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July 16, 2018

Mr. Ruben Brooks
Ms. Laurelei McKnight
Director, Southeast Region MultiFamily Housing
U.S. Department of Housing and Urban Development
Jacksonville Field Office
Charles Bennett Federal Building
400 West Bay Street, Suite 1015
Jacksonville, FL 32202-4439

SUBJECT: Tampa Park Apartments I
Tampa, Florida
HAP Contract No. FL29M000266
iREMS No. 800004492

Dear Mr. Brooks and Ms. McKnight:

The undersigned firm represents Tampa Park Apartments, Inc. ("Tampa Park"), regarding the "Notice of Termination," dated June 27, 2018 (the "Notice"), purporting to terminate Tampa Park from the Housing Assistance Payment Contract ("HAP Contract") apposite to Tampa Park Apartments I (the "Project"). As the basis for termination, HUD alleges that Tampa Park, as "Owner," is "required to maintain the Project in a decent, safe and sanitary condition. Owner has failed to do so."

Allow this to serve as notice that HUD's purported termination is itself a breach the HAP Contract as HUD has failed to specify a cognizable "Event of Default" and failed to provide the specific notice and cure period required in Section 26(b), a provision that HUD itself recites in the Notice.

While HUD recites the "Events of Default" provision, the Notice fails to specify one actual physical condition at the Project to support its accusation that the Project is not currently in a decent, safe and sanitary condition. The factual premise of HUD's argument that Tampa Park has not maintained the Project properly is based entirely upon the arbitrary REAC inspection scores below 60 assigned to the Project in 2015-2018, *i.e.*, 54 (in 2015), 59 (in 2016), 56 (in 2017) and now 47 in 2018. As stated by HUD itself in its October 2, 2015, Real Estate Assessment Center letter to Tampa Park, however, receiving a REAC score below 60 is not in of itself an Event of Default authorizing termination:

A physical Inspection score below 60 indicates that the owner may not be fulfilling

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his/her contractual obligation to HUD and that the residents may not be receiving the quality of housing to which they are entitled.

We note that the Project had never received a REAC score below 60 until after Tampa Park filed suit against HUD based on HUD 's failure to properly account for Tampa Park's funds held by HUD in escrow. Tampa Park filed a lawsuit against HUD on May 23, 2014, alleging breach of contract and seeking an accounting. By letter dated November 23, 2015, Tampa Park requested that the Jacksonville HUD office have no further involvement with its properties because of a conflict of interest and potential bias arising from the existence of the lawsuit and HUD's defenses in the lawsuit. HUD, by its silence, rejected Tampa Park's request. Before the lawsuit, Tampa Park, with history spanning 47-years of a property management relationship with HUD, had no prior offenses or REAC inspection scores below the 60 threshold. The accusations of failing inspections all occurred in the three years after Tampa Park filed its lawsuit against HUD. One cannot avoid the conclusion that the litigation has colored HUD's administration of the HAP Contract.

We also note that HUD has ignored Tampa Park's challenges to REAC inspection scores. Tampa Park made a request by letter dated June 15, 2016, to review Tampa Park's May 11, 2016 inspection score of 59c, but the request was never acknowledged or answered by the REAC Technical Assistance Center. A second request for review of inspection score of 59c was made to the Atlanta, Ga., HUD Enforcement Center by letter dated December 6, 2016; HUD made no response. Neither the original nor the second request was acknowledged or answered by HUD REAC Technical Assistance Center. By way of example, in the 2016 REAC report on site conditions, Tampa Park was penalized 3.98 in deductions (excluding H&S) and 5.96 for H&S deductions. Tampa Park's appeal letter noted that these deductions included penalties for alleged defects in sidewalks maintained by the City of Tampa, not Tampa Park. Awarding one point to the Project for its May 11, 2016, site inspection would have put the Project in a satisfactory performance status for that year thereby negating any argument that the Project has a three-year consecutive negative performance status justifying default under HAP Contract. After an appeal of June 21, 2017, original score of 49.52, HUD raised the score to 56; however, that raised score was still based on deducting 11.66 on site H&S deductions. Points against the Project over which Tampa Park had no control, such as graffiti on the local utility's poles, as well as grass in the cracks of the sidewalk, were not removed upon appeal. Insofar as REAC inspectors incorrectly cited Tampa Park for alleged defects in sidewalks maintained by the City, a corrected score based on properly identifying site conditions aposite to the Project and under the control of Tampa Park would undoubtedly have moved the correct REAC score over the 60 point threshold.

To push the total REAC scores below the 60 point threshold, HUD has employed double inspectors to fly-speck unit conditions in order to increase the deductions, and thus

lower the total scores. By way of example, having been assigned 58.80 “Final Points” in the 2016 REAC inspection, Tampa Park was actually only .7 point away from the 60 point threshold (when rounding off). The REAC inspectors keep the score below the 60 point threshold by not only citing site defects in areas not controlled or maintained by Tampa Park, but penalizing Tampa Park 9.58 points for deductions unrelated to health and safety in units, including for defects in finishes within tenant units. The threshold for imposing a deduction for a “Damaged Surface” lies within the discretion of the inspector. By using a double-inspector protocol, HUD causes the imposition of a deduction penalty for a condition that was deemed acceptable or not noted as defective by one inspector but by a second inspector applying different criteria.

The Notice asserts that following the 2015, 2016 and 2017 inspections, Tampa Park “was notified of the default pursuant to HUD’s protocols” and was instructed to undertake five corrective actions, including undertaking to correct deficiencies identified in the REAC inspections. HUD then alleges that Tampa Park “failed to satisfactorily respond to the conditions of the November 18, 2015, Notice of Default.” The November 18, 2015, letter fails to serve as a basis for this termination as any deficiencies cited in the 2015 REAC inspection were cured. The Notice fails to explain how Tampa Park’s response was inadequate.

The Notice further asserts that in response to a “NOD issued November 7, 2016,” Tampa Park provided a certification confirming compliance with the 100% survey and “indicating all stated deficiencies” had been remediated, but that “the Project again failed the REAC Inspection conducted on June 21, 2017, resulting in an original score of 49.52,” later raised (but not entirely corrected) to 56. The 2017 inspection, however, was not to evaluate the specific deficiencies noted in the 2016 REAC report. HUD does not disclose what specific defects noted in the 2016 REAC inspection report were again noted in the 2017 report. The Project was built in 1968; the buildings are past their depreciation schedule life-cycle. Fully repairing defects evidenced in one year shall not yield a defect-less structure, but rather a new list of components and systems to be repaired and replaced.

The Notice further asserts that HUD conducted an inspection on May 11, 2018 and that the Project failed with a score of 42c with “several repeated deficiencies.” The same categories of defects, i.e., “sharp edges,” “interior door damage,” and “infestation,” may be recited; however, HUD cannot support the supposition that the instances cited in the 2017 REAC inspection were not corrected. After each REAC inspection, Tampa Park noted and corrected the identified violations immediately, often within 24-hours or a week of inspection. Thus, any health and safety violations and all property deficiencies reported during the October 2015, May 2016 and June 2017 inspections were in fact corrected. Tampa Park has complied with and corrected those specific deficiencies stated in the REAC inspection reports as part of its management and ongoing maintenance of the

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Project. Proper certification and documentation was sent to the HUD Jacksonville, FL Field Office for its acknowledgment and records. The corrections that could be done by Tampa Park's maintenance staff, were done while the inspectors were at the Project. Inspectors, however, would not acknowledge the corrections.

The HAP Contract requires HUD to afford Tampa Park notice of the specific default and specific actions that Tampa Park must take to cure the specific defects noted in the May 11, 2018, report so as to bring the Project into compliance. HAP Contract Section 26(b), cited in the Notice, provides:

Corrective Action. Upon determining that a default has occurred, HUD will notify the Owner, by certified mail, of the nature of the default, the actions the Owner must take to cure the default, and the time within which the Owner must complete the corrective actions. If the Owner does not implement the requested actions, or other corrective action acceptable to HUD, within the prescribed time or does not do so to the satisfaction of HUD, HUD may terminate this Contract in whole or in part... [.]

Allow this to serve notice that in terminating, HUD is itself in breach by having failed to notify Tampa Park by certified mail of the specific nature of the default and the specific actions Tampa Park must take to cure the specific defaults and to specify a reasonable time within which Tampa Park must complete the corrective actions. Tampa Park deems the scoring assigned by HUD to be entirely arbitrary and to serve as a pretext for improperly declaring Tampa Park in default of the HAP Contract. HUD reports that the Project receives scores of 54c, 59c, 56c and most recently 42c. Insofar as a passing grade is 60, it is readily apparent that the inspections were scored arbitrarily to cause the Project to fall below the 60 threshold. HUD instituted its plan to declare a default of the HAP Contract when Tampa Park sued HUD and decided to bring it to conclusion when Tampa Park achieved substantial success in its lawsuit when the jury returned a verdict declaring that HUD had failed to account for \$1.6 million of Tampa Park's mortgage, interest and escrow payments.

To effect a proper termination of the HAP Contract, HUD is required to serve a notice of the specific corrections to conditions cited in HUD's letter of May 11, 2018, needed to bring the Project into compliance with the 60 REAC score and to afford a reasonable time to do so. HUD has failed to comply with the HAP Contract termination procedure because this contract shall terminate by its own terms on September 30, 2018, in a little over two months. Tampa Park expects HUD's full compliance with the existing HAP contract and seeks HUD's confirmation that it will comply with the contract through the term of the contract. Otherwise, Tampa Park deems HUD's non compliant Notice of Termination as an anticipatory breach of the HAP Contract and will be governed accordingly. HUD's non-compliant Notice of Termination is a thinly veiled attempt to try to shift to Tampa Park the cost of relocating subsidized residents by declaring a baseless

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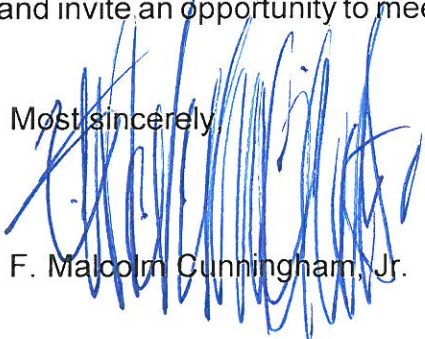
default 60 days before the HAP contract expires.

Tampa Park also notes that HUD sent a July 10, 2018, letter to all of its residents including those who receive no subsidies from HUD, falsely asserting that Tampa Park has failed to "make necessary repairs and maintain the property...." Tampa Park regards this letter as interfering with Tampa Park's advantageous business relationships. HUD has no privilege to so interfere where Tampa Park's residents have no relationship with HUD. Demand is hereby made that HUD cease and desist from its tortuous behavior.

Allow this to further serve notice to HUD that its demand purportedly made pursuant to Section 21 of the HAP Contract, directing Tampa Park "to submit a full accounting of the finances at this property for the years 2015-2018 to date is unsupported by the HAP Contract. Section 25 affords HUD access to such documents "that are pertinent to compliance with this Contract," including "the verification of information pertinent to the housing assistance payments." HUD's demand bears no reasonable relationship to its alleged breach, much less the fact that Tampa Park is not in default and cannot be declared in default until HUD complies with the notice and cure provisions of its own form of contract.

As Tampa Park has not yet been served with a proper notice of default and afforded its right to cure, we look to HUD to withdraw its Notice of Termination, forthwith. HUD can then serve proper notice or the parties can meet and work productively and cooperatively towards resolving HUD's real issue: renewing the HAP contract and the conditions for renewal of the HAP Contract or making reasonable accommodations to move and relocate the residents that are subject to the expiring HAP Contract to new residences. We hope to work productively in addressing these issues and invite an opportunity to meet with HUD to resolve these issues.

Most sincerely,



F. Malcolm Cunningham, Jr.

FMC:lw

cc: Mayor Bob Buckhorn, City of Tampa
North Tampa Housing Development Corporation
Ms. Alesia Scott-Ford, Field Office Director
Ms. Denise Cleveland-Leggett, Regional Administrator
Department Enforcement Center
Office of Assdet Management Portfolio Oversight
Office of Property Disposition