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RIGHT OF FIRST REFUSAL REGULATIONS

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RIGHT OF FIRST REFUSAL REGULATIONS

Section I. Authority

The Prince George's County Department of Housing and Community Development has authority pursuant to Sec. 13-1119 of the Prince George's County Code to promulgate and amend, as deemed necessary, regulations to govern the right of first refusal ("ROFR") for Prince George's County, Maryland ("County") to buy multifamily rental facilities as a means of revitalization and to preserve housing opportunities for low- to- moderate income households and in the County.

Section II. Purpose

- A.** The regulations set forth herein shall govern the Director's evaluation and option to exercise the County's ROFR to purchase Multifamily rental facilities that include twenty (20) or more dwelling units, which are located within the County.
- B.** The regulations as promulgated pursuant to Section 13-1119 of the County Code and thereafter amended pursuant to CR-51-2015 shall be deemed effective as of November 06, 2015.

Section III. Definitions

For the purposes of this Section, the below-referenced terms are defined as follows:

- A.** Convert and conversion shall mean:
 - 1. subjecting of a property to a condominium regime by recording in the County land records that complies with the requirements in Title 11 of the Real Property Article of the Annotated Code of Maryland;
 - 2. changing the use of a Multifamily rental facility to a nonresidential use;
 - 3. demolishing at least one-third of occupied dwelling units in a Multifamily rental facility in a twelve (12) month period except when such demolition is related to rehabilitation and a reasonable, comparable housing alternative is offered to the impacted tenant(s);
 - 4. displacing tenants from at least one-third of occupied dwelling units in a twelve (12) month period by raising rents; or
 - 5. any other act that ends the use of the property as a Multifamily rental facility.
- B.** Day(s) shall mean calendar days unless specified as business days.
- C.** Department shall mean the Prince George's County Department of Housing and Community Development.
- D.** Director shall mean the Director of the Prince George's County Department of Housing and Community Development or the Director's designee.
- E.** Dwelling Unit shall mean one (1) or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, within a rental facility.
- F.** Municipality shall mean an incorporated jurisdiction within the County.
- G.** Owner shall mean a person or an entity holding title to rental housing.

- H. "Multifamily rental facility" shall mean any building, structure, or combination of related buildings, structures, and appurtenances, operated as a single entity, housing cooperative ("COOP"), or a condominium, in which the landlord provides for a consideration twenty (20) or more rental Dwelling units; but shall not be construed to mean any transient facilities such as boarding houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities, any other facilities operated for religious or eleemosynary purposes, continuing care facilities regulated by the State pursuant to Title 10, Subtitle 4 of the Human Services Article of the Annotated Code of Maryland and projects authorized under 10 U.S.C. 2828, which allows the U.S. Government to lease housing facilities at or near a military installation for assignment, without rental charge, as family housing for members of the Armed Forces.
- I. Right of First Refusal ("ROFR") shall mean the Department's right to exercise an option to purchase a Multi-family rental facility at the exact same terms and conditions contained in a bona fide contract of sale that an Owner has received from another buyer except as otherwise provided herein.
- J. Sale, sell, or selling means:
1. transfer of title to rental housing;
 2. transfer in a 12-month period of a majority interest in Owner;
 3. or lease of Multifamily rental facility for a period of more than seven (7) years.
- K. Site Plan shall mean a graphic depiction, which at a minimum, shows property lines between existing buildings; distance between buildings; structures and improvements, setbacks, easements, surrounding streets, parking lots, driveways and landscape areas.
- L. Tenant shall mean any person having a leasehold right to occupy a Dwelling unit in a Multifamily rental facility.
- M. Title shall mean a legal or equitable ownership interest in a Multifamily rental facility; or a legal, equitable, or beneficial interest in a partnership, Limited Liability Company, limited partnership, corporation, trust or other person who is not an individual, that has a legal or equitable ownership interest in rental housing.

Section IV. Designated Area

The Right of First Refusal (ROFR) shall apply to all areas of Prince George's County pursuant to CR-51-2015.

Section V. Notice of Sale

Notice to the Tenant

Within five (5) business days after an Owner enters into a bona fide contract of sale, the Owner must provide written notice to each tenant in the Multifamily rental facility by hand or by certified mail, return receipt requested. When giving written notice to tenants by hand delivery, this requirement is satisfied when hand delivered to each occupied Dwelling unit. The written notice should identify the parties to a bona fide contract for sale, the contract date, and the name and phone number of a person the tenants can contact with questions.

Notice to Department

Within five (5) business days after an Owner enters into a bona fide contract of sale, the Owner must provide written notice to the Director by certified mail, return receipt requested.

Section VI. Right of First Refusal (ROFR)**A. Offer to Purchase**

Within five (5) business days after an Owner executes a bona fide contract of sale, the Owner shall offer a ROFR to purchase the Multifamily rental facility to the Department and submit documentation ("ROFR Documents") for the Director's review by certified mail, return receipt that shall include the following:

1. Bona fide contract of the sale;
2. Site plan, if available;
3. Income and Expense Statement for the three (3) prior years of operation;
4. Current rental schedule showing date of last rent increase;
5. Current rent roll (in an Excel file) showing the names of current tenants addresses and telephone numbers and current rent;
6. Current rental license (County or Municipality);
7. Use and Occupancy Permit;
8. Expected re-rent rates within 1 year of closing, if any;
9. Names of Mortgage holder, existing Mortgage balances, and terms, repayment terms interest rates, loans for which Dwelling units are used as collateral, liens covenants easements and any other documents recorded against the property;
10. Security Deposit Schedule and identification of escrow accounts;
11. Any architectural, engineering, mechanical, structural, general construction plans and specifications;
12. Lead Certification;
13. Phase I Environmental Survey;
14. Capital needs assessment or Property Condition Survey
15. Current and historic information on underground storage tanks on property;
16. Copies of all service contracts that include, but are not limited to, property management, maintenance security, construction, or other agreements related to the sale of the identified Multifamily rental facility;
17. Any existing warranties on any major components of the apartment including, but not limited to roof, HVAC, boilers, hot water heaters, etc.
18. A notarized affidavit that states (a) the owner of the multifamily rental facility or an authorized designee has provided to each tenant in occupancy:
 - a. a notice of sale within five (5) days of signing a bona fide sales contract;
 - b. identifies the method of delivery of notice of sale;
 - c. provides a copy of the notice of sale provided to tenants and

- d. affirms that the notice of sale was conspicuously posted in the public areas of the Multifamily rental facility; and
19. Any other agreements and information the Owner may have concerning the rental housing that may materially affect a decision to purchase the rental housing.

B. Initial Evaluation

Within seven (7) business days of the Department's receipt of a written ROFR offer and all applicable ROFR Documents, the Department shall make an initial evaluation as to whether the Department will exercise its option to accept, waive or exempt a proposed ROFR for the sale of Multifamily rental facility and shall notify the Owner in writing of the Department's decision.

C. Property Inspection

Access to inspect a Multifamily rental facility and provide tests at reasonable times shall be provided by the Owner within forty-five (45) days of the notice of sale.

D. Offer Period

In the event the Department has made an evaluation that the Department will not exercise its ROFR option, the ROFR offer period will terminate with the Department's written notification to the owner.

In the event the Department has made a determination to exercise its ROFR option, an Owner's ROFR offer to sell a Multifamily rental facility to the Department must remain open for a period of sixty (60) days after all required ROFR Documents have been submitted for the Department's review.

E. ROFR Initial Offer

The ROFR offer is not complete until all the information and documentation identified in Section VI (A) has been submitted for the Department's review. Additionally, the Department's timeline to accept a ROFR option will not commence until an Owner has submitted all the information and documentation identified in Section VI (A) for the Department's review.

Any written notices and ROFR Documents submitted by an Owner pursuant to the regulations set forth herein shall not be disclosed by the Department or the County except as otherwise required exercising or assigning a ROFR option and/or complying with local, State or federal laws. In the event a ROFR option is assigned to a third party, any notices and ROFR Documents submitted by an Owner pursuant to the regulations set forth herein shall not be disclosed by the third-party assignee.

An Owner shall be required to immediately notify the Department of any proposed or accepted alteration and/or revision that materially changes a term or condition in the ROFR documents including, but not limited to, the price or financing set forth in any pending contract. If an Owner desires to enter into new contract of sale before the Department has made a determination to exercise, reject or otherwise waive its ROFR option, the Owner shall be required to make a new ROFR offer to the Department that includes the new material terms and conditions. Each new ROFR offer must remain open for (60) additional days following receipt by the Department.

Section VII. Acceptance of ROFR

A. Acceptance of Offer

The Department may exercise its ROFR by accepting the offer within sixty (60) days of receiving a ROFR Offer as defined in Section VI. D. or any applicable ROFR extension period.

1. Any agreement to accept or assign the County's ROFR offer to purchase a Multifamily rental facility must include:
 - a. substantially the same terms and conditions set forth in an Owner's original offer with the proposed buyer and include the deposit, and any bona fide real estate commission payable to an independent broker; and
 - b. may provide for up to one hundred eighty (180) days financing contingency pursuant to this Subsection and Section 13-1113(e) of the County Code.
2. The County must complete an ROFR to purchase a Multifamily rental facility within (180) days of receipt of the Owner's offer as defined herein or any subsequent offer presented to the County unless a longer time is otherwise agreed to by the Owner.
3. Any sale of a Multifamily rental facility that materially violates a Section of 13-1110 et. seq. of the County Code or Regulations set forth herein may be voided at the County's option and the current Owner of record shall be required to extend an initial or new ROFR offer to the County that includes the same terms and conditions offered to the original purchaser.
4. In the event the Multifamily rental facility is within a municipality (see Attachment A), the Department may accept a ROFR offer to buy rental housing in the municipality only if the municipality approves in writing within one hundred eighty (180) days from the date of the ROFR offer. The failure of a municipality to provide written approval to the Department within the timeframe above shall be deemed an approval.

B. Assignment of ROFR Offer

The Department is authorized to designate assignees to evaluate and/or exercise the Department's ROFR offers to purchase Multifamily rental facilities. In such cases, the Owner will receive written notice within ten (10) business days of the County's assignment.

The Department's option to assign its ROFR shall not otherwise extend the sixty (60) business day evaluation period.

Third party assignee(s) will enter into an Agreement Not to Convert with the Department acknowledging their liability in the event actions by the Assignee result in damages to the property or owner.

Section VIII. Waivers and Exceptions

A. Waivers

The Department may waive Owner's ROFR offer or make determination that an Owner may sell a Multifamily rental facility without providing the County a ROFR offer pursuant to the criteria set forth in this Subsection and Section 13-1114 of the County Code. If the Department approves and enters into a written Agreement Not to Convert a Multifamily

rental facility, it will be based on that the following criteria:

1. The Department received the written agreement from the prospective Buyer or otherwise agreed to enter into an Agreement Not to Convert a Multifamily rental facility at least thirty (30) days before the proposed sale.
2. The Department has given consideration to the following:
 - a. The physical condition of the Multifamily rental facility including any rehabilitation necessary to correct dangerous defects; and
 - b. The current tenants' ability to afford rent increases; and
 - c. The need to preserve low-to-moderate income rental housing in the County;
3. Prior to entering into an Agreement Not to Convert a Multifamily rental facility, the owner has provided the Department with the following:
 - a. An express agreement to submit an annual compliance report, which shall be due on the anniversary date of the Agreement Not to Convert or the settlement date as approved by the Department and which shall include the following:
 - i. A copy of any lease for any tenant that leased in the past 12 months;
 - ii. A list of any tenants vacating the rental housing in the last 12 months; and
 - iii. Any rent increase in the last 12 months.
4. The Agreement Not to Convert a Multifamily rental facility will provide as follows:
 - a. the buyer is prohibited from converting a Multifamily rental facility for at least three (3) years after the sale and agrees to record the County's Certificate of Compliance with the Prince George's County Office of Land Records; or
 - b. the buyer agrees that at least twenty percent (20%) of the Dwelling units in the Multifamily rental facility shall be maintained as Dwelling Units for fifteen (15) years from the date of acquisition for households that do not exceed the applicable income eligibility figures established under Section 11-138 (b)(4)(ii) of the Real Property Article of the Annotated Code of Maryland; and
 - c. the Department received the written agreement from the prospective Buyer or otherwise agreed to enter in an Agreement Not to Convert a Multifamily Rental Facility at least thirty (30) days before the proposed sale.

B. Exceptions

Upon the Department's receipt of the written notice and any ROFR Documents submitted by an Owner, buyer or interested party, the Department may make a determination that the Owner does not have to offer a ROFR to the County for a sale, or transfer of the following:

1. Under the terms of a bona fide mortgage or deed of trust;
2. to a mortgagee in lieu of foreclosure or any other proceedings, arrangement or deed in lieu of foreclosure;

3. under a court order or judicial sale;
4. from one co-tenant to another co-tenant by operation of law;
5. under a will or descent or intestate distribution;
6. to the State or local government;
7. to a spouse, son or daughter;
8. made pursuant to the liquidation of a partnership, limited liability company, or corporation; or
9. into a partnership, limited liability company, or corporation wholly owned by the person(s) so contributing.

Section IX. Certificate of Compliance

- A. In the event the Department has made a determination that it will not exercise its ROFR option, the Department will issue a Certificate of Compliance for rental housing to the Owner, buyer, or any other interested party, in a form that is appropriate for recordation in the land records, after the Department determines that the regulation set forth herein and the provisions of Section 13-1115 of the County Code have been satisfied or otherwise waived by the Department. The Certificate of Compliance will be conclusive evidence of compliance, and will be issued within ten (10) days of the Department's decision not to exercise its ROFR option.
- B. Upon the Department's determination that a proposed sale of a Multifamily rental facility does not require an Owner to offer the County a ROFR option or subject to the Department's approval of a buyer's written agreement to utilize a Multifamily rental facility in accordance with the provisions set forth in Section 13-1114 of the County Code, the Department shall issue a Certificate of Compliance. The Certificate of Compliance shall be in form that is appropriate for recordation in the Prince George's County Office of Land Records and shall incorporate by reference any approved written agreements and documentation the Department relied upon as conclusive evidence of an Owner's or buyer's compliance with the ROFR Regulations.

Section X. Complaints and Enforcement

A. Complaints

Any person harmed by the Owner's, buyer's or another person's violation any Sections of the ROFR Regulations may file a written complaint with the Department as pursuant to Section 13-1116 of the County Code.

B. Enforcement

A violation of any ROFR Regulation set forth herein shall be deemed to be a civil violation under Section 28-221 of the County Code and shall be punishable as a separate violation for each Dwelling unit in a Multifamily rental facility affected by the violation for each day the violation exists. The Department's authority to enforce compliance of the ROFR Regulations set forth herein includes the following:

1. investigating any alleged violation;
2. issuing a summons or subpoena to compel the attendance of a person or the production of documents or other evidence;
3. enjoining a violation;
4. revoking a rental license issued under this Subtitle of the County Code;
5. reporting a violation to any other appropriate government agency;
6. informal conciliation between a complainant and an alleged violator;
7. dismissing a complaint when the Director of the Department determines that there is insufficient evidence of a violation;
8. obtaining injunctive or other appropriate judicial relief, such as an order to:
 - a. require compliance with a summons or a subpoena;
 - b. require an alleged violator or witness to attend a Department meeting or other proceeding concerning an alleged violation;
 - c. require production of documents or other evidence;
 - d. require transfer of documents or other evidence to the Court; or
 - e. prohibit the destruction of documents or other evidence;
9. recovering costs and fees of an investigation or a lawsuit if the Department finds a violation occurred and prevails in any appeal;
10. ordering any appropriate financial, legal, or equitable relief to a tenant injured by a violation of this subdivision;
11. any other applicable enforcement action that the Department could take to enforce a violation of this Subtitle;
12. developing, conducting, or assisting in educational and information programs concerning the requirements of this subdivision;
13. any sale of a Multifamily rental facility that materially violates Section of 13-1110 et. seq. of the County Code or Regulations set forth herein is void at the County's option and the current Owner of record shall be required to extend an initial or new ROFR offer to the County that includes the same terms and conditions offered to the original purchaser.
14. The ROFR Regulations shall not limit the County from exercising or otherwise pursuing any other legal or equitable rights and remedies.

Section XI. Annual Report to the Council

Pursuant to the ROFR Regulations and Section 13-1118 of the County Code, the administrative reporting requirements shall be as follows:

A. By December 31 of each year, the County Executive or Department shall report to the County Council on activities under the ROFR Regulations for the prior fiscal year, including:

1. any offer of a right of First Refusal received by the County;
2. any agreement Not to Convert that the Department approved; and
3. any conversion of rental housing in the County

Section XII. Severability

If any Section or Subsection of the Regulations set forth herein shall be declared to be invalid, unenforceable or void for any reason, the remaining Sections and Subsections of the Regulations shall survive and remain enforceable.