

2. Type of Affirmative Marketing Plan (check all that apply) <input checked="" type="checkbox"/> MFH Plan <input type="checkbox"/> SFH Plan New <input type="checkbox"/> Updated <input checked="" type="checkbox"/> White (non-minority) Area <input type="checkbox"/> Minority Area <input type="checkbox"/> <input checked="" type="checkbox"/> Mixed Area (with 50 % minority residents)	3. Direction of Marketing Activity (Indicate which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without special outreach efforts) <input type="checkbox"/> White <input checked="" type="checkbox"/> American Indian or Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Persons with Disabilities <input type="checkbox"/> Families with Children
---	--

4a. Marketing Program: Commercial Media (Check the type of media to be used to advertise the availability of this housing)

☒ Newspapers/Publications ☐ Radio ☐ TV ☐ Billboards ☐ Other (specify)

Name of Newspaper, Radio or TV Station	Group Identification of Readers/Audience	Size/Duration of Advertising
The Montgomery Independent	groups listed in #3	Weekly

4b. Marketing Program: Brochures, Signs, and HUD's Fair Housing Poster

(1) Will brochures, letters, or handouts be used to advertise? ☐ Yes ☒ No If "Yes", attach a copy or submit when available.

(2) For project site sign, indicate sign size _____ x _____; Logo type size _____ x _____. Attach a photograph of project sign or submit when available.
will submit when available

(3) 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/Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

Accounts and Notes Receivable	Partner (P)	Employee (E)	Relative (R)	or other (O)*
Name (Indicate also P,E,R or O)*	Address		Maturity Date	Amount
Name (Indicate also P,E,R or O)*	Address		Maturity Date	Amount
Name (Indicate also P,E,R or O)*	Address		Maturity Date	Amount
Name (Indicate also P,E,R or O)*	Address		Maturity Date	Amount
Name (Indicate also P,E,R or O)*	Address		Maturity Date	Amount
Life Insurance		Face Value	Beneficiary	

Delinquencies (starting with Federal Indebtedness)		
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances

Accounts and Notes Payable	Partner (P)	Employee (E)	Relative (R)	or other (O)*
Name (Indicate also P,E,R or O)*	Address		Amount	Maturity Date
Name (Indicate also P,E,R or O)*	Address		Amount	Maturity Date
Name (Indicate also P,E,R or O)*	Address		Amount	Maturity Date
Name (Indicate also P,E,R or O)*	Address		Amount	Maturity Date
Name (Indicate also P,E,R or O)*	Address		Amount	Maturity Date

Pledged Assets		
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability

Legal Proceedings: (If any legal proceedings have been instituted by creditors, or any unsatisfied judgments remain on record, give full details starting with any unresolved Federal Indebtedness.)

[illegible]

Location and Description of Land and Buildings Owned	Age	Original Cost	Market Value	Assessed Value	Mortgaged For	Insured For
Sabine Terrace Aptments, Eastland TX	30	700K	700K	400K	0.0	1.5 M
After Care Cleveland, OH	30	300K	300K	300K	0.0	300K
Schenectady NY 12305	30	700K	5K	700K	0.0	1.5 M
Totals		1.7 M	1,005 M	1.4 M	0.0	3.3 M

Location of Real Property:	Name of Title Holders:
Eastland, TX	AHMAD HALIM / Eaglell UC
Cleveland, OH	AHMAD HALIM / Eaglell LLC
Schenectady, NY	AHMAD HALIM / Eaglell LLC

Bank and/or Trade References

Name & Address:

Wachovia

Account Numbers:

1053087154938

Other Information/Remarks

The applicant never defaulted on any project, very conservative, not in any debts

I/We hereby certify that the foregoing figures and the statements contained here, submitted to obtain mortgage insurance under the National Housing Act, are true and give a correct showing of my/our financial condition as of this date.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name(s) & Signature(s):*

AHMAD HALIM
AHMAD HALIM

Social Security Number(s):

295600211

Date Signed:

8/16/06

* For married individuals, the signature and Social Security Number of the spouse is required. This signature also authorizes the acceptance of the Criminal Certification and allows consideration of the funds indicated herein for the HUD insured project.

NY 06 A00502

Affirmative Fair Housing Marketing Plan

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0013
(exp. 11/30/2006)

1a. Applicant's Name, Address (including city, state & zip code) & Phone Number AHMAD HALIM 213 Saint Helena Ave. Dundalk, MD 21222 Ph 443 216 7483 off. 443 320 3717 cell	1c. Project/Application Number Schenectady 40 Apartments	1d. Number of Units 40
	1e. Price or Rental Range From \$ 368.00 To \$ 525.00	1f. For Multifamily Housing Only <input type="checkbox"/> Elderly <input checked="" type="checkbox"/> Non-Elderly
	1g. Approximate Starting Dates (mm/dd/yyyy) Advertising 07/20/2006 Occupancy 70%	

1b. Project's Name, Location (including city, State and zip code) Schenectady 40 Apartments 11 Buildings, different addresses at Schenectady, NY 12305	1h. Housing Market Area Schenectady County	1i. Census Tract 209,360 93020900
1j. Managing/Sales Agent's Name & Address (including City, State and Zip Code) Same as Applicant name.		

2. Type of Affirmative Marketing Plan (check all that apply) <input checked="" type="checkbox"/> MFH Plan <input checked="" type="checkbox"/> New <input checked="" type="checkbox"/> Updated <input type="checkbox"/> SFH Plan White (non-minority) Area <input type="checkbox"/> Minority Area <input checked="" type="checkbox"/> Mixed Area (with 70 % minority residents)	3. Direction of Marketing Activity (Indicate which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without special outreach efforts) <input checked="" type="checkbox"/> White <input checked="" type="checkbox"/> American Indian or Alaskan Native <input checked="" type="checkbox"/> Asian <input checked="" type="checkbox"/> Black or African American <input checked="" type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Persons with Disabilities <input checked="" type="checkbox"/> Families with Children
---	---

4a. Marketing Program: Commercial Media (Check the type of media to be used to advertise the availability of this housing) <input checked="" type="checkbox"/> Newspapers/Publications <input type="checkbox"/> Radio <input type="checkbox"/> TV <input type="checkbox"/> Billboards <input type="checkbox"/> Other (specify)		
Name of Newspaper, Radio or TV Station	Group Identification of Readers/Audience	Size/Duration of Advertising
The Daily Gazette	in All groups listed	Weekly 1.
The Sunday Gazette	in All groups listed	Weekly 1.

4b. Marketing Program: Brochures, Signs, and HUD's Fair Housing Poster

(1) Will brochures, letters, or handouts be used to advertise? ☒ Yes ☒ No If "Yes", attach a copy or submit when available.

(2) For project site sign, indicate sign size **18** x **36**; Logo type size x . Attach a photograph of project sign or submit when available.
will submit when available.

(3) 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/Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

[illegible]

Location and Description of Land and Buildings Owned	Age	Original Cost	Market Value	Assessed Value	Mortgaged For	Insured For
Sabine Terrace Apartments, Eastland, TX 76448	30	700K	700K	400K	0.0	1.5 M.
Aster Care H Cleveland, OH	30	300K	300K	300K	0.0	300K
Totals		1 M. 700K	700K	0.0		1.8 M.

Location of Real Property:	Name of Title Holders:
Eastland, TX Cleveland, OH	AHMAD HALIM / Eagle II LLC. AHMAD HALIM / Eagle II LLC.

4c. **Community Contacts.** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area. If more space is needed, attach an additional sheet. Notify HUD-Housing of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

Name of Group/Organization	Group Identification	Approximate Date (mm/dd/yyyy)	Person Contacted or to be Contacted
CD BG	City of Schenectady	07/17/06	Ms. Carmen Sylvester
Home Contacts	Schenectady	07/17/06	Ms. Patricia Hourigan
Address & Phone Number		Method of Contact	Indicate the specific function the Group/Organization will undertake in implementing the marketing program
Dept of Development City Hall, Rm #1		Phone	Welfare of Tenants
518-382-5225		Phone	
City Hall, Rm #14		Phone	Housing assistance
518 382 5147			

5. **Future Marketing Activities (Rental Units Only)** Mark the box(s) that best describe marketing activities to fill vacancies as they occur after the project has been initially occupied.

- ☒ Newspapers/Publications ☐ Radio ☐ TV
☒ Brochures/Leaflets/Handouts
☒ Site Signs ☒ Community Contacts ☐ Other(specify)

7. **Additional Considerations** Attach additional sheets as needed.

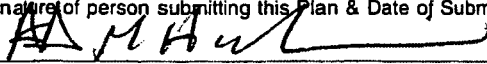
6. **Experience and Staff Instructions** (See instructions)

6a. Staff has experience. ☒ Yes ☐ No

6b. On separate sheets, indicate training to be provided to staff on Federal, State and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

8. **Review and Update** By signing this form, the applicant agrees to review their AFHM Plan every 5 years and update as needed to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (24 CFR 200.620).

Signature of person submitting this Plan & Date of Submission (mm/dd/yyyy)


 Name (type or print) **AHMAD HALIM**

Title & Name of Company **President Eagle II LLC.**

For HUD-Office of Housing Use Only	For HUD-Office of Fair Housing and Equal Opportunity Use Only
Reviewing Official:	Approved _____ Disapproval _____ (Check One)
Signature & Date (mm/dd/yyyy)	Signature & Date (mm/dd/yyyy)
Name (type or print)	Name (type or print)
Title	Title

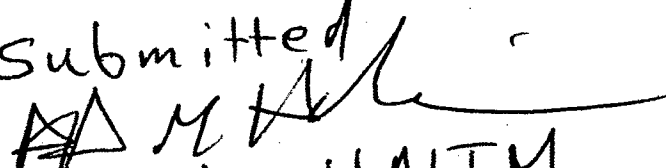
From : AHMAD HALIM

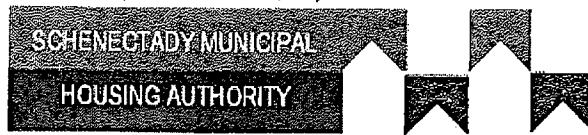
TO : Gail

Re : Schenectady 40

Affirmative Fair Housing
Marketing Plan

I will contact the city of
Schenectady Fair Housing office
to provide me and my staff information
about training on Federal, state and
local Fair Housing Laws and regulations
as well as AFHM Plan. The contact
number at the city is 518 382 5147.
This information will be provided to
HUD regional office no later than
12/31/2006.

Submitted

AHMAD HALIM



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Saturday, July 13, 2019**, this office conducted an inspection of your dwelling unit located at **783 Albany Street #2 Schenectady** occupied by **Donise Brown**. We have determined that on **07/13/2019** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

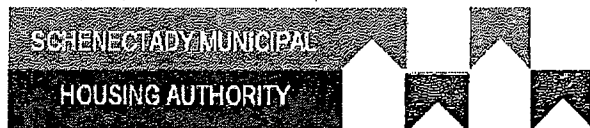
William B

cc: Donise Brown
783 Albany Street #2
Schenectady, NY 12307

F8BBB8F033C0AFF2E0F8BBB8F
E2AAAE020303931E0E2AAA2E
323CD5AC5516D7E0C5426AD16
7E5245A897CA2531E17BAFCA3
B222A2B0E56B1AE6F8A8F86F9
F0EEE0F0CA897D1DE6EDE7A2F
888888800008000008888888

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy , practice or services that may necessary to afford you an equal opportunity to participate in the program.





Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Wednesday, March 18, 2020**, this office conducted an inspection of your dwelling unit located at **17 Grove Place, Apt# 1 Schenectady** occupied by **Hekima Smith**. We have determined that on **03/18/2020** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

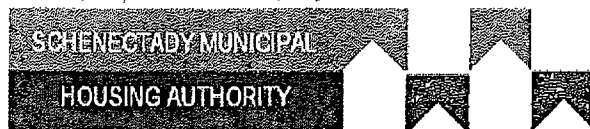
Elisa W

cc: Hekima Smith
17 Grove Place, Apt# 1
Schenectady, NY 12307

F8BBB8F0EADDF75D60F8BBB8F
E2AAA2E078602DE420E2AAA2E
7588D6A7A889B99A7ECA07CEE
74E556AC74BD950C59757A723
B2A22AB0CE2451D3F8A8FD019
F0EEE0F0EDAD505B8BED8271F
888888800080088080008008

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy , practice or services that may necessary to afford you an equal opportunity to participate in the program.





Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Thursday, November 21, 2019**, this office conducted an inspection of your dwelling unit located at **17 Grove Place #2 Schenectady** occupied by **Patricia Hoyt**. We have determined that on **11/21/2019** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

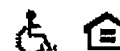
Sincerely,

William B

cc: Patricia Hoyt
17 Grove Place #2
Schenectady, NY 12307

F0DBB8F03D3CA8B70F8BBB8F
E2AAA2E029FC3431B0E2AAA2E
7409C1A92355A4C605426A952
FAEFFF5A2BB174081E17BAFCA3
B22A2AB86D54CB26F8A8F86F9
F0EEE0F0CA24D3CED8EDE7A2F
88888880008880008888888

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or services that may necessary to afford you an equal opportunity to participate in the program.





Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Thursday, November 21, 2019**, this office conducted an inspection of your dwelling unit located at **783 Albany, Apt#1 Schenectady** occupied by **Evelyn Ives**. We have determined that on **11/21/2019** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

William B

cc: Evelyn Ives
783 Albany, Apt#1
Schenectady, NY 12307

F8BBB8F00DC7BE1670F8BBB8F
E2AAA2E0B4E560A930E2AAA2E
54EC51ADB7458B347CF3A0527
12EAE7AA64B6501A7D173C565
322AA2B8678187AEF8A8F0484
F0EEE0F06636BD3099DCA9E34
888888800888080080008008

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or services that may necessary to afford you an equal opportunity to participate in the program.





Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Monday, July 20, 2020**, this office conducted an inspection of your dwelling unit located at **958 Emmett Street 2nd Floor Schenectady** occupied by **Maria Tebano**. We have determined that on **07/20/2020** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

Elisa W

cc: Maria Tebano
958 Emmett Street 2nd Floor
Schenectady, NY 12307

F8BBB8F030DFF29F40F8BBB8F
E2AAA2E029FD216C20E2AAA2E
716F96AC797DDC5E45426E974
7A679BAFE67920D1E178AFC3
B2A2A2B86B99CDC6F8A8F86F9
F0EEE0F0C1E90A2ED8EDE7A2F
888888800808088008088888

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy , practice or services that may necessary to afford you an equal opportunity to participate in the program.

a step up . . . a helping hand



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Friday, January 31, 2020**, this office conducted an inspection of your dwelling unit located at **779 Albany St #2 Schenectady** occupied by **Debra Page**. We have determined that on **01/31/2020** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

Robert S

cc: Debra Page
779 Albany St #2
Schenectady, NY 12307

F8BB8F09AFA76610F8BB8F
E2AA2E029F1F0E8B0E2AA2E
27C389A79A8BF6CA7B172D67D
A587BAA51975A8CEFC20D0D76
B22AA2B8519683E9F8A8F7A4C
F0EE0F0A06DCFE1AEB8A8D4A
88888880080000800008008

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or services that may necessary to afford you an equal opportunity to participate in the program.



a step up . . . a helping hand



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Thursday, March 28, 2019**, this office conducted an inspection of your dwelling unit located at **760 Albany Street #1 Schenectady** occupied by **Doris Brown**. We have determined that on **03/28/2019** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

William B

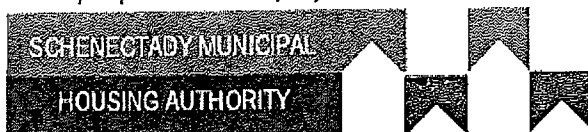
cc: Doris Brown
760 Albany Street #1
Schenectady, NY 12307

F8BBB8F0941CDC32F0F8BBB8F
E2AA2E024A925AD60E2AA2E
52D0FBA3A189635C7B172923D
A9CEABA54686C836FC20D0D76
B2A222B8DB6C5EC9F8A8F7A4C
F0EEE0F0AD40D1D1AEB8A8D4A
888888800088088000880808

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or services that may necessary to afford you an equal opportunity to participate in the program.



a step up . . . a helping hand



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC:

On Thursday, February 6, 2020, this office conducted an inspection of your dwelling unit located at 752 Albany St #4 in Schenectady occupied by tenant. We have determined that on 02/06/2020 the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

The SMHA will be sending you a Housing Assistance Payment Contract to finalize the lease-up process. The contract will start on either the 1st or the 15th of the month dependent on the date repairs were reported complete. The tenant is eligible to receive housing assistance as of the contract start date provided they have taken possession of the apartment. You will need to execute a one year lease with your family beginning the 1st day of the Housing Assistance Payment Contract. You will also need to complete a W9 tax form and a direct deposit information form so that payment can be made when the lease up process is complete.

Please note that it may take up to 30 days to complete this process and receive rent subsidy. The SMHA does not provide security deposits but owners are encouraged to collect security deposits which are consistent with their private pay tenants.

Pursuant to the Fair Housing Act (42U.S.C.3601-3619), if you are a federally assisted housing program applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or service that may be necessary to afford you an equal opportunity to participate in the program.

Sincerely,

Robert S

F8BBB8F0962F5F1CA0F8BBB8F
E2AAA2E025E874F8B0E2AAA2E
63A1DDA1F85672CBAB172964B
25619FA6114E8436FC20D0D76
B222AAB8D1BFE6F9F8A8F7A4C
F0EEE0F0A5F20121AEB8A8D4A
888888800088000800080808

a step up . . . a helping hand



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC:

On Wednesday, April 22, 2020, this office conducted an inspection of your dwelling unit located at 953 Albany Street #3 in Schenectady occupied by tenant. We have determined that on 04/22/2020 the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

The SMHA will be sending you a Housing Assistance Payment Contract to finalize the lease-up process. The contract will start on either the 1st or the 15th of the month dependent on the date repairs were reported complete. The tenant is eligible to receive housing assistance as of the contract start date provided they have taken possession of the apartment. You will need to execute a one year lease with your family beginning the 1st day of the Housing Assistance Payment Contract. You will also need to complete a W9 tax form and a direct deposit information form so that payment can be made when the lease up process is complete.

Please note that it may take up to 30 days to complete this process and receive rent subsidy. The SMHA does not provide security deposits but owners are encouraged to collect security deposits which are consistent with their private pay tenants.

Pursuant to the Fair Housing Act (42U.S.C.3601-3619), if you are a federally assisted housing program applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or service that may be necessary to afford you an equal opportunity to participate in the program.

Sincerely,

Elisa W

F8BBB8F09F9F2285E0F8BBB8F
E2AAA2E029E07DEC20E2AAA2E
75E3FEA1B9A0F68D3B172D66B
253F58AE9A1E9056FC20D0D76
B22A2AB0D65AFAC9F8A8F7A4C
F0EEE0F0ABC41481AEB8A8D4A
888888800888888800088888



a step up . . . a helping hand



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Wednesday, November 20, 2019**, this office conducted an inspection of your dwelling unit located at **760 Albany Street #3 Schenectady** occupied by **Tamkia Parkinson**. We have determined that on **11/20/2019** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

Robert S

cc: Tamkia Parkinson
760 Albany Street #3
Schenectady, NY 12307

F8BBB8F09DF12ACE00F8BBB8F
E2AAA2E02575242430E2AAA2E
15D1CEA3ECD49006EB172926F
ADB7B2A7CEAC37AEFC20D0D76
B22AA2B85E8123E9F8A8F7A4C
F0EEE0F0AD2D8711AEB8A8D4A
8888888000808000800080808

Pursuant to the Fair Housing Act (42U.S.C. 3619), if you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or services that may necessary to afford you an equal opportunity to participate in the program.



a step up . . . a helping hand



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC:

On Friday, November 1, 2019, this office conducted an inspection of your dwelling unit located at 760 Albany Street #4 in Schenectady occupied by tenant. We have determined that on 11/01/2019 the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

The SMHA will be sending you a Housing Assistance Payment Contract to finalize the lease-up process. The contract will start on either the 1st or the 15th of the month dependent on the date repairs were reported complete. The tenant is eligible to receive housing assistance as of the contract start date provided they have taken possession of the apartment. You will need to execute a one year lease with your family beginning the 1st day of the Housing Assistance Payment Contract. You will also need to complete a W9 tax form and a direct deposit information form so that payment can be made when the lease up process is complete.

Please note that it may take up to 30 days to complete this process and receive rent subsidy. The SMHA does not provide security deposits but owners are encouraged to collect security deposits which are consistent with their private pay tenants.

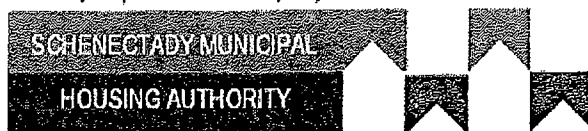
Pursuant to the Fair Housing Act (42U.S.C.3601-3619), if you are a federally assisted housing program applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or service that may be necessary to afford you an equal opportunity to participate in the program.

Sincerely,

William B

F8BBB8F07C4D5E95E0F8BBB8F
E2AAA2E0E520FC6CE0E2AAA2E
67C53BA8D8D90A9FEC18AAED7
AEF1ACA89E505659F32FDFD86
8AAA2AB0FB74F1C6F8A8F8ABC
F0EEE0F02F0F962EA9BFA7DBA
888888800088088008888888





Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Thursday, March 28, 2019**, this office conducted an inspection of your dwelling unit located at **760 Albany Street #1 Schenectady** occupied by **Doris Brown**. We have determined that on **03/28/2019** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

William B

cc: Doris Brown
760 Albany Street #1
Schenectady, NY 12307

F8BBB8F033AA7FD910F8BBB8F
E2AAA2E025A17024E0E2AAA2E
0229B7A861C6D34EB5426A964
72226AABDA10B269E17BAFCA3
B2AA22B8E9A63B96F8A8F86F9
F0EEE0F0CB61261ED8EDE7A2F
888888800880080080888888

Pursuant to the Fair Housing Act (42U.S.C. 3619), If you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or services that may necessary to afford you an equal opportunity to participate in the program.



a step up . . . a helping hand



Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC

On **Friday, September 13, 2019**, this office conducted an inspection of your dwelling unit located at **779 Albany St. #4 Schenectady** occupied by **Christopher Spero**. We have determined that on **09/13/2019** the unit was in compliance with Federal Housing Quality Standards.

If you have any questions about this inspection, please contact this office at (518) 386-7000.

Sincerely,

Robert S

cc: Christopher Spero
779 Albany St. #4
Schenectady, NY 12307

F8BBB8F034A97914B0F8BDD8F
E2AAA2E024F1AC75A0E2AAA2E
6178E6AC1832C29E25426AD04
7E35BCA30EB3C6F1E17BAFCA3
B22A22B064B9FA86F8A8F86F9
FOEEE0F0C37A2D8EDBEDE7A2F
888888800888088008888888

Pursuant to the Fair Housing Act (42U.S.C. 3619), if you are a federally assisted housing programs applicant or resident with a disability, you may request an exception, change or adjustment to a rule, policy, practice or services that may be necessary to afford you an equal opportunity to participate in the program.



a step up . . . a helping hand

SCHENECTADY MUNICIPAL

HOUSING AUTHORITY

Richard E. Homenick, Executive Director
Gregory J. Hoffman, Counsel

August 5, 2020

Al Haqq, LLC
PO Box 1694
8338 Governor Grayson Way
Ellicott City, MD 21041

Dear Al Haqq, LLC:

On 03/22/2018, this office conducted an inspection of your dwelling unit located at 748 Albany Street, Apt. #1 in Schenectady occupied by Elijah M Jenkins. We have determined that the following corrective action is required to place this dwelling unit in compliance with Housing Quality Standards:

UNITED STATES COURT OF FEDERAL CLAIMS

AHMAD HALIM,

Plaintiff

v.

THE UNITED STATES OF AMERICA,

Defendant

No. 12-5 C
(Judge Elaine D. Kaplan)

FOURTH AMENDED COMPLAINT

In accordance with RCFC 15(a)(2), Plaintiff hereby amends his Third Amended Complaint through the filing of this Fourth Amended Complaint. Plaintiff amends his Third Amended Complaint as a matter of right because Defendant has consented in writing to the amendment.

INTRODUCTION

1. Plaintiff entered into several contracts with the United States Department of Housing and Urban Development ("HUD") in connection with Plaintiff's bidding on and/or purchase of five multifamily housing rental projects that were sold by HUD at a foreclosure sale held for each of the five projects.

2. HUD has breached each of the contracts at issue.

JURISDICTION

3. This Court has jurisdiction over this action under 28 U.S.C. §1491(a)(1) because each of Plaintiff's claims is founded on an express contract between Plaintiff and the United States.

PARTIES

4. Plaintiff is a resident of Maryland.
5. HUD is an agency of the United States. As an agency of the United States, HUD's actions are imputed to the United States.
6. The United States, acting through HUD, is an actual party to each of the contracts at issue in this action.

FACTS

The New York Project

7. Plaintiff is the owner of Schenectady 40 Apartments, a 40-unit multifamily housing rental project located in Schenectady, New York ("New York Project").
8. Plaintiff bought the New York Project at a foreclosure sale initiated by HUD. Plaintiff closed on his purchase of the New York Project in July 2006.
9. Plaintiff entered into a "Foreclosure Sale Use Agreement" with HUD ("New York Use Agreement"); a copy of which is attached as Exhibit 1, in connection with his purchase of the New York Project.
10. Rider 2 to the New York Use Agreement required Plaintiff to make the repairs specified in the New York Use Agreement within twenty-four months of Plaintiff's closing on his purchase of the New York Project.
11. As required by Rider 2 to the New York Use Agreement, Plaintiff gave HUD \$403,584 to be held in escrow to ensure the satisfactory completion of the repairs required by the New York Use Agreement ("New York Escrow").
12. Plaintiff spent approximately \$1.5 million in making the repairs required by the New York Use Agreement.

13. As Plaintiff completed the repairs required by the New York Use Agreement, HUD returned part of the New York Escrow to Plaintiff. Although Plaintiff completed the repairs required by the New York Use Agreement, HUD did not return the remaining balance of the New York Escrow to Plaintiff.

14. Plaintiff also entered into a project-based Housing Assistance Payments ("HAP") contract with HUD ("New York HAP Contract"), a copy of which is attached as Exhibit 2, in connection with Plaintiff's purchase of the New York Project.

15. The purpose of a project-based HAP contract, including the New York HAP Contract, is to provide a subsidy from HUD under HUD's Section 8 Program to the owner of the multifamily housing rental project covered by the HAP contract on behalf of the low-income tenants who live at the project. This subsidy, known as housing assistance payments, pays the difference between the rent for the project's units and thirty percent of a tenant's adjusted gross income.

16. Under the New York HAP Contract, Plaintiff was required to maintain the New York Project's units in accordance with the Uniform Physical Condition Standards ("UPCS") specified by HUD.

17. Although all of the units at the New York Project passed a UPCS inspection, HUD terminated the New York HAP Contract on the alleged basis that Plaintiff had failed to maintain the New York Project in accordance with the UPCS.

The Mississippi Project

18. Plaintiff is the owner of Meadowbrook Apartments, a 51-unit multifamily housing rental project located in Meridian, Mississippi ("Mississippi Project").

19. Plaintiff purchased the Mississippi Project from HUD at a foreclosure sale initiated by HUD. Plaintiff closed on his purchase of the Mississippi Project in January 2007.

20. Plaintiff entered into a "Foreclosure Sale Use Agreement" with HUD ("Mississippi Use Agreement"), a copy of which is attached as Exhibit 3, in connection with his purchase of the Mississippi Project.

21. Rider 2 to the Mississippi Use Agreement required Plaintiff to make the repairs specified in the Mississippi Use Agreement within twenty-four months of Plaintiff's closing on his purchase of the Mississippi Project.

22. As required by Rider 2 to the Mississippi Use Agreement, Plaintiff gave HUD a Letter of Credit in the amount of \$513,967 to be held in escrow to ensure the satisfactory completion of the repairs required by the Mississippi Use Agreement. The \$513,967 Letter of Credit provided by Plaintiff to HUD was subsequently converted by HUD to a cash escrow ("Mississippi Escrow").

23. Plaintiff spent almost \$2 million in making the repairs required by the Mississippi Use Agreement.

24. As Plaintiff completed the repairs required by the Mississippi Use Agreement, HUD returned part of the Mississippi Escrow to Plaintiff. Although Plaintiff completed the repairs required by the Mississippi Use Agreement, HUD did not return the remaining balance of the Mississippi Escrow to Plaintiff.

25. Plaintiff also entered into a project-based HAP contract with HUD ("Mississippi HAP Contract"), a copy of which is attached as Exhibit 4, in connection with Plaintiff's purchase of the Mississippi Project.

26. Under the Mississippi HAP Contract, Plaintiff was required to maintain the Mississippi Project's units in accordance with HUD's UPCS.

27. Although the units at the Mississippi Project were in compliance with the UPCS, HUD terminated the Mississippi HAP Contract on the alleged basis that Plaintiff had failed to maintain the Mississippi Project in accordance with the UPCS.

The Ohio Project

28. Plaintiff was the high bidder at a foreclosure sale initiated by HUD in 2006 on Nichols Townhomes, a multifamily housing rental housing project located in Flushing, Ohio ("Ohio Project").

29. Plaintiff made a \$50,000 deposit in connection with his winning bid on the Ohio Project.

30. Plaintiff executed the "Terms and Requirements of Foreclosure Sale – Acknowledgment by Bidder", a copy of which is attached as Exhibit 5, in connection with his bid on the Ohio Project ("Ohio Contract").

31. Rider 1 to the Ohio Contract required Plaintiff to submit certain specified documents to HUD no later than ten days after being "verbally notified at the foreclosure sale of being the high bidder."

32. Plaintiff timely submitted all of the documents he was required to submit to HUD in accordance with Rider 1 to the Ohio Contract.

33. Two of the documents submitted by Plaintiff to HUD were a Management Entity Profile, Form HUD 9832, and a Management Certification, Form HUD 9839 A and B. In accordance with these documents, Plaintiff proposed to manage the Ohio Project himself.

34. Although HUD had approved Plaintiff's management of other multifamily housing rental projects, HUD cancelled its sale of the Ohio Project to Plaintiff because of Plaintiff's alleged failure to provide for acceptable management of the Ohio Project.

35. When HUD cancelled its sale of the Ohio Project to Plaintiff, HUD retained Plaintiff's \$50,000 deposit as liquidated damages for Plaintiff's alleged failure to provide for the acceptable management of the Ohio Project.

The North Carolina Project

36. Plaintiff is the owner of Beacon Light-Goodwill Baxter Apartments, which was a 14-building, 108-unit multifamily housing rental project located in Henderson, North Carolina ("North Carolina Project").

37. Plaintiff's bid of \$54,000 was the winning bid at HUD's 2007 foreclosure sale of the North Carolina Project.

38. Before the closing on Plaintiff's purchase of the North Carolina Project, HUD approved Plaintiff's request that the North Carolina Project be conveyed to his son, Sharif Abdel Halim, instead of to Plaintiff. Accordingly, Plaintiff's son executed all of the documents at the closing.

39. Plaintiff's son entered into a "Foreclosure Sale Use Agreement" with HUD ("North Carolina Use Agreement"), a copy of which is attached as Exhibit 6, in connection with the purchase of the North Carolina Project.

40. Rider 3 to the North Carolina Use Agreement required Plaintiff's son to make the repairs specified in the Agreement within twenty-four months of Plaintiff's son's closing on the purchase of the North Carolina Project.

41. As required by Rider 3 to the North Carolina Use Agreement, Plaintiff gave HUD \$1,292,567 to be held in escrow to ensure the satisfactory completion of the repairs required by the North Carolina Use Agreement ("North Carolina Escrow").

42. The City of Henderson, North Carolina ("Henderson"), the city in which the North Carolina Project is located, would not approve the repairs required by the North Carolina Use Agreement because the North Carolina Project did not meet the density and setback requirements.

43. A request for a variance to Henderson's density and setback requirements submitted by Plaintiff's son to Henderson was denied.

44. On December 1, 2009, Plaintiff, on behalf of his son, met with Courtland Wilson, the HUD acting Director of Asset Management at that time, to discuss Plaintiff's son's inability to make the repairs required by the North Carolina Use Agreement because the North Carolina Project did not meet Henderson's density and setback requirements and Henderson would not approve a variance to those requirements.

45. At the December 1, 2009 meeting, Mr. Wilson and Plaintiff, on behalf of Plaintiff's son, agreed that HUD would refund the \$54,000 purchase price of the North Carolina Project and release the North Carolina Escrow to Plaintiff's son in return for the re-deeding of the North Carolina Project by Plaintiff's son to HUD. Although Plaintiff's son was ready, willing and able to re-deed the North Carolina Project to HUD, HUD did not refund the purchase price or release the North Carolina Escrow to Plaintiff's son.

46. In October 2010, HUD and Henderson entered into a Memorandum of Understanding pursuant to which HUD agreed to pay for Henderson's demolition of the North Carolina Project.

47. The North Carolina Project was demolished in August 2011 in accordance with the Memorandum of Understanding between HUD and Henderson.

48. The cost of the demolition of the North Carolina Project by Henderson was \$399,900. HUD paid for the demolition of the North Carolina Project by Henderson with funds from the North Carolina Escrow.

49. Plaintiff's son did not consent to the demolition of the North Carolina Project.

50. In June 2012, Plaintiff's son conveyed the North Carolina Project to Plaintiff. As the new owner of the North Carolina Project, Plaintiff is the successor in interest to all of Plaintiff's son's right, title and interest in the North Carolina Project including, but not limited to, the North Carolina Use Agreement, the North Carolina Escrow and the North Carolina Contract.

The Alabama Project

51. Plaintiff is the owner of Highland Village Apartments, a 20-building, 302-unit multifamily housing rental project located in Montgomery, Alabama ("Alabama Project").

52. In late 2006, HUD issued a Bid Kit for the prospective foreclosure sale of the Alabama Project.

53. Although Plaintiff submitted a bid on the 2006 foreclosure sale of the Alabama Project, he was not the winning bidder.

54. Because the 2006 foreclosure sale of the Alabama Project did not close, HUD initiated a second foreclosure sale of the Alabama Project in 2007. To solicit bids for the second foreclosure sale, HUD re-issued the exact same Bid Kit it had issued for the 2006 foreclosure sale of the Alabama Project that did not close.

55. Between the first and second foreclosure sales of the Alabama Project, the Alabama Project was gutted and all the tenants moved out. As a result, at the time of the second

foreclosure sale of the Alabama Project, the walls were essentially the only thing remaining of the Alabama Project; there were no windows, doors, appliances, etc.

56. HUD did not notify Plaintiff, or any other prospective bidder at the second foreclosure sale of the Alabama Project, that the Alabama Project had been gutted or that the tenants had moved out.

57. Plaintiff was the winning bidder at the second foreclosure sale of the Alabama Project. Plaintiff closed on his purchase of the Alabama Project in June 2007.

58. Plaintiff executed a "Foreclosure Sale Use Agreement" with HUD ("Alabama Use Agreement"), a copy of which is attached as Exhibit 7, in connection with his purchase of the Alabama Project.

59. Rider 3 to the Alabama Use Agreement required Plaintiff to make the repairs specified in the Alabama Use Agreement within twenty-four months of Plaintiff's closing on his purchase of the Alabama Project.

60. In accordance with Rider 3 to the Alabama Use Agreement, Plaintiff gave HUD \$1,405,998 to be held in escrow to ensure the completion of the repairs required by the Alabama Use Agreement ("Alabama Escrow").

Count I – Breach of the New York Use Agreement

61. Plaintiff re-alleges paragraphs 1-60.

62. Plaintiff completed the repairs required by the New York Use Agreement.

63. HUD did not return all of the New York Escrow to Plaintiff after Plaintiff completed the repairs required by the New York Use Agreement.

64. HUD breached the New York Use Agreement by failing to return the entire amount of the New York Escrow to Plaintiff.

65. HUD's breach of New York Use Agreement has damaged Plaintiff in the amount of at least \$317,440.

Count II – Breach of the New York HAP Contract

66. Plaintiff re-alleges paragraphs 1-65.

67. As required by the New York HAP Contract, Plaintiff maintained the New York Project in accordance with HUD's UPCS.

68. HUD breached the New York HAP Contract by terminating the Contract on the erroneous basis that Plaintiff failed to maintain the New York Project in accordance with HUD's UPCS.

69. Plaintiff has suffered monetary damages as a result of HUD's breach of the New York HAP Contract.

Count III – Breach of the Mississippi Use Agreement

70. Plaintiff re-alleges paragraphs 1-69.

71. Plaintiff completed the repairs required by the Mississippi Use Agreement.

72. HUD did not return all of the Mississippi Escrow to Plaintiff after Plaintiff completed the repairs required by the Mississippi Use Agreement.

73. HUD breached the Mississippi Use Agreement by failing to return the entire amount of the Mississippi Escrow to Plaintiff.

74. HUD's breach of the Mississippi Use Agreement has damaged Plaintiff in the amount of at least \$328,062.

Count IV – Breach of the Mississippi HAP Contract

75. Plaintiff re-alleges paragraphs 1-74.

76. As required by the Mississippi HAP Contract, Plaintiff maintained the Mississippi Project in accordance with HUD's UPCS.

77. HUD breached the Mississippi HAP Contract by terminating the Contract on the erroneous basis that Plaintiff failed to maintain the Mississippi Project in accordance with HUD's UPCS.

78. Plaintiff has suffered monetary damages as a result of HUD's breach of the Mississippi HAP Contract.

Count V – Breach of the Ohio Contract

79. Plaintiff re-alleges paragraphs 1-78.

80. Plaintiff timely submitted all the documents he was required to submit in accordance with the Ohio Contract.

81. Plaintiff was qualified to manage the Ohio Project.

82. HUD breached the Ohio Contract by cancelling its sale of the Ohio Project to Plaintiff on the erroneous basis that Plaintiff was not qualified to manage the Ohio Project.

83. HUD's breach of the Ohio Contract has damaged Plaintiff in the amount of \$50,000.

Count VI – Rescission of the North Carolina Use Agreement (Mutual Mistake of Fact)

84. Plaintiff re-alleges paragraphs 1-83.

85. Plaintiff's son, the owner of the North Carolina Project at the time the North Carolina Use Agreement was executed, and HUD each made a mistake of fact regarding the ability of Plaintiff's son to complete the repairs required by the North Carolina Use Agreement.

86. Plaintiff's son and HUD both believed that there would be not be any impediment to completing the repairs required by the North Carolina Use Agreement. This belief by Plaintiff's

son and HUD was a fundamental and basic assumption underlying the North Carolina Use Agreement.

87. Henderson's refusal to approve the repairs required by the North Carolina Use Agreement, or a variance to Henderson's density and setback requirements submitted by Plaintiff's son to Henderson which would have allowed Plaintiff's son to complete the repairs required by the North Carolina Use Agreement, had a material adverse effect on the bargain to which Plaintiff's son and HUD agreed under the North Carolina Use Agreement.

88. Because of the mutual mistake of fact made by Plaintiff's son and HUD regarding the ability of Plaintiff's son to make the repairs required by the North Carolina Use Agreement, Plaintiff is entitled to rescind the North Carolina Use Agreement and, in accordance with such a rescission, a refund of the purchase price of the North Carolina Project and the return of the North Carolina Escrow.

Count VII – Breach of Contract (North Carolina Project)

89. Plaintiff re-alleges paragraphs 1-88.

90. On December 1, 2009, Plaintiff, on behalf of his son who was the owner of the North Carolina Project at that time, met with Courtland Wilson, the then HUD acting Director of Asset Management, to discuss Henderson's refusal to approve the repairs required by the North Carolina Use Agreement or a variance to Henderson's density and setback requirements which would have enabled Plaintiff's son to complete the required repairs.

91. At the December 1, 2009 meeting, Plaintiff, as the authorized agent of Plaintiff's son, and HUD agreed that HUD would refund the purchase price of the North Carolina Project and return the North Carolina Escrow to Plaintiff's son in return for the re-deeding of the North

Carolina Project by Plaintiff's son to HUD. This agreement constituted a valid, binding oral contract between HUD and Plaintiff's son ("North Carolina Contract").

92. Plaintiff's son was ready, willing and able to re-deed the North Carolina Project to HUD in return for the refunding of the purchase price of the North Carolina Project and the return of the North Carolina Escrow. Plaintiff has also been ready, willing and able to re-deed the North Carolina Project to HUD in return for the refunding of the purchase price of the North Carolina Project and the return of the North Carolina Escrow since Plaintiff's son conveyed the North Carolina Project to Plaintiff. However, HUD has refused to refund the purchase price of the North Carolina Project and to return the North Carolina Escrow to either Plaintiff's son or Plaintiff.

93. HUD has breached the North Carolina Contract by failing to refund the purchase price of the North Carolina Project and to return the North Carolina Escrow to either Plaintiff's son or Plaintiff.

94. HUD's breach of the North Carolina Contract has damaged Plaintiff in the amount of \$1,346,567.

Count VIII – Breach of the North Carolina Use Agreement

95. Plaintiff re-alleges paragraphs 1-94.

96. Henderson demolished the North Carolina Project in 2011.

97. The cost of the demolition of the North Carolina Project was \$399,900.

98. HUD paid for the demolition of the North Carolina Project with funds from the North Carolina Escrow.

99. Plaintiff's son, the owner of the North Carolina Project at the time the North Carolina Project was demolished, did not agree to the demolition of the North Carolina Project by Henderson.

100. HUD breached the North Carolina Use Agreement by agreeing to the demolition of the North Carolina Project by Henderson and by paying for the demolition with funds from the North Carolina Escrow.

101. HUD's breach of the North Carolina Use Agreement has damaged Plaintiff in the amount of at least \$399,900.

Count IX – Rescission of the Alabama Use Agreement (Misrepresentation of Facts)

102. Plaintiff re-alleges paragraphs 1-101.

103. HUD knew, or should have known, that the Alabama Project had been gutted and the tenants of the Alabama Project had moved out in the few months between the first and second foreclosure sales of the Alabama Project.

104. HUD's failure to notify Plaintiff that between the first and second foreclosure sales of the Alabama Project the Alabama Project had been gutted, and that the tenants at the Alabama Project had moved out, was a misrepresentation of material facts by HUD.

105. HUD's misrepresentation of these material facts induced Plaintiff to submit a bid at the second foreclosure sale of the Alabama Project and to execute the Alabama Use Agreement after Plaintiff's bid was accepted. Plaintiff would not have submitted a bid at the second foreclosure sale of the Alabama Project if HUD had informed Plaintiff that the Alabama Project had been gutted and the tenants of the Alabama Project had moved out between the first and second foreclosure sales of the Alabama Project.

106. Plaintiff's reliance on HUD's misrepresentation of these material facts was reasonable and justified.

107. HUD's misrepresentation of the material facts regarding the condition and occupancy level of the Alabama Project at the time of the second foreclosure sale of the Alabama Project entitles Plaintiff to rescind the Alabama Use Agreement and, in accordance with such a rescission, the return of the Alabama Escrow.

Count X – Rescission of the Alabama Use Agreement (Unilateral Mistake of Facts)

108. Plaintiff re-alleges paragraphs 1-107.

109. Plaintiff made a unilateral mistake regarding the condition and occupancy level of the Alabama Project when Plaintiff submitted a bid at the second foreclosure sale of the Alabama Project and executed the Alabama Use Agreement.

110. Based on Plaintiff's inspection of the Alabama Project before the first foreclosure sale of the Project, Plaintiff reasonably believed that when HUD solicited bids for the second foreclosure sale of the Alabama Project the condition and occupancy level of the Alabama Project was comparable to the condition and occupancy level of the Alabama Project at the time of the first foreclosure sale. This belief was a fundamental and basic assumption underlying the Alabama Use Agreement.

111. The gutting of the Alabama Project and the move-out of the tenants at the Alabama Project between the first and second foreclosure sales of the Alabama Project had an adverse material effect on Plaintiff's performance under the Alabama Use Agreement.

112. HUD knew, or should have known, that the Alabama Project had been gutted and that the tenants had moved out between the first and second foreclosure sales of the Alabama Project.

113. Because of Plaintiff's unilateral mistake of facts regarding the condition and occupancy level of the Alabama Project at the time of the second foreclosure sale of the Alabama Project, Plaintiff is entitled to rescind the Alabama Use Agreement and, in accordance with such a rescission, to the return of the Alabama Escrow.

Count XI – Rescission of the Alabama Use Agreement (Mutual Mistake of Facts)

114. Plaintiff re-alleges paragraphs 1-113.

115. Plaintiff and HUD each made mistakes of fact regarding the condition and occupancy level of the Alabama Project when the Alabama Use Agreement was executed.

116. Both Plaintiff and HUD mistakenly believed that when HUD solicited bids for the second foreclosure sale of the Alabama Project the condition and occupancy level of the Alabama Project was comparable to the condition and occupancy level of the Alabama Project at the time of the first foreclosure sale. This belief by Plaintiff and HUD was a fundamental and basic assumption underlying the Alabama Use Agreement.

117. The gutting of the Alabama Project and the move-out of the tenants at the Alabama Project between the first and second foreclosure sales of the Alabama Project had a material adverse effect on the bargain to which Plaintiff and HUD agreed under the Alabama Use Agreement.