

Required Statements and Certifications Reference Documents

Form Number	Form Description	Applicable for:		
		*All projects	**Insured multifamily projects	***Section 202/811 capital advance projects
A. HUD-92264*	Project Income Analysis and Appraisal (Firm)	X		
B. HUD-92432**	Commitment for Insurance of Advances		X	
C. HUD-92432-CA***	Firm Commitment for Capital Advance Financing			X
D. HUD-92441**	Building Loan Agreement		X	
E. HUD-92441 Supplement	Supplement to the Building Loan Agreement (Applicable only to those insured projects where the mortgagor is also serving as the general contractor)			
F. HUD-90167-CA***	Capital Advance Agreement			X
G. HUD-2434**	Mortgagee's Certificate		X	
H. FHA-2455**	Request for Endorsement of Credit Instrument, Certificate of Mortgagee, Mortgagor and General Contractor (Applicable only to insurance upon completion cases – only certificate of Mortgagee portion will be completed)		X	
I. HUD-3305** HUD-3306** HUD-93566-CA***	Agreement and Certification (Select Applicable Form)		X	X
J. HUD-92442** HUD-92442A** HUD-92442-CA*** HUD-92442A-CA***	Construction Contract (Select Applicable Form)		X	X
K. HUD-92448*	Contractor's Requisition, Project Mortgages (Latest requisition approved by HUD)	X		
L. FHA-2328*	Contractor's and/or Mortgagor's Cost Breakdown	X		
M. HUD-92437*	Request for Construction Change (Changes Order)	X		
N. HUD-92443** HUD-92443-CA***	Construction Contract Incentive Payment		X	X
O. FHA-2453**	Commitment to Insure Upon Completion		X	
P. HUD-92466** HUD-92466-CA***	Regulatory Agreement-Multifamily Housing Project		X	X
Q. FHA-1733**	Regulatory Agreement-Nonprofit and Public Mortgagor		X	
R. HUD-5379*	HUD Representative's Trip Report (Showing 100 percent completion)	X		
S. FHA-2485*	Initial Permission to Occupy-Project Mortgages	X		
T. AIA Document* B181 HUD-90169-CA***	Owner-Architect Agreement and HUD amendment	X		X

Form Number	Form Description	Applicable for:		
		*All projects	**Insured multifamily projects	***Section 202/811 capital advance projects
U. HUD-92531A**	Guide Form of Contract for Housing Consultant Services for Nonprofit Projects Under HUD Programs		X	
V. HUD-92531A-CA***	Contract for Housing Consultant Services for Nonprofit Projects Under Section 202 or Section 811			X
W. HUD-90172A-CA***	Part I of the Agreement to Enter into a Project Rental Assistance Contract			X
X. HUD-90172B-CA***	Part 2 of the Agreement to Enter into a Project Rental Assistance Contract			X
Y. *	Management Contract	X		

Multifamily Summary Appraisal Report

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

OMB Approval No. 2502-0029
(exp. 10/31/2012)

This form is in compliance with the requirements of the Uniform Standards of Professional Appraisal Practice for written reports, except where the Jurisdictional Exception is invoked to allow for minor deviations, as noted throughout.
Additional technical direction is contained in the HUD Handbooks referenced in the lower right corner.

Application Processing Stage SAMA Feasibility (Rehab) Firm
 Property Rights Appraised Fee Simple Leasehold

Project Name _____ Project Number _____

Purpose. This appraisal evaluates the subject property as security for a long-term insured mortgage. Included in the appraisal (consultation for Section 221) are the analyses of market need, location, earning capacity, expenses, taxes, and warranted cost of the property.
Scope. The Appraiser has developed, and hereunder reports, conclusions with respect to: feasibility; suitability of improvements; extent, quality, and duration of earning capacity; the value of real estate proposed or existing as security for a long-term mortgage; and several other factors which have a bearing on the economic soundness of the subject property.

A. Location and Description of Property

1. Street Nos.		2. Street		3. Municipality	
4a. Census Tract No.		4b. Placement Code	4c. Legal Description (Optional)		5. County
6. State and Zip Code					
7. Type of Project		8. No. Stories		9a. Foundation	
<input type="checkbox"/> Highrise <input type="checkbox"/> 2 - 5 sty. Elev. <input type="checkbox"/> Elevator(s) _____ <input type="checkbox"/> Walkup <input type="checkbox"/> Row House <input type="checkbox"/> Detached <input type="checkbox"/> Semi-Detached <input type="checkbox"/> Town House				<input type="checkbox"/> Slab on Grade <input type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement <input type="checkbox"/> Crawl Space	
				9b. Basement Floor	
				<input type="checkbox"/> Structural Slab	
				<input type="checkbox"/> Slab on Grade	
10.	11. Number of Units		12. No. of Bldgs.	13a. List Accessory Bldgs. and Area	
<input type="checkbox"/> Proposed	Revenue	Non-Rev.			
<input type="checkbox"/> Existing					
13b. List Recreation Facilities and Area					

13c. Neighborhood Description					
Location		<input type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Rural		Present Land Use _____ % 1 Family _____ % 2 to 4 Family	
Built Up <input type="checkbox"/> Fully Developed		<input type="checkbox"/> Over 75% <input type="checkbox"/> 25 % to 75% <input type="checkbox"/> Under 25%		_____ % Multifamily _____ % Condo/Coop	
Growth Rate		<input type="checkbox"/> Rapid <input type="checkbox"/> Steady <input type="checkbox"/> Slow		_____ % Commer. _____ % Industrial	
Property Values		<input type="checkbox"/> Increasing <input type="checkbox"/> Stable <input type="checkbox"/> Declining		_____ % Vacant	
Demand/Supply		<input type="checkbox"/> Shortage <input type="checkbox"/> In Balance <input type="checkbox"/> Oversupply		Change In Use <input type="checkbox"/> Not Likely <input type="checkbox"/> Likely <input type="checkbox"/> Taking Place	
Rent Controls		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Likely		From _____ to _____	
				Predominant Occupancy <input type="checkbox"/> Owner <input type="checkbox"/> Tenant _____ % Vacant	

Description of Neighborhood. (Note: Race and racial composition of the neighborhood are not appraisal factors.) Describe boundaries of the neighborhood and those factors, favorable or unfavorable, that affect marketability, including neighborhood stability, appeal, property conditions, vacancies, rent control, etc.

Site Information

14. Dimensions			15a. Zoning (If recently changed, submit evidence)		
ft. by	ft. or	sq. ft.			
15b. Zoning Compliance <input type="checkbox"/> Legal <input type="checkbox"/> Illegal <input type="checkbox"/> Legal nonconforming (Grandfathered use) <input type="checkbox"/> No zoning					
15c. Highest and Best Use as Improved <input type="checkbox"/> Present use <input type="checkbox"/> Proposed use <input type="checkbox"/> Other use (explain)					
15d. Intended M/F Use (summarize: e.g., Market Rent: Hi - Med. - Lo-End; Rent Subsidized; Rent Restricted with or without Subsidy; Applicable Percentages)					

Building Information

16a. Yr. Built	16b. <input type="checkbox"/> Manufactured Housing <input type="checkbox"/> Conventionally Built	17a. Structural System	17b. Floor System	17c. Exterior Finish	18. Heating-A/C System
	<input type="checkbox"/> Modules <input type="checkbox"/> Components				

B. Additional Information Concerning Land or Property

19. Date Acquired	20. Purchase Price \$ _____	21. Additional Costs Paid or Accrued \$ _____	22. If Leasehold, Annual Ground Rent \$ _____	23a. Total Cost \$ _____	23b. Outstanding Balance \$ _____
24a. Relationship (Business, Personal, or Other) Between Seller and Buyer		24b. Has the Subject Property been sold in the past 3 years? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," explain:			
25. Utilities	Public <input type="checkbox"/>	Community <input type="checkbox"/>	Distance from Site _____	26. Unusual Site Features	
Water	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/> Cuts <input type="checkbox"/> Fills <input type="checkbox"/> Rock Formations <input type="checkbox"/> Erosion <input type="checkbox"/> Poor Drainage <input type="checkbox"/> None <input type="checkbox"/> High Water Table <input type="checkbox"/> Retaining Walls <input type="checkbox"/> Off Site Improvements <input type="checkbox"/> Other (Specify) _____	
Sewers	<input type="checkbox"/>	<input type="checkbox"/>	_____		

C. Estimate of Income (Attach forms HUD-92273, 92264-T, as applicable)

27. No. of Each Family Type Unit	Rentable Living Area (Sq. Ft.)	Composition of Units	Unit Rent per Mo. (\$)	Total Monthly Rent For Unit Type (\$)
(a)				
(b)				
(c)				
(d)				
(e)				
(f)				
(g)				
(h)				
(i)				

28. **Total Estimated Rentals for All Family Units** \$ _____

29. Number of Parking Spaces	Offstreet Parking and Other Non-Commercial Ancillary Income (Not Included in Unit Rent)		
<input type="checkbox"/> Attended _____	Open Spaces _____ @ \$ _____	per month = \$ _____	
<input type="checkbox"/> Self Park _____	Covered Spaces _____ @ \$ _____	per month = \$ _____	
	Laundry _____ Sq. Ft. or Living Units @ _____	per month = \$ _____	
	Other _____	per month = \$ _____	
Total Spaces _____	Other _____	per month = \$ _____	
	Total Monthly Ancillary Income		\$ _____

30. Commercial Income (Attach Documentation)

Area-Ground Level _____ sq. ft. @ \$ _____ per sq. ft./month = \$ _____

Other Levels _____ sq. ft. @ \$ _____ per sq. ft./month = \$ _____

Total Monthly Commercial Income \$ _____

31. **Total Estimated Monthly Gross Income at 100 Percent Occupancy** \$ _____

32. **Total Annual Rent** (Item 31 x 12 months) \$ _____

33. Gross Floor Area Sq. Ft.	34. Net Rentable Residential Area Sq. Ft.	35. Net Rentable Commercial Area Sq. Ft.
---------------------------------	----------------------------------------------	---------------------------------------------

36. Non-Revenue Producing Space

Type of Employee	No. Rms.	Composition of Unit	Location of Unit in Project

36a. Personal Benefit Expense (PBE) (May produce additional revenue and expenses to be considered above and below.)

Tenant Employee-Paid Utilities Type(s) _____ Monthly Cost \$ _____

Landlord Employer-Paid Utilities Type(s) _____ Monthly Cost \$ _____

D. Amenities and Services Included in Rent (Check and circle appropriate items; fill-In number where Indicated)

37a. Unit Amenities

- Ranges (Gas or Elec.) Disposal/Compactor
- Refrig. (Gas or Elec.) Air Conditioning (central or window)
- Micro Wave Dishwasher
- Carpet Window treatment (blinds, drapes, shades)
- Balcony/Patio Fireplace(s) No. _____
- Laundry hookups (in units)
- Upper level vaulted ceiling/Skylight(s) No. _____
- Wash/Dryer (in units) Security System(s) (Describe)
- Other(Specify)

37b. Project Amenities

- Guest room(s) No. _____ Community room(s) No. _____
- Sauna/Steam room(s) No. _____ Swimming Pool(s) No. _____
- Exercise room(s) No. _____ Racquetballcourt(s) No. _____
- Tennis Court(s) No. _____ Picnic/Play area(s) No. _____
- Laundry Facilities (coin)
- Project Security System(s) (Describe)
- Jacuzzies/Community Whirlpool(s) No. _____
- Other(specify)

37c. Unit Rating

	Good	Aver.	Fair	Poor
Condition of Improvement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Room Sizes and Layout	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adequacy of Closets and Storage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kitchen Equip., Cabinets, Workspace	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plumbing - Adequacy and Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electrical - Adequacy and Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Soundproofing - Adequacy and Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Insulation - Adequacy and Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall Livability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal and Marketability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

37d. Project Rating

	Good	Aver.	Fair	Poor
Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Appearance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amenities & Rec.Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Density (units per acre)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unit Mix	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Quality of Construction (matl. & finish)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Condition of Exterior	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Condition of Interior	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal to Market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Soundproofing - Vertical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Soundproofing - Horizontal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

38. Services

- Gas: Heat Hot Water Cooking Air Conditioning
- Elec: Heat Hot Water Cooking Air Conditioning Lights/etc.
- Other: Heat Hot Water Water Other (specify)

39. Special Assessments

- a. Prepayable Non-Prepayable
- b. Principal Balance \$ _____
- c. Annual Payment \$ _____
- d. Remaining Term _____ Years

E. Estimate of Annual Expense

Administrative

- 1. Advertising \$ _____
- 2. Management \$ _____
- 3. Other \$ _____
- 4. **Total Administrative** \$ _____

Operating

- 5. Elevator Main. Exp. \$ _____
- 6. Fuel (Heating and Domestic Hot Water) \$ _____
- 7. Lighting & Misc. Power \$ _____
- 8. Water \$ _____
- 9. Gas \$ _____
- 10. Garbage & Trash Removal \$ _____
- 11. Payroll \$ _____
- 12. Other \$ _____
- 13. **Total Operating** \$ _____

Maintenance

- 14. Decorating \$ _____
- 15. Repairs \$ _____
- 16. Exterminating \$ _____
- 17. Insurance \$ _____
- 18. Ground Expense \$ _____
- 19. Other \$ _____
- 20. **Total Maintenance** \$ _____
- 21. Replacement Reserve (0.006 x total structures Line G41)
or (0.004 x MTG. for Rehab) \$ _____
- 22. **Total Operating Expense** \$ _____

Taxes

- 23. Real Estate: Est. Assessed Value \$ _____
at \$ _____ per \$1000 \$ _____
- 24. Personal Prop. Est. Assessed Value \$ _____
at \$ _____ per \$1000 \$ _____
- 25. Empl. Payroll Tax \$ _____
- 26. Other \$ _____
- 27. Other \$ _____
- 28. **Total Taxes** \$ _____
- 29. **Total Expense** (Attach form HUD-92274, as necessary) \$ _____

F. Income Computations

30a. Estimated Residential Project Income (Line C28 x 12) \$ _____	c. Effective Gross Commercial Income (Line 32a. x Line 32b.) \$ _____
b. Estimated Ancillary Project Income (Line C29 x 12) \$ _____	d. Total Commercial Project Expenses (From Attached Analysis) \$ _____
c. Residential and Ancillary Occupancy Percentage * _____ %	33. Net Commercial Income to Project (Line 32c. minus Line 32d.) \$ _____
d. Effective Gross Residential and Ancillary Income (Line 30c. x (Line 30a. plus Line 30b.)) \$ _____	34. Total Project Net Income (Line 31 plus Line 33) \$ _____
e. Total Residential and Ancillary Project Expenses (Line E29) \$ _____	35a. Residential and Ancillary Project Expense Ratio (Line E29 divided by Line 30d.) _____ %
31. Net Residential and Ancillary Income to Project (Line 30d. minus Line 30e.) \$ _____	35b. Commercial Expense Ratio (Line 32d. divided by 32c.) _____ %
32a. Estimated Commercial Income (Line C30 x 12) \$ _____	
b. Commercial Occupancy * (80% Maximum) (See Instructions) _____ %	

* Vacancy and collection loss rates and corresponding residential and commercial occupancy percentages are analyzed through market data, but subject by Jurisdictional Exception to overall HUD underwriting mandates.

G. Estimated Replacement Cost

36a. Unusual Land Improvements	\$ _____
b. Other Land Improvements	\$ _____
c. Total Land Improvements	\$ _____

Structures

37. Main Buildings	\$ _____
38. Accessory Buildings	\$ _____
39. Garages	\$ _____
40. All Other Buildings	\$ _____
41. Total Structures	\$ _____
42. General Requirements	\$ _____

Carrying Charges & Financing

53. Interest: _____ Mos. at _____ % on \$ _____	\$ _____
54. Taxes	\$ _____
55. Insurance	\$ _____
56. FHA Mtg. Ins. Prem. (%)	\$ _____
57. FHA Exam. Fee (%)	\$ _____
58. FHA Inspec. Fee (%)	\$ _____
59. Financing Fee (%)	\$ _____
60. AMPO (N. P. only) (%)	\$ _____
61. FNMA/GNMA Fee (%)	\$ _____
62. Title & Recording	\$ _____
63. Total Carrying Charges & Financing	\$ _____

Fees

43. Builder's Gen. Overhead at _____ %	\$ _____
44. Builder's Profit at _____ %	\$ _____
45. Arch. Fee-Design at _____ %	\$ _____
46. Arch. Fee-Supvr. at _____ %	\$ _____
47. Bond Premium	\$ _____
48. Other Fees	\$ _____
49. Total Fees	\$ _____
50. Total All Improvements (Lines 36c. plus 41 plus 42 plus 49)	\$ _____
51. Cost Per Gross Sq. Ft.	\$ _____
52. Estimated Construction Time (Months)	_____

Legal, Organization & Audit Fee

64. Legal	\$ _____
65. Organization	\$ _____
66. Cost Certification Audit Fee	\$ _____
67. Total Legal, Organization & Audit Fees (64 + 65 + 66)	\$ _____
68. Builder and Sponsor Profit & Risk	\$ _____
69. Consultant Fee (N. P. only)	\$ _____
70. Supplemental Management Fund	\$ _____
71. Contingency Reserve (Sec. 202 or Rehab only)	\$ _____
72. Total Est. Development Cost (Excl. of Land or Off-site Cost) (50 plus 63 plus 67 thru 71)	\$ _____
73a. Warranted Price of Land J-14(3)(New Constr) _____ sq. ft. @ \$ _____ sq. ft.	\$ _____ * see note 1
73b. As Is Property Value (Rehab only)	\$ _____ * see note 2
73c. Off-Site (if needed, Rehab only)	\$ _____ * see note 1
74. Total Estimated Replacement Cost of Project (72 plus 73a or 73b and 73c)	\$ _____

Note 1: Jurisdictional Exception: In HUD programs, land, and/or existing improvements are not valued for their "highest and best use," but instead, for their intended multifamily use (See Section J analysis below.)(Exception: Title II or VI Preservation). Offsite improvements are assumed completed in new construction land valuations (See Line M17 for estimated cost.) Unusual costs of site preparation are deducted from the "Value of the Site Fully Improved" to determine "Warranted Price of Land Fully Improved."

H. Remarks

(Note 2: For Rehab only: Estimated Value of land without Improvements \$ _____
 Estimated Value of land and improvements "As Is" by Residual Method, i.e., After Rehabilitation Correlated Value minus line G 7 2 Cost of Rehabilitation Improvements equals \$ _____; line G 73b is the lesser of this residual amount, and the amount estimated by Supplemental form HUD-92264 "As Is".)

I. Estimate of Operating Deficit

Periods	Gross Income	Occup. %	Effec. Gross	Expenses	Net Income	Debt Serv. Reqmt.	Deficit
1. 1st () Mos	\$ _____	%	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
2. 2nd () Mos	\$ _____	%	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
3. Total Operating Deficit							\$ _____

J. Project Site Analysis and Appraisal (See Chapter 2, Handbook 4465.1)

- | | | | | |
|-------------------------------------------------------------------------------|--------------------------|-----|--------------------------|----|
| 1. Is Location and Neighborhood acceptable? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 2. Is Site adequate in Size for proposed Project? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 3. Is Site Zoning permissible for intended use? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 4. Are Utilities available now to serve the Site? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 5. Is there a Market at this location for the Facility at the proposed Rents? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |

6. Site acceptable for type of Project proposed under Section _____. (If checked, acceptance subject to qualifications listed at bottom of page 6.)

7. Site not acceptable (see reasons listed at bottom of page 6.)

Date of Inspection _____ Note: The Effective Date of all land valuations is the date of inspection.

8. Value Fully Improved	Location of Project				Size of Subject Site
	Comparable Sales Address No. 1	Comparable Sales Address No. 2	Comparable Sales Address No. 3	Comparable Sales Address No. 4	Comparable Sales Address No. 5
Date of Sale					
Sales Price					
Size per Sq. Ft.					
Price per Sq. Ft.					
Adjustments (%)					
Time					
Location					
Zoning					
Plottage					
Demolition					
Pilling, Etc.					
Other					
Total Adjustment Factor					
Adjusted Sq. Ft. Price					
Indicated Value by Comparison					

9. Value of Site Fully Improved \$

10.	Value "As Is" No. 1	Value "As Is" No. 2	Value "As Is" No. 3
Date of Sale			
Sales Price			
Ft. / Acres			
Price per Sq. Ft.			
Adjustments (%)			
Time			
Location			
Zoning			
Plottage			
Demolition			
Pilling, Etc.			
Other			
Total Adjustment Factor			
Adjusted Sq. Ft. Price			
Indicated Value by Comparison			

11. Value of Site "As Is" by Comparison \$

12. Acquisition Cost (Last Arms-Length Transaction)

Buyer	Address
Seller	Address
Date	Price \$
Source	

13. Other Costs

(1) Legal Fees and Zoning Costs	\$
(2) Recording and Title Fees	\$
(3) Interest on Investment	\$
(4) Other	\$
(5) Acquisition Cost (From 12 above)	\$
(6) Total Cost to Sponsor	\$

14. Value of Land and Cost Certification

(1) Fair Market Value of land fully improved (from 9 above)	\$
(2) Deduct unusual items from Section G, item 36a	\$
(3) Warranted price of land fully improved (Replacement Cost items excluded) (enter G-73)	\$
For Cost Certification Purposes	
(3a) Deduct cost of demol. \$ _____ and required off-sites \$ _____ to be paid by Mtgor. or by special assessments	\$
(4) Estimate of "As Is" by subtraction from improved value	\$
(5) Estimate of "As Is" by direct comparison with similar unimproved sites (from 11 above)	\$
(6) "As Is" based on acquisition cost to sponsor (from 13 above)	\$
(7) Commissioner's estimated value of land "As Is" (the lesser of [4] or [5] above)*	\$

* Where land is purchased from LPA or other Governmental authority for specific reuse, use the lesser of 4, 5, or 6.

K. Income Approach to Value

(1) Estimated Remaining Economic Life	Years
(2) Capitalization Rate Determined By (See Chapter 7, Handbook 4465.1)	
<input type="checkbox"/> Overall Rate From Comparable Projects	
<input type="checkbox"/> Rate From Band of Investment	
<input type="checkbox"/> Cash Flow to Equity	
(3) Rate Selected	%
(4) Net Income (Line F 34)	\$
(5) Capitalized Value (Line 4 divided by Line 3)	\$
(6) Value of Leased Fee (See Chapter 3, Handbook 4465.1) Ground Rent \$ _____ divided by Cap. Rate _____ % equals Value of Leased Fee	\$

Remarks: (See item 6 and 7 on page 5)

L. Comparison Approach to Value

7. The undersigned has recited three sales of properties most similar and proximate to the subject property and has described and analyzed these in this analysis. If there is a significant variation between the subject and comparable properties, the analysis includes a dollar adjustment reflecting the market reaction to those items or an explanation supported by the market data. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of the subject property. If a significant item in the comparable property is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject property.
 *[(1) equals the Sales Price divided by Gross Annual Rent]

Item	Subject Property	Comparable Sale No.1				Comparable Sale No. 2				Comparable Sale No. 3						
Address																
Proximity to subject																
Sales price	\$	<input type="checkbox"/> Unf. <input type="checkbox"/> Furn. \$				<input type="checkbox"/> Unf. <input type="checkbox"/> Furn. \$				<input type="checkbox"/> Unf. <input type="checkbox"/> Furn. \$						
Sales price per GBA	\$	\$				\$				\$						
Gross annual rent	\$	\$				\$				\$						
Gross rent multiplier (1)*																
Sales price per unit	\$	\$				\$				\$						
Sales price per room	\$	\$				\$				\$						
Data source																
Adjustments	Description	Description	+ (-) \$ Adjust.			Description	+ (-) \$ Adjust.			Description	+ (-) \$ Adjust.					
Sales or financing concessions																
Date of sale/time																
Location																
Site/view																
Design and appeal																
Quality of construction																
Year built																
Condition																
Gross Building Area	Sq. ft.				Sq. ft.				Sq. ft.							
Unit Breakdown	No. of Units	Room count			No. of Units	Room count			No. of Units	Room count			No. of Units	Room count		
	Tot.	Br.	Ba.	Vac	Tot.	Br.	Ba.	Vac	Tot.	Br.	Ba.	Vac	Tot.	Br.	Ba.	Vac
Basement description																
Functional utility																
Heating/cooling																
Parking on/off site																
Project amenities and fee (if applicable)																
Other																
Net Adjustment (Total)		<input type="checkbox"/> + <input type="checkbox"/> - \$			<input type="checkbox"/> + <input type="checkbox"/> - \$				<input type="checkbox"/> + <input type="checkbox"/> - \$							
Adjusted sales price of comparables		\$			\$				\$							

8. Indicated Value by Sales Comparison Approach \$ _____

Reconciliation

Capitalization \$ _____ Summation \$ _____ Comparison \$ _____

9. The market value (or replacement cost) of the property, as of the effective date of the appraisal, is \$ _____ ** see note below

**** Note:** For Section 221 mortgage insurance application processing, acceptable risk analysis produces a supportable replacement cost estimate, and the estimate reflected here is the replacement cost new/summation approach result. In effect, such "appraisals" are in fact USPAP "consultations" concerning supportable cost limits. For Section 207 and 223 processing, all three approaches to value are included in the appraisal, but the subject property is appraised for intended multifamily use, not necessarily its "highest and best use." The definition provided in USPAP for "market value" is generally observed, but see Handbook 4465.1, paragraph 8-4 for qualifications.

Effective Dates: For new construction or substantial rehabilitation proposals, the effective date of the improvements component estimation is the Line G53 month estimate added to the report and certification date below. The land component is valued as of the inspection date. For Section 223, the effective date of the appraisal is the same as the reporting date, but assumes (hypothetically) the completion of all required repairs/work write-up items.

Comments on: (continue on separate page if necessary)

- Sales comparison (including reconciliation of all indicators of value as to consistency and relative strength and evaluation of the typical investors'/purchasers' motivation in that market).
- Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of the subject and comparables within three years of the date of appraisal.

M. To Be Completed by Construction Cost Analyst

Cost Not Attributable to Dwelling Use		Total Est. Cost of Off-Site Requirements	
10. Parking	\$ _____	16. Off-Site	Est. Cost
11. Garage	\$ _____	_____	\$ _____
12. Commercial	\$ _____	_____	\$ _____
13. Special Ext. Land Improvements	\$ _____	_____	\$ _____
14. Other	\$ _____	_____	\$ _____
15. Total	\$ _____	_____	\$ _____
	_____ %	17. Total Off-Site Costs	\$ _____

N. Signatures and Appraiser Certification

Architectural Processor	Date	Architectural Reviewer	Date
Cost Processor	Date	Cost Reviewer	Date

I certify that to the best of my knowledge and belief:

- o the statements of fact contained in this report are true and correct.
- o the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- o I have no present or prospective interest in the property that is the subject of this report, and I have no personal interests with respect to the parties involved.
- o my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- o my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice; HUD Handbook 4465.1, *The Valuation Analysis Handbook for Project Mortgage Insurance*; HUD Handbook 4480.1, *Multifamily Underwriting Forms Catalog*; and other applicable HUD handbooks and Notices.
- o I have made a personal inspection of the property that is the subject of this report.
- o no one provided significant professional assistance to the appraisers signing this report, except for the Architectural and Engineering, and Cost Estimation professionals signing above. These professionals' estimations of the subject property's dimensions and "hard" replacement costs have been relied upon by the Appraiser and Review Appraiser.

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)

Appraiser	Date	Review Appraiser	Date
State Certification Number	State	State Certification Number	State

The Review Appraiser certifies that he/she Did Did not inspect the subject property

Chief, Housing Programs Branch	Date	Director, Housing Development	Date
Field Office Manager/Deputy		Date	

O. Remarks and Conclusions (continue on separate page if necessary. Appraisal reports must be kept for a minimum of five years.)

Public Reporting Burden for this collection of information is estimated to average 114 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. This information is being collected under Public Law 101-625 which requires the Department of to implement a system for mortgage insurance for mortgages insured under Sections 207,221,223,232, or 241 of the National Housing Act. The information will be used by HUD to approve rents, property appraisals, and mortgage amounts, and to execute a firm commitment. Confidentiality to respondents is ensured if it would result in competitive harm in accord with the Freedom of Information Act (FOIA) provisions or if it could impact on the ability of the Department's mission to provide housing units under the various Sections of the Housing legislation.

Commitment for Insurance of Advances

Sections 207, 220, 221, 231, 232, 242 and 810; and Title XI

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

Project Number	Name of sponsor
To (Borrower)	Street address
Street Address	City & State
City & State	Name of proposed Lender

The Federal Housing Commissioner, acting herein on behalf of the Secretary of Housing and Urban Development, will endorse for insurance under the provisions of Section _____ of the National Housing Act, and the Regulations thereunder now in effect, a mortgage note in the amount of \$ _____, to be secured by a mortgage, on the property locate at _____ and consisting of approximately _____ square feet. The insurance endorsement will be subject to compliance with the requirements of the Regulations, and the terms and conditions set forth below. The mortgage amount, however, is subject to reduction prior to final insurance endorsement of the mortgage note as provided in the Regulations.

1. The mortgage note shall be payable in monthly installments in accordance with the payment provision checked and completed below:

(a) **Combination Declining Annuity Plan**

The loan shall bear interest at the rate of _____ percent per annum payable on the first day of each month on the outstanding balance of principal. The first payment to principal (commencement of amortization) shall be due on the first day of the _____ month following the month in which the mortgage is dated. The mortgage shall provide that the first payment to principal shall be in the amount of \$ _____. Thereafter, on the first day of each succeeding month until the _____ installment has been paid, an installment of principal shall be paid in an amount equal to _____ percent of the principal payment which became due on the first day of the next preceding month. The _____ payment and, until the mortgage is paid in full, each succeeding payment shall be in an amount equal to _____ percent of the last preceding payment. The maturity and final payment date shall be _____ years and _____ months following the due date of the first payment to principal (commencement of amortization).

(b) **Accelerating Curtail Declining Annuity Plan**

The loan shall bear interest at the rate of _____ percent per annum payable on the first day of each month on the outstanding balance of principal. The first payment to principal (commencement of amortization) shall be due on the first day of the _____ month following the month in which the mortgage is dated. The mortgage shall provide that the first payment to principal shall be in the amount of \$ _____. Thereafter, on the first day of each succeeding month until the entire indebtedness has been paid, an installment of principal shall be paid in an amount equal to _____ percent of the principal payment which became due on the first day of the preceding month. The maturity and final payment date shall be _____ years and _____ months following the due date of the first payment to principal (commencement of amortization).

(c) **Level Annuity Monthly Payment Plan**

The loan shall bear interest at the rate of _____ percent per annum payable on the first day of each month on the outstanding balance of principal. The first payment to principal (commencement of amortization) shall be due on the first day of the _____ month

following the month in which the mortgage is dated. The loan shall be payable on a level annuity basis by _____ monthly payments of principal and interest in the amount of \$ _____. The maturity and final payment date shall be _____ years and _____ months following the due date of the first payment to principal (commencement of amortization).

(d) **Level Annuity Monthly Payment Plan**

(Sec. 221(d)(3) Below Market Interest Rate Mortgage)

The loan shall bear interest at the rate of _____ percent per annum payable on the first day of each month on the outstanding balance of principal up to and including the date of final endorsement of the secured note. Thereafter, the loan shall bear interest at the rate of _____ percent per annum payable on the first day of each month on the outstanding balance of principal. The first payment to principal (commencement of amortization) shall be due on the first day of the _____ month following the month in which the mortgage is dated. The loan shall be payable on a level annuity basis by monthly payments of principal and interest in the amount of \$ _____. The maturity and final payment date shall be _____ years and _____ months following the due date of the first payment to principal (commencement of amortization).

2. A project shall be constructed on the mortgaged property in accordance with Drawings and Specifications filed with the Commissioner and designated as _____ FHA Project No. _____ dated _____. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A 201) and "Supplementary Conditions of the Contract for Construction (form HUD-2554), shall be identified in a manner acceptable to the Commissioner by the following parties or their authorized agents: Mortgagor, Design Architect, Architect administering the Construction Contract, Contractor and the Contractor's Surety.

3. At least 15 days prior to the anticipated date for initial insurance endorsement of the mortgage note, two draft copies of each of the following documents and exhibits shall be submitted to the Commissioner. After review, the place and date of the initial closing will be designated, at which time the following documents and exhibits in final form shall be delivered to the Commissioner for approval:

- (a) The mortgage and the note evidencing the debt secured.

(b) The Building Loan Agreement (form HUD-92441) between the Mortgagee and the Mortgagor governing advances of the mortgage proceeds.

(c) The Construction Contract (form HUD-92442 or 92442A) between the Mortgagor and the General Contractor whereby the project is to be built.

(d) Contractor's Certification of Labor Standards and Prevailing Wage Requirements.

(e) Agreement and Certification executed by the Mortgagee and Mortgagor.

(f) Owner-Architect Agreement (appropriate HUD form).

(g) Title evidence in conformity with the Regulations which shall show that title to the property on the date of initial endorsement of the mortgage for insurance is vested in the Mortgagor free of all encumbrances other than the mortgage, and free of all reservations of title (either junior or prior to said mortgage), except such as are specifically determined to be acceptable by the Commissioner. If such title evidence is in the form of a title insurance policy, it shall by its terms inure to the benefit of the Mortgagee and the Secretary of Housing and Urban Development, as interest may appear. Such title evidence must be accompanied by a survey of the property, together with the Surveyor's Certificate showing that there are no easements or encroachments upon the subject property except those acceptable to the Commissioner, which survey will be extended from time to time during construction to show that the improvements on the site have been erected solely upon the land covered by the mortgage and within the building restriction lines, if any, on said land and do not encroach upon or overhang any land not covered by the mortgage nor upon any easement or right-of-way. Evidence will be required to show that the premises are not zoned or restricted so as to prevent the construction of the improvements, and that building and other permits have been issued by legally constituted authorities having jurisdiction.

(h) Assurance of the completion of the project.

(i) Assurance that adequate sewer, water, gas, and electric facilities will be fully installed prior to completion of the project and that necessary public streets, sidewalks, and curbing outside the project site, if not yet constructed, will be fully completed within a reasonable time after completion of the project.

(j) The Mortgagee's Certificate itemizing the charges made by you in connection with the mortgage transaction and evidencing the collection by you or your nominee from the Mortgagor of the following sums to be applied to the following items:

(1) Deposit to meet cost of equipping and renting the project subsequent to completion of the entire project or units thereof, and to be applied to taxes, mortgage insurance premiums, property insurance premiums and assessments required by the terms of the mortgage accruing subsequent to initial endorsement of the mortgage for insurance, and not included in the proceeds of the mortgage \$_____. (Note: For Section 232 Nursing Home Projects this deposit is required only for accruals of taxes, mortgage insurance premiums, property insurance premiums and assessments.)

(2) Funds, if any, required over and above mortgage proceeds for completion of the project \$_____. This sum represents the difference between the Commissioner's estimate of the total cash required for carrying charges, financing, and for construction of the project, including builder's fees (or builder's and sponsor's profit and risk allowance, if any), architect's fees, and the maximum amount of the mortgage to be insured. These funds may be

reduced by so much of the profit and risk allowance and fees, up to a maximum of \$_____, as the closing documents show are not to be paid in cash.

(3) Escrow deposit, if any, to cover off-site utilities and streets... \$_____.

(4) The Mortgagor shall establish to the Commissioner's satisfaction that, in addition to the proceeds of the insured mortgage, the Mortgagor has funds in the amount of \$_____, or has made financial arrangements acceptable to the Commissioner in order to meet the expenses of the project from the date of initial occupancy until _____ months after the date of final endorsement as the Commissioner estimates is necessary to establish a profitable operation. The funds shall be deposited with the Mortgagee or other depository acceptable to the Commissioner on or before the date of initial endorsement, and such funds shall be held in a special account under an agreement approved by the Commissioner.

(k) The Escrow Agreement providing for the deposit, if any, required by Item (i)(3) of this paragraph and covering off-site utilities and streets.

(l) The Mortgagor's Certificate certifying to the priority of the mortgage and to other matters set forth therein.

(m) The instrument under which the Mortgagor entity is created, unless the Mortgagor is an individual.

4. The Mortgagor must possess the powers necessary for operating the project and meeting all the requirements of the Secretary of Housing and Urban Development for insurance of the mortgage. At the initial insurance endorsement of the mortgage note, there shall be filed with the Commissioner copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize the execution of the mortgage and the other closing documents, and a Regulatory Agreement or other instrument to permit the Commissioner's regulation of the Mortgagor as to rents, charges, and methods of operation. Such instrument shall provide, among other things, for the establishment of a Reserve Fund for Replacements under control of the Mortgagee by payment of \$_____ per annum, to be accumulated monthly commencing on the date of the first payment to principal as established in the insured mortgage, unless a later date is agreed to by the Commissioner.

5. (a) Approval of advances in accordance with the Building Loan Agreement must be obtained on a form prescribed by the Commissioner prior to the date of each advance to be insured. A Contractor's Prevailing Wage Certificate will be filed with the request for approval of each advance which includes a payment for construction costs.

(b) During the course of construction, the Commissioner and his representatives shall at all times have access to the property and the right to inspect the progress of construction, and an inspection fee in the amount of \$_____ shall be paid upon the initial insurance endorsement of the mortgage note. The inspection of construction by a representative of the Commissioner shall be only for the benefit and protection of the Secretary of Housing and Urban Development.

(c) Upon completion of the project in accordance with the Drawings and Specifications the mortgage note will be finally endorsed for insurance to the extent of the advances of mortgage proceeds approved by the Commissioner, subject to reduction as provided in the Regulations.

6. Any change in the Drawings and Specifications or in the conditions upon which this commitment is based, which may occur after the date hereof, shall be explained in writing, or in a supplementary application if required by the Commissioner, and must be approved by the Commissioner prior to initial endorsement. Any such change occurring subsequent to initial endorsement must be brought to the attention of the Commissioner immediately upon occurrence, and, except for such changes in the Drawings and Specifications which may be authorized by the Architect, must be approved by the Commissioner prior to the date on which the Commissioner is requested to approve any further advance for insurance. Changes in the Drawings and Specifications which result in any net construction cost increase, or will, change the design concept, or will result in a net cumulative construction cost decrease of more than 2% of the contract amount may be effected only with the prior written approval of the Lender and the Commissioner. The Commissioner's approval of any change described above may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe.

7. If under the laws of the jurisdiction in which the project is located, the personal property of the Mortgagor, which is used in the operation of the project, is not covered by and subject to the real estate mortgage, the Mortgagee shall require and receive from the Mortgagor, prior to the final insurance endorsement of the mortgage note, a Security Agreement and a Financing Statement or such other security instrument as may be necessary to effect a first lien on such personal property in favor of the Mortgagee.

8. Any change in the sponsorship upon which this commitment is predicated must be requested in writing by the Mortgagee on behalf of any proposed substitute sponsor, and such request must be approved in writing by the Commissioner. Any sponsor or principal (including the principals of any parent entity of such sponsor or principal), who is now or who may later become involved in this project by way of financial interest, employment or otherwise, and who has not filed a certificate with the Commissioner fully disclosing his previous participation in FHA mortgage insurance programs, shall file such certificate on the form prescribed by the Commissioner and must be approved by the Commissioner.

9. All certificates, documents and agreements called for by this commitment shall be on forms approved or prescribed by the Commissioner and shall be completed, executed and filed in the number of copies and in such manner as he shall prescribe.

10. This commitment shall terminate _____ days from the date hereof unless renewed or extended by the Commissioner. Prior to any renewal or extension of this commitment, the Commissioner may, at his option, reexamine the commitment to determine whether it shall be extended in the same amount, or shall be amended to include a lesser amount.

11. A request for the reopening of this commitment within 90 days of its termination must be accompanied by the reopening fee prescribed by the Regulations.

12. The Design Architect and the Architect administering the construction contract shall each be covered by a policy of professional liability insurance in an amount consistent with insurance industry practice. At initial closing, there shall be provided for each Architect the writing agent's certificate in substantially the following form:

To: Mortgagee and Secretary of Housing and Urban Development
I certify that _____(Name of Architect)
is insured in the amount of \$ _____
under _____ (Name of Insurer)
Policy No. _____ of Architect and/or Engineers
Professional Liability Insurance.

Your attention is directed to the Regulations covering the assignment or the transfer of the insured mortgage, in whole or in part, and the transfer of your rights, privileges, and obligations under the contract of mortgage insurance.

Special conditions set forth below or attached hereto and identified as additional numbered paragraphs are made a part hereof.

Dated _____

Secretary of Housing and Urban Development
By: Federal Housing Commissioner

By: _____
Authorized Agent

Firm Commitment for Capital Advance Financing

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

Section 202 Section 811 New Construction Reconstruction Rehabilitation Acquisition From Resolution Trust Corporation

Project Number

Project Name

To (Name of Owner)

Street Address

City & State

Your Request for Firm Commitment for Capital Advance Financing has been reviewed pursuant to 24 CFR Part 889 or Part 890 and your final plans and specifications and the Contractor/Owner's cost estimates have been found to be acceptable. The issuance of this Firm Commitment further denotes the reaffirmation of the conclusions reached during Conditional Commitment processing except as may be modified herein. **Note:** Where the Conditional Commitment stage has been bypassed, our attachment of forms HUD-92264 and 92264-A (see Paragraph 11 below) evidences compliance with the requirements of 24 CFR Part 889 or Part 890.

The Secretary of Housing and Urban Development (hereinafter called "Secretary" and/or "HUD") will make and disburse a capital advance under the provisions of Section 202 of the Housing Act of 1959, or Section 811 of the National Affordable Housing Act (NAHA), and the Regulations now in effect, pursuant to a mortgage note in the amount of \$ _____ to be secured by a mortgage or deed of trust on the property located at _____ and consisting of approximately _____ square feet. Estimated project development cost (based on the replacement cost minus grants/loans for replacement cost items, excess unusual land improvements, cost of ineligible amenities, value of leased fee and unpaid special assessments) is _____. The capital advance will be subject to compliance with the requirements of the Regulations, the Regulatory Agreement, form HUD-92466-CA, the Use Agreement, form HUD-90163-CA, and the terms and conditions set forth below. The capital advance amount, however, is subject to reduction at final closing as provided in the Regulations.

1. The mortgage note shall bear no interest and shall be repayable only if the above-described project does not remain available for very low-income eligible individuals/families as approved by HUD for no less than 40 years. In no event may the capital advance be repaid without the permission of HUD.
2. A project shall be constructed on the mortgaged property in accordance with Drawings and Specifications filed with HUD and designated as _____, Project No. _____ dated _____. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201), as amended, and "Supplementary Conditions of the Contract for Construction," form HUD-2554, as amended, shall be identified in a manner acceptable to HUD by the following parties or their authorized agents: Owner, Design Architect, Architect administering the Construction Contract, Contractor, and the Contractor's Surety.
3. Any change in the Drawings and Specifications or in the conditions upon which this commitment is based, which may occur after the date hereof, shall be explained in writing or in a supplementary application, if required by HUD, prior to initial closing. Any such change occurring subsequent to initial closing may be effected only with the prior written approval of HUD. The approval of any change may be subject to such conditions and qualifications as may be prescribed by HUD.
4. Approval of advances in accordance with the Capital Advance Agreement must be obtained on form HUD-92403-CA prior to the date of each advance. A Contractor's Certification concerning Labor Standards and Prevailing Wage Requirements (if required) on the back of form HUD-92448 will be filed with the request for approval of each advance which includes a payment for construction costs.
5. During the course of construction, HUD representatives shall at all times have access to the property and the right to inspect the progress of construction. The inspection of construction by HUD representatives shall be solely for the benefit and protection of HUD and no other party.
6. At least 15 working days prior to the anticipated date for initial closing, two draft copies (executed where noted) of each of the

following documents and exhibits shall be submitted to HUD. After review, the place and date of the initial closing will be designated, at which time the following documents and exhibits in final form shall be delivered to HUD for approval:

- a. The Owner's organization documents, e.g., Certificate of Incorporation and By-Laws, as required by applicable State or local laws (see form HUD-91732-A-CA), Incumbency Certificate, including evidence of good standing.
- b. The Regulatory Agreement which will regulate the Owner's operation of the project (form HUD-92466-CA). Such instrument shall provide, among other things, for the establishment of a Reserve Fund for Replacements under the control of HUD by payment of \$ _____ per annum.
- c. Resolution by Owner's Board authorizing execution of Use Agreement, Note, Mortgage, Capital Advance Agreement, Regulatory Agreement, Incumbency Certificate and updating conflict of interest certifications and other closing documents.
- d. Lease in conformance with Lease Addendum (if mortgage is on a leasehold).
- e. Title evidence in conformity with the Regulations which shall show that title to the property on the date of initial closing is vested in the Owner free of all encumbrances other than the mortgage and free of all reservations of title (either junior or prior to said mortgage), except such as are specifically determined to be acceptable by HUD. If such title evidence is in the form of a title insurance policy, it shall by its terms inure to the benefit of the Secretary of Housing and Urban Development.
- f. Evidence of zoning compliance and building permits issued by legally constituted authorities.
- g. The survey of the mortgaged property (dated no more than 90 days before initial closing), together with the Surveyor's Certificate, HUD-92457, (dated within 30 days of initial closing), showing that there are no easements or encroachments upon the subject property except those acceptable to HUD.
- h. Mortgage or Deed of Trust (using form HUD-90165-CA as a guide) and a Mortgage Note, HUD-93432-CA, to ensure HUD's interest in the capital advance.
- i. The Construction Contract, HUD-92442-CA, for competitively-bid contracts (or HUD-92442A-CA for negotiated contracts) between the Owner and the General Contractor whereunder the project is to be built. (Contractor's and/or Mortgagor's Cost Breakdown, HUD-2328, shall be attached, if applicable.)
- j. The Assurance of Completion of the project in the form of:
 - (1) Separate performance (FHA-2452) and payment (HUD-92452-A) bonds, each in the amount of 100% of the amount of the HUD-estimated construction or rehabilitation, or a 100% performance-payment bond (HUD-92452-CA); or
 - (2) Cash escrow (25% of the estimated HUD construction or rehabilitation cost) using the Completion Assurance Agreement, HUD-92450-CA. All percentages relate to total construction, reconstruction or rehabilitation cost of the housing and related facilities.
- k. The Owner-Architect Agreement, AIA Form B-181, with HUD Amendment.

- l. Escrow Agreement for Off-Site Facilities, HUD-90170-CA, in the Amount of \$ _____ to be funded by cash deposit or letter of credit. (In lieu thereof, an Off-Site Bond, form HUD-90177-CA may be provided.)
- m. Assurance that adequate sewer, water, gas and electric facilities will be fully installed prior to completion of the project and that necessary public streets, sidewalks and curbing outside the project site, if not yet constructed, will be fully completed within a reasonable time after completion of the project.
- n. The Owner's Internal Revenue Service tax exemption ruling under Section 501(c)(3) or (4) of the Internal Revenue Code.
- o. The Owner's Certificate, HUD-2433-CA, certifying to the priority of the mortgage and to other matters set forth therein.
- p. The Owner's Attorney's Closing Opinion as to legal status of the Owner, building permit and compliance with zoning laws and requirements (form HUD-90166-CA).
- q. Evidence that the Owner has deposited with the depository the following sums to be applied to its following items:
 - (1) A minimum capital investment of \$ _____, representing one-half of one percent of the total HUD-approved capital advance (not to exceed \$10,000 for Section 811 projects or \$25,000 for Section 202 projects), to be escrowed with HUD or its designee at initial closing.
 - (2) Funds, if any, required over and above the capital advance proceeds for completion of the project: \$ _____. This sum represents the difference between HUD's estimate of the total cash required for completion of the project and the approved capital advance amount.
 - (3) Funds in the amount of \$ _____ to meet the expenses of the project from the date of initial occupancy until _____ months after the date of final closing as HUD estimates are necessary, (form HUD-90168).
- r. FHEO Assurance of Compliance with nondiscrimination and equal opportunity requirements. (Appendix 23 of Handbook 4571.2 (Section 811) and 4571.3 (Section 202).
- s. Evidence that the Owner has obtained the required property insurance coverage (see form HUD-92329).
- t. Blanket Fidelity Bond covering all the Owner's officers and employees, including noncompensated officers, during the construction period, unless a title company is handling all disbursements on behalf of the Owner.
- u. The Agreement to Enter Into a Project Rental Assistance Contract (forms HUD-90172-A-CA and HUD-90172-B-CA). (To be prepared by HUD)
- v. Use Agreement (form HUD-90163-CA).
- w. The Capital Advance Agreement, HUD-90167-CA, governing advances of the capital advance proceeds. (Executed copies rather than draft copies of form HUD-90167-CA should be submitted to facilitate initial disbursement.) This instrument, prepared by HUD, is attached for execution.
- x. Agreement and Certification (form HUD-93566-CA).
- y. Direct Deposit Sign-Up Form, SF 1199A (executed). The designated depository must be insured by the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund.

- z. Owner's executed initial requisition for advance for capital advance funds (form HUD-92403-CA).
- aa. All other applicable documents (as noted below).
7. If under the laws of the jurisdiction in which the project is located, the personal property of the Owner, which is used in the operation of the project, is not covered by and subject to the real estate mortgage, the Owner shall provide prior to the final closing, a Security Agreement and a Financing Statement (UCC-1) or such other security instrument as may be necessary to effect a first lien on such personal property in favor of HUD.
 8. Any change in the sponsorship upon which this commitment is predicated must be requested in writing by the Owner on behalf of any proposed substitute sponsor, and such request must be approved in writing by HUD. Any sponsor or principal (including the principals of any parent entity of such sponsor or principal), who is now or who may later become involved in this project by way of financial interest, employment or otherwise, who has not filed a certificate with HUD fully disclosing his/her previous participation in FHA mortgage insurance and other HUD housing programs, shall file such certificate on the form prescribed for HUD approval.
 9. All certificates, documents and agreements called for by this commitment, shall be on forms approved or prescribed by HUD and shall be completed, executed and filed in the number of copies and in such manner as prescribed by HUD.
 10. This commitment shall terminate 60 days from the date hereof unless renewed or extended by HUD. Prior to any renewal or extension of this commitment, HUD may, at its option, reexamine the commitment to determine whether it shall be extended in the same amount, or shall be amended to include a lesser amount.
 11. The following documents are attached and incorporated herein:
 - (a) Rental Housing Program Income Analysis and Appraisal, HUD-92264.
 - (b) Supplement to Analysis, HUD-92264-A.
- Special conditions set forth below or attached hereto and identified as additional numbered paragraphs are made a part hereof.

Secretary of Housing and Urban Development

By (Authorized Agent)

Dated

Building Loan Agreement

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

OMB Approval No. 2502-0011 (Exp. 9/30/2013)

Public Reporting Burden for this collection is estimated to average 1 hour per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2502-0011), U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article I.E of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C. 1701 et. seq.) This information is provided to the FHA-Commissioner to obtain approval by contractors, mortgagors and mortgagees for changes in the drawings and specifications or any terms of the contract documents, or order for extra work, or changes by altering or adding to the work, or which will change the design concept. The information is used by HUD to ensure that viable projects are developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number

This Agreement, made the _____ day of _____, by and between

_____ ,
a corporation organized and existing under the laws of _____,

with an office and place of business in _____, County of _____,

and State of _____ (hereinafter called the "Borrower"), and

_____ , a corporation organized

and existing under the laws of _____, having an office and place of business in

_____ , County of _____,

and State of _____ (hereinafter called the "Lender").

Whereas, the Borrower as the owner in fee simple of, or the owner of the leasehold estate in, the property described in Exhibit "A", attached hereto and made a part hereof, has applied to the Lender for a mortgage loan of _____

_____ Dollars (\$))
to aid the Borrower in the construction on said property of a project (identified as HUD Project No. _____) in accordance with Drawings and Specifications hereinafter referred to; and

Whereas, The Borrower understands that the Lender has received a commitment from the Federal Housing Commissioner (hereinafter called the "Commissioner") for insurance of said loan under the provisions of the National Housing Act and intends upon execution of the hereinafter-mentioned Note and Mortgage to have said Note endorsed for insurance by the Commissioner.

Now, Therefore, in consideration of the mutual promises hereinafter set out and of other valuable considerations, the undersigned agree as follows:

(1) The Lender shall make and the Borrower shall take a building loan in the principal sum of _____ Dollars (\$)), to be advanced as hereinafter provided, and to bear interest from the date of each advance at the rate of _____ percent (%) per annum. Said loans shall be evidenced by a credit instrument (hereinafter called the "Note") dated

(mm/dd/yyyy) _____, shall be payable in monthly installments, and shall have a maturity date of (Mm/dd/yyyy) _____. Said Note shall be executed by the Borrower and payable to the Lender, or order, and shall be secured by a _____

_____ (hereinafter called the "Mortgage"), of even date, on the property described in Exhibit "A". The Mortgage shall constitute a valid first lien on said property and the improvements to be erected thereon, and the only lien thereon except for liens for taxes and assessments not yet payable and other liens acceptable to the Lender and the Commissioner.

(2) The Borrower shall complete on the aforesaid property, by _____, a project in accordance with Drawings and Specifications filed with the Commissioner and designated HUD Project No. _____, dated (mm/dd/yyyy) _____. Such Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (form HUD-2554), have been identified by the Borrower, the Design Architect, the Architect administering the Construction Contract (hereinafter called the "Architect"), the Contractor and the Contractor's Surety.

- (3) Changes in the Drawings and Specifications, or changes by altering or adding to the work contemplated, or orders for extra work, or which change the design concept, may be effected only with the prior written approval of the Lender and the Commissioner and under such conditions as either the Lender or the Commissioner may establish.
- (4) (a) The Borrower shall make monthly applications on form HUD-92403 for advances of mortgage proceeds from the Lender. Applications for advances with respect to construction items shall be for amounts equal to (i) the total value of classes of the work acceptably completed; plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (iii) the value of components stored off-site in compliance with applicable HUD requirements; less (iv) 10 percent (holdback) and less prior advances. The "values" of both (i), (ii), and (iii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown", attached hereto as Exhibit "B", and made a part hereof. Each application shall be filed at least _____ days before the date the advance is desired, and the Borrower shall be entitled thereon only to such amount as may be approved by the Lender and the Commissioner.
- (b) Upon completion of the improvements, including all landscape requirements and off-site utilities and streets, the Borrower shall furnish to the Lender and the Commissioner satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; and that all requisite certificates of occupancy and the approvals have been issued. The balance due the Borrower hereunder shall be payable at such time after completion as the Commissioner authorizes the release of the holdback. However, the Lender may withhold final payment until after the expiration of any period which mechanics and materialmen may have for filing liens.
- (c) The Borrower agrees that any funds required for the completion of the Project over and above the proceeds of the loan which have been deposited with the Lender for that purpose shall be advanced by the Lender to the Borrower prior to the advance of any proceeds of the loan "(i) if any portion of these funds is to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds, (ii) if all or part of the funds are provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept, in lieu of the funds, an agreement which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee."
- (d) The Borrower covenants that it will hold in trust each advance hereunder for application to the items for which such advance was requested and approved.
- (e) The Borrower agrees that the loan shall at all times remain in balance. The Lender shall, in accordance with the provisions of this agreement, continue to advance to the Borrower funds out of the proceeds of the loan as long as the loan remains in balance and the Borrower is not in default hereunder or under the Note or Mortgage. The loan shall be deemed to be in balance only when the undistributed proceeds of the loan (after provision for reserves, fees, expenses and other deposits required by the Lender or the Commissioner) equal or exceed the amount necessary (based on the Commissioner's estimate of the cost of construction) to pay for all work completed and all materials delivered, for which payment has not been made, and the cost of completing construction of the project in accordance with the Drawings and Specifications.
- (5) The Lender shall advance to the Borrower out of the funds referred to in (4)(c) above, or out of the proceeds of the loan, amounts for application to the charges or items enumerated below, but only to the extent that such charges have accrued, or that the Borrower is otherwise entitled to payment on account of such items.
- | | |
|-------------------------------------------|----------|
| (a) Interest during construction | \$ _____ |
| (b) Real estate taxes during construction | \$ _____ |
| (c) Insurance during construction | \$ _____ |
| (d) FHA mortgage insurance premium | \$ _____ |
| (e) FHA examination fee | \$ _____ |
| (f) Initial service charge | \$ _____ |
| (g) Title and recording expense | \$ _____ |
| (h) Inspection fee | \$ _____ |
| (i) _____ | \$ _____ |
| (j) _____ | \$ _____ |
| (k) _____ | \$ _____ |
- (6) The Borrower shall cause either this instrument or the construction contract under which the improvements are to be erected to be filed in the public records, if the effect thereof will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any advance hereunder, the Lender may require the Borrower to obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor acknowledgments of payment and releases of lien down to the date covered by the last advance, and concurrently with the final payment for the entire project. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.

- (7) The Borrower shall, as a condition precedent to the first advance hereunder, furnish the Lender with a certified, current survey of the mortgaged property and a mortgagee's title policy (or other evidence of title) in form, substance and amount satisfactory to the Lender and the Commissioner. Said policy (or other title evidence) shall be extended so as to cover each and every advance of said loan at the time of payment thereof and shall show no mechanics' or materialmen's liens against the mortgaged property. The Borrower shall furnish duplicate originals of said survey and title policy (or title evidence) for the Commissioner.
- (8) The Borrower agrees that said project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities, and any rating or inspection organization, bureau, association or office having jurisdiction. The Borrower further agrees that said project shall be constructed entirely on the aforesaid property and will not encroach upon any easement or right-of-way, or the land of others; and that the buildings when erected shall be wholly within the building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. The Borrower shall furnish from time to time such evidence with respect thereto as may be required by the Lender or the Commissioner and, upon completion of construction, shall furnish a survey, certified by a registered surveyor, which shows the project to be entirely on said property and to be free from any such violations.
- (9) If the Borrower at any time prior to the completion of the project abandons the same or ceases work thereon for a period of more than 20 days or fails to complete the erection of the project strictly in accordance with the Drawings and Specifications, or makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof, or otherwise fails to comply with the terms hereof, any such failure shall be a default hereunder, and the Lender, at its option, may terminate this agreement. If the Lender so elects to terminate this agreement, it may use and apply any funds deposited with it by the Borrower, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as the Commissioner may prescribe. If the Lender elects not to terminate this agreement, it may enter into possession of the premises and perform any and all work and labor necessary to complete the improvements substantially according to the Drawings and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by the Lender shall be deemed to have been paid to the Borrower and secured by the Mortgage. For this purpose, the Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the project in the name of the borrower. The Borrower hereby empowers said attorney as follows: (a) To use any funds of the Borrower, including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the project in the manner called for by the Drawings and Specifications; (b) to make such additions, changes and corrections in the Drawings and Specifications as shall be necessary or desirable to complete the project in substantially the manner contemplated by the Drawings and Specifications; (c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the mortgaged property, or as may be necessary or desirable for the completion of the project, or for clearance of title; (e) to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the mortgaged premises or the construction of the project and to take such action and require such performance as he deems necessary under the accepted guaranty of completion; and (g) to do any and every act which the Borrower might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The Borrower hereby assigns and quitclaims to the Lender all sums unadvanced under the Mortgage and all sums due in escrow conditioned upon the use of said sums for the completion of the project, such assignment to become effective only in case of the Borrower's default.
- (10) The Borrower shall provide or cause to be provided workmen's compensation insurance and public liability and other insurance required by applicable law or by the general conditions included in the Specifications. The Borrower further agrees to purchase and maintain fire insurance and extended coverage on the mortgaged property. All such policies shall be issued by companies approved by the Lender and shall be in form and amounts satisfactory to the Lender and the Commissioner. Such policies shall be endorsed with standard mortgagee clauses making loss payable to the Lender or its assigns; and may be endorsed to make loss during construction payable to the Contractor, as interest may appear. The originals of such policies shall be deposited with the Lender.
- (11) The Lender and its agents and the Commissioner also have the right to inspect building components stored offsite.
- (12) The Borrower shall execute and deliver to the Lender, upon completion of the project, a security agreement and financing statement, or other similar instrument, covering all property of any kind whatsoever purchased with mortgage proceeds and concerning which there may be any doubt as to such property's being subject to the lien of the Mortgage under the laws of the state in which the project is situated.
- (13) The Borrower shall furnish to the Lender assurance of completion of the project in the form specified in the applicable HUD Regulations in effect on the date of this agreement. Such assurance of completion shall run to the Lender as obligee and shall contain a provision granting to the Lender the authority to assign all rights thereunder to the Commissioner.

(14) (a) The Borrower understands that the wages to be paid laborers and mechanics employed in the construction of the project are required by the provisions of Section 212(a) of the National Housing Act, as amended, to be not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on construction of a similar character in the locality in which the work is to be performed, as determined by the Secretary of Labor with respect to this project. The Borrower hereby states that it has read the aforesaid determination by the Secretary of Labor and is fully familiar with the same.

(b) The Borrower shall, as a condition precedent to any advance hereunder, submit to the Lender (i) with each application for advance prior to the final application, certifications, in form approved by the Commissioner, that all laborers and mechanics employed in the construction of the project whose work is covered by that or any previous application and who have been paid in whole or in part on account of said employment, have been paid at rates not less than the said prevailing wage rates; and (ii) with the final application for advance, certifications, in form satisfactory to the Commissioner, that the project has been fully constructed in accordance with the provisions of this agreement and that all laborers and mechanics employed in the construction of the completed project have been paid not less than the said prevailing wage rates. The Secretary's prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be made prior to the beginning of construction.

(c) The Borrower agrees that should any advances hereunder be ineligible for insurance under the National Housing Act by reason of (i) the nonpayment of the said prevailing wage rates, or (ii) violation of any of the applicable labor standards provisions of the Regulations of the Secretary of Labor, the Lender may withhold from the Borrower all payments or advances payable to the Borrower hereunder

until the Borrower establishes to the satisfaction of the Commissioner that all laborers and mechanics or other persons employed in the construction of the project have been paid said prevailing wage rates and that such violation of the said Labor Standards provisions no longer exists. The written statement of any officer of the Federal Housing Administration or authorized agent of the Commissioner declining to insure any advance of funds hereunder by reason of such nonpayment or violation shall be deemed conclusive proof that such advances are ineligible for mortgage insurance.

(d) The Borrower shall insert the labor standards provisions of the aforesaid Supplementary Conditions of the Contract for Construction in any contract made by him for the construction of the project, or any part thereof, and shall require the Contractor to insert similar provisions in each subcontract relating to the construction of the project.

(15) The Lender and the Borrower agree that the mortgage loan shall be reduced by any amount required by the Agreement and Certification (Form _____) between the parties hereto and the Commissioner, which agreement is incorporated herein by reference to the same extent as if set forth herein at length.

(16) The Borrower shall furnish such records, papers and documents relating to the project as the Lender or the Commissioner may reasonably require from time to time.

(17) The Borrower shall not transfer, assign or pledge any right or interest in, or title to, any funds deposited by the Borrower with the Lender, or reserved by the Lender for the Borrower, without the prior written approval of the Lender and the Commissioner.

(18) As used in this instrument, the term "Lender" shall be deemed to include any person to whom the Note and Mortgage referred to above shall be assigned with the knowledge and consent of the Commissioner. This instrument shall be binding upon the parties hereto and their respective successors and assigns.

(Seal) Attest	Owner
Witness	By
Witness	Title
(Seal)	Lender
Witness	By
Witness	Title

Capital Advance Agreement Under Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act	U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner	OMB Approval No. 2502-0470 (exp. 08/31/2013)
Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.		
This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the projects meet statutory requirements, ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.		
<input type="checkbox"/> Section 202 <input type="checkbox"/> Section 811 This Agreement , made the _____ day of _____, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and a nonprofit corporation organized and existing under and by virtue of the laws of the State of _____ (hereinafter called the "Owner"). Whereas , the Owner has made application for a capital advance to assist in financing a rental housing project to house <input type="checkbox"/> elderly persons or <input type="checkbox"/> persons with disabilities (hereinafter called the "Project") in accordance with the provisions of Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (hereinafter called "Section 202") or Section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (hereinafter called "Section 811"), and the appropriate regulations. Whereas , the Project will be located at _____		

Now, Therefore, in consideration of the mutual promises hereinafter set forth and of the valuable considerations, the parties hereto do covenant and agree as follows:

1. HUD, subject to the terms of this Agreement, will make a capital advance to the Owner, to be advanced as hereinafter provided, in an amount not to exceed _____ Dollars (\$ _____). The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Owner. The capital advance shall bear no interest and is not required to be repaid so long as the housing remains available to eligible very low income households for a period of 40 years and in accordance with Section 202 or Section 811. The capital advance shall be secured by a _____ (hereinafter called the "Mortgage") on the property described in Exhibit "A." For Section 202 and Section 811 projects, structures (existing housing and related facilities) without rehabilitation may be acquired from other entities. The Owner shall execute or cause to be executed a Use Agreement restricting use of the PRAC-assisted units in the project to rental housing for eligible households as approved by HUD for a 40-year period.

2. The Owner shall complete on the aforesaid project in accordance with drawings and specifications filed with and approved by HUD and designated Project Number _____ dated _____. Such drawings and specifications, which include "General Conditions of the Contract for Construction" except for all paragraphs concerning arbitration in AIA Document A201 and "Supplementary Conditions of the Contract for Construction" (HUD Form No. 2554) as amended, have been identified by the Owner, the Design Architect, the Architect administering the construction Contract (hereinafter called the "Architect"), the Contractor and the Contractor's Surety.

3. Changes in the Drawings and Specifications, or changes by altering or adding to the working contemplated, or orders for extra work, or which change the design concept, may be effected

only with the prior written approval of the Architect and HUD under such conditions as HUD may establish.

4.(a) The Owner shall make monthly applications on Form Number HUD-92403-CA for portions of the capital advances by HUD. Such applications for construction items shall be for amounts equal to (i) the total value of classes of the work acceptably completed; plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; less (iii) 10 percent (holdback) and less prior disbursements. The "values" of both (i) and (ii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown," attached hereto as Exhibit "B" and made a part hereof. Each application shall be filed at least _____ days before the date desired, and the owner shall be entitled thereon only to such amount as may be approved by HUD.

(b) Upon completion of the improvements, including all landscape requirements and off-site utilities and streets, the Owner shall furnish HUD satisfactory evidence that all work requiring inspection by municipal and other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office have jurisdiction; and that all requisite certificates of occupancy and other approvals have been issued. The balance due the Owner hereunder shall be payable at such time after completion as HUD releases the holdback, after the expiration of any period which mechanics and materialmen may have for filing liens.

(c) The Owner agrees that any funds required for the completion of the project over and above the amount of the capital advance shall be deposited in the Construction Account prior to disbursement of proceeds of the capital advances.

(d) The Owner covenants that it will deposit the proceeds of the capital advance and the additional funds to be furnished by the Owner in order to assure the payment of all Project costs into separate interest bearing account(s) called the "Construction Account" established by it in depository or depositories which are members of the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or National Credit Union Share

Insurance Fund. Any portion of the capital advance not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD and as set forth in the General Depository Agreement prescribed by HUD. Moneys in the Construction Account shall be expended only for the purposes for which capital advance funds were requested and approved. The same requirements shall be applicable to any escrow deposit agreements required by HUD.

(e) The Owner agrees that the capital advance shall at all times remain in balance. HUD shall, in accordance with the provisions of this Agreement, continue to provide to the Owner funds from the capital advance as long as the capital advance remains in balance and the Owner is not in default hereunder or under the Note or Mortgage. The capital advance deemed to be in balance only when the undistributed capital advance (after provision for reserve, fees, expenses and other deposits required by HUD) equal or exceed the amount necessary (based on HUD's estimate of the cost of construction (including rehabilitation)) to pay for all work completed and all materials delivered, for which payment has not been made, and the cost of completing construction of the project in accordance with the Drawings and Specifications.

(f) Owners which incur actual development costs that are less than the amount of the capital advance may be entitled to retain 50 percent of the savings in the replacement reserve account. Such percentage shall be increased to 75 percent for owners which add energy efficiency features which exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the National Affordable Housing Act; substantially reduce the life-cycle cost of the housing; reduce gross rent requirements and enhance tenant comfort and convenience. These funds shall be used only for the specified purposes of the replacement reserve or for such other purposes as determined by the Secretary. Even though an Owner does not qualify to share in the savings, funds remaining in the project contingency after cost certification shall be placed in the replacement reserve account.

5. HUD shall provide capital advance fund, to the Owner for the charges or items enumerated below, but only to the extent that such charges have accrued and the owner is otherwise entitled to payment on account of such items:

- (a) Real Estate taxes during development \$
- (b) Insurance during development \$
- (c) Preliminary expense (including _____) \$
- (d) Land and rights-of-way \$
- (e) Architect/Engineering services \$
- (f) Legal expenses including title and recording expenses \$
- (g) Administrative expenses \$
- (h) \$
- (i) \$

6. The Owner shall cause either this instrument or the construction contract under which the improvements are to be erected to be filed in the public records, if the effect thereof will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any disbursement of capital advance funds hereunder, HUD may require the Owner to obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor, acknowledgements of payment on and release of lien down to the date covered by the last disbursement, and concurrently with the final payment for the entire project. Such acknowledgements and release shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.

7. The Owner shall, as a condition precedent to the first disbursement hereunder, furnish HUD with a certified, current survey of the mortgaged property and a mortgagee's title policy (or other evidence of title) in form, substance and amount satisfactory to HUD. Said policy shall be extended so as to cover each and every disbursement of said capital advance at the time of payment thereof and shall show no mechanics' or materialmen's liens against the mortgaged property.

8. The Owner agrees that said project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities, and any rating or inspection organization, bureau, association or office having jurisdiction. The Owner further agrees that said project shall be constructed entirely on the aforesaid property and will not encroach upon any easement or right-of-way, or the land of others; and that the buildings when erected shall be wholly within the building restriction lines, however established and will not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. The Owner shall furnish from time to time such evidence with respect thereto as may be required by HUD, and, upon completion of construction, shall furnish a survey, certified by a registered surveyor, which shows the project to be entirely on said property and to be free from any such violations.

9. If the Owner at any time prior to the completion of the project abandons the same or ceases work thereon for a period of more than 20 days or fails to complete the erection of the project strictly in accordance with the Drawings and Specifications, or makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof, or otherwise fails to comply with the terms hereof, any such failures shall be a default hereunder, and HUD, at its option, may terminate this Agreement. If HUD so elects to terminate this Agreement, it may use and apply any funds deposited within by the Owner, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as it may prescribe. If HUD elects not to terminate this Agreement, it may enter into possession of the premises and perform any and all work and labor necessary to complete the improvements substantially according to the Drawings and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by HUD shall be deemed to have been paid to the Owner and secured by the Mortgage. For this purpose, the Owner hereby constitutes and appoints HUD its true and lawful attorney-in-fact, with full power of substitution on the premises, to complete the project in the name of the Owner. The Owner hereby empowers said attorney as follows: (a) To use any funds of the Owner, including any balance which may be held in escrow and any funds which may remain undisbursed hereunder for the purpose of completing the project in the manner called for in the Drawings and Specifications; (b) to make such additions, changes and corrections in the Drawings and Specifications as shall be necessary or desirable to complete the project in substantially the manner contemplated by the Drawings and Specifications; (c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the mortgaged property, or as may be necessary or desirable for the completion of the project, or for clearance of title; (e) to execute all applications and certificates in the name of the Owner which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the mortgaged premises or the construction of the project and to take such action

and required such performance as he deems necessary under the accepted guaranty of completion; (g) to do any and every act which the Owner might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The Owner hereby assigns and quit claims to HUD all sums undisbursed under the Mortgage and all sums in escrow conditioned upon the use of said sums for the completion of the project, such assignment to become effective only in case of the Owners default.

10. The Owner shall provide or cause to be provided workmen's compensation insurance and public liability and other insurance required by applicable law or by the general conditions included in the Specifications. The Owner further agrees to purchase and maintain fire insurance and extended coverage on the mortgaged property. All such policies shall be issued by companies approved by HUD and shall be in form and amounts satisfactory to HUD. Such policies shall be endorsed with standard mortgagee clauses making loss payable to HUD or its assigns; and may be endorsed to make loss during construction payable to the Contractor, as interest may appear. Certified duplicates of such policies shall be deposited with HUD.

11. HUD and its agents shall, at all times during construction, have the right of entry and free access to the project and the right to inspect all work done, all materials, equipment and fixtures furnished, installed or stored in and about the project, building components stored offsite and to inspect all books, subcontracts and records of the Owner.

12. The Owner shall execute and deliver to HUD, prior to final closing, a security agreement and financing statement, or other similar instrument, covering all property of any kind whatsoever purchased with the capital advance and concerning which there may be any doubt as to such property's being subject to the lien of the Mortgage under the laws of the State in which the project is situated.

13. The Owner shall furnish to HUD assurance of completion of the project in a form acceptable to HUD. Such assurance of completion shall run to HUD as obligee.

14.(a) The Owner understands that the wages to be paid laborers and mechanics employed in the new construction or substantial rehabilitation of housing assisted under Section 202 and consisting of 12 or more units or housing assisted under Section 811 and designated for dwelling use by 12 or more persons with disabilities required by the provisions of Section 2020(5) of the Housing Act of 1959, as amended and Section 811 0(6) of the National Affordable Housing Act to be not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on a construction of a similar character in the locality in which the work is to be performed, as determined by the Secretary of Labor with respect to this project. The Owner hereby states that it has read the aforesaid determination by the Secretary of Labor and is fully familiar with the same.

(b) The Owner shall, as a condition precedent to any advance hereunder, submit to HUD (i) with each application for advance prior to the final application, certifications, in form approved by HUD, that all laborers and mechanics employed in the construction of the project whose work is covered by that or any previous application and who have been paid in whole or in part of account of said employment, have been paid at rates not less than the said prevailing wage rate, if applicable, and (ii) with the final application for advance, certifications, in form satisfactory to HUD, that the project has been fully constructed in accordance

with the provisions of this agreement and that all laborers and mechanics employed in the construction of the completed project have been paid not less than the said prevailing wage rates, if applicable. The Secretary's prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be made prior to the beginning of construction.

(c) The Owner agrees that should any portion of the capital advance hereunder be ineligible for disbursement by reason of (i) the nonpayment of the prevailing wage rates, or (ii) violation of any of the applicable labor standards provisions of the Regulations of the Secretary of Labor, HUD may withhold from the Owner such amounts payable to the Owner hereunder until the Owner establishes to the satisfaction of HUD that all laborers and mechanics or other persons employed in the construction of the project have been paid the applicable wages rates and that such violation of the said Labor Standards provisions no longer exists. The written statement by HUD declining to make available any portion of the capital advance hereunder by reason of such nonpayment or violation shall be deemed conclusive proof that such amounts are ineligible for disbursement.

(d) The Owner shall insert the labor standards provisions of the aforesaid Supplementary Conditions of the Contract for Construction in any contract, if applicable (see paragraph 14(a) above) made by him for the construction of the project, or any part thereof, and shall require the Contractor to insert similar provisions in each subcontract relating to the construction of the project.

15. The Owner shall furnish such records, papers and documents relating to the project as HUD may reasonably require from time to time.

16. The Owner shall not transfer, assign or pledge any right or interest in, or title to, any capital advance funds deposited in the Construction Account without the approval of HUD.

17. Prior to the disbursement of any portion of the capital advance, the Owner shall present evidence satisfactory to HUD that it is able to finance from other than capital advance funds or Project revenues the applicable minimum capital investment required under the Regulations.

18. The Owner covenants and agrees that it will attempt to obtain and maintain in effect exemption of the Project from State and local real and personal property taxes.

19. The Owner shall, on or before substantial completion of the Project, provide from sources other than the capital advance hereunder, if necessary, and from sources and in a manner which will not jeopardize the security for the capital advance, the furnishings and movable equipment necessary to the full enjoyment of the use and occupancy of the Project.

20. Prior to the disbursement of any portion of the capital advance the Owner shall obtain from the Internal Revenue Service a tax exemption ruling under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code if it is a nonprofit organization or is organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends, may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption.

21. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

22. By execution of this Agreement the Owner represents that it has not paid, and, also, agrees not to pay, any bonus, commission, or fee for the purpose of obtaining an approval of its application for the capital advance hereunder.

Note: If a mixed-finance transaction is structured with a loan of the capital advance from the Sponsor to the Owner then the rights and duties of the Owner shall also apply to the Sponsor.

By: _____ (Seal)
Attest

(Name of Owner) _____ Secretary

(Signature & Date) _____ By: President

Date _____ UNITED STATES OF AMERICA
Secretary of Housing and Urban Development

By: _____

By: _____ (*Seal*)
Attest

(Name of Sponsor if a Mixed-Finance Transaction) _____ Secretary

(Signature & Date) _____ **By: President**

Mortgagee's Certificate

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

OMB Approval No. 2502-0468 (Exp. 04/30/2009)

(Execute original plus two copies)

Public Reporting Burden for this collection of information is estimated to average 0.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD collects this information as a part of an Multifamily Housing loan application and uses it to determine the insurability of the loan. This information is required to obtain benefits. HUD may not collect this information, and you are not required to provide it, if this form does not display a currently valid OMB control number.

Project Name

Project Number

To the Federal Housing Commissioner

We hand you herewith a check for \$ _____ covering the first mortgage insurance premium, together with the other items called for in your Commitment dated _____, 20 ____, and in any extensions or amendments thereof, and we certify that all conditions thereof have been fulfilled to date.

1. We are the Mortgagee under _____ (hereinafter referred to as the Mortgage) dated _____, 20 ____, executed by _____ (hereinafter referred to as the Mortgagor), securing a credit instrument evidencing a loan by us as Mortgagee to the Mortgagor in the principal sum of \$ _____ which we have agreed to make on condition that it be insured by you pursuant to your Regulations for Section _____ of the National Housing Act, effective as of the date of your Commitment.

2. The agreement providing for the advancement of said loan is embodied in a Building Loan Agreement dated _____, 20 ____, three copies of which are submitted herewith.

3. There is submitted herewith a certified Survey of the property and title evidence in form specified in the Regulations together with evidence that the mortgaged premises are not zoned or restricted so as to prevent the construction of the improvements.

4. All applications for insurance of an advance of mortgage proceeds will be submitted to you at least five days prior to the date we wish to disburse such advance. Such application will be accompanied by forms as required by you. We agree that the amount approved for disbursement by HUD will not be released unless the current extension of the title policy evidences clear title.

5. The charges enumerated below have been collected in cash or will be so collected not later than the date of initial endorsement:

- (a) FHA application and commitment fee \$ _____
- (b) Initial service charge, if any \$ _____
(not exceeding 2%)
- (c) Title and recording expense \$ _____
(including cost of surveys, recording fees, mortgage and stamp taxes, etc. associated with initial endorsement)
- (d) FHA Inspection Fee \$ _____
- (e) Ground rent during construction \$ _____
(may collect only one year's rent at initial endorsements)

6. (a) The undersigned has received from the Mortgagor a working capital deposit in the form of (Cash) – (Letter of Credit) _____ in the sum of \$ _____.

While under our control, it is understood that funds in this deposit may be released or allocated for the purposes indicated below and for no other purpose unless approved by you:

(1) The cost of equipping and renting the project after final completion of construction of the project (Note: Not applicable to Section 232 profit-motivated nursing home projects);

(2) For accruals during the course of construction, for interest, mortgage insurance premiums, taxes, ground rents, property insurance premiums and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted; and also for allocation to such accruals after completion of construction if the income from the project, at that time, is insufficient to meet such accruals.

Any balance of said funds remaining in our hands one year after the construction completion date will be returned to the Mortgagor, provided the mortgage is not then in default, unless you have directed other disposition. (**Note:** Paragraph (6)(a) is not applicable to nonprofit mortgagor projects under Sections 221, 231, 232, or 242).

We agree that no disbursements will be made from the deposit without your prior written approval, for projects involving Low-Income Housing Tax Credits, if the mortgagor agrees for any balance of said funds to be transferred to the reserve for replacement or any other restricted account specified by you.

6. (b) We certify that the allowance to make the project operational included in the HUD estimate of replacement cost shall be disbursed under the Building Loan Agreement for the same purposes as set forth in paragraph (6)(a). We agree that no disbursement up to and including final endorsement will be made from such allowance without your prior written approval. At final endorsement, any undrawn funds shall be transferred to the Reserve Fund for Replacements. Any remaining undrawn funds shall be applied to the reduction of the insured mortgage at your direction. (**Note:** Paragraph (6)(b) is applicable only to nonprofit mortgagors under Sections 221, 231, 232 or 242.)

7. The Mortgagor has deposited with us or subject to our order in a depository satisfactory to us, the following sums required by your Commitment: (Check applicable paragraphs.)

Cash required, if any, over the proceeds of the Mortgage, to complete the project in the amount of \$ _____. Of this amount, \$ _____ will be represented by a grant/loan from a nongovernment source; and \$ _____ will be represented from a grant/loan from a government source. We

understand that these funds must be used before any mortgage proceeds are advanced, except for the grant/loan funds from a government source, which, with your prior written approval, will be disbursed on the following prorata basis _____.

Since the grant/loan proceeds from a government source will not be funded upfront at the time of initial closing, and escrow in the amount of \$ _____, which represents 10 percent of the grant/ loan proceeds being provided from this source, this escrow is in the form of _____.

The agreement providing for the advancement of grant/loan proceeds executed / to be executed between us, HUD, and the government agency or instrumentality is submitted herewith.

Cash required, if any, over the proceeds of the Mortgage, to complete the project, which will be used before any mortgage proceeds are advanced, in the amount of \$ _____.

Escrow deposit guaranteeing payment for off site utilities and streets in the amount of \$ _____. This deposit is in the form of (Cash)-(Letter of Credit) -(U.S) bearer bonds with a market value of 15 percent of the required escrow. _____.

Interest rate differential escrow in the amount of \$ _____ which represents the dollar difference between the interest rate in effect after cut-off for cost certification and the permanent interest rate upon which the mortgage debt service is calculated. The escrow is in the form of (Cash) - (Letter of Credit) _____.

We shall require that the Mortgagor establish and maintain with us, or in a depository satisfactory to us, a sinking fund in accordance with the Regulatory Agreement executed by the Mortgagor and Commissioner for those Section 232 cases where Medicaid reimbursement is on a depreciation plus interest basis rather than a pass through of principal and interest on the mortgage. We agree:

(a) To require the mortgagor to direct and empower the payor of the capital reimbursement funds into a trust account designated by us. Also, the trust instrument shall be irrevocable unless approved by us and shall provide that the trustee shall immediately segregate from each provider payment an amount representing the excess depreciation component of the capital reimbursement per a schedule prepared by us and pay it into the sinking fund held by us.

(b) To establish and maintain the sinking fund in an interest bearing bank whose capital and surplus are at least \$50,000,000 and which is federally insured.

(c) To furnish HUD quarterly financial reports on the investments, accounting on balances, deposits and withdrawals.

(d) To monitor the sinking fund and examine the external auditor's fund balance report and notify HUD whether it complies with the contractual agreement between the mortgagor and us.

(e) To promptly notify HUD in the event of any breach of the regulatory agreement executed between us and the mortgagor, and further agree to seek specific performance or other injunctive relief a appropriate, promptly upon learning of any violation under this regulatory agreement.

(f) The sinking fund constitutes "funds held by us on behalf of the mortgagor" is held under the contractor of mortgage insurance "for and on behalf of the mortgagor," and as such, is unrelated to the bond transaction.

(g) In the event of a claim for insurance benefits, the amount of benefits is subject to surcharge if funds have been disbursed from the sinking fund in a manner or for purposes not in compliance with the regulatory agreement between us and the mortgagor. No such surcharge shall be made on the basis of the mortgagor's failure to make required deposits into the sinking fund.

8. We hand you herewith: (Check applicable paragraphs.)

Off site bond in the amount of \$ _____.

Evidence to the effect that required off site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the project.

9. We hand you herewith a duplicate copy of the following assurance for the completion of the project: (Check applicable paragraph.)

Performance bond and payment bond of an approved Surety in the penal sum of \$ _____ for each bond.

Assurance of Completion Agreement reflecting the deposit with _____ of a fund in the amount of \$ _____ in the form of (Cash)-(Letter of Credit) _____ which fund has been deposited and is subject to our order and will be disbursed with your written approval in the manner and for the purposes provided for in said agreement.

Personal undertaking in the amount of \$ _____. It is understood that HUD reserves the right to decide the acceptability of the principals in the personal undertaking.

10. We hand you herewith the Sponsor's guarantee to meet an initial operating deficit as required by your Commitment: (If required, check and complete the applicable paragraph.)

Agreement of Sponsors to Furnish Additional Funds in the amount of \$ _____, and Bond Guaranteeing Sponsor's Performance.

Escrow Agreement evidencing a deposit of \$ _____ U. S. bearer bonds, with a market value of at least 115 percent of required escrow amount, cash, or a Letter of Credit in the amount of \$ _____.

11. We hand you herewith the Sponsor's guarantee to meet the 12-month debt services reserve escrow required by your Commitment: (Applicable only to Section 232 projects involving independent living units. If required, check and complete the applicable paragraph.)

We have accepted a personal note from the mortgagor for \$ _____ which we will hold until final completion and Bond Guaranteeing Sponsor's Performance. The note will then be converted to cash or a letter of credit. We agree that HUD will treat the note as a cash item and reduce the insurance benefits by the amount of the note if there is a mortgage default and we make a claim for insurance benefits before the note is converted.

A escrow deposit in the amount of \$ _____. This deposit is in the form of (Cash) - (Letter of Credit) _____.

12. If, upon completion of construction, there is any property on the premises which is not, under the laws of the jurisdiction, clearly subject to the lien of the real estate mortgage, we will require from the mortgagor a financial statement and security agreement per UCC or a chattel

mortgage or other appropriate security instrument covering such property. If the law of the jurisdiction is such that no additional security instrument is necessary to cover such property, we will submit our attorney's opinion to that effect.

13. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by you in writing, we shall require a monthly deposit with us or in a depository satisfactory to us of one-twelfth (1/12) of the sum set forth in your Commitment for Insurance constituting a "Reserve Fund for Replacements" which fund will be subject to our order and from which fund withdrawals may be made only upon the receipt of your written permission. These funds will be deposited with us by the Mortgagor in cash or in the form of obligations of or guaranteed as to principal by the United States of America. We will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to the Commissioner within 60 days.

14. We understand that nothing herein contained or contained in the said credit instrument or Mortgage securing the same, or in the other contract documents, is to be deemed a waiver of any of the provisions of the aforesaid HUD Regulations, but all of said instruments are intended to be subject thereto. We hereby agree to conform with and abide by such HUD Regulations in all matters with respect to the aforesaid loan and the project in so far as they are applicable to us. We agree to furnish you with a complete report of the results of our annual inspection of the mortgaged premises required by the said Regulations.

15. We certify that, if the Mortgagor defaults in its obligation to complete the construction of the improvements on the mortgaged premises, we have the right to complete the project, which right is transferable to the Commissioner, and for that purpose the undisbursed balance of the Mortgage will be available in the event the completion of the project is undertaken by either of us. Such undisbursed balance may be used to discharge any and all valid liens or claims against the project and all such advances will be considered as made for the account of the Mortgagor and will be covered by the terms of the Mortgage. It is understood that all mortgage proceeds funds so advanced for the completion and preservation of the property will be covered by the Contract of Mortgage Insurance.

16. So long as the Contractor, and/or Mortgagor, or upon default, the Surety or any other person acting on behalf of, or in substitution for them, shall be ready, able and willing to complete the Contract for the construction of the project, we will, upon notice from you, advance the undisbursed balance of the Mortgage and authorizing the release of grant loan proceeds, if any, for that purpose. The term "Contractor" shall mean all persons, firms or corporations contracting directly with the Mortgagor for the construction of all or any portion of the project.

17. We certify that all insurance policies on the project required by the terms of the insured Mortgage will have attached thereto a standard Mortgagee clause making the loss payable to the Mortgagee and the Secretary, Department of Housing and Urban Development, as their interests may appear.

18. We certify and agree that: (Check and complete the following

applicable subparagraphs (a), (b), (c), (d), (e) or (f)).

(a) We have not imposed and will not impose a financing charge of any kind directly or indirectly, other than the initial service charge in the amount of \$ _____ which is included in the mortgage proceeds.

(b) In addition to the initial service charge, we have collected in the form of (Cash)-(Letter of Credit) _____ the amount of \$ _____ as a discount or financing charge for the construction loan. Also, an amount of \$ _____ has been collected in the form of (Cash) - (Letter of Credit) _____ to cover construction loan extension fees. In an addendum, we have identified the time frames in which the extension fees must be paid.

(c) We intend to retain the permanent loan and have collected a permanent placement fee of \$ _____. In addition to the initial service charge and permanent placement fee, we have collected in the form of (Cash)-(Letter of Credit) _____ the amount of \$ _____ as a discount or financing charge for the permanent loan. We also intend to collect in the form of (Cash) - (Letter of Credit) _____ an amount of \$ _____ to cover permanent loan extension fees. In an addendum, we have identified the time frames in which the extension fees must be paid.

(d) We have a firm commitment from _____ to purchase the loan when fully disbursed and fully insured at a financing charge or discount of _____ and we have collected in the form of (Cash)-(Letter of Credit) _____ the sum of \$ _____ to cover said charge or discount. The commitment also requires the collection of permanent loan extension fees in the amount of \$ _____, which will be collected in the form of (Cash) - (Letter of Credit) _____. In an addendum, we have identified the time frames in which the extension fees must be paid.

(e)(1) This project will be financed with (tax-exempt) - (taxable) _____ bonds. Therefore, we have collected in the form of (Cash) - (Letter of Credit) _____ the amount of \$ _____ to cover costs if issued. A statement is attached itemizing these costs with an explanation of the necessity of each cost. We also intend to collect in the form of (Cash) - (Letter of Credit) _____ the amount of \$ _____ to cover permanent loan extension fees. In an addendum, we have identified the time frames in which the extension fees must be paid.

(e)(2) GNMA Mortgage Backed Securities will be issued for the construction and/or permanent loan(s). We have collected a GNMA Indemnification Escrow in the form of (Cash)-(Letter of Credit) _____ in the amount of \$ _____. This escrow will be maintained for 36 months after the issuance of the GNMA security to cover certain losses and expenses which would result from a mortgage default. We understand that this fee is not cost certifiable by the mortgagor inasmuch as it will potentially be returned to the mortgagor at the end of the escrow period if the project is not in default be paid.

(f) Additional financing charges or discount of \$ _____

are to be collected under the attachment hereto for the purpose shown in (b), (c), (d), (e). (Strike inapplicable letters). The arrangement for the collection of additional financing charges or discount must follow forms and procedures prescribed by Commissioner.

No financing charges other than charges disclosed herein have been or will be made. Until final endorsement for insurance by the Commissioner, all funds collected pursuant to items (c), (d), or (e) above and not paid over to the permanent lender, plus any funds returned by the permanent lender, shall be held for the account of the mortgagor and shall be subject to your control and direction in the event of claim under the contract of insurance.

19. Except for mortgage advances approved by the Commissioner or notes executed pursuant to (18) (f), we do not have outstanding and will not make loans or advances to the mortgagor, any of the sponsors, the general contractor, or the architect for any purpose connected directly or indirectly with this project without prior written approval of the Commissioner. We have not made or offered, and will not make or offer, any guarantees, pledges, reservations of sums to become due or other inducements to any entity or person to make loans or advances which we would be prohibited from making under the terms of this paragraph.

20. We certify that we have not made and will not make payment of any kickback or fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this mortgage transaction, including the purchase or sale of the mortgaged property, except for compensation paid or to be paid, if any, for the actual performance of services and approved by you.

21. We certify that in any case where a letter of credit has been accepted instead of cash, (a) such, unconditional and irrevocable letter of credit has been issued by (1) another banking institution; (2) ourselves, subject to receiving your written permission prior to initial endorsement; (b) if demand under the letter of credit is not immediately met, we will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the mortgagor, any sponsor, the general contractor or the architect; (c) we have not made and will not make any inducements as described in Paragraph 19 above to procure issuance of letters of credit; and (d) we have made every reasonable effort to satisfy ourselves that both the mortgagor and the institution which issued the letter of credit are aware that it is entirely possible that demands will be made for cash under the terms of the letter and that no possibility exists that mortgage proceeds will be available to reimburse the issuing bank for such cash payouts.

22. For mortgages funded with the proceeds of State or local bonds which contain a lock-out and/or penalty provision, we agree, in the event of a default during the term of the prepayment lock-out and/or penalty (i.e., prior to the date on which prepayments may be made with

a penalty of one percent or less), to:

(a) request a three-month extension of the deadline prescribed by 24 CFR Section 207.258 for filing a notice of our intention to file an insurance claim and our election to assign the mortgage;

(b) assist the mortgagor in arranging a refinancing to cure the default and avert an insurance claim, if HUD grants the requested (or a shorter) extension of notice filing deadline;

(c) report to HUD at least monthly on any progress in arranging a refinancing;

(d) otherwise cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(e) require any successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out and/or penalty.

23. For any case involving components stored offsite, we agree to:

(a) File UCC-1, financing statements, in the proper jurisdiction with the proper office;

(b) Make whatever additional filings are necessary to maintain a first lien on the components until they are incorporated into the building (s);

(c) Release the financing statement filings as appropriate;

(d) Unconditionally certify by letter to HUD with each disbursement request that the security instrument(s) is (are) a "first lien" on the building components covered by the instrument(s). This certification will be supported by an opinion from our legal counsel;

(e) In the event of default under the mortgage, either assign our security interest to HUD or acquire title through foreclosure to the components intended for use or incorporation into the building(s) and convey title to HUD.

(f) Require a performance bond and payment bond equal to 100 percent of the construction contract be used to satisfy the assurance of completion requirements.

24. Whenever the terms "Mortgage," "Mortgagor," or "Mortgagee" are used herein, the same shall be deemed to include respectively: the security instrument whether the same be a Mortgage or a Deed of Trust; the Obligor of the debt secured thereby; the Obligee, or the Trustee(s) and the Beneficiary of said credit instrument. The term "financing charge(s)", as used herein shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the mortgagor. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Date	Mortgagee
Attest:	By

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION**

**REQUEST FOR ENDORSEMENT OF CREDIT INSTRUMENT
CERTIFICATE OF MORTGAGEE, MORTGAGOR AND GENERAL CONTRACTOR
(For insurance Upon Completion only)**

Project Name _____ Project No. _____

Location _____ Date of Commitment _____

Date _____ Principal Amount of Loan \$ _____

To the Federal Housing Commissioner:

We hand you herewith the original credit instrument drawn upon the form approved by you for use in the State in which the above-captioned project is located in connection with loans insured under Section ____ of the National Housing Act, as amended, evidencing a loan to the undersigned Mortgagor, together with three conformed copies thereof, and three conformed copies of the Security Instrument of even date securing the same recorded as shown thereon, also drawn, upon the form approved by you for use in said State.

We request endorsement of said instrument for mortgage insurance in the total sum of \$ _____ in accordance with the Regulations for Section _____ of the National Housing Act, as amended.

We hand you herewith a check for \$ _____ covering the first mortgage insurance premium called for in said Regulations.

We also hand you (a) a certified and two conformed copies of a Chattel Mortgage or Security Agreement and Financing Statement recorded as indicated thereon from the Mortgagor to us covering all personal property in the project not otherwise covered by the real estate mortgage to be insured or (b) certificate of Mortgagee's Attorney that no chattel mortgage or security agreement and financing statement are required to protect the interest of the Mortgagee and the Secretary, Department of Housing and Urban Development in respect to such personal property. (NOTE: For nursing homes, the personal property referred to includes the equipment required to operate the nursing facilities.)

We hand you herewith the Sponsors' Guaranty Agreement to meet a subsidy differential in the amount of \$ _____. (Applicable only to Sec. 231 and Sec. 232 nonprofit projects if required by the Commitment.)

We understand that nothing herein contained or contained in the said credit instrument or Mortgage securing the same, or in the other contract documents, is to be deemed a waiver of any of the provisions of the aforesaid Regulations, but all of said instruments are intended to be subject thereto. We hereby agree to conform with and abide by such Regulations in all matters with respect to the aforesaid loan and the project insofar as they are applicable to us. We agree to furnish you with a complete report of the results of our annual inspection of the mortgaged premises required by the said Regulations.

CERTIFICATE OF MORTGAGEE

We, the undersigned Mortgagee, hereby certify that:

1. To the best of our knowledge and belief the project has been completed, with the exception of the minor items enumerated on the Exhibit attached hereto, strictly in accordance with the Drawings and Specifications heretofore approved by you except for such changes as have heretofore been approved in writing by us and by your authorized representatives.

2. The Mortgage to be insured is current with respect to all of its requirements.

3. The project is fully covered by fire and other insurance as required by the terms of the insured mortgage in the form and amounts heretofore stipulated by you; and that all insurance policies on the project have attached thereto a standard mortgagee clause making the loss payable to the Mortgagee and the Secretary, as their interests may appear.

4. We have received a guarantee against defects due to faulty workmanship and defective materials in the form of:

(Check applicable paragraph(s))

(a) A Surety Bond on a form prescribed by you and in an amount not less than ten percent (10%) of the cost of construction, running for a period of not less than two years from the date of substantial completion* of the project, which bond has been assigned to the Mortgagee (or under which bond the Mortgagee is a joint obligee) and which is assignable to the Secretary.

(b) By agreement between ourselves and the Mortgagor and Contractor, we retain in our possession for a period of one year following the date of substantial completion* of the project, a sum equal to two and one-half (2 1/2%) percent of the principal amount of the mortgage, in the form of _____,
(Cash) - (Letter of Credit)

which sum, upon failure of the Mortgagor or the Contractor to cure any such defects due to faulty workmanship and defective materials to the satisfaction of ourselves and your authorized representative, can be used for the purpose of curing such defects, or can be applied to the mortgage Indebtedness with your consent.

* For this purpose the date of substantial completion is construed as the date the FHA Chief Underwriter signs the final Project Inspection Report.

5. We have received: (Check applicable paragraphs)

An Escrow Agreement guaranteeing the completion of off-site utilities and streets. The Mortgagor has made the deposit called for therein in the form of cash.

Evidence to the effect that required off-site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the project.

An Escrow Deposit Agreement covering the incomplete on-site improvements. The Mortgagor has made the deposit called for therein in the form of cash.

A copy of the Escrow Agreement or other evidence is delivered herewith.

6. The Mortgagor has deposited with us or in a depository satisfactory to us and subject to our control, a deposit, as required by your commitment, for operating expenses from the date of initial occupancy until _____ months after endorsement in the amount of \$ _____, such funds to be disbursed only with your approval. This deposit is in the form of _____.
(Cash) - (Letter of Credit)

(NOTE: For Section 232 Nursing Home projects only.)

7. An Escrow Agreement evidencing the deposit by the Sponsor of cash, U. S. Bearer bonds, or an unconditional irrevocable letter of credit in the amount of \$ _____ as required by your Commitment to meet a possible initial operating deficit has been received by us. A copy of the Escrow Agreement is delivered herewith. (Complete, if required.)

8. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by you in writing, we will require a monthly deposit with us or in a depository satisfactory to us of one-twelfth (1/12) of the sum set forth in your Commitment to Insure Upon Completion constituting a "Reserve Fund for Replacements" which fund will be subject to our control and from which fund withdrawals may be made only upon the receipt of your written permission. These funds will be deposited with us by the Mortgagor in the form of cash or in the form of obligations of or guaranteed as to principal by the United States of America. We will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the deposits required herein will be forwarded to the Commissioner within 60 days.

9. In compliance with the provisions of the Commitment of Insurance issued with respect to the above identified case, to its best knowledge and belief no restriction upon the sale or occupancy of the mortgaged property, on the ground of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950, and prior to the recording of the mortgage offered for insurance. This certification is based upon our examination of the title evidence received by us.

10. No financing charges other than charges disclosed herein have been made and we agree that no other charges for financing will be made. The term "financing charges" as used herein means any charge, direct or indirect, for supplying the loan to or servicing the loan for the mortgagor.

(Check and complete the following applicable subparagraphs a, b, c, d, e, f, g or h.)

- a. No financing charges of any kind have been or will be imposed directly or indirectly.
- b. We have collected in cash an initial service charge in the amount of \$ _____.
- c. In addition to the initial service charge referred to in (b), we have collected the amounts set forth in subparagraph(s) _____.
- d. In addition to the initial service charge, we have collected in the form of cash the amount of \$ _____ as a discount or financing charge for the construction loan.
- e. We are retaining the permanent loan. In addition to the initial service charge, we have collected in the form of cash the amount of \$ _____.
- f. We have a firm commitment from _____ to purchase the loan when insured at a financing charge or discount of _____ and we have collected in the form of cash the sum of \$ _____ to cover said charge or discount.
- g. The loan was originated for sale by the undersigned who does not, at this time, have a firm commitment or agreement to purchase the loan from which the amount of its loss, if any, in connection with such sale can be determined. The undersigned has collected in the form of cash the amount of \$ _____ to be held in escrow under an agreement to cover any discount or additional financing charge incurred by the undersigned in the bona fide sale of the mortgage. Such agreement provides that any part of the escrowed deposit not necessary to reimburse the undersigned for such discount as it may have to pay will be repaid to the mortgagor or applied to the reduction of the insured mortgage or will be deposited in the Reserve Fund for Replacements of the mortgagor as you may direct. We hereby agree to notify you of the amount of any excess deposit as soon as same has been determined and to hold such excess pending receipt of your instructions for its disposition.

*h. Additional financing charges or discount of \$_____ are to be collected pursuant to the attachment hereto for the purpose shown in (d), (e), (f), (g). (Strike inapplicable letters).

*The arrangement for the collection of additional financing charges or discount must be in accordance with forms and procedures prescribed by the Commissioner.

11. In any case where a letter of credit has been accepted in lieu of cash, (a) such letter of credit has been issued to us by another banking institution and is unconditional and irrevocable; (b) in the event a demand under the letter of credit is not immediately met, we will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the mortgagor, any sponsor, the general contractor or the architect; and (c) we have made every reasonable effort to satisfy ourselves that both the mortgagor and the institution which issued the letter of credit are aware that it is entirely possible that demands will be made for cash under the terms of the letter.-5-

12. We certify that we have not paid any kickback, fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this mortgage transaction, including the purchase or sale of the mortgaged property, except for compensation paid, if any, for the actual performance of services and approved by you.

Mortgagee

ATTEST:

By

(Signature and Title of Officer)

CERTIFICATE OF MORTGAGOR

The undersigned Mortgagor hereby certifies that:

1. It possesses the powers necessary for and incidental to the ownership and operation of a project as required by the appropriate provisions of the National Housing Act and the Regulations applicable thereto.
2. The undersigned has read the items above and certified to by the Mortgagee concurrently herewith and to the best of its knowledge and belief considers them correct.
3. The project books and records will be kept in accordance with the requirements of the Commissioner from the date of this certificate, and shall be kept available to permit a speedy and effective audit. The undersigned further agrees that if the project has been occupied prior to the date of this certificate, financial reports covering the entire period of occupancy will be furnished the Commissioner, if requested.
4. That neither it nor anyone authorized to act for it will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin; that any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and in hereby specifically disclaimed; and that civil action for preventive relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

The undersigned understands that the mortgage contains a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, the mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, religion or national origin, and that such covenant will be binding upon the mortgagee and his assigns and provides that upon violation thereof the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

5. All funds escrowed with the Mortgagee as enumerated in the Mortgagee's Certificate, if applicable, may be held by the Mortgagee for the purposes indicated therein, or in the event of a default may be applied to the accelerated Mortgage indebtedness.
6. The Federal Housing Commissioner and his authorized agents and the Mortgagee are hereby granted the right to enter upon the mortgaged premises at any and all times for the purpose of inspection.
7. No material or equipment, for which mortgage proceeds were made available, has been purchased on a conditional sale contract or financed by a chattel mortgage.
8. Further, in order to induce the Commissioner to endorse the credit instrument for mortgage insurance, and with the intent that the Commissioner rely upon the statements hereinafter set forth, the undersigned makes the following certifications:

(a) That it has received the sum of \$ _____, constituting the full principal amount of the mortgage for this project.

(b) That construction of the project is substantially complete and is in accordance with the plans and specifications approved by the Federal Housing Commissioner; that said mortgage is a good and valid first lien on the property therein described; that the property is free and clear of all liens other than that of subject mortgage; that all outstanding unpaid obligations contracted by or on behalf of the mortgagor entity directly or indirectly, in connection with the mortgage transaction, the acquisition of the property, or the construction of the project are listed below:

- * (1) FHA-approved notes (copies attached) \$
- (2) Due General Contractor \$
- * (3) Other \$

(c) That, except for the amounts due on notes listed in item (1) of paragraph (b) above, the undersigned agrees to pay the foregoing obligations in cash and to furnish the Commissioner receipts, or other evidence of payment satisfactory to the Commissioner within 45 days following the date hereof.

Mortgagor

Date _____

BY _____
Title

*(NOTE: If the space provided is inadequate to list all unpaid obligations, insert the total in each category and attach itemizations. If there are no outstanding obligations, so state.)

Agreement and Certification

For use in Insurance of Advances Cases

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

This Agreement made this _____ day of _____, by and between the _____, a _____ *(hereinafter called Mortgagor), and _____,

a _____ corporation (hereinafter called Mortgagee), and the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner);

Whereas, Mortgagor has applied to Mortgagee for a mortgage loan for the purpose of erecting a housing project to be located at _____

and identified as HUD Project No. _____; and the Mortgagee has applied to the Commissioner for insurance of said mortgage loan under Section _____ of the National Housing Act; and

Whereas, the Commissioner has issued a commitment to insure said mortgage loan in the amount of \$ _____, subject to reduction of said amount as provided in the National Housing Act and the Regulations promulgated pursuant thereto; and

Whereas, under the provisions of the National Housing Act and the Regulations promulgated pursuant thereto, this agreement is required;

Now therefore this agreement witnesseth:

1. That in consideration of the agreement by the Mortgagee to make, and of the Commissioner to insure, said loan, Mortgagor agrees to submit to the Commissioner prior to the receipt of the final advance under the mortgage, and within the period fixed in the building loan agreement for completion of the project or any extension of such period approved in writing by the Commissioner, a fully completed and executed Mortgagor's Certificate of Actual Cost and, if required, a fully completed and executed Contractor's Certificate of Actual Cost on forms prescribed by the Commissioner and/or the HUD form for Contractor's, Subcontractor's and Mortgagor's Certifications. The Mortgagor understands and agrees that each of the certificates of cost shall be supported by the certificate of an independent public accountant in form acceptable to the Commissioner.

2. The Mortgagor and Mortgagee agree that the total advances of mortgage monies shall not exceed the amount permitted by the National Housing Act and the Regulations promulgated pursuant thereto.

3. The Mortgagor agrees that if it receives from the Mortgagee monies in excess of that permitted under the National Housing Act and the Regulations promulgated pursuant thereto, it will pay upon demand forthwith to the Mortgagee any such excess for application to the reduction of the then outstanding principal balance of the mortgage. Mortgagee agrees that upon its receipt of such excess the contract of mortgage insurance is reduced by the amount of such excess.

The Mortgagor further agrees that if the Commissioner, for cost certification purposes, accepts estimates for any items, the Mortgagor will, at final endorsement, establish a cash escrow to pay all the "to be paid in cash items" identified in its Certification of Actual Cost and debts to third parties who made the original disbursement for an item listed as paid on the Mortgagor's Certification of Actual Cost, unless documentation, satisfactory to the Commissioner, is submitted evidencing that these amounts were paid by the Mortgagor after the submission of its Certification of Actual Cost. The Mortgagor

understands that the items covered by this cash escrow must be paid within 45 days of the date of final endorsement, except for those items in dispute or involved in litigation. If the Mortgagor's actual cost was less than the estimates accepted for cost certification purposes and the Commissioner determines that this difference plus the net amount (total receipts less expenses of perfecting claims) of settlement of claims against bonding companies would have required a reduction of the insured mortgage, the Mortgagor understands that prepayment of the mortgage in an amount equal to the scheduled monthly principal payments, to the extent possible, is required and any remaining balance shall be deposited to the Reserve Fund for Replacements.

4. Mortgagor certifies that the financial interests or family relationships which exist between Mortgagor or any of its officers, directors, stockholders with the Architect and with the General Contractor, subcontractors, suppliers, or equipment lessors are: (Please complete page three stating the name, title, interest, and relationship.) (If none, so state).

5. Mortgagor agrees to notify the Commissioner, in writing, of any changes in relationship subsequent to the execution of this agreement which results in an identity of interest of the Mortgagor with the General Contractor or any subcontractor, supplier, or equipment lessor within 10 working days from the date the change occurred, in which case the Mortgagor's certification of actual cost will be accompanied by the Contractor's certification of actual cost in form prescribed by the Commissioner and, if required by the Commissioner, certification of actual cost by such subcontractor, supplier, or equipment lessor. It is agreed that the absence of such notice may be treated by the Commissioner as a representation that no change in relationship has occurred which creates any such identity of interest.

6. Mortgagor agrees to maintain and keep adequate records of all costs referred to in (1) above, and to make such records available for examination by the Commissioner upon request.

* Insert type of mortgagor, e.g. "Individual", "Partnership", "(State) Corporation"

7. Mortgagor agrees that, where this agreement and certification reveals any identity of interest between the Mortgagor and the General Contractor, the Mortgagor will include in the contract for the performance of the construction of the project a provision requiring the General Contractor, upon completion of the project, to submit to Mortgagor for delivery to the Commissioner its certificate of all actual costs of labor and materials and necessary services as required by paragraph (1) hereof. Mortgagor further agrees to include in the construction contract the requirement that the Contractor shall maintain adequate records of all such costs, and make such records, documents, contracts and accounts available for review upon request by the Federal Housing Commissioner.
8. Mortgagor agrees that it will require in the general contract and in all agreements with subcontractors (which term for the purposes of this paragraph shall also include material suppliers and equipment lessors) a provision that if there is, or comes into being, any identity of interest between the Mortgagor and any Subcontractor, or (in those cases where the General Contractor is required to certify his actual costs) between the General Contractor and any Subcontractor, then (a) such Subcontractor will agree to submit to the Commissioner (unless specifically waived in writing by the Commissioner) a certificate of the actual cost of providing the material and/or services after deduction of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof, and (b) such Subcontractor will join in the execution and submission of the HUD form for Contractor's, Subcontractor's and Mortgagor's Certifications. The Subcontractor's certificates of actual cost will be supported by the certification of an independent Certified Public Accountant in a form acceptable to the Commissioner. For purposes of determining actual cost, no profit or general overhead may be included in the subcontract unless the Commissioner has in advance granted approval in writing of the subcontract and has approved a specific dollar amount or a specific percentage for profit and/or general overhead.
9. Mortgagor agrees that if there comes into being any identity of interest between the Mortgagor and the Architect or between the General Contractor and the Architect, the Architect will immediately be relieved of inspection duties and the maximum Architect's fees allowable for cost certification purposes will be \$ _____ * for design services only. No fees will be allowed to the identity of interest Architect for supervision.
10. For those cases which include a Builder's and Sponsor's Profit and Risk Allowance (Sections 220, 221(d)(3) and (4), 231, and 236), the Mortgagor and General Contractor agree that:
- (a) If there is any identity of interest between the Mortgagor and the General Contractor, the construction contract will be on a cost plus fee basis with a maximum upset price, provided, however, that in lieu of the contractor's fee, the Mortgagor shall be entitled to include in its certificate of actual cost an allowance for Builder's and Sponsor's profit and risk. The allowance for Builder's and Sponsor's profit and risk shall be determined by applying the profit and risk percentage, provided for in Section 227 of the National Housing Act and the Regulations adopted pursuant thereto and which was in effect on the date the Commitment was issued, to the actual cost, as accepted by the Commissioner, of those items which, under the provisions of the National Housing Act, shall be included in computing the allowance. Mortgagor further agrees that for the purpose of determining actual cost, no general overhead expense in excess of \$ _____ * will be allowed by the Commissioner as actual cost.
- (b) In the event there is no identity of interest between the Mortgagor and the General Contractor, the Builder's and Sponsor's profit and risk allowance provided for in paragraph 10.(a) herein shall not be applicable, but the Mortgagor shall be entitled to include in its certificate of actual cost a Sponsor's profit and risk allowance which shall be determined by applying the profit and risk percentage, provided for in Section 227 of the National Housing Act and the Regulations adopted pursuant thereto and which was in effect on the date the Commitment was issued, to the actual cost, as accepted by the Commissioner, of those items which, under the provisions of the National Housing Act, shall be included in computing the allowance. (The National Housing Act specifically excludes, among other items, the amount of the construction contract in computing the allowance.)
- (c) If there is any identity of interest between the Mortgagor and the General Contractor and more than 50 percent of the actual cost of construction is subcontracted with any one contractor, or subcontractor, or more than 75 percent with three or less contractors or subcontractors, the Builder's and Sponsor's profit and risk allowance provided for in paragraph 10.(a) herein shall not be permitted as an actual cost and the Mortgagor shall be limited to the inclusion of the Sponsor's profit and risk allowance, provided for in paragraph 10.(b) herein, on its certificate of actual cost.
11. For those cases which do **not** include a Builder's and Sponsor's Profit and Risk Allowance, the Mortgagor and General Contractor agree that the construction contract will be on a cost plus fee basis with a maximum upset price if there is any identity of interest between the General Contractor, or under any other circumstances where the Commissioner requires the use of such a contract, and that for the purpose of determining the actual cost of physical improvements on the mortgaged property, the allowance for the Contractor's fee shall not exceed \$ _____ * and the general overhead expense shall not exceed \$ _____ *; provided, however, that in the event more than 50 percent of the actual cost of construction is subcontracted with any one contractor or subcontractor, or more than 75 percent with three or less contractors or subcontractors, the Contractor's fee provided for herein shall not be allowed as an actual cost.
12. The Mortgagor and General Contractor agree that for the purpose of paragraphs 10.(c) and 11: (i) the terms contractor and subcontractor include material suppliers and equipment lessors, and (ii) any two or more contractors or subcontractors

*Enter amounts from appropriate items on HUD-92264.

having an identity of interest or common ownership shall be considered as one contractor or subcontractor. It is understood that the 50-75 percent rule is **not** applicable to manufacturers of industrialized housing, trade items performed by persons on the general contractor's payroll, mobile home park program, supplemental loan program, or rehabilitation programs other than gut rehabilitation.

13. Mortgagor further agrees that if there comes into being an identity of interest between the Mortgagor and General Contractor following the execution by the parties of a lump sum contract, the allowable costs to the Mortgagor of the construction contract and profit and risk allowance shall be determined in accordance with the applicable provisions of paragraphs 10.(a) through 10.(c) or 11 and 12 herein.

14. The Mortgagor agrees to submit with this form signed duplicate copies of any collateral agreement(s) and/or side deal agreement(s) executed by the Mortgagor or any principals of the Mortgagor evidencing any secured or unsecured borrowing made in association with the construction of the project. The Mortgagor further agrees to obtain the approval of the Commissioner before entering into any such agreement after executing this form.

15. The foregoing agreements and certifications by the Mortgagor, Mortgagee, and General Contractor are made and delivered for the purpose of influencing an official action of the Federal Housing Commissioner and are to be relied upon by the Commissioner as true.

In Witness Whereof the parties hereto have duly executed this agreement the day and year first above written.

Identity of Interest

(from paragraph four -- must be completed on each individual entity)

Name _____

Title _____

Address _____

Relationship to Mortgagor _____

Interest (financial, in-kind service, etc.) _____

Specify _____

Attach separate sheets if necessary.

Attest:	(Mortgagor)
	By
	(General Contractor)
	By
	(Mortgagee)
	By
Secretary of Housing and Urban Development Acting by and Through the Federal Housing Commissioner	By (Authorized Agent)

Capital Advance Program Agreement & Certification

For Section 202 of the Housing Act of 1959
or Section 811 of the National Affordable Housing Act

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

OMB Approval No. 2502-0470
(Expires 8/31/2013)

See bottom of form for Public Burden statement.

This Agreement made this _____ day of _____, 20____, by and between _____ (hereinafter called Owner), and the Secretary of Housing and Urban Development (hereinafter called HUD).

Whereas, Owner has applied to HUD for a capital advance in the amount of \$ _____ or the purpose of constructing, rehabilitating or purchasing with or without rehabilitation (projects without rehabilitation under Section 811 limited to group homes and under Section 202 limited to structures purchased from the Resolution Trust Corporation) a housing project to be located at _____ and identified as Project No. _____ pursuant to Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act.

Whereas, the provisions of the applicable Act limit the amount of capital advance to the development cost of the project;

Now Therefore this Agreement Witnesseth:

- (1) That in consideration of the agreement by HUD to make said capital advance, the Owner agrees to submit to HUD prior to final disbursement of the capital advance its Certificate of Actual Cost, and, if required, the Contractor's Certificate of Actual Cost, on forms prescribed by HUD, and/or Contractor's Subcontractor's and Owner's Certifications. Owner agrees that all Certificates of Actual Cost shall be certified to by an independent Certified Public Accountant or an independent Public Accountant in form acceptable to HUD. The Owner further agrees that if HUD, for cost certification purposes accepts estimates of cost for any items the Owner will, upon determination of actual cost, submit in a form satisfactory to HUD a certification of such actual costs which shall be reduced by the net amount (total receipts less expenses of perfecting claims) of settlement of claims against bonding companies or others, and if the substitution of such certified actual costs for the estimates of cost which were used at final disbursement would have required a reduction of the mortgage, the reduction so required shall be made provided that the entire amount, or any part thereof may, with the consent of HUD, be deposited in the Reserve Fund for Replacements.
- (2) Owner and HUD agree that, prior to final disbursement, the mortgage note will be adjusted to comply with the provisions of Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act and the applicable regulations.
- (3) Owner certifies that no financial interests or family relationships exist between Owner or any of its officers, directors, or stockholders with the Architect or with the General Contractor, subcontractors, suppliers, or equipment lessors.
- (4) Owner agrees to notify HUD, in writing prior to final disbursement, of any change in relationship subsequent to the execution of this Agreement which results in an identity of interest of the Owner with the General Contractor, or any subcontractor, supplier, or equipment lessor, in which case the Owner's certification of actual cost will be accompanied by the Contractor's certification of actual cost in form prescribed by HUD and, if required by HUD, certification of actual cost by such subcontractor, supplier, or equipment lessor. It is agreed that the absence of such notice may be treated by HUD as a representation that no change in relationship has occurred which creates any identity of interest.
- (5) Owner agrees to maintain and keep adequate records of all costs referred to in (1) above, and to make such records available for examination by HUD upon request.
- (6) Owner agrees to include in the construction contract a requirement that the Contractor shall maintain adequate records of all actual costs of labor and materials and necessary services, and make such records, documents, contracts and accounts available for review upon request by HUD.
- (7) Owner agrees that it will require in the general contract and in all agreements with subcontractors a provision that if there is or comes into being any identity of interest between the General Contractor and any Subcontractor, then (a) such Subcontractor will agree to submit to HUD (unless specifically waived by HUD) a certificate of the actual cost of providing the material and/or services after deduction of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof, and (b) such Subcontractor will join in the execution and submission of the HUD form for Contractor's, Subcontractor's and Owner's Certifications. The Subcontractors' certificates of actual cost will be supported by the certifications of an independent Certified Public Accountant or an independent Public Accountant in form acceptable to HUD. For purposes of determining actual cost, no profit or general overhead may be included in the subcontract unless HUD has in advance approved in writing of the subcontract and has approved a specific dollar amount or a specific percentage for profit and/or general overhead.
- (8) Owner agrees that if there comes into being any identity of interest between the General Contractor and Architect, the

Architect will be relieved immediately of inspection duties and the maximum Architect's fees allowable for cost certification purposes will be \$ _____ for design services only. No fee will be allowed to the identity of interest Architect for supervision.

- (9) Owner agrees that the construction contract will be on a lump-sum fee basis (if competitively bid) or on a cost-plus fee basis with a maximum upset price (if negotiated) and that for the purpose of determining the actual cost of the physical improvements on the mortgaged property, the allowance for the Contractor's fee shall not exceed \$ _____ and the general overhead expense shall not exceed \$ _____, provided, however, that in the event more than 50 percent of the actual cost of construction is subcontracted with any one contractor or subcontractor, or

more than 75 percent with three (3) or less contractors or subcontractors, the Contractor's fee provided for herein shall not be allowed as an actual cost. For the purpose of this paragraph, it is further agreed that (a) the terms contractors or subcontractors include material suppliers and equipment lessors, and (b) any two or more contractors or subcontractors having an identity of interest or common ownership shall be considered as one contractor or subcontractor.

- (10) The foregoing agreements and certifications by the Owner are made and delivered for the purpose of influencing an official action of HUD and are to be relied upon as true and correct.

In Witness Whereof, the parties hereto have duly executed this instrument the year first above written.

Attest:

(Secretary)

(Owner)

By: _____

United States of America
Secretary of Housing and Urban Development

By: _____
(Authorized Agent)

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the projects meet statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

Construction Contract Cost Plus

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

OMB Approval No. 2502-0011 (exp. 9/30/2013)

Public Reporting Burden for this collection is estimated to average 16 hours per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, 451 7th Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article 1.E of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C., 1701 et. seq.). This information is necessary for contractors and mortgagors to obtain approval from the FHA Commissioner's to document the terms of any Contract Document, or order for extra work, or change by altering or adding to the work, or which will change the design concept. The information is used by HUD to ensure that viable projects are being developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits. This agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless that collection displays a valid OMB number.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses the data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This Agreement, made the _____ day of _____, 20____, between _____

_____ (hereinafter called the "Contractor") and
_____ (hereinafter called the "Owner").

Witnesseth, that the Contractor and the Owner, for the consideration hereinafter set out, agree as follows:

Article 1: Scope of Contract

A. The Contract between the parties is set forth in the "Contract Documents," which consist of this Agreement, the Drawings and Specifications, which include the current edition of AIA Document A201, "General Conditions of the Contract for Construction," and Form HUD-2554, "Supplementary Conditions of the Contract for Construction." The provisions of this instrument and the said HUD Supplementary Conditions take precedence over all inconsistent provisions in the said AIA General Conditions. This Contract constitutes the entire agreement between the parties, and any previously existing contract concerning the work contemplated by the Contract Documents is hereby revoked.

B. The Contractor shall furnish all of the materials and perform all of the work (within the property lines) shown on, and in accordance with, the Drawings and Specifications entitled _____

HUD Project No. _____, dated _____.

C. The Drawings, which are numbered _____,
and the Specifications, the pages of which are numbered _____

have been prepared by _____
_____ ("Design Architect").

The Architect administering the Construction Contract (hereinafter, and elsewhere in the Contract Documents, referred to as the "Architect") is _____

D. A master set of said Drawings and Specifications, identified by the parties hereto and by the Design Architect, the Architect, and the Contractor's Surety or Guarantor have been placed on file with the Federal Housing Commissioner (hereinafter referred to as the "Commissioner"), and shall govern in all matters which arise with respect to such Drawings and Specifications.

E. Changes in the Drawings and Specifications or any terms of the Contract Documents, or orders for extra work, or changes by altering or adding to the work, or which will change the design concept, may be effected only with the prior written approval of the Owner's Lender (more particularly identified below and hereinafter referred to as the "Lender") and the Commissioner and under such conditions as either the Lender or the Commissioner may establish.

Article 2: Time

A. The work to be performed under this Contract shall be commenced within _____ days of this Agreement, and shall be completed by _____, 20____. The time by which the work shall be completed may be extended in accordance with the terms of the said AIA General Conditions only with the prior written approval of the Commissioner.

B. The Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from the date of final completion.

C. If the work is not brought to final completion in accordance with the Drawings and Specifications, including any authorized changes, by the date specified above, or by such date to which the contract time may be extended, the maximum sum stated in Article 3A(1) below shall be reduced by \$ _____, as liquidated damages, for each day of delay until the date of final completion. When the Owner cost certifies to HUD, the actual cost of interest, taxes, insurance, mortgage insurance premiums, and construction and permanent loan extension fees, as approved by the Commissioner, for the period from the scheduled date of completion through the date construction was actually completed, shall be determined. The lesser of the liquidated or actual damages shall be applied. The applicable amount shall be reduced by the project's net operating income (as determined by the Commissioner) for the damage period.

D. The Owner and Contractor may amend this contract prior to initial endorsement (insurance of advances projects) or upon execution of the construction contract (insurance upon completion projects), in a form prescribed by the Commissioner, to provide for an incentive payment to the Contractor, which will result in an increase in the contract sums stated in Article 3A below, if the work is completed before the date specified in this contract. The Contractor will **not** be entitled to any incentive payment resulting from early completion if HUD determines that the Contractor's cost certification, required by Article 10, is fraudulent or materially misrepresents the Contractor's actual cost of construction.

E. The date of final completion shall be the date the HUD representative signs the final HUD Representative's Trip Report provided that the trip report is subsequently endorsed by the Chief Architect.

Article 3: Contract Sum and Payments

A. (1) Subject to the provisions hereinafter set out, the Owner shall pay to the Contractor for the performance of this Contract the following items in cash:

(a) The actual cost of construction as defined in Article 10 below; plus

(b) A fee of \$ _____.

In no event, however, shall the total cash payable pursuant to this paragraph (1) exceed \$ _____.

(2) In addition to any cash fee provided for in paragraph (1), the Owner shall pay to the Contractor by means other than cash, the following:

(a) A note in the form prescribed by the Commissioner in the amount of \$ _____.

(b)

(3) If, upon completion, the Contractor shall have received cash payments in excess of (a) the actual cost of construction, plus (b) the cash fee specified in paragraph (1), plus the additional amount to be paid under the provisions of paragraph (2), all such excess shall be refunded to the Owner.

B. Each month after the commencement of work hereunder, the Contractor shall make a monthly request on Form HUD-92448 for payment by the Owner for work done during the preceding month. Each request for payment shall be filed at least _____ days before the date payment is desired. Subject to the approval of the Lender and the Commissioner, the Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the work acceptably completed; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with applicable HUD requirements; less (4) 10 percent holdback and less prior payments. The "values" of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of work in the "Contractor's and/or Mortgagee's Cost Breakdown," attached hereto as Exhibit "A". The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument.

C. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the work hereunder is fully completed, provided the following have occurred.

(1) All work hereunder requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(2) All certificates of occupancy, or other approvals, with respect to all units of the project have been issued by State or local governmental authorities having jurisdiction; and

(3) Permission(s) To Occupy (Form HUD-92485) for all units of the project have been issued by the Commissioner.

D. With its final application for payment by the Owner, the Contractor shall disclose, on a form prescribed by the Commissioner, all unpaid obligations contracted in connection with the work performed under this Contract. The Contractor agrees that within 15 days following receipt of final payment, it will pay such obligations in cash and furnish satisfactory evidence of such payment to the Owner.

Article 4—Receipts & Releases of Liens

The Owner may require the Contractor to attach to each request for payment its acknowledgement of payment and all subcontractors' and material supplier's acknowledgements of payment for work done and materials, equipment and fixtures furnished through the date covered by the previous payment. Concurrently with the final payment, the Owner may require the Contractor to execute a waiver or release of lien for all work performed and materials furnished hereunder, and may require the Contractor to obtain similar waivers or releases from all subcontractors and material suppliers.

Article 5—Requirements of Contractor

A. The Contractor shall furnish, at its own expense, all building and other permits, licenses, tools, equipment and temporary structures necessary for the construction of the project. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and protective covenants, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Contractor further shall comply with the provisions of the Occupational Safety and Health Act of 1970. The Contractor shall immediately notify the Commissioner of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to the Commissioner upon his request.

B. If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify the Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications. If the Contractor performs any work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants, without giving such notice to the Architect, it shall bear all costs arising therefrom.

C. Upon completion of construction, the Contractor shall furnish to the Owner a survey showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey shall be prepared by a licensed surveyor who shall certify that the work is installed and erected entirely upon the land covered by the mortgage and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. In addition, the Contractor shall furnish additional surveys when required by the Owner for any improvements, including structures and utilities, not theretofore located on a survey. The Contractor shall furnish copies of such survey required hereunder for the Lender and the Commissioner.

D. The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from the Commissioner that such landscaping has been finally completed. The Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

Article 6—Assurance of Completion

The Contractor shall furnish to the Owner assurance of completion of the work in the form of (specify) _____

_____ .

Such assurance of completion shall run to the Owner and the Lender as obligees and shall contain a provision whereby the surety agrees that any claim or right of action that either the Owner or the Lender might have thereunder may be assigned to the Commissioner.

Article 7—Waiver of Lien or Claim

The Contractor shall not file a mechanic's or materialman's lien or maintain any claim against the Owner's real estate or improvements for or on account of any work done, labor performed or materials furnished under this Contract, and shall include in each subcontract a clause which shall impose this requirement on the subcontractor.

Article 8—Right of Entry and Interpretation

A. The Lender and its agents or assigns and the Commissioner and his agents shall, at all times during construction, have the right of entry and free access to the project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the project. For such purpose, the Contractor shall furnish such enclosed working space as the Lender or Commissioner may require and find acceptable as to location, size, accommodations and furnishings.

B. The Commissioner shall also have the right to interpret the Contract Documents and to determine compliance therewith.

Article 9—Assignments, Subcontracts and Termination

A. This Contract shall not be assignable by either party without the prior written consent of the other party, the Lender and the Commissioner, except that the Owner may assign the Contract, or any rights hereunder, to the Lender or the Commissioner.

B. The Contractor shall not subcontract all of the work to be performed hereunder without the prior written consent of the Owner, the Lender and the Commissioner.

C. Upon request by the Owner, the Lender or the Commissioner, the Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to work to be done and materials and equipment to be furnished hereunder.

D. The Contractor understands that the work under this contract is to be financed by a building loan to be secured by a mortgage and insured by the Commissioner, and that the terms of said loan are set forth in a Building Loan Agreement between the Owner as Borrower and _____

_____ as Lender.

The Contractor further understands that said Building Loan Agreement provides that, in the event of the failure of the Owner to perform its obligations to the Lender thereunder, the Lender may, as attorney-in-fact for the Owner, undertake the completion of the project in accordance with this Contract. In the event the Lender elects not to undertake such completion, the Contractor's obligations under this contract shall terminate.

Article 10—Certification of Actual Cost

A. The "actual cost of construction," as used in Article 3 above, shall include all items of cost and expense incurred by the Contractor in the performance of this Contract, including costs and expenses of labor, materials for construction, equipment and fixtures, field engineering, sales taxes, workmen's compensation insurance, social security, public liability insurance, job overhead and all other expenses directly connected with construction, and including general overhead expenses, but excluding kick-backs, rebates or discounts received or receivable in connection with the construction of the project; and excluding any return on or cost of the Contractor's working capital, such return on or cost of working capital being a part of or to be paid from the Contractor's fee or profit.

B. The Contractor shall keep accurate records of account of the said actual cost of construction, and shall, upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the project available for inspection by the Owner and the Commissioner.

C. With its final application for payment, the Contractor shall furnish to the Owner a completed "Contractor's Certificate of Actual Cost," which shall be accompanied and supported by an independent public accountant's certificate as to actual cost (in form acceptable to the Commissioner).

D. The Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the project, in the event the Commissioner determines there is an identity of interest between either the Owner or the Contractor and any such subcontractor, equipment lessor or supplier.

In Witness Whereof, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest:	Owner
Witness	By
Witness	Title

(Seal)	Contractor
Witness	By
Witness	Title

Note: If Contractor or owner is a corporation, Secretary should attest.

Construction Contract Lump Sum

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

OMB Approval No. 2502-0011 (Exp. 9/30/2013)

Public Reporting Burden for this collection is estimated to average 16 hours per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Reports Management Officer, Paperwork Reduction Project (2502-0011), U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article I.E. of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C. 1701 et seq.). This information is provided to the FHA-Commissioner to obtain approval by contractors and mortgagors to document the terms and conditions of any Contract Document, or order for extra work, or changes by altering or adding to the work, or which will change the design concept. The information is used by HUD to ensure that viable projects are developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This Agreement, made the _____ day of _____, 20____, between _____
_____ (hereinafter called the "Contractor") and
_____ (hereinafter called the "Owner").

Witnesseth, that the Contractor and the Owner, for the consideration hereinafter set out, agree as follows:

Article 1—Scope of Contract

A. The Contract between the parties is set forth in the "Contract Documents," which consist of this Agreement, the Drawings and Specifications, which include the current edition of AIA Document A201, "General Conditions of the Contract for Construction," and Form HUD-2554, "Supplementary Conditions of the Contract for Construction." The provisions of this instrument and the said HUD Supplementary Conditions take precedence over all inconsistent provisions in the said AIA General Conditions. This Contract constitutes the entire agreement between the parties, and any previously existing contract concerning the work contemplated by the Contract Documents is hereby revoked.

B. The Contractor shall furnish all of the materials and perform all of the work (within the property lines) shown on, and in accordance with, the Drawings and Specifications entitled _____

_____ ,
HUD Project No. _____, dated _____.

C. The Drawings, which are numbered _____,
and the Specifications, the pages of which are numbered _____

_____ ,
have been prepared by _____
_____ ("Design Architect").

The Architect administering the Construction Contract (hereinafter, and elsewhere in the Contract Documents, referred to as the "Architect") is _____

D. A master set of said Drawings and Specifications, identified by the parties hereto and by the Design Architect, the Architect, and the Contractor's Surety or Guarantor have been placed on file with the Federal Housing Commissioner (hereinafter referred to as the "Commissioner"), and shall govern in all matters which arise with respect to such Drawings and Specifications.

E. Changes in the Drawings and Specifications or any terms of the Contract Documents, or orders for extra work, or changes by altering or adding to the work, or which will change the design concept, may be effected only with the prior written approval of the Owner's Lender (more particularly identified below and hereinafter referred to as the "Lender") and the Commissioner under such conditions as either the Lender or the Commissioner may establish.

Article 2—Time

A. The work to be performed under this Contract shall be commenced within _____ days of this Agreement, and shall be completed by _____, 20____. The time by which the work shall be completed may be extended in accordance with the terms of the said AIA General Conditions only with the prior written approval of the Commissioner.

B. The Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from the date of final completion.

C. If the work is not brought to final completion in accordance with the Drawings and Specifications, including any authorized changes, by the date specified above, or by such date to which the contract time may be extended, the contract sum stated in Article 3A below shall be reduced by \$ _____, as liquidated damages, for each day of delay until the date of final completion. When the Owner cost certifies to HUD, the actual cost of interest, taxes, insurance, mortgage insurance premiums, and construction and permanent loan extension fees, as approved by the Commissioner, for the period from the scheduled date of completion through the date construction was actually completed, shall be determined. The lesser of the liquidated or actual damages shall be applied. The applicable amount shall be reduced by the project's net operating income (as determined by the Commissioner) for the damage period.

D. The Owner and Contractor may amend this contract prior to initial endorsement (insurance of advances projects) or upon execution of the construction contract (insurance upon completion projects), in a form prescribed by the Commissioner, to provide for an incentive payment to the Contractor, which will result in an increase in the contract sum stated in Article 3A below, if the work is completed before the date specified in this contract. The Contractor will **not** be entitled to any incentive payment resulting from early completion if HUD determines that the Contractor's cost certification, if required by Article 7, is fraudulent or materially misrepresents the Contractor's actual cost of construction.

E. The date of final completion shall be the date the HUD representative signs the final HUD Representative's Trip Report provided that the trip report is subsequently endorsed by the Chief Architect.

Article 3—Contract Sum and Payments

A. The Owner shall pay the Contractor for the performance of the Contract, as hereinafter provided, the sum of \$ _____

B. Each month after the commencement of work hereunder, the Contractor shall make a monthly request on Form HUD-92448 for payment by the Owner for work done during the preceding month. Each request for payment shall be filed at least _____ days before the date payment is desired. Subject to the approval of the Lender and the Commissioner, the Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the work acceptably completed; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with applicable HUD requirements; less (4) 10 percent holdback and less prior payments. The "values" of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of work in the "Contractor's and/or Mortgagor's Cost Breakdown," attached hereto as Exhibit "A". The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument.

C. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the work hereunder is fully completed, provided the following have occurred.

(1) All work hereunder requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(2) All certificates of occupancy, or other approvals, with respect to all units of the project have been issued by State or local governmental authorities having jurisdiction; and

(3) Permission(s) To Occupy (Form HUD-92485) for all units of the project have been issued by the Commissioner.

D. With its final application for payment by the Owner, the Contractor shall disclose, on a form prescribed by the Commissioner, all unpaid obligations contracted in connection with the work performed under this Contract. The Contractor agrees that within 15 days following receipt of final payment, it will pay such obligations in cash and furnish satisfactory evidence of such payment to the Owner.

Article 4—Receipts & Releases of Liens

The Owner may require the Contractor to attach to each request for payment its acknowledgement of payment and all subcontractors' and material supplier's acknowledgements of payment for work done and materials, equipment and fixtures furnished through the date covered by the previous payment. Concurrently with the final payment, the Owner may require the Contractor to execute a waiver or release of lien for all work performed and materials furnished hereunder, and may require the Contractor to obtain similar waivers or releases from all subcontractors and material suppliers.

Article 5—Requirements of Contractor

A. The Contractor shall furnish, at its own expense, all building and other permits, licenses, tools, equipment and temporary structures necessary for the construction of the project. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Contractor further shall comply with the provisions of the Occupational Safety and Health Act of 1970. The Contractor shall immediately notify the Commissioner of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to the Commissioner upon request.

B. If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify the Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications. If the Contractor performs any work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants, without giving such notice to the Architect, it shall bear all costs arising therefrom.

C. Upon completion of construction, the Contractor shall furnish to the Owner a survey showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey shall be prepared by a licensed surveyor who shall certify that the work is installed and erected entirely upon the land covered by the mortgage and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. In addition, the Contractor shall furnish additional surveys when required by the Owner for any improvements, including structures and utilities, not theretofore located on a survey. The Contractor shall furnish copies of such survey required hereunder for the Lender and the Commissioner.

D. The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from the Commissioner that such landscaping has been finally completed. The Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

Article 6—Assurance of Completion

The Contractor shall furnish to the Owner assurance of completion of the work in the form of (specify) _____

Such assurance of completion shall run to the Owner and the Lender as obligees and shall contain a provision whereby the surety agrees that any claim or right of action that either the Owner or the Lender might have thereunder may be assigned to the Commissioner.

Article 7—Cost Certification

In the event the Commissioner determines that there is an identity of interest between the Contractor and the Owner, the Contractor shall certify, on a form prescribed by the Commissioner, its cost incurred in the performance of work under this Contract.

Article 8—Right of Entry and Interpretation

A. The Lender and its agents or assigns and the Commissioner and his/her agents shall, at all times during construction, have the right of entry and free access to the project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the project. For such purposes, the Contractor shall furnish such enclosed working space as the Lender or Commissioner may require and find acceptable as to location, size, accommodations and furnishings.

B. The Commissioner shall also have the right to interpret the Contract Documents and to determine compliance therewith.

Article 9—Assignments, Subcontracts and Termination

A. This Contract shall not be assignable by either party without the prior written consent of the other party, the Lender and the Commissioner, except that the Owner may assign the Contract, or any rights hereunder, to the Lender or the Commissioner.

B. The Contractor shall not subcontract all of the work to be performed hereunder without the prior written consent of the Owner, the Lender and the Commissioner.

C. Upon request by the Owner, the Lender or the Commissioner, the Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to work to be done and materials and equipment to be furnished hereunder.

D. The Contractor understands that the work under this contract is to be financed by a building loan to be secured by a mortgage and insured by the Commissioner, and that the terms of said loan are set forth in a Building Loan Agreement between the Owner as Borrower and _____

 _____ as Lender.

The Contractor further understands that said Building Loan Agreement provides that, in the event of the failure of the Owner to perform its obligations to the Lender thereunder, the Lender may, as attorney-in-fact for the Owner, undertake the completion of the project in accordance with this Contract. In the event the Lender elects not to undertake such completion, the Contractor's obligations under this contract shall terminate.

In Witness Whereof, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest:	Owner
Witness	By
Witness	Title

(Seal)	Contractor
Witness	By
Witness	Title

Note: If Contractor or owner is a corporation, Secretary should attest.

Capital Advance Program
Construction Contract
Lump Sum

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

OMB Approval No. 2502-0011
(exp. 9/30/2013)

For use under Section 202 of the Housing Act of 1959
or Section 811 of the National Affordable Housing Act)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article 1.E of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C., 1701 et. seq.).

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations.

This Agreement, made the _____ day of _____, 20____, between _____

_____ (hereinafter called the "Contractor") and

_____ (hereinafter called the "Owner").

Witnesseth, that the Contractor and the Owner, for the consideration hereinafter set out, agree as follows:

Article 1 - Scope of Contract

A. The Contract between the parties is set forth in the "Contract Documents" which consists of this Agreement, the Drawings and Specifications, together with any addenda thereto, the current edition of AIA Document A201, "General Conditions of the Contract for Construction," except all paragraphs concerning arbitration, and Form HUD 2554, "Supplementary Conditions of the Contract for Construction."

B. The Contractor shall furnish all of the materials and perform all of the work (within the property lines) shown on, and in accordance with, the Drawings and Specifications entitled _____

_____ ,

HUD Project No. _____, dated _____.

C. The Drawings, which are numbered _____, and the Specifications, the pages of which are numbered _____,

and addenda numbered _____, have been prepared by _____, ("Design Architect").

The Architect administering the Construction Contract (hereinafter, and elsewhere in the Contract Documents, referred to as the "Architect") is _____

D. A master set of said Drawings and Specifications, identified by the parties hereto and by the Design Architect, the Architect, and the

Contractor's Surety or Guarantor have been placed on file with the Department of Housing and Urban Development ("HUD"), and shall govern in all matters which arise with respect to such Drawings and Specifications.

E. Changes in the Drawings and Specifications or any terms of the Contract Documents, or orders for extra work, or changes by altering or adding to the work, or which will change the design concept, may be affected only with the prior written approval of HUD under such conditions as HUD may establish.

Article 2 - Time

A. The work to be performed under this Contract shall be commenced within _____ days of this Agreement, and shall be completed by _____, 20____. The time by which the work shall be completed may be extended in accordance with the terms of the said AIA General Conditions only with the prior written approval of HUD.

B. The Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from the date of final completion.

C. If the work is not brought to final completion in accordance with the Drawings and Specifications, including any authorized changes, by the date specified above, or by such date to which the contract time may be extended, the sum stated in Article 3A below shall be reduced by the actual cost of taxes and insurance, as approved by HUD, for the period from the scheduled date of completion through the date construction was actually completed, shall be determined. This cost shall be reduced by an amount equal to the project's net operating income (as determined by HUD) for the period upon which the aforementioned actual costs are based.

D. The Owner and Contractor may amend this contract prior to initial endorsement, in a form prescribed by the Commissioner, to provide for an incentive payment to the Contractor, which will result in an increase in the contract sum stated in Article 3A below, if the work is completed before the date specified in this contract. The Contractor will not be entitled to any incentive payment resulting

from early completion if HUD determines that the Contractor's cost certification, if required by Article 7, is fraudulent or materially misrepresents the Contractor's actual cost of construction.

E. The date of final completion shall be the date the HUD representative signs the final HUD Representative's Trip Report provided that the trip report is subsequently endorsed by the Chief Architect.

Article 3 – Contract Sum and Payments

A. The Owner shall pay the Contractor for the performance of the Contract, as hereinafter provided, the sum of \$ _____

B. Each month after the commencement of work hereunder, the Contractor shall make a monthly request on Form HUD 92448 for payment by the Owner for work done during the preceding month. Each request for payment shall be filed at least _____ days before the date payment is desired. Subject to the approval of HUD, the Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the work acceptably complete; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with applicable HUD requirements less (4) 10 percent holdback and less prior payments. The "values" of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgager's Cost Breakdown," attached hereto as Exhibit "A". The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or the vendor's title or lien retention instrument.

C. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the work hereunder is fully complete, provided the following have occurred:

(1) All work hereunder requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(2) All certificates of occupancy, or other approvals, with respect to all units of the project have been issued by State or local governmental authorities having jurisdiction; and

(3) Permission(s) To Occupy (Form HUD-92485) for all units of the project have been issued by HUD.

D. With its final application for payment by the Owner, the Contractor shall disclose, on a form prescribed by HUD, all unpaid obligations contracted in connection with the work performed under this Contract. The Contractor agrees that, within 15 days following receipt of final payment, it will pay such obligations in cash and furnish satisfactory evidence of such payment to the Owner.

Article 4 – Receipts and Releases of Liens

The Owner may require the Contractor to attach to each request for payment its acknowledgement of payment and all subcontractors' and material supplier's acknowledgements of payment for work done and materials, equipment and fixtures furnished through the date covered by the previous payment. Concurrently with the final payment, the Owner may require the Contractor to obtain similar waivers or releases from all subcontractors and material suppliers.

Article 5 – Requirements of Contractor

A. The Contractor shall furnish, at its own expense, all building and

other permits, licenses, tools, equipment and temporary structures necessary for the construction of the project. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and protective covenants, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Contractor further shall comply with the provisions of the Occupational Safety and Health Act of 1970. The Contractor shall immediately notify HUD of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to HUD upon request.

B. If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify the Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications. If the Contractor performs any work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants, without giving such notice to the Architect, it shall bear all cost arising therefrom.

C. Upon completion of construction, the Contractor shall furnish to the Owner a survey showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey shall be prepared by a licensed surveyor who shall certify that the work is installed and erected entirely upon the land covered by the mortgage and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. In addition, the Contractor shall furnish additional surveys when required by the Owner for any improvements, including structures and utilities, not theretofore located on a survey. The Contractor shall furnish copies of such survey required hereunder for HUD.

D. The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from HUD that such landscaping has been finally completed. The Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

Article 6 – Assurance of Completion

The Contractor shall furnish to the Owner assurance of completion of the work in the form of (specify) _____

Such assurance of completion shall run to the Owner and HUD as obligees.

Article 7 – Cost Certification

An identity of interest between the Owner and the Contractor is prohibited. In the event HUD determines that there is an identity of interest between the Owner and the Contractor, the Contractor shall certify on a form prescribed by HUD, its cost incurred in the performance of work under this Contract.

Article 8 – Right of Entry and Interpretation

A. HUD, its agents or assigns, at all times during construction, has the right of entry and free access to the project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the project. For such purpose, the Contractor shall furnish such enclosed working space as HUD may require and find acceptable as to location, size, accommodations and furnishings.

B. HUD shall also have the right to interpret the Contract Documents and to determine compliance therewith.

Article 9 – Assignments, Subcontracts and Termination

A. This Contract shall not be assignable by either party without prior written consent of the other party and HUD, except that the Owner may assign the Contract, or any rights hereunder, to HUD.

B. The Contractor shall not subcontract all of the work to be performed hereunder without the prior written consent of the Owner and HUD.

C. Upon request by the Owner, or HUD, the Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to work to be done and materials and equipment to be furnished hereunder.

D. The Contractor understands that the work under this contract is to be financed by a capital advance to be secured by a mortgage and subject to the terms of a Capital Advance Agreement between the Owner and HUD.

The Contractor further understands that said Capital Advance Agreement provides that in the event of the failure of the Owner to perform its obligations to HUD thereunder, HUD may, as attorney-in-fact for the Owner, undertake the completion of the project in accordance with this Contract. In the event HUD elects not to undertake such completion, the Contractor's obligations under this Contract shall terminate.

In Witness Whereof, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest:	Owner
Witness	By
Witness	Title

(Seal)	Contractor
Witness	By
Witness	Title

Note: If Contractor or Owner is a corporation, Secretary should attest.

Capital Advance Program Construction Contract Cost Plus

Under Section 202 of the Housing Act of 1959 or
Section 811 of the National Affordable Housing Act

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

OMB No. 2502-0011 (exp.9/30/2013)

Public reporting burden for this collection is estimated to average 2 hours per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2502-0011), U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article 1.E of the National Housing Act (Public Law 479, 48 Stat., 1246, 12 U.S.C. 1701 et. seq.). It is provided by contractors and mortgagors to document the terms and conditions of the Construction Contract; i.e., change for extra work or changes by altering or adding to the work, or which will change the design concept of the Construction Document for the approval of the FHA Commissioners. This information is used by HUD to ensure that viable projects are being developed. This information is considered non-sensitive and no assurance of confidentiality is provided. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This Agreement, made the _____ day of _____, 20____, between _____
_____ (hereinafter called the "Contractor") and
_____ (hereinafter called the "Owner").

Witnesseth, that the Contractor and the Owner, for the consideration hereinafter set out, agree as follows:

Article 1 – Scope of Contract

A. The Contract between the parties is set forth in the "Contract Documents" which consists of this Agreement, the Drawings and Specifications, the current edition of AIA Document A201, "General Conditions of the Contract for Construction," except for all paragraphs concerning arbitration and Form HUD 2554, "Supplementary Conditions of the Contract for Construction." The provisions of this instrument and the said HUD Supplementary Conditions take precedence over all inconsistent provisions in the said AIA General Conditions. This Contract constitutes the entire agreement between the parties, and any previously existing contract concerning the work contemplated by the Contract Document is hereby revoked.

B. The Contractor shall furnish all of the materials and perform all of the work (within the property lines) shown on, and in accordance with, the Drawings and Specifications entitled _____

HUD Project No. _____, dated _____.

C. The Drawings, which are numbered _____,
and the Specifications, the pages of which are numbered _____

have been prepared by _____
_____ ("Design Architect").

The Architect administering the Construction Contract (hereinafter, and elsewhere in the Contract Documents, referred to as the "Architect") is _____

D. A master set of said Drawings and Specifications, identified by the parties hereto and by the Design Architect, the Architect, and the Contractor's Surety or Guarantor have been placed on file with the Department of Housing and Urban Development ("HUD"), and shall govern in all matters which arise with respect to such Drawings and Specifications.

E. Changes in the Drawings and Specifications or any terms of the Contract Documents, or orders for extra work, or changes by altering or adding to the work, or which will change the design concept, may be effected only with the prior written approval of HUD under such conditions as HUD may establish.

Article 2 – Time

A. The work to be performed under this Contract shall be commenced within _____ days of this Agreement, and shall be completed by _____, 20____. The time by which the work shall be completed may be extended in accordance with the terms of the said AIA General Conditions only with the prior written approval of HUD.

B. The Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from the date of final completion.

C. If the work is not brought to final completion in accordance with the Drawings and Specifications, including any authorized changes, by the date specified above, or by such date to which the contract time may be extended, the contract sums stated in Article 3A(1) below shall be reduced by the actual cost of taxes and insurance, as approved by HUD, for the period from the scheduled date of completion through the date construction was actually completed. This cost shall be reduced by an amount equal to the project's net operating income (as determined by HUD) for the period upon which the aforementioned actual costs are based.

D. The Owner and Contractor may amend this contract prior to initial endorsement, in a form prescribed by the Commissioner, to provide for an incentive payment to the Contractor, which will result in an increase in the contract sums stated in Article 3A below, if the work is completed before the date specified in this contract. The Contractor will **not** be entitled to any incentive payment resulting from early completion if HUD determines that the Contractor's cost certification, required by Article 10, is fraudulent or materially misrepresents the Contractor's actual cost of construction.

E. The date of final completion shall be the date the HUD representative signs the final HUD Representative's Trip Report provided that the trip report is subsequently endorsed by the Chief Architect.

Article 3 – Contract Sum and Payments

A. (1) Subject to the provisions hereinafter set out, the Owner shall pay to the Contractor for the performance of this Contract the following items in cash:

(a) The actual cost of construction as defined in Article 10 below; plus

(b) A fee of \$ _____. In no event, however, shall the total cash payable pursuant to this paragraph (1) exceed \$ _____.

(2) If, upon completion, the Contractor shall have received cash payments in excess of (a) the actual cost of construction, plus (b) the cash fee specified in paragraph (1), all such excess shall be refunded to the Owner.

B. Each month after the commencement of work hereunder, the Contractor shall make a monthly request on Form HUD-92448 for payment by the Owner for work done during the preceding month. Each request for payment shall be filed at least _____ days before the date payment is desired. Subject to the approval of HUD, the Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the work acceptably completed; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with applicable HUD requirements less (4) 10 percent holdback and less prior payments. The "values" of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown," attached hereto as Exhibit "A". The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument.

C. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the work hereunder is fully completed, provided the following have occurred:

(1) All work hereunder requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(2) All certificates of occupancy, or other approvals, with respect to all units of the project have been issued by State or local governmental authorities having jurisdiction; and

(3) Permission(s) To Occupy (Form HUD-92485) for all units of the project have been issued by HUD.

D. With its final application for payment by the Owner, the Contractor shall disclose, on a form prescribed by HUD, all unpaid obligations contracted in connection with the work performed under this Contract. The Contractor agrees that, within 15 days following receipt of final payment, it will pay such obligations in cash and furnish satisfactory evidence of such payment to the Owner.

Article 4 – Receipts and Releases of Liens

The Owner may require the Contractor to attach to each request for payment its acknowledgement of payment and all subcontractors'

and material supplier's acknowledgements of payment for work done and materials, equipment, and fixtures furnished through the date covered by the previous payment. Concurrently with the final payment, the Owner may require the Contractor to execute a waiver or release of lien for all work performed and materials furnished hereunder, and may require the Contractor to obtain similar waivers or releases from all subcontractors and material suppliers.

Article 5 – Requirements of Contractor

A. The Contractor shall furnish, at its own expense, all building and other permits, licenses, tools, equipment and temporary structures necessary for the construction of the project. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and protective covenants, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Contractor further shall comply with the provisions of the Occupational Safety and Health Act of 1970. The Contractor shall immediately notify HUD of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to HUD upon request.

B. If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify the Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications.

C. Upon completion of construction, the Contractor shall furnish to the Owner a survey showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey shall be prepared by a licensed surveyor who shall certify that the work is installed and erected entirely upon the land covered by the mortgage and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. In addition, the Contractor shall furnish additional surveys when required by the Owner for any improvements, including structures and utilities, not theretofore located on a survey. The Contractor shall furnish copies of such survey required hereunder for HUD.

D. The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from HUD that such landscaping has been finally completed. The Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

Article 6 – Assurance of Completion

The Contractor shall furnish to the Owner assurance of completion of the work in the form of (specify) _____

Such assurance of completion shall run to the Owner and HUD as obligees.

Article 7 – Waiver of Lien or Claim

The Contractor shall file no mechanic's or materialman's lien or maintain any claim against the Owner's real estate or improvements for or on account of any work done, labor performed or materials furnished under this Contract, and shall include in each subcontract a clause which shall impose this requirement on the subcontractor.

Article 8 – Right of Entry and Interpretation

A. HUD, its agents or assigns, at all times during construction, has the right of entry and free access to the project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the project. For such purpose, the Contractor shall furnish such enclosed working space as HUD may require and find acceptable as to location, size, accommodations and furnishings.

B. HUD shall also have the right to interpret the Contract Documents and to determine compliance therewith.

Article 9 – Assignments, Subcontracts and Termination

A. This Contract shall not be assignable by either party without prior written consent of the other party and HUD, except that the Owner may assign the Contract, or any rights hereunder, to HUD.

B. The Contractor shall not subcontract all of the work to be performed hereunder without the prior written consent of the Owner and HUD.

C. Upon request by the Owner, or HUD, the Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to work to be done and materials and equipment to be furnished hereunder.

D. The Contractor understands that the work under this contract is to be financed by a capital advance to be secured by a mortgage and subject to the terms of a Capital Advance Agreement between the Owner and HUD.

The Contractor further understands that said Capital Advance Agreement provides that in the event of the failure of the Owner to perform its obligations to HUD thereunder, HUD may, as attorney-in-fact for the Owner, undertake the completion of the project in accordance

with this Contract. In the event HUD elects not to undertake such completion, the Contractor's obligations under this Contract shall terminate.

Article 10 – Certification of Actual Cost

A. The "actual cost of construction," as used in Article 3 above, shall include all items of cost and expense incurred by the Contractor in the performance of this Contract, including costs and expenses of labor, materials for construction, equipment and fixtures, field engineering, sales taxes, workmen's compensation insurance, social security, public liability insurance, job overhead expenses, and all other expenses directly connected with construction, and including general overhead expenses, but excluding kickbacks, rebate and discounts received in connection with the construction of the project; and excluding any return on or cost of the Contractor's working capital, such return on or cost of working capital being a part of or to be paid from the Contractor's fee or profit.

B. The Contractor shall keep accurate records of account of the said actual cost of construction, and shall upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the project available for inspection by the Owner and HUD.

C. With its final application for payment, the Contractor shall furnish to the Owner a completed "Contractor's Certificate of Actual Cost," which shall be accompanied and supported by an independent public accountant's certificate as to actual cost (in form acceptable to HUD).

D. The Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the project, in the event HUD determines there is an identity of interest between the Owner or the Contractor and any such subcontractor, equipment lessor or supplier.

In Witness Whereof, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest	Owner
Witness	By
Witness	Title

(Seal)	Contractor
Witness	By
Witness	Title

Contractor's Requisition

Project Mortgages

To be submitted to mortgagee in quadruplicate

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0028 (exp. 8/31/2013)

This information is used to verify program benefits consisting of distribution of insured mortgage proceeds when construction costs are involved. The information regarding completed work items is used by HUD to ensure that payments from mortgage proceeds are made for work actually completed in a satisfactory manner. This information is a requirement under Section 207(b) of the National Housing Act (Public Law 479, Stat. 1246, 12 U.S.C. 1701 et. seq) authorizing the Secretary of HUD to insure mortgages. The information collection does not contain information of a sensitive nature.

Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

To (owner)		Requisition Number	
Project	Project Number	Location	

In accordance with the provision of the Construction Contract dated _____ and Contractor's and/or Mortgagor's Cost Breakdown (Schedule of Values) attached thereto, this requisition is submitted for the amount of \$ _____ due for work performed up to the _____ day of _____ and as itemized below by the trades listed in the Schedule of Values.

DIV	Trade Item	Cost as per Cost Breakdown (A)	Enter Amounts to Nearest Even Dollar	
			Amounts Complete (B)	For HUD-FHA Use (C)
3	Concrete	\$	\$	\$
4	Masonry			
5	Metals			
6	Rough Carpentry			
6	Finish Carpentry			
7	Waterproofing			
7	Insulation			
7	Roofing			
7	Sheet Metal			
8	Doors			
8	Windows			
8	Glass			
9	Lath and Plaster			
9	Drywall			
9	Tile Work			
9	Acoustical			
9	Wood Flooring			
9	Resilient Flooring			
9	Painting and Decorating			
10	Specialties			
11	Special Equipment			
11	Cabinets			
11	Appliances			
12	Blinds and Shades, Artwork			
12	Carpets			
13	Special Construction			
14	Elevators			
15	Plumbing and Hot Water			
15	Heat and Ventilation			
15	Air Conditioning			
16	Electrical			
	Accessory Buildings			
2	Earth Work			
2	Site Utilities			
2	Roads and Walks			
2	Site Improvement			
2	Lawns and Planting			
2	Unusual Site Conditions			
1	General Requirements			
1	Bond Premium (\$)			

DIV	Trade Item	Cost as per Cost Breakdown (A)	Enter Amounts to Nearest Even Dollar							
			Amounts Complete (B)			For HUD-FHA Use (C)				
1	Other Fees (\$)									
(1)	Subtotal of Breakdown Items	\$	*	%	\$	**	%	\$		
(2)	Builder's Overhead	\$		%	\$		%	\$		
(3)	Builder's Profit	\$		%	\$		%	\$		
(4)	Total of Cost Breakdown Items	\$			\$			\$		
(5)	Inventory of Materials Stored On-site (See Note Below)				\$			\$		
(6)	Inventory of Materials Stored Off-Site (See Note Below)				\$			\$		
(7)	Sum of Cost Breakdown Items Plus Inventories of Materials				\$			\$		
(8)	Less Net Decrease in Cost as a Result of Approved Changes				\$			\$		
(9)	Total After Adjusting for Net Decrease to Approved Changes				\$			\$		
(10)	Less Retained 10%				\$			\$		
(11)	Bal.: Total Amount Due to Date on Account of Construction Contract				\$			\$		
(12)	Less Previous Payments				\$			\$		
(13)	Net Amount of This Requisition				\$			\$		

I certify that the Work covered by this requisition has been completed in accordance with the Contract Documents, and that I have actually received \$_____ for Work performed and materials purchased up to the _____ day of _____ (date of previous requisition).
Date _____ Contractor _____

* Percentage derived from subtotal of Breakdown Items (col. B divided by col. A) Note: Attached inventory of materials item ized as to quantities and costs.
** (col. C divided by col. A) Exclusive of Bond Premium

For Use of HUD-Federal Housing Commissioner

Date	Net Amount Approved for Payment	Column C Completed by (Mortgage Credit Examiner)
Reviewed and Approved by (Chief, Mortgage Credit)	Director, Housing Development	

Architect's Certificate I certify, based on my on-site observations (or those of my authorized representative) and the data comprising this requisition, that the Work has progressed to the point indicated; that to the best of my knowledge, information and belief the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment of the amount certified.

Date _____ Architect _____

Inspector's Certificate Amount Modified No Modification

I certify that I have visited the site on this date _____, observed the Work, and monitored the log and reports of the Architect (if an architect is administering the Construction Contract); that to the best of my knowledge, information and belief the amount certified represents acceptable Work; and that I have no personal interest, present or prospective, in the property, applicant or proceeds of the mortgage.

Date _____ Inspector _____

Contractor's Prevailing Wage Certificate (For use under all sections of the National Housing Act requiring certification as to payment of prevailing wages. To be completed with each request for insurance of advance of mortgage proceeds which includes a payment on account of construction cost, or at the time the mortgage is presented for insurance pursuant to a commitment to insure upon completion.)

To	Date	Advance No.
Manager	Project Name	
Field Office	Project Number	

The undersigned, as principal contractor in connection with the construction of the above project, states that he/she is fully familiar with applicable wage determination decision of the Secretary of Labor and certifies that:

- A copy of the applicable wage determination decision is posted in a conspicuous place at the site of the work and he/she has required each subcontractor as a part of his/her contract, to agree to pay wages at rates not less than those contained in the decision.
- All laborers and mechanics employed in the construction of the project have been, to the date hereof, paid for such employment at wage rates not less than those contained in the applicable wage determination decision of the Secretary of Labor and no deductions or rebates have been made, either directly or indirectly, from the full weekly wages earned by any person, other than permissible deductions as defined in Regulations of the Secretary of Labor, Part 3 (29 CFR Part 3).
- He/She has fulfilled his/her obligations, to the date hereof, under The Labor Standards Provisions of the Supplementary Conditions of the Contract for Construction and has included said conditions in all subcontracts.

This certificate is executed by the undersigned for the purpose of inducing the Commissioner to approve for insurance that certain mortgage loan, or an advance thereof, made or to be made by the mortgagee in connection with the construction of the project, and with the intent that the Commissioner rely upon this certification to establish compliance with the provisions of Section 212 of the National Housing Act, which provides in part: The Commissioner shall not insure ... unless the principal contractor files a certificate ... certifying that the laborers and mechanics ... have not been paid not less than the wages prevailing ... as determined by the Secretary of Labor..."

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

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. 329, 3802).

Contractor _____ By _____ Date: _____
_____ X _____

Contractor's and/or Mortgagor's Cost Breakdown

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

OMB No. 2502-0044 (exp. 12/31/2009)

Schedules of Values

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Section 227 of the National Housing Act (Section 126 of the Housing Act of 1954, Public Law 560, 12 U.S.C., 1715r), authorizes the collection of this information. The information is required for a general contractor when an identity of interest exists between the general contractor and the mortgagor or when the mortgagor is a non-profit entity and a cost plus contract has been used. The information is used by HUD to facilitate the advances of mortgage proceeds and their monitoring.

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

Date	Sponsor		
Project No.	Building Identification		
Name of Project			Location

This form represents the Contractors and/or Mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. Detailed instructions for completing this form are included on the reverse side.

Line	Div.	Trade Item	Cost	Trade Description
1	3	Concrete		
2	4	Masonry		
3	5	Metals		
4	6	Rough Carpentry		
5	6	Finish Carpentry		
6	7	Waterproofing		
7	7	Insulation		
8	7	Roofing		
9	7	Sheet Metal		
10	8	Doors		
11	8	Windows		
12	8	Glass		
13	9	Lath and Plaster		
14	9	Drywall		
15	9	Tile Work		
16	9	Acoustical		
17	9	Wood Flooring		
18	9	Resilient Flooring		
19	9	Painting and Decorating		
20	10	Specialties		
21	11	Special Equipment		
22	11	Cabinets		
23	11	Appliances		
24	12	Blinds and Shades, Artwork		
25	12	Carpets		
26	13	Special Construction		
27	14	Elevators		
28	15	Plumbing and Hot Water		
29	15	Heat and Ventilation		
30	15	Air Conditioning		
31	16	Electrical		
32		Subtotal (Structures)		
33		Accessory Structures		
34		Total (Lines 32 and 33)		

Line	Div.	Trade Item	Cost	Trade Description			
35	2	Earth Work					
36	2	Site Utilities					
37	2	Roads and Walks					
38	2	Site Improvements					
39	2	Lawns and Planting					
40	2	Unusual Site Condition		Nonresidential and Special Exterior Land Improvement (costs included in trade item breakdown)		Offsite Costs (costs not included in trade item breakdown)	
41		Total Land Improvements					
42		Total Struct. & Land Imprvts.		Description	Est. Cost	Description	Est. Cost
43	1	General Requirements					
44		Subtotal (Lines 42 and 43)					
45		Builder's Overhead					
46		Builder's Profit		Total \$			
47		Subtotal (Lines 44 thru 46)		Other Fees		Total \$	
48				Demolition (costs not included in trade item breakdown)			
49		Other Fees					
50		Bond Premium				Description	Est. Cost
51		Total for All Improvements					
52		Builder's Profit Paid by Means Other Than Cash					
53		Total for All Improvements Less Line 52		Total \$		Total \$	

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

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)

Mortgagor	By	Date	
Contractor	By	Date	
FHA (Processing Analyst)	Date	FHA (Chief, Cost Branch or Cost Analyst)	Date
FHA (Chief Underwriter)		Date	

Instructions for Completing Form HUD-2328

This form is prepared by the contractor and/or mortgagor as a requirement for the issuance of a firm commitment. The firm replacement cost of the project also serves as a basis for the disbursement of dollar amounts when insured advances are requested. A detailed breakdown of trade items is provided along with spaces to enter dollar amounts and trade descriptions.

A separate form is prepared through line 32 for each **structure type**. A summation of these structure costs are entered on line 32 of a master form. Land improvements, General Requirements and Fees are completed through line 53 on the master 2328 **only**.

Date—Date form was prepared.

Sponsor—Name of sponsor or sponsoring organization.

Project No.—Eight-digit assigned project number.

Building Identification—Number(s) or Letter(s) of each building as designated on plans.

Name of Project—Sponsors designated name of project.

Location—Street address, city and state.

Division—Division numbers and trade items have been developed from the cost accounting section of the uniform system.

Accessory Structures—This item reflects structures, such as: community, storage, maintenance, mechanical, laundry and project office buildings. Also included are garages and carports or other buildings.

When the amount shown on line 33 is \$20,000.00 or 2% of line 32 whichever is the lesser, a separate form HUD-2328 will be prepared through line 32 for Accessory Structures.

Unusual Site Conditions—This trade item reflects rock excavation, high water table, excessive cut and fill, retaining walls, erosion, poor drainage and other on-site conditions considered unusual.

Cost—Enter the cost being submitted by the Contractor or bids submitted by a qualified subcontractor for each trade item. These costs will include, as a minimum, prevailing wage rates as determined by the Secretary of Labor.

Trade Description—Enter a brief description of the work included in each trade item.

Other Fees—Includable are fees to be paid by the Contractor, such as sewer tap fees not included in the plumbing contract. Fees paid or to be paid by the Mortgagor are not to be included on this form.

Total For All Improvements—This is the sum of lines 1 through 50 and is to include the total builder's profit (line 46).

Line 52—When applicable, enter that portion of the builder's profit (line 46) to be paid by means other than cash and/or any part of the builder's profit to be waived during construction.

Non-Residential and Special Exterior Land Improvement Costs—Describe and enter the cost of each improvement, i.e. on-site parking facilities including individual garages and carports, commercial facilities, swimming pools with related facilities and on-site features provided to enhance the environment and livability of the project and the neighborhood. The Design Representative and Cost Analyst shall collaborate with the mortgagor or his representative in designating the items to be included.

Off-Site Costs—Enter description and dollar amount including fees and bond premium for off-site improvements.

Demolition—Enter description and dollar amount of demolition work necessary to condition site for building improvements including the removal of existing structures, foundations, utilities, etc.

Other Fees—Enter a brief description of item involved and cost estimate for each item.

Signatures—Enter the firm name, signature of authorized officer of the contractor and/or mortgagor and date the form was completed.

Request for Construction Changes on Project Mortgages

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

OMB Approval No. 2502-0011 (exp. 8/31/2013)

No changes in the drawings and specifications may be effected unless a completed request for construction changes has been filed and approved by HUD in accordance with the Construction Contract. **Read the instructions & Public Burden statement on the back of this form.**

Name and location of this project	Request No.(HUD use only)	Project Number
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Name of Contractor	Name of Mortgagor	Name of Mortgagee
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To the Federal Housing Commissioner: You are requested to consider the following proposed changes in the project. The changes are satisfactory to the parties hereto, as indicated by the signatures below.

Description of Changes	Mortgagor Estimated Effect on Cost + or -	HUD Estimated Effect on Cost + or -	V = Acceptable O = Unacceptable	
			Arch.	Val.
a.				
b.				
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				
l.				
m.				

Amount on deposit with mortgagee to cover increased cost of changes pursuant to conditions of Request No. _____ \$	Total \$	Initial & Date	Initial&Date	Initial&Date
--------------------------------------------------------------------------------------------------------------------	----------	----------------	--------------	--------------

I certify that I have no financial interest in this project beyond the fee for my professional services, and that I have no interest with the mortgagor, contractor, or any subcontractor or supplier. The changes set forth in this request conform to the intent of the contract documents and I recommend that the changes be approved.

Contractor (signature)	Mortgagor (signature)	Mortgagee (signature)
------------------------	-----------------------	-----------------------

The following is required on requests involving cooperatives and non-profit mortgagors with respect to any increase or decrease in cost resulting from acceptable changes: (check appropriate box.)

- The abovesigned contractor agrees to assume any additional costs and agrees that he will not assert any claim against the Mortgagor in connection therewith.
- The abovesigned Mortgagor, acting pursuant to a resolution adopted at a meeting of its stockholders or members, and the abovesigned Contractor, agree to the above described construction changes and agree that the construction contract executed by them (date) _____ is amended by increasing the contract price of \$ _____ set forth in Article 3 thereof to \$ _____ all other provisions of the Construction Contract remain unchanged.
- The abovesigned Mortgagor and the above signed Contractor agree to the construction changes described above and agree that the construction contract executed by them (date) _____ is amended by decreasing the contract price of \$ _____ set forth in Article 3 thereof to \$ _____ ; all other provisions of the construction contract remain unchanged.

Federal Housing Commissioner Findings:			1. Mortgagor's Estimate				2. Net effect on Construction Costs				
a. Effect on cost of previously accepted changes \$	b. Effect on cost to date of all changes \$	c. Percent %		a. Present changes \$	b. Previous changes \$	c. Total \$	d. Percent %				
				<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease	<input type="checkbox"/> Increase <input type="checkbox"/> Decrease					

3. Changes _____ are acceptable and the drawings and specifications amended, provided:

- a. That a total sum of \$ _____ is on deposit with the mortgage to cover net increase in cost resulting from present and previous construction changes. This supersedes any previous requirements. The money will not be released without written consent of HUD prior to final completion and acceptance of the project construction. No further advances of the mortgage proceeds under the Building Loan Agreement will be approved unless the total sum is on deposit with you.
- b. That in order to reflect the net decrease in cost or reduction in mortgage based on net income or number of family units, resulting from acceptable present and previous construction changes, the amount of \$ _____ shall be deducted from the amount entered on the line entitled "Sum of Cost Breakdown Items Plus Inventories of Materials", form HUD-92448. This amount may be modified by later changes.
- c. Consent of surety to these changes is obtained in writing and a signed copy sent to this office prior to effecting the change.
- d. There is compliance with the conditions stated on the back of this form.

4. <input type="checkbox"/> Changes _____ are not acceptable. See "Reasons for Unacceptability" on the back of this form.	Mortgage Credit Initial & Date
----------------------------------------------------------------------------------------------------------------------------------	--------------------------------

HUD analysis and findings reviewed and approved: Director, Housing Development Division (signature)	Date	Federal Housing Commissioner Signature of authorized agent
--------------------------------------------------------------------------------------------------------	------	---------------------------------------------------------------

Public Reporting Burden for this collection is estimated to average 2 hours per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Reports Management Officer, Paperwork Reduction Project (2502-0011), U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Section 5 of the United States Housing Act of 1937, as amended. It is provided by contractors, mortgagors and mortgagees to obtain the FHA Commissioner's approval of changes in contract drawings and specifications, and this information is used to ensure that viable projects are developed. This information is used by HUD to ensure that viable projects are being developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Instructions

Send the original and six copies to HUD through the mortgagee.

Under "Description of Changes" describe each proposed change and enter the amount by which the construction cost will be increased or decreased as the net result of each proposed change. Attach documentation including (1) reason for each change, (2) general scope, (3) full detailed description of work to be omitted and/or added and the cost for each trade affected, and (4) reference any attachments showing proposed revisions.

Estimate the cost of each change on the basis of the current cost of items omitted, substituted or added. Estimates include job overhead and builder's fee, or job overhead and general overhead, as applied in the HUD estimate of the project. No allowance for "Builder's and Sponsor's Profit and Risk" is included. No architect's or engineer's fee is included.

This form is not used for off-site changes. Such changes must be submitted in writing, using this form as a guide.

To be acceptable to HUD a proposed change must be due to necessity, or be an appropriate betterment, or qualify as an equivalent. In accepting any changes, it is assumed that they will be executed. If an accepted change is not executed, it must be nullified by substituting a Request for Construction Changes amending the drawings and specifications so as to restore the drawings and specifications to prior status or to a status acceptable to HUD.

Send requests for a time extension on a separate form.

Conditions of Acceptance or Reasons for Unacceptability

When the HUD estimated cost of all accepted changes results in a net decrease in the total construction cost, the insurable mortgage will be similarly decreased; but if the net effect is an increase, the additional costs will be defrayed by the mortgagor. The acceptance of any change or changes involving a net increase does not increase the mortgage amount.

Construction Contract Incentive Payment

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

Must be executed prior to initial closing (insurance of advances) or upon execution of the construction contract (insurance upon completion).

In any case where there is no identity between the Owner and the Contractor, the parties may amend the Construction Contract to provide for the payment of an additional sum to the Contractor as an incentive for completing the project earlier than the completion date specified in the contract, or by such date to which the contract completion may be extended.

The Construction Contract - Lump Sum (Form HUD-92442) may be amended by adding the following paragraph by rider:

Article 3. Contract Sum and Payments (cont.)

If the work is completed prior to the time for completion specified in the contract, the Owner shall pay the Contractor, in addition to the contract sum stated herein, an amount equal to _____ * percent of the amount by which the sum of the Commissioner's estimates of interest, real estate taxes, insurance and mortgage insurance premium during construction, totaling the amount of \$_____, ** exceeds the Owner's certified cost of these same items as approved by the Commissioner through the final completion date. No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the actual cost of construction.

The Construction Contract - Cost Plus (Form HUD-92442-A) may be amended by striking paragraph A(3) from Article 3 and adding the following paragraphs by rider:

Article 3 - Payments (cont.)

(3) If the work is completed prior to the time for completion specified in this contract, the Owner shall make an incentive payment to the Contractor. The amount of the payment shall be ascertained according to the instructions on the attachment entitled Incentive Payment Computation which is made a part hereof.

(4) If, upon completion, the Contractor shall have received cash payments in excess of (a) the actual cost of construction, plus (b) the cash fee specified in paragraph (1), plus the incentive payment under the provisions of paragraph (3), all such excess shall be refunded to the Owner.

(5) No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the actual cost of construction.

In Witness Whereof, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest	Owner
Witness	By
Witness	Title

(Seal)	Contractor
Witness	By
Witness	Title

Note: If contractor or owner is a corporation, Secretary should attest.

* Not to exceed 50%

** Insert here that portion of the sum of interest, taxes, insurance, and Mortgage Insurance Premium that appear in Section G of Form HUD-92264 that are attributable to the construction period. For example, if the construction period also shown in Section G of Form HUD-92264 is estimated to be 15 months, interest, taxes and insurance have been calculated for a 17 month period. Only a portion (15/17) may be included in the savings computation for these items. Similarly, the MIP must be prorated and (15/24's) would be included as this item is computed on an annual basis. In addition, if there has been a change in the interest rate charged for the construction period, the dollar amount included in Section G of Form HUD-92264 must be adjusted and the adjusted amount reflected in the savings computation.

Incentive Payment Computation

To be completed at completion of the Project Construction (see Note 2)

Step 1. Soft Cost Computations

- (a) Enter the sum of HUD's estimated cost of interest, real estate taxes, insurance and Mortgage Insurance Premium from Section G, Form HUD-92264. ** (see other side) \$ _____
- (b) Enter the Owner's certified cost of these same items as approved by the Commissioner through the final completion date. \$ _____
- (c) Subtract 1(b) from 1(a). If 1(b) exceeds 1(a) enter 0. \$ _____

Step 2. Construction Cost Computations

- (a) Enter lesser of (1) HUD's estimated cost of physical construction (see Note 1) or (2) Cash upset price set out in Article 3.A of the Construction Contract. \$ _____
- (b) Enter HUD's estimated amount of the net increase in cost or net decrease in cost resulting from approved construction changes from the final Form HUD-92437. \$ _____
- (c) Enter sum of 2(a) and 2(b) if approved change orders resulting in construction cost increase. If approved changes resulted in a decrease in cost, subtract 2(b) from 2(a) and enter the difference. \$ _____
- (d) Enter the Contractor's actual certified cost of physical construction (including Builder's Profit). \$ _____
- (e) If 2(c) exceeds 2(d) enter difference here. If 2(d) exceeds 2(c) enter 0. \$ _____

Step 3. Incentive Payment Computations

- (a) Enter the sum of Step 1(c) and 2(e). \$ _____
- (b) Multiply 3(a) by _____% (Note 2) to obtain amount of incentive payment. \$ _____

Note 1. HUD's estimate of the cost of physical construction shall be determined by adding together the following items that appear in Section G of Form HUD-92264, Total Land Improvements, Total Structures, General Requirements, Builder's Profit, Builder's General Overhead, Bond Premium and Builder's Other Fees.

Note 2. This blank should be completed on or before initial closing (insurance of advances) or upon execution of the construction contract (insurance upon completion) of the loan and the percentage to be inserted must not exceed 50%.

Construction Contract Incentive Payment

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

OMB Approval No. 2502-0297
(exp. 8/31/2013)

Under Section 202 of the Housing Act of 1959, as amended by
Sec. 801 of NAHA or Section 811 of the National Affordable
Housing Act

Must be executed prior to initial closing.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

The Owner and the Contractor may amend the Construction Contract to provide for the payment of an additional sum to the Contractor as an incentive for completing the project earlier than the completion date specified in the contract, or by such date to which the contract completion may be extended.

The Construction Contract - Lump Sum (Form HUD-92442-CA) may be amended by adding the following paragraph by rider:

Article 3. Contract Sum and Payments (cont.)

If the work is completed prior to the time for completion specified in the contract, the Owner shall pay the Contractor, in addition to the contract sum stated herein, an amount equal to _____* percent of the amount by which the sum of HUD's estimates of real estate taxes and insurance during construction, totaling the amount of \$_____, ** exceeds the Owner's certified cost of these same items as approved by HUD through the final completion date. No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the actual cost of construction.

The Construction Contract - Cost Plus (Form HUD-92442-CA) may be amended by striking paragraph A(3) from Article 3 and adding the following paragraphs by rider:

Article 3 - Payments (cont.)

(3) If the work is completed prior to the time for completion specified in this contract, the Owner shall make an incentive payment to the Contractor. The amount of the payment shall be ascertained according to the instructions on the attachment entitled Incentive Payment Computation which is made a part hereof.

(4) If, upon completion, the Contractor shall have received cash payments in excess of (a) the actual cost of construction, plus (b) the cash fee specified in paragraph (1), plus the incentive payment under the provisions of paragraph (3), all such excess shall be refunded to the Owner.

(5) No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the actual cost of construction.

In Witness Whereof, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest	Owner
Witness	By
Witness	Title
(Seal)	Contractor
Witness	By
Witness	Title

Note: If Contractor or Owner is a corporation, Secretary should attest.

* Not to exceed 50%

** Insert here that portion of the sum of taxes and insurance that appear in Section G of Form HUD-92264 that are attributable to the construction period. For example, if the construction period also shown in Section G of Form HUD-92264 is estimated to be 15 months, taxes and insurance have been calculated for a 17 month period. Only a portion (15/17) may be included in the savings computation for these items.

Incentive Payment Computation

To be completed at completion of the Project Construction (see Note 2)

Step 1. Soft Cost Computations

- (a) Enter the sum of HUD's estimated cost of interest, real estate taxes, insurance and Mortgage Insurance Premium from Section G, Form HUD-92264. ** (see other side) _____ \$
- (b) Enter the Owner's certified cost of these same items as approved by the Commissioner through the final completion date. \$ _____
- (c) Subtract 1(b) from 1(a). If 1(b) exceeds 1(a) enter 0. \$ _____

Step 2. Construction Cost Computations

- (a) Enter lesser of (1) HUD's estimated cost of physical construction (see Note 1) or (2) Cash upset price set out in Article 3.A of the Construction Contract). \$ _____
- (b) Enter HUD's estimated amount of the net increase in cost or net decrease in cost resulting from approved construction changes from the final Form HUD-92437. \$ _____
- (c) Enter sum of 2(a) and 2(b) if approved change orders resulting in construction cost increase. If approved changes resulted in a decrease in cost, subtract 2(b) from 2(a) and enter the difference. \$ _____
- (d) Enter the Contractor's actual certified cost of physical construction (including Builder's Profit). \$ _____
- (e) If 2(c) exceeds 2(d) enter difference here. If 2(d) exceeds 2(c) enter 0. \$ _____

Step 3. Incentive Payment Computations

- (a) Enter the sum of Step 1(c) and 2(e). \$ _____
- (b) Multiply 3(a) by _____% (Note 2) to obtain amount of incentive payment. \$ _____

Note 1. HUD's estimate of the cost of physical construction shall be determined by adding together the following items that appear in Section G of Form HUD-92264, Total Land Improvements, Total Structures, General Requirements, Builder's Profit, Builder's General Overhead, Bond Premium and Builder's Other Fees.

Note 2. This blank should be completed on or before initial closing of the loan and the percentage to be inserted must not exceed 50%.

Regulatory Agreement Multifamily Housing Projects

Instructions to Closing Attorney

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

Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits

1. Form of Mortgagor

- a. Corporate Mortgagor - any form of Corporate Charter may be used which:

- (1) contains nothing inconsistent with the Regulatory Agreement,
- (2) gives the corporation powers necessary to operate the project and execute the note and mortgage, and
- (3) specifically authorizes the execution of the regulatory Agreement.

Suggested charter provisions to accomplish the above purposes are attached.

- b. Partnership Mortgagor - Unless all general partners execute the Regulatory Agreement, a copy of the partnership agreement should be furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement. It should further contain a provision substantially as follows:

“The partnership is authorized to execute a note and mortgage in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming general partner shall as a condition of receiving an interest in the partnership agree to be bound by the note, mortgage, and Regulatory Agreement and other documents required in connection with the FHA insured loan to the same extent and on the same terms as the other general partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

- c. Trust - any Trust Agreement before it is finally accepted generally should:

- (1) Give the trustee the powers necessary to execute the note and mortgage;
- (2) specifically authorize the execution of the Regulatory Agreement;
- (3) contain nothing inconsistent with the Regulatory Agreement;
- (4) prohibit the transfer of beneficial interest prior to completion of the project without the prior written consent of the Secretary and prohibit the transfer of such interest subsequent to completion of the project unless the new beneficiary assumes and agrees to be bound by the Regulatory Agreement; and
- (5) require that the Secretary be advised ten (10) days prior to any proposed transfers of beneficial interests.

2. The Section of the National Housing Act under which the mortgage was originally endorsed for insurance or the fact that the mortgage originally was a Secretary-held purchase money mortgage shall be set out in the heading of the Agreement under the item “mortgage.”

3. The names of all mortgagors including all beneficiaries of any trust shall be set out in the first unnumbered paragraph of the Agreement in the place for listing the names of the parties. Where any such person is signing the Agreement as trustee or in some other representative capacity, this fact shall be clearly set out both in this first paragraph and in an identical manner at the end of the Agreement where such person signs. The name of the person signing in a

representative capacity should also be set out in his individual capacity in Paragraph 17. For example: a party may be designated, “Mr. Jones, as trustee of Sara Jones Trust,” be listed in paragraph 17 as “Mr. Jones, individually,” and sign the Agreement as “Mr. Jones, trustee of the Sara Jones Trust.” This would make the Sara Jones Trust responsible for carrying out the provisions of the Regulatory Agreement, but Mr. Jones would be responsible individually only for his own acts.

4. In all cases involving the issuance of a commitment to insure there shall be added to the mortgage a provision substantially as follows:

“The Regulatory Agreement of even date herewith entered into between the Mortgagors (Grantors) herein and the Secretary of Housing and Urban Development which is being recorded simultaneously herewith, is incorporated in and made a part of this mortgage (deed of trust). Upon default under the Regulatory Agreement and upon request by the Secretary, the Mortgagee, at its option, may declare this mortgage (deed of trust) in default and may declare the whole of the indebtedness secured hereby to be due and payable.”

If the mortgage is already on record, it should be modified to incorporate the Regulatory Agreement. Ordinarily this may be done by a separate Modification Agreement executed by the mortgagor and mortgagee.

5. The Regulatory Agreement shall be executed by the Mortgagor and Secretary and recorded at the expense of the Mortgagor prior to endorsement for insurance, prior to consent to a conveyance in existing insured mortgage cases, or prior to the conveyance to a purchaser in sales cases.
6. Since the requirements for execution vary from state to state, space is left at the end of the printed form for proper execution. Generally, acknowledgment by each party will be required and the form of acknowledgment used in the mortgage or deed of trust would be acceptable.
7. If the mortgage is insured pursuant to Section 232, Par. 4 of the Regulatory Agreement shall be stricken and the deletion appropriately approved by the parties.
8. The Agreement is to be executed in the name of the Secretary by the Field Office Manager.
9. A **legal description** of the property shall be attached.
10. Whenever this Agreement is executed by a person not liable for the payment of the note and mortgage, such person shall be listed in Paragraph 17. If all persons executing this Agreement are so liable, the word “none” should be inserted in Paragraph 17 or Paragraph 17 should be stricken in its entirety.
11. In the event the project is to be insured under section 232, and the owner is to lease the project, the lessee shall execute FHA Form No. 2466-nhl.
12. The dollar amount to be inserted in the first paragraph of 2(a) is 1/12 the annual Reserve for Replacements recited in the commitment.

Corporate Charter Provisions

Article Purposes

The purpose for which the corporation is formed and the business to be carried on and the objectives to be effected by it are:

Section 1. (a) To create a private corporation to construct or to acquire a housing project or projects, and to operate the same; (b) to enable the financing of the construction of such rental housing with the assistance of mortgage insurance under the National Housing Act; (c) to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to rents, sales, charges, capital structure, rate of return and methods of operation; (d) to any acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary for the construction and operation of such project; and (e) to borrow money, and to issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien, in furtherance of any or all of the objects of its business in connection with said project.

Article Powers

Section 1. The corporation shall have the power to do and perform all things whatsoever set out in Section 1 of Article _____ Purposes above, and necessary or incidental to the accomplishments of said purposes.

Section 2. The corporation, specifically and particularly, shall have the power and authority to enter into a Regulatory Agreement setting out the requirements of the Secretary of Housing and Urban Development.

Regulatory Agreement for Multifamily Housing Projects

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

Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits

Project Number		Mortgagee	
Amount of Mortgage Note		Date	
Mortgage Recorded	State	County	Date
	Book	Page	Originally endorsed for insurance under Section

This Agreement entered into this _____ day of _____, 20____ between _____ whose address is _____

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described note or in consideration of the consent of the Secretary to the transfer of the mortgaged property or the sale and conveyance of the mortgaged property by the Secretary, and in order to comply with the requirements of the National Housing Act, as amended, and the Regulations adopted by the Secretary pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage, or during any time the Secretary is obligated to insure a mortgage on the mortgage property:

1. Owners, except as limited by paragraph 17 hereof, assume and agree to make promptly all payments due under the note and mortgage.
2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Secretary of an amount equal to \$ _____ per month unless a different date or amount is approved in writing by the Secretary.

Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event that the owner is unable to make a mortgage note payment on the due date and that payment cannot be made prior to the due day of the next such installment or when the mortgagee has agreed to forgo making an election to assign the mortgage to the Secretary based on a monetary default, or to withdraw an election already made, the Secretary is authorized to instruct the mortgagee to withdraw funds from the reserve fund for replacements to be applied to the mortgage payment in order to prevent or cure the default. In addition, in the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

- (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.

3. Real property covered by the mortgage and this agreement is described in Schedule A attached hereto.

(This paragraph 4 is not applicable to cases insured under Section 232.)

4. (a) Owners shall make dwelling accommodation and services of the project available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing by the Secretary, for any project subject to regulation of rent by the Secretary. Accommodations shall not be rented for a period of less than thirty (30) days, or, unless the mortgage is insured under Section 231, for more than three years. Commercial facilities shall be rented for such use and upon such terms as approved by the Secretary. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of Owners and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Secretary thereof.
 - (b) Upon prior written approval by the Secretary, Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule. Approval of charges for facilities and services is not required for any project not subject to regulation of rent by the Secretary.
 - (c) For any project subject to regulation of rent by the Secretary, the Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

- (i) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or;
 - (ii) Deny the increase stating the reasons therefor.
5. (a) If the mortgage is originally a Secretary-held purchase money mortgage, or is originally endorsed for insurance under any Section other than Sections 231 or 232 and is not designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.
- (b) If the mortgage is originally endorsed for insurance under Section 221, Owners shall in selecting tenants give to displaced persons or families an absolute preference or priority of occupancy which shall be accomplished as follows:
- (1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by the Secretary, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants;
 - (2) Thereafter, and on a continuing basis, such preferred applicants shall be given preference over nonpreferred applicants in their placement on a waiting list to be maintained by the Owners; and
 - (3) Through such further provisions agreed to in writing by the parties.
- (c) Without the prior written approval of the Secretary not more than 25% of the number of units in a project insured under Section 231 shall be occupied by persons other than elderly persons.
- (d) All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of the Owners to obtain occupancy by elderly persons.
6. Owners shall not without the prior written approval of the Secretary:
- (a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property.
 - (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from surplus cash, except for reasonable operating expenses and necessary repairs.
 - (c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property.
 - (d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project.
 - (e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:
 - (1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;
 - (2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;
 - (3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and
 - (4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.
 - (f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.
 - (g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.
 - (h) Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.
7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.
8. Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.
9. (a) Any management contract entered into by Owners or any of them involving the project shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.
- (b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
- (c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.

- (d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.
- (e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.
- (f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.
- (g) All rents and other receipts of the project shall be deposited in the name of the project in a financial institution, whose deposits are insured by an agency of the Federal Government. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash as permitted by paragraph 6(e) above. Any Owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall hold such funds in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.
- (h) If the mortgage is insured under Section 232:
- (1) The Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as a nursing home and shall not lease all or part of the project except on terms approved by the Secretary.
 - (2) The Owners shall suitably equip the project for nursing home operations.
 - (3) The Owners shall execute a Security Agreement and Financing Statement (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the insured mortgage. The Security Agreement and Financing Statement shall constitute a first lien upon such equipment and shall run in favor of the mortgagee as additional security for the insured mortgage.
 - (i) If the mortgage is insured under Section 231, Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as housing for the elderly.
- 10.** Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin, including Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 82 Stat. 73), as amended, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100, 107 and 110, and Subparts I and M of Part 200).
- 11.** Upon a violation of any of the above provisions of this Agreement by Owners, the Secretary may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Owners as their 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 the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Secretary may:
- (a) (i) If the Secretary holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;
 - (ii) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;
 - (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Owners' obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project.
 - (c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.
 - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
- 12.** As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Secretary because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Secretary their rights to the rents, profits, income and charges of whatsoever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

13. As used in this Agreement the term:

- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;
- (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;
- (d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;
- (e) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto;
- (f) "Surplus Cash" means any cash remaining after:
 - (1) the payment of:
 - (i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;
 - (ii) All amounts required to be deposited in the reserve fund for replacements;
 - (iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
 - (2) the segregation of:
 - (i) An amount equal to the aggregate of all special funds required to be maintained by the project; and
 - (ii) All tenant security deposits held.
- (g) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project.

- (h) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;
 - (i) "Section" refers to a Section of the National Housing Act, as amended.
- (j) "Displaced persons or families" shall mean a family or families, or a person, displaced from an urban renewal area, or as the result of government action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970.
- (k) "Elderly person" means any person, married or single, who is sixty-two years of age or over.

14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Secretary and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

16. The invalidity of any clause, part or provisions of this Agreement shall not affect the validity or the remaining portions thereof.

17. The following Owners:

Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

- (a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and
- (b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

(To be executed with formalities for recording a deed to real estate.)

Capital Advance Program Regulatory Agreement

Housing for the Elderly or Handicapped (Nonprofit)

Section 202 of the Housing Act of 1959 or Section 811
of the National Affordable Housing Act.

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

OMB Approval No. 2502-0470
(Expires 5/31/2010)

See final page for Public Burden statement.

This agreement entered into _____ day of _____, 20____, between _____
_____ whose address is _____

hereinafter called Mortgagor, and the undersigned Secretary of Housing and Urban development hereinafter called HUD.

In consideration of the making of the capital advance by HUD and the disbursement of any part thereof, and in order to comply with the requirements of the Housing Act of 1959 or National Affordable Housing Act of 1990 and the Regulations adopted by the Secretary pursuant thereto, the Mortgagor agrees for itself, its successors and assigns, and any owner of the mortgaged property, that in connection with the mortgaged property and the project operated thereon and so long as the capital advance is outstanding:

1. The Note and Mortgage bear no interest and repayment is not required so long as the housing remains available for very low-income elderly persons or very low-income persons with disabilities (whichever is applicable).
2. Mortgagor will establish and maintain a special fund to be known as the revenue fund account in a bank which is a member of the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund, into which will be deposited all rentals, charges, income and revenue arising from the operation or ownership of the project. The bank in which this account is established shall provide collateral acceptable to HUD to equal the maximum amount in the account at any one time when such amount exceeds \$100,000. If the bank will not provide appropriate collateral in such instances, the Mortgagor will be required to establish accounts in two or more banks so that the total amount on deposit at any time does not exceed \$100,000 in any one bank. Expenditures shall be made from the revenue fund account only in accordance with the operating budget submitted to and approved by HUD.
3. Not later than 30 days prior to the beginning of each fiscal year, the Mortgagor shall submit an operating budget for that fiscal year to HUD. The budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incident to the operation of the project; and shall show the expected revenue to pay such expenses, including reserve fund deposits. The expenses incurred and disbursements shall not exceed the reasonable and necessary amount thereof, and the Mortgagor will not expend any amount or incur any obligations in excess of the amounts approved in the annual operating budget except upon written certification by the Mortgagor to HUD that such expenses were unanticipated and are necessary and provided further, that nothing in this section shall limit the amount which the Mortgagor may expend from funds ob-

tained from some other source than project revenues or other funds required of the Mortgagor pursuant to this Agreement or the Capital Advance Agreement.

4. As security for the Capital Advance for the required payments under this Agreement into the reserve fund for replacements, and for all other obligations of the Mortgagor under this Agreement, the Mortgagor hereby assigns, pledges and mortgages to HUD all its rights to the income and charges of whatever sort which it may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents or project income in the Mortgage referred to herein. Until a default occurs under this Agreement, however, permission is granted to Mortgagor to collect and retain under the provisions of this Agreement such rents, income, operating surplus and charges, but upon default this permission is terminated, as to all rents, income, operating surplus and charges due or collected thereafter.
5. (a) Mortgagor will establish and maintain a reserve fund for replacements in a separate account in a bank which is insured by the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Concurrently with the effective commencement of rental assistance payments under the Project Rental Assistance Contract, the Mortgagor will deposit an amount equal to \$ _____ per month unless a different date or amount is approved in writing by HUD.

Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be subject to the control of HUD. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project for any other purpose, may be made only after the consent in writing of HUD. In the event of a default in the terms of the mortgage, HUD may demand the full or partial application of the balance in such fund to be amount due on the mortgage debt.
- (b) Mortgagor will deposit the minimum capital investment with an escrow agent acceptable to HUD pursuant to Regulations.
- (c) Within 60 days after the end of each fiscal year, any residual receipts realized from the operation of the mortgaged property shall be deposited in a separate

residual receipts account. Residual receipts shall be under the control of HUD and shall be disbursed only at the discretion of HUD for such purpose as it may determine to be necessary or appropriate.

6. The real property covered by the Mortgage and this Agreement is described in Schedule A attached hereto.

7. Mortgagor shall not without the written approval of the Secretary;

- (a) Transfer, dispose of or encumber any of the mortgaged property. Any such transfer shall be only to a person or persons or corporation satisfactory to and approved by HUD, who shall, by legal and valid instrument in writing, to be recorded or filed in the same recording office in which conveyances of the property covered by the Mortgage are required to be filed or recorded, duly assume all obligations under this Agreement and under the Note and Mortgage;
- (b) Assign, transfer, dispose of, or encumber any personal property, including rents or charges, and shall not disburse or pay out any funds except as provided herein and in the Capital Advance Agreement.
- (c) Remodel, reconstruct, add to, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
- (d) Pay any compensation or make any distribution of income or other assets to any of its officers, directors or stockholders;
- (e) Enter into any contract or contracts for supervisory or managerial services;
- (f) Require as a condition of occupancy or leasing of any unit or residential space in the project, any consideration or deposit other than a security deposit in an amount equal to one month's total tenant payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Mortgagor may collect the security deposit on an installment basis.

The security deposits must be placed in a segregated interest-bearing account. A record shall be maintained of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement, the Mortgagor shall allocate to the family's balance, the interest accrued on the balance during the year. Unless prohibited by State or local law, the Mortgagor may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year. The amount of the segregated, interest-bearing account maintained by the Mortgagor must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments.

The Mortgagor must comply with any applicable State and local laws concerning interest payments on security deposits.

The Mortgagor, subject to State and local law, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease in accordance with the Regulations.

- (g) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by HUD.
 - (h) Amend its articles of incorporation or by-laws other than as permitted under the terms of the articles of incorporation approved by HUD.
8. Mortgagor shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good and substantial repair and condition; **provided that**, in the event all or any of the buildings covered by the Mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the Mortgage.
9. Mortgagor shall not file any petition in bankruptcy or insolvency, or for a receiver, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors; or permit an adjudication in bankruptcy, or insolvency, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within 45 days.
10. Mortgagor shall from funds other than project income immediately satisfy or release any mechanic's lien, or any other lien which attaches to the mortgaged property or any personal property used in the operation of the project, and shall dismiss or have dismissed or vacated any receivership, or petition in bankruptcy or assignment for benefit of creditors, creditors bill or insolvency proceeding involving the project or the mortgaged property.
11. (a) If the Mortgagor has or comes to have any nonproject funds, all income and other funds of the mortgaged project shall be segregated from any such funds of the Mortgagor and segregated from any funds of any other corporations or persons. Income and other funds pledged to the mortgaged project shall be expended only for the purposes of the project.
- (b) Mortgagor shall provide for the management of the project satisfactory to HUD. Any management contract entered into by the Mortgagor involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by HUD addressed to the Mortgagor and the management agent. Upon receipt of such request the Mortgagor shall immediately move to terminate

- the contract within a period of not more than 60 days and shall make arrangements satisfactory to HUD for continuing proper management of the project.
- (c) Neither Mortgagor nor its agents shall make any payments for services, supplies or materials unless such services are actually rendered for the project or such supplies or materials are delivered to the project and are reasonably necessary for its operation. Payments for such services or materials shall not exceed the amount ordinarily paid for such services, supplies or materials in the area where the services are rendered or the supplies or materials furnished.
- (d) The mortgaged property, equipment, buildings, plans, offices, devices, books, apparatus, contracts, records, documents, and all other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD and its duly authorized agents. Mortgagor and its successors, assigns or its agents shall retain copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by HUD or its duly authorized agents.
- (e) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of HUD.
- (f) Within 60 days following the end of each fiscal year HUD shall be furnished with a complete annual financial report based upon an examination of the books and records of Mortgagor prepared in accordance with the requirements of HUD, certified to be an officer of the Mortgagor and, when required by HUD, prepared and certified by a Certified Public Accountant, or other person accepted to HUD.
- (g) At the request of HUD, its agents, employees, or attorneys, the Mortgagor shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the Mortgage and any other information with respect to the Mortgagor or the mortgaged property and of the project which may be requested.
- (h) All receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the FDIC, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project. Any person receiving funds of the project shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any person receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.
- (i) Mortgagor shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect a license to operate the project from the State and/or other licencing authority. Mortgagor shall lease any portion of the project only on terms approved by HUD.
- (j) Mortgagor shall not collect from tenants or occupants or prospective tenants or occupants of the project any admission fee, founder's fee, life-care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.
- (k) No officer, director, trustee, member, stockholder nor authorized representative of the Mortgagor except for management by sponsor or non-profit affiliate, shall have any financial interest in any contractual arrangement entered into by the Mortgagor in connection with rendition of services, the provision of goods or supplies, management of the project, procurement of the site or other matters whatsoever.
12. (a) If project is funded under Section 202 of the Housing Act of 1959, as amended, Mortgagor will limit public occupancy of the project to elderly families and individuals as defined in Section 202 of the Housing Act of 1959, and applicable HUD Regulations. If project is funded under Section 811 of the National Affordable Housing Act of 1990, Mortgagor will limit public occupancy of the project to persons with disabilities as defined in Section 811 of the National Affordable Housing Act of 1990, and applicable HUD Regulations. The criteria governing eligibility of tenants for admission to Section 202 or Section 811 units and the conditions of continued occupancy shall be in accordance with the Project Rental Assistance Contract.
- (b) Except as provided in (d) below Mortgagor will make its dwelling accommodations and services available to eligible occupants at charges established in accordance with a schedule to be approved in writing by HUD. Such accommodations shall not be rented for a period less than 30 days. Commercial facilities, if any, shall be rented only in accordance with a schedule of charges fixed by the Mortgagor and approved in writing by HUD. Subleasing of dwelling accommodations or commercial facilities shall be permitted only upon the terms and conditions approved by HUD in writing.
- (c) Upon prior written approval by the Secretary, Mortgagor may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Mortgagor for any facilities and/or services which may be furnished by the Mortgagor or others to such tenant upon request, in addition to the facilities and services included in the approved Project Rental Assistance Contract.
- (d) Nothing contained in this Agreement shall be construed to relieve the Mortgagor of any obligations under the Project Rental Assistance Contract.

13. Mortgagor will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, age, sex, handicap, familial status or national origin, including Title VI of the Civil Rights Act of 1964 (42U.S.C.2000d-1), the Fair Housing Act (42U.S.C.3601), Section 504 of the Rehabilitation Act of 1973(29U.S.C.794), Age Discrimination Act of 1975(42U.S.C.6101) Executive Orders 11063 and 11246, Section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24CFR part 200, subpart M.
14. No litigation seeking the recovery of a sum in excess of \$5,000 nor any action for specific performance or other equitable relief shall be instituted nor shall any claim for a sum in excess of \$5,000 be settled or compromised by the Mortgagor unless prior written consent thereto has been obtained from HUD. Such consent may be subject to such terms and conditions as HUD may prescribe.
15. Upon a violation of any of the above provisions of this Agreement by Mortgagor, HUD may give written notice, thereof, to Mortgagor, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to HUD, be designated by the Mortgagor as its legal business address. If such violation is not corrected to the satisfaction of HUD within 30 days after the date such notice is mailed or within such further time as HUD determines is necessary to correct the violation, without further notice HUD may declare a Default under this Agreement effective on the date of such declaration of default and such default HUD may:
- (a) Take possession of the project, bring any action necessary to enforce any rights of the Mortgagor growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as HUD in its discretion determines that the Mortgagor is again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the Note and Mortgage, or require Power of Attorney from Mortgagor to effectuate transfer of the project to a HUD approved nonprofit corporation.
 - (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Mortgagor's obligations under this Agreement and under the Note and Mortgage, and the necessary expenses of preserving the property and operating the project.
 - (c) Declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage.
 - (d) 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 property in accordance with the terms of this Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
- (e) Require the Mortgagor to transfer all of its right title and interest in the project and to all project assets to a private nonprofit corporation designated by HUD and, for this purpose the Mortgagor hereby constitutes and appoints HUD its true and lawful attorney-in-fact, with full power of substitution in the premises, to transfer the project and all project assets to the private nonprofit corporation designated by HUD, if the Mortgagor fails or refuses to make such a transfer as required by HUD.
16. (a) Mortgagor has executed the Project Rental Assistance Contract. The terms of the Project Rental Assistance Contract, when executed, shall be incorporated by reference into this Regulatory Agreement.
- (b) A violation of the Project Rental Assistance Contract may be construed to constitute a default hereunder in the sole discretion of HUD.
- (c) In the event said Project Rental Assistance Contract expires or terminates before the expiration or termination of this Agreement, the provisions of this paragraph and any other reference to said Contract, and to assisted units contained herein shall be self-cancelling and shall no longer be effective as of the date of the expiration or termination of the Project Rental Assistance Contract.
17. As used in this Agreement the term:
- (a) "Default" means a default declared by HUD when a violation of this Agreement is not corrected to its satisfaction within the time allowed by this Agreement or such further time as may be allowed by HUD after written notice;
 - (b) "Distribution" means any withdrawal or taking of cash or other assets of the project other than for payment of reasonable expenses incident to its construction, operation and maintenance;
 - (c) "Mortgage" includes "Deed of Trust", "Chattel Mortgage" Declaration of Covenants" and any other security for the Note identified herein;
 - (d) "Mortgaged Property" includes property, real, personal, or mixed, covered by the mortgage or mortgages securing the note held by HUD;
 - (e) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
 - (f) "Project" includes the mortgaged property and all its other assets or whatsoever situate, used in or owned by the business conducted on said mortgaged property;
 - (g) "Residual Receipts" means any cash remaining after;
 - (l) The Payment of;
 - (i) All amounts required to be deposited in the reserve fund for replacements;

- (ii) All obligations of the project other than the mortgage held by HUD unless funds for payment are set aside or deferment of payment has been approved by HUD; and
 - (2) The segregation of;
 - (i) An amount equal to the aggregate of all special funds required to be maintained by the project;
 - (ii) All tenant security deposits held.
 - (h) "Assisted Units" refer to units assisted pursuant to Project Rental Assistance Contract.
 - (i) "Assistance Contract" refers to a Project Rental Assistance Contract between the Mortgagor and HUD under Section 202 of the Housing Act of 1959 or between the Mortgagor and HUD under Section 811(d)(2) of the National Affordable Housing Act of 1990.
18. HUD shall not be liable for any of its actions hereunder except for arbitrary and capricious conduct.
19. This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns, and all owners of the mortgaged property, so long as the Mortgage is outstanding.
20. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
21. Mortgagor warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereto, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.
22. Mortgagor does not assume personal liability for payments due under the Note and mortgage or for payments to the reserve for replacement fund. However, defaults or other failures to follow program requirements may result in limited denial of participation or debarment from HUD or other Federal programs.
23. Mortgagor shall have available necessary equipment or devices and make reasonable accommodations to meet the needs of persons with visual and/or hearing impairments in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 24 CFR Part 8.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

United States of America Secretary of Housing and Urban Development (Signature)		Owner(Signature)	
By (Name)		By (Name)	
Official Title	Date	Official Title	Date

Permission to Occupy Project Mortgages

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

OMB Approval No. 2502-0029
(Exp. 10/31/2012)

Public Reporting Burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is being collected under Public Law 101-625 which requires the Department of to implement a system for mortgage insurance for mortgages insured under Sections 207,221,223,232, or 241 of the National Housing Act. The information will be used by HUD to approve rents, property appraisals, and mortgage amounts, and to execute a firm commitment. Confidentiality to respondents is ensured if it would result in competitive harm in accord with the Freedom of Information Act (FOIA) provisions or if it could impact on the ability of the Department's mission to provide housing units under the various Sections of the Housing legislation.

Project Name	Project Number
Project Location	Request Number

Request for Permission to Occupy

Federal Housing Administration

Permission is requested for the occupancy of (Number) _____ living units
identified as

and located in (Describe structure, wing, entrance, etc.)

All work in connection therewith has been substantially completed and all of the above-described living units are suitable for occupancy, with the fixtures and equipment installed and in operating condition. Light, heat, water, gas, and sanitary services have been connected and available for use. The premises have been inspected by the public authorities having jurisdiction and permission to occupy granted by them as evidenced by the certificates attached hereto. Safe and adequate approaches to the site and the aforesaid living units have been provided, including temporary or permanent guard rails, barricades, walks, lights, and other provisions necessary to the protection of tenants and the public. Proposed rental schedules or monthly charges in triplicate and mortgagor's proposal for management of the project and compensation to be paid therefor, if and as requested by corporate charter have been or are herewith submitted.

Mortgagor
Date (mm/dd/yyyy) _____ By _____

Architect's Certificate of Substantial Completion

I have inspected the units listed above and have found construction to be sufficiently complete and in accordance with contract requirements so that owner may occupy the above described living or service units for the uses intended. I have examined all required certificates of permission to occupy as issued by public authorities having jurisdiction and found same to be in proper order.

Architect
Date (mm/dd/yyyy) _____ By _____

Contractor's Certification

This is to certify that all work or correction necessary to complete the above-described living units in accordance with the contract requirements and in a manner acceptable to the Federal Housing Administration will be performed without delay and at no additional cost regardless of adverse conditions resulting from the occupancy of the aforesaid living units.

Contractor
Date (mm/dd/yyyy) _____ By _____

Mortgagee's Statement

Federal Housing Administration

All insurance risks have been covered in conformity with Federal Housing Administration Hazard Insurance requirements issued in connection with this project. The above request is acceptable to the undersigned.

Mortgagee
Date (mm/dd/yyyy) _____ By _____

To (Name of Mortgagee, Street Address, City, State, Zip):

FHA Inspection Report

Examination of the living units described above, including the available means of access thereto, reveals they are suitable for occupancy with the exception of those enumerated below, which are considered unsuitable for occupancy at this time for the reasons stated.

Inspected _____ (Date mm/dd/yyyy) By _____
 Architectural Construction Representative

Approved as reported above; as modified by me _____
 Chief Architecture & Engineering Section Deputy

Approved: Date _____ (mm/dd/yyyy) By _____
 Chief Underwriter; Assistant Director for Technical Services Deputy

Permission to Occupy

Permission is granted for the occupancy of the living units identified on the FHA Inspection Report portion of this form as suitable for occupancy. It is understood that this does not constitute and shall not be construed as acceptable of construction and that completion of these living units in accordance with the contract documents is essential and will be performed prior to acceptance of the construction.

Federal Housing Administration,

By _____
(Authorized agent)

Date (mm/dd/yyyy) _____

DRAFT AIA[®] Document B181[™] - 1994

Standard Form of Agreement Between Owner and Architect for Housing Services

AGREEMENT made as of the [] day of [] in the year of 20xx
(In words, indicate day, month and year)

BETWEEN the Owner:

XXXXXXXXXXXXXXXXXXXXXXXXXX

and the Architect:

XXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXX

For the following Project:

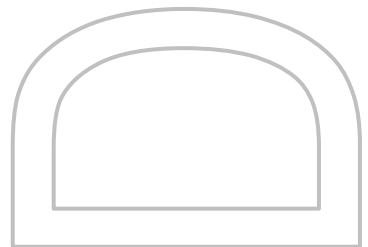
XXXXXXXXXXXXXXXXXXXXXXXXXX

The Owner and the Architect agree as set forth below.



ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 ARCHITECT'S SERVICES

§ 1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services described elsewhere in this Agreement.

§ 1.1.2 Time is of the essence under this Agreement. The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Attached as Exhibit "A" to this Agreement is the preliminary schedule for Architect's performance of services under this Agreement; this schedule may be adjusted as the Project proceeds upon the mutual agreement of Owner and Architect. The schedule includes reasonable allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect.

§ 1.1.2A Professional Standards of Care

In the performance of all of its services under this Agreement, the Architect agrees to use the same or exceed the degree of skill and care that is consistent with that degree of professional care, skill, efficiency and judgment ordinarily employed by other reasonable, reputable and comparable architectural firms that have the skill and expertise in the rehabilitation of multi-family residential buildings. The Architect agrees to utilize the services of competent, qualified, and properly licensed architects, engineers and other professionals for the proper preparation of its design for the Project and to utilize professionals whose professional obligations are undertaken and performed in the best interests of the Owner. The Architect agrees to use its best efforts and skill to protect the interests of the Owner at all times.

§ 1.1.2B Compliance with Applicable Laws and Permit Requirements

The Architect acknowledges that it is familiar with all applicable laws, ordinances, rules, regulations and codes that pertain to the design and construction of the Project and agrees to exercise due professional care such that its services and design documents will comply with such standards.

§ 1.1.2C Independent Contractor

In providing its services under this Agreement, the Architect agrees that it is an independent contractor to the Owner that is solely responsible for its own means and methods of providing services under this Agreement. The Architect agrees that it is solely responsible for all professional design services it furnishes for the Project.

§ 1.1.3 The services covered by this Agreement are subject to the time limitations contained in Section 11.5.1.

§ 1.1.4 Architect's Design Team

§ 1.1.4.1 Architect's Staffing

The Architect hereby designates _____ (California License Number # _____) as its Principal-In-Charge for the Project whose professional architectural stamp will appear on the final Drawings and Specifications that it prepares under this Agreement. The Architect further designates _____ as its Project Manager for the Project, _____ as its Project Architect, and _____ as its Construction Administrator.

§ 1.1.4.2 Architect's Consultants

Attached as Exhibit "B" to this Agreement is a list of Architect's intended consultants for the Project, along with an identification of Project Manager and Principal-In-Charge for each consultant.

§ 1.1.4.3 Quality Control Amongst Architect's Design Team

As a part of Basic Services under this Agreement, the Architect agrees to perform all necessary quality review and plan check review of all Drawings and Specifications prepared by the Architect and its consultants in order to reduce the likelihood of conflicts, errors, omissions, and discrepancies in the design documents that are issued for the construction of the Project. Architect further agrees, as part of Basic Services, to correct and/or otherwise address all conflicts, errors omissions, and discrepancies discovered in the design documents.

§ 1.1.4.4 Changes in Personnel

Any proposed changes with respect to the assignment of the individuals identified in Section 1.1.4.1 (Architect's Staffing) and Exhibit "B" under Section 1.1.4.2 (Architect's Consultants) of this Agreement shall be formally requested by the Architect and shall be subject to the written approval of the Owner. Such approval shall not be unreasonably withheld. If requested by Owner, the Architect shall work diligently with the Owner to resolve any concerns over the performance or behavior of the Architect's or its consultants' staff members, and Owner may request replacement of any staff member.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1 DEFINITION

§ 2.1.1 The Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal waterproofing, acoustical, structural, mechanical, plumbing, electrical engineering, and services.

§ 2.1.2 General -- Basic Services

Without limiting any of the specific obligations set forth in this Agreement, the Architect agrees that, as a part of Basic Services, it will be responsible for the following services and responsibilities: (a) Maintain its necessary professional certification and licenses in the State of California; (b) Comply with codes, ordinances, and technical requirements, and make diligent efforts to comply with standards, rules, directives, and interpretations of federal, state, and local government agencies having jurisdiction over the Project; (c) Comply with reasonable and foreseeable code interpretations by governmental field inspectors, even if such compliance requires redesign of its Drawings and Specifications; (d) Comply and coordinate with utility companies providing, or which will provide, services to the Project; and (e) Comply with any requirements of Project funding sources as they pertain to the Architect and its services (See Exhibit "G" for funding source requirements).

§ 2.1.3 Securing of Building Permits / Planning Approvals -- Basic Services

As part of Basic Services under this Agreement, the Architect agrees to apply for and provide all necessary design services in order to obtain the building permit and planning department approvals for the Project based on its Drawings and Specifications. This includes, but is not limited to, attending pre-application and post-application meetings with applicable governmental authorities (e.g., San Francisco Department of Building and Inspection ("DBI"), Department of Public Works ("DPW"), Mayor's Office on Disability, and other agencies) attending public hearings with such governmental authorities; and responding to plan-check comments from such authorities. Architect further agrees to regularly check the status of the applications for building permit and planning department approval, including pro-actively attempting to initiate progress with the governmental authorities to keep the application processing within schedule. The actual costs of the permits will be paid for by Owner, but Architect agrees to contact the applicable governing bodies to determine the exact cost of each permit when this cost is readily calculable by the authorities. Attention is directed to Section 2.1.6 of this Agreement regarding specific responsibilities of the Architect concerning obtaining approvals from the Mayor's Office on Disability.

§ 2.1.4 Project Meetings -- Basic Services

It is anticipated that, up through the Architect's completion of the Drawings and Specifications for the Project, there will be project meetings between the Architect and the Owner (and others) on a bi-weekly basis. The Architect agrees to promptly prepare and circulate minutes of these Project meetings. During the construction phase of the Project, it is anticipated that Architect's attendance at project meetings will be required on a weekly basis. Contractor will promptly prepare and circulate minutes of these meetings. Upon Owner's request, Architect's consultants must attend the project meetings. In addition to attending the regular project meetings specified herein, Architect agrees, as part of Basic Services, to attend additional meetings as necessary to perform the services

specified in this Agreement (e.g., evaluating contractor change order requests, etc.) Owner will use reasonable, good faith efforts to schedule such meetings so as to minimize the number of meetings requiring Architect's attendance.

§ 2.1.5 Design-Build Systems -- Basic Services

§ 2.1.5.1 Under the construction contract between Owner and Contractor, it is anticipated that the Contractor will be furnishing certain systems on a design-build basis based on performance criteria established by the Architect. As part of Basic Services under this Agreement, the Architect will coordinate and consult with the Contractor's design-build consultants to assist their preparation of the Drawings and Specifications for the design-build systems. These specialty design-build consultants will become the professionals of record for the design-build systems, and they and the Contractor shall be fully responsible for the design of said systems, except to the extent of the performance criteria prepared by Architect for said systems. Such Architect coordination and consultation are included within Basic Services under this Agreement and shall include, as necessary, any meetings with permitting and compliance agencies

§ 2.1.5.2 As part of Basic Services under this Agreement, Architect will review the design-build consultants' Drawings and Specifications, Shop Drawings, and design calculations and take appropriate action with respect to conformance with the performance criteria. Shop Drawings and other submittals related to the Work designed or certified by the design-build consultants shall bear the engineer of record's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 2.1.6 Mayor's Office on Disability

The Architect understands and agrees that this Project is subject to the jurisdiction of the Mayor's Office on Disability ("MOD"). The Architect agrees that, as a part of Basic Services, it will prepare its Drawings and Specifications such that it will obtain the approval of the MOD; this may include conceptual FF&E layouts common areas and shall include pre-design and pre-construction meetings. Furthermore, the Architect will attend all job site inspections conducted by representatives of the MOD and will prepare and distribute minutes from such inspections. Contractor will be responsible for scheduling MOD inspections.

§ 2.2 SCHEMATIC DESIGN PHASE -- BASIC SERVICES

§ 2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

§ 2.2.2 The Architect shall provide a preliminary evaluation of the site conditions, Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.2. The Architect will assist the Owner in identifying, if necessary, locations for exploratory demolition based on the Architects evaluation of the program and existing site conditions.

The preliminary evaluation will include a building assessment as it relates to the elevator modernization as well as meetings with the Building and Fire Department for code requirements. A summary analysis will be prepared and submitted to the Owner in the form of a Pre-Design Report. The analysis is to note code deficiencies with a strategy for conformance as well as additional programmatic recommendations.

The Architect shall prepare as-built drawings sufficient to allow the Architect to provide Owner with the services required under this Agreement.

§ 2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

§ 2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall develop and present Schematic Drawings and Specifications for Owner's review and approval. At a minimum, the schematic design will include elevation drawings, section drawings, detailed plan drawings, a building code and planning analysis, outline specifications and other documents illustrating the design intent, scale and relationship of

Project components. The Schematic Specifications shall identify major materials and systems and generally establish their quality levels.

§ 2.2.5 During the Schematic Design Phase, the Architect (and its Consultants, as required) will attend bi-weekly project meetings with the Owner (and others). Attention is directed to Section 2.1.4 of this Agreement.

§ 2.2.6 The Owner plans to select the Contractor for the Project prior to the conclusion of the Schematic Design Phase. Attention is directed to Sections 2.5.1 and 4.7.1 of this Agreement. As a part of Basic Services, the Architect agrees to assist the Owner in the interviewing and selection of the Contractor for the Project. Additionally, the Architect agrees to cooperate with the Contractor in regards to Contractor's performance of pre-construction services.

§ 2.2.7 The Owner plans to obtain a construction cost estimate from its Contractor based on the Architect's Schematic Design Drawings and Specifications. The Architect agrees to evaluate the construction cost estimate as part of Basic Services. As required by the Owner, the Architect also agrees as part of Basic Services to participate in value engineering sessions with the Owner and Contractor with regard to the schematic design.

§ 2.2.8 Written approval from the Owner will be required prior to proceeding from any phase to the subsequent phase.

§ 2.4 CONSTRUCTION DOCUMENTS PHASE -- BASIC SERVICES

§ 2.4.1 Based on the approved Schematic Design Drawings and Specifications (including any comments furnished by Owner and its agents with regard to same) and any Owner authorized written modifications to the program, schedule and construction budget requirements for the Project, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications. These documents shall respond to comments provided by the Owner and its agents as part of their prior reviews of the Architect design. The final set of Drawings and Specifications shall be full, complete and accurate, giving such directions that will enable the Contractor to carry them out.

§ 2.4.2 During the Construction Documents Design Phase, the Architect (and its Consultants, as required) will attend bi-weekly project meetings with the Owner (and others). Attention is directed to Section 2.1.4 of this Agreement.

§ 2.4.3 The Architect agrees to furnish to Owner a 50% progress set submittal of its Construction Documents Phase Drawings and Specifications. In connection with its next subsequently issued set of Drawings and Specifications, Architect shall respond to comments provided by the Owner and its agents regarding their review of the 50% Construction Document progress set.

§ 2.4.4 Owner plans to obtain a construction cost estimate from its Contractor based on the 50% progress set of the Architect's Construction Documents Phase Drawings and Specifications. The Architect agrees to evaluate the construction cost estimate as part of Basic Services. As required by the Owner, the Architect also agrees as part of Basic Services to participate in value engineering sessions with the Owner and Contractor with regard to the Construction Documents design.

§ 2.4.5 Attention is directed to Section 2.1.3 of this Agreement regarding the Architect's general responsibilities as a part of Basic Services regarding securing of building and planning permits.

§ 2.4.6 Attention is directed to Article 5 of this Agreement regarding the Architect's responsibility with regard to preparing a design in conformance with the Fixed Limit of Construction Cost for the Project.

§ 2.4.7 Attention is directed to Section 1.1.4.3 of this Agreement regarding the Architect performing quality control review and plan-check review of the Drawings and Specifications.

§ 2.4.8 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Construction Contract, and the form of Agreement between the Owner and Contractor.

§ 2.4.9 The Architect's Drawings and Specifications, as permitted by the applicable governmental authorities, shall be wet-stamped by the Architect's principal-in-charge. This permitted set of design documents shall address all comments received from the applicable governmental authorities in connection with their issuing the permits for construction. Architect's Consultants shall similarly arrange to approve its design documents.

§ 2.4.10 Written approval from the Owner will be required prior to proceeding from any phase to the subsequent phase.

§ 2.5 BIDDING OR NEGOTIATION PHASE -- BASIC SERVICES

§ 2.5.1 Following the Owner's approval of the final set of Drawings and Specifications produced upon the conclusion of the Construction Documents Phase, the Architect shall assist the Owner (and/or Contractor) in obtaining subcontractor bids or negotiated proposals and assist in Contractor awarding subcontracts for construction. Attention is directed to Section 2.2.6 of this Agreement regarding the Architect assisting, as a part of Basic Services, the Owner in the selection of the Contractor for the Project.

§ 2.5.2 As a part of Basic Services, the Architect agrees to review and evaluate any qualifications and exclusions required by the Contractor under the construction contract between Owner and Contractor. As appropriate, Architect shall prepare, as part of Basic Services, a conformed set of the permitted Drawings and Specifications to incorporate design revisions necessary to address issues raised by the Contractor's subcontractors in connection with their preparation of bids for the Project.

§ 2.6 CONSTRUCTION PHASE ADMINISTRATION OF THE CONSTRUCTION CONTRACT -- BASIC SERVICES

§ 2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the Owner's issuance of the Notice to Proceed for the commencement of the construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work, with the exception of the obligation to provide a warranty walk-through as set forth in Section 2.6.17 of this Agreement. Architect hereby acknowledges that it understands and agrees that, potentially, the Owner's issuance of the Notice to Proceed may occur significantly after the Architect's Drawings and Specifications are permitted to enable Owner to satisfy financing requirements.

§ 2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, including any addendum and/or amendments authorized by Owner.

§ 2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without the written agreement of the Owner and the Architect.

§ 2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due; and (2) as an Additional Service at the Owner's direction from time to time during the warranty period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument. Instructions to the Contractor shall be forwarded through the Architect.

§ 2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction (or as otherwise agreed by the Architect in writing) to become familiar with the progress and quality of the Work and to determine if the Work when completed will be in accordance with the Contract Documents. The Architect agrees to request on at least a monthly basis Contractor to provide a verification report that Contractor is complying with its obligation to prepare as-built drawings of the construction. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work, and shall immediately notify Owner in writing of any defects and deficiency in the Work. (More extensive site representation may be agreed to as an Additional Service, as described in Section 3.2.)

§ 2.6.6 The Architect shall not have control over, charge of, or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be

responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons performing any of the Work.

§ 2.6.7 The Architect shall at all times have access to the Work, wherever it is in preparation or progress.

§ 2.6.8 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

§ 2.6.9 The Architect's certification for payment shall constitute a representation to the Owner that the Work has progressed to the point indicated, and that to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. Such certification shall be based on the Architect's observations at the site as provided in Section 2.6.5 and on the data comprising the Contractor's Application for Payment. The foregoing representations are subject to an evaluation of the Work for conformance to the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to any specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money paid on account of the Contract Sum.

§ 2.6.10 The Architect shall have authority to reject Work that it discovers does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect agrees to notify Owner, and a decision will be mutually made concerning whether to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

§ 2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's actions shall be taken within fifteen (15) calendar days, or as otherwise modified by mutual agreement between Owner, Architect and Contractor, of Architect's receipt of the submittal so as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time (in the Architect's professional judgment) to permit adequate review. The Architect's approval of a specific item shall not indicate approval of an assembly of which that item is a component.

§ 2.6.12 The Architect shall prepare Change Orders for the Owner's approval and execution, and may order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time.

§ 2.6.13 The Architect shall conduct inspections to determine the date of Substantial Completion of the Work. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. At a minimum, before Substantial Completion may be achieved, the Contractor must have secured a Certificate of Occupancy (either temporary or permanent) from the applicable governing authorities. When the Work is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall be subject to the approval of the Owner.

§ 2.6.13.1 The Architect shall assist with the Contractor's preparation and completion of punch-lists with regard to the Work. If the Architect's inspections disclose any item, whether or not included on the Contractor's punch list, that is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of

Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 2.6.13.2 The Architect shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor.

§ 2.6.13.3 The Architect shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Document.

§ 2.6.14 The Architect shall assist Owner in interpreting and deciding matters concerning performance of the Contractor under the requirements of the Contract Documents on written request of the Owner. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon. When assisting Owner pursuant to these provisions, the Architect shall endeavor to secure faithful performance by Owner and Contractor and shall not be liable for such assistance if rendered in good faith and in accordance with the terms of this Agreement and otherwise the professional standards of care.

§ 2.6.15 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by Owner and Contractor and shall not be liable for such interpretations or decisions if rendered in good faith and in accordance with the terms of this Agreement and otherwise the professional standards of care. The Architect agrees to respond to any Requests for Information ("RFIs") submitted by Contractor within fifteen (15) calendar days, or as otherwise modified by mutual agreement between Owner, Architect and Contractor, of receipt of the RFI. If the RFI is incomplete and/or was not submitted in good faith by the Contractor, the Architect may elect to return the RFI without a substantive response, with the indication that the Contractor must cure the deficiency before a substantive response is furnished.

§ 2.6.16 In connection with the determination of Final Completion under the construction contract with the Contractor, the Architect agrees to furnish a redlined version of its Drawings and Specifications that note all design changes and change orders issued during the course of construction. The Architect agrees to review the Contractor's as-built drawings to determine whether they are complete. The Architect will not be responsible for the content of the as-built drawings provided by the Contractor.

§ 2.6.17 Notwithstanding anything in this Agreement to the contrary, the Architect's Basic Services includes a 12 month warranty walk-through with Owner and Contractor.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services are defined as those services that are not included within the scope of Basic Services set forth in this Agreement. The Agreement agrees to provide Additional Services only after Owner has provided its written authorization for the Additional Services. Compensation for Additional Services, if authorized, will be separately negotiated and approved in writing by Owner via a written amendment to this Agreement. Owner is not obligated to compensate the Architect for any Additional Services not so approved by written amendment, regardless of whether those services are described in this Agreement as Additional Services. The Architect is solely responsible for notifying Owner of any service the Architect considers to be an Additional Service. The Architect's failure to provide Owner with written notice prior to the performance of the Additional Service is a waiver by the Architect of any entitlement to additional compensation based on said service.

§ 3.2 If the Owner and the Architect agree that more extensive representation at the site than is described in Section 2.6.5 shall be provided, such additional project representation shall be provided and paid for as set forth in Article 12.

§ 3.3 In no event is the Architect entitled to additional compensation for services required to be performed by the Architect to correct and/or clarify any and all errors, defects, discrepancies, ambiguities, or omissions found at any time in its Drawings and Specifications. As a part of Basic Services under this Agreement, the Architect agrees to perform such work without undue delay and without additional cost to the Owner.

ARTICLE 4 THE OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall provide full information, including a program setting forth the Owner's design objectives, constraints and criteria. The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs. If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

§ 4.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions pertaining to documents submitted by the Architect in a timely manner, so as to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 4.3 The Owner shall furnish a legal description, and the services of geotechnical engineers or other consultants when such services are deemed necessary by the Architect. Such services may include but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, including necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 4.4 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports as required by law or the Contract Documents.

§ 4.5 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner. The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

§ 4.6 The Owner, unless otherwise provided in Article 12, shall furnish all legal, accounting, planning, estimating and other services and expenses required to prepare, present and process any application for governmental or private financing, mortgage insurance or subsidy.

§ 4.7 The Owner, unless otherwise provided in Article 12, may furnish the services of a cost consultant or cost estimator to provide all construction cost data, preliminary estimates of Construction Cost or other cost estimates as the Architect's work progresses. The Owner plans to secure construction cost estimates at the following stages of the Architect's development of the Drawings and Specifications: 100% Schematic Design; and 50 % Construction Documents.

§ 4.7.1 Owner's Contractor / Pre-Construction Services

The Owner anticipates using a negotiated bid contracting agreement with its selected Contractor for the construction of the Project. The Owner anticipates that it will select its Contractor prior to the completion of the Schematic Design Phase, and the Owner anticipates that the selected Contractor will provide pre-construction services for the Project. It is intended that the Contractor will provide constructability reviews of Architect's progress sets of the Architect's Drawings and Specifications, along with construction cost estimates and value engineering analysis. As a part of Basic Services under this Agreement, the Architect agrees to cooperate with the Contractor and incorporate or otherwise address all comments received by Contractor as part of its constructability reviews. Architect also agrees to evaluate the Contractor's construction cost estimates and participate in value engineering sessions with the Contractor.

§ 4.8 The services, information, surveys and reports required by Sections 4.3 through 4.7, inclusive, shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

§ 4.9 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. However, notwithstanding such obligation, it

is understood and agreed that the Architect is solely responsible for the sufficiency, adequacy and completeness of its Drawings and Specifications. The Architect acknowledges that the Owner will not be conducting a detailed review, check or coordination of the Architect's Drawings and Specifications, and Architect agrees that it will not rely on the Owner to discover any errors or omissions in its Drawings and Specifications.

§ 4.10 The Architect agrees to provide all certificates or certifications that are customarily required for the type of Project that is the subject of this action. These certificates or certifications may be required by the applicable governing bodies (e.g., San Francisco Building Department) and by the Owner's lenders or other sources of funding for the Project. Owner will endeavor to provide the proposed language of certificates or certifications requested of the Architect or Architect's consultants to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

ARTICLE 5 CONSTRUCTION COST

§ 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or estimated construction cost to the Owner of all elements of the Project designed or specified by the Architect, including the design-build systems to be furnished by the Contractor based on the Architect's performance criteria.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and any equipment which has been designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

§ 5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the cost of the land, rights-of-way, financing or other costs that are the responsibility of the Owner as provided in Article 4.

§ 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 It is recognized that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect can not and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any preliminary estimate of Construction Cost or other cost estimate or evaluation. Any Project budget shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which bids or negotiated proposals are sought.

§ 5.2.2 Owner hereby establishes a fixed limit of Construction Cost for the Project to be xxxxxxxxxxxxxxxxxxxx **Dollars (\$xxxx)**. It is understood and agreed that this fixed limit is a condition of this Agreement. The Architect is permitted to include reasonable contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project; and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit.

§ 5.2.3 If the Project budget or fixed limit of Construction Cost is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in the Project budget or the fixed limit;
- .2 authorize rebidding or renegotiating the Project within a reasonable time. If this option is selected by Owner, Architect shall not be entitled to additional compensation based on the rebidding or renegotiation of the Project;
- .3 if the Project is abandoned, terminate in accordance with Section 8.2; or
- .4 cooperate in revising the Project scope and quality as required to reduce the lowest bona fide bid or negotiated proposal so as to conform with the fixed limit of Construction Cost.

§ 5.2.4 If the Owner chooses to proceed under Section 5.2.3.4, the Architect shall endeavor to comply with the Project budget or the fixed limit of Construction Cost by making modifications to the Contract Documents as a part of Architect's Basic Services. The making of such modifications shall be the limit of the Architect's responsibility

arising out of the establishment of a Project budget or a fixed limit of Construction Cost. If a fixed limit has been established as a Condition of this Agreement, the Architect shall not obtain an increase in compensation for making such modifications unless the fixed limit has been exceeded due to inaccurate cost estimating by the Owner's consultant. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed, whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 6.1 The Drawings, Specifications and other documents prepared by the Architect for the Project (the "Plans") shall become the property of the Owner upon the Owner's payment of the Fee for the portion of the Work completed by the Architect. The Owner may use the Drawings to complete or add to the Project so long as the Owner agrees to hold the Architect harmless from damages, caused by any changes made to the Drawings by others after termination of this Agreement. The Owner shall not use the Drawings for other projects unless the Owner agrees to hold the Architect harmless from damages caused by the use of the Drawings on such other projects. The Architect shall be permitted to keep copies, including reproducible copies, of the Drawings for information and reference in connection with the Architect's work on the Project.

ARTICLE 7 RESOLUTION OF CLAIMS, DISPUTES OR OTHER MATTERS

§ 7.1 LITIGATION

§ 7.1.1 Claims, disputes or other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be subject to and decided by litigation.

§ 7.2 MEDIATION

§ 7.2.1 In addition to and prior to the initiation of litigation, the parties shall endeavor to settle claims, disputes, or other matters in question by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The costs of the mediation shall be shared equally as between the Owner and Architect.

§ 7.3 ATTORNEYS' FEES

§ 7.3.1 Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such proceeding or in a separate action brought for that purpose.

ARTICLE 8 SUSPENSION, TERMINATION OR ABANDONMENT

§ 8.1 This Agreement may be terminated, with or without cause, by the Owner upon not less than seven days' written notice to the Architect.

§ 8.2 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

§ 8.3 If the Project is suspended by the Owner for more than 90 consecutive days, the Architect shall be compensated for services performed prior to written notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

§ 8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination and the Architect may terminate this Agreement upon not less than fourteen days' written notice to Owner.

§ 8.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon thirty days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in

full is received by the Architect within thirty days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

§ 8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due .

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 Unless otherwise provided, this Agreement shall be governed by the law of the place of the Project.

§ 9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 9.3 Intentionally not used.

§ 9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

§ 9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Architect may not assign its interests in or obligations under this Agreement without the written consent of the Owner, which consent may be withheld without cause. The Owner reserves the right, upon notice to the Architect, to assign this Agreement to a partner, an affiliate, a related corporate entity, an institutional lender providing financing for the Project, or to other persons or entities ready and capable of performing the Owner's obligations under the Agreement.

§ 9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect, unless specifically stated to the contrary in this Agreement.

§ 9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

§ 9.9 Provided that Owner has furnished its prior written consent, the Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

§ 10.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 10.1.1 An initial payment set forth in Section 11.1 is the minimum payment under this Agreement.

§ 10.1.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service on the basis set forth in Section 11.2.2. Payments to the Architect during the Schematic Design, Construction Documents, and Bidding or Negotiation Phases shall be made on a monthly basis upon billings submitted by the Architect based on percentage of the Architect's work completed in each Phase. Payments to the Architect for the Construction Phase shall be made in monthly

installments based on the percentage of completion of the Contractor's work under the construction contract. All payments to the Architect during the Construction Phase are subject to a retention of 10%, which retention will be released to the Architect upon the earlier of the issuance of the Final Certificate of Payment to the Contractor or 60 days after Substantial Completion of the Work. Notwithstanding the release of retention, the Architect agrees, as a part of Basic Services to participate in a 12 month warranty walk-through with Owner and Contractor. Attention is directed to Section 2.6.17 of this Agreement.

§ 10.1.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.

§ 10.1.4 When compensation is based on a percentage of Construction Cost, and any portions of the Project are deleted or otherwise not constructed, to the extent services are performed on those portions, compensation for those portions of the Project shall be payable in accordance with the schedule set forth in Section 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal; or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or other cost estimate as described in Section 4.7 for such portions of the Project.

§ 10.2 REIMBURSABLE EXPENSES

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include actual expenditures made by the Architect in the interest of the Project for:

- .1 transportation in connection with travel outside of the San Francisco Bay Area, as authorized by the Owner;
- .2 long-distance communications;
- .3 fees paid for securing approvals of authorities having jurisdiction over the Project;
- .4 expense of reproductions, postage and handling of Drawings and Specifications and other documents. Check prints, plots, or other reproductions required for the development of the contract documents not authorized by the Owner shall not be included as a reimbursable expense.;
- .5 expense of renderings, models and mock-ups requested by the Owner;
- .6 if authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

§ 10.3 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

§ 10.3.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

§ 11.1 AN INITIAL PAYMENT of Zero Dollars (\$ 0) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

§ 11.2 BASIC COMPENSATION

§ 11.2.1 FOR BASIC SERVICES, as described in Article 2 and any other services described elsewhere in this Agreement as part of Basic Services, Basic Compensation shall be computed as follows:

A stipulated, fixed amount of _____ Dollars (\$ _____).

Attached as Exhibit "D" to this Agreement is a breakdown of the intended compensation by the Architect to each of its Consultants for their portion of the performance of Basic Services set forth in this Agreement. Architect agrees to promptly pay its Consultants for the services they have rendered. Architect's payment of compensation to its Consultants shall be made within fifteen (15) days of Architect's receipt of payment from Owner.

§ 11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable: (Insert additional phases as appropriate.)

Schematic Design Phase _____ percent (_____ %)

Construction Documents Phase:		percent (%)
Bidding or Negotiation Phase:		percent (%)
Construction Phase:		percent (%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.3 COMPENSATION FOR ADDITIONAL SERVICES

§ 11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Section 3.2, compensation shall be computed as follows:

To be negotiated if, and when, Owner determines that such Additional Services are necessary. Attached as Exhibit "E" to this Agreement is a listing of the hourly rates of Architect and its consultants, which will be used as the basis for any Additional Services authorized by Owner. Architect for itself and on behalf of its consultants agrees to not change the hourly rates for a period of at least two-years after the effective date of this Agreement. Owner intends that any Additional Service authorization will be awarded on either a stipulated, fixed sum basis or a not to exceed maximum; Owner does not intend to issue any Additional Service authorization on an open ended time and material basis.

§ 11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation as described in Section 3.2; and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

To be negotiated if, and when, Owner determines that such Additional Services are necessary. Attached as Exhibit "E" to this Agreement is a listing of the hourly rates of Architect and its consultants, which will be used as the basis for any Additional Services authorized by Owner. Architect for itself and on behalf of its consultants agrees to not change the hourly rates for a period of at least two-years after the effective date of this Agreement. Owner intends that any Additional Service authorization will be awarded on either a stipulated, fixed sum basis or a not to exceed maximum; Owner does not intend to issue any Additional Service authorization on an open ended time and material basis.

§ 11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those other consultants listed in Exhibit "B" of this Agreement, no multiple may be added by the Architect for such services. Architect shall submit those costs to Owner without the addition of any multiple.

See also Section 11.3.2 of this Agreement, above.

§ 11.4 REIMBURSABLE EXPENSES

§ 11.4.1 FOR REIMBURSABLE EXPENSES, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, no multiple may be added by the Architect for such expenses. Architect shall submit those expenses to Owner without the addition of any multiple.

§ 11.5 ADDITIONAL PROVISIONS

§ 11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within () months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 11.3.

§ 11.5.2 Payments are due and payable thirty (30) days from the date of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect.

Ten Percent (10%) per annum

§ 11.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect, except as provided in Section 11.3.2 of this Agreement.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

§ 12.1 OWNER'S ANTICIPATED FUNDING SOURCES

As of the date of this Agreement, Owner has not yet finalized the funding sources for the Project. Owner anticipates that funding will likely include, but not be limited to, a combination of some of the following sources:

- Federal HOME, CDBG, or other local funds administered by the San Francisco Mayor's Office of Housing.

The Architect agrees to execute any amendments to this Agreement or other agreements required by the San Francisco Redevelopment Agency, the San Francisco Mayor's Office of Housing, or any other lender to the Project, provided that the amendments do not alter the substance of Architect's rights and obligations under this Agreement.

§ 12.2 CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION OR COMPARABLE REQUIREMENTS

The Architect agrees to comply with all reporting and other requirements of the San Francisco Human Rights Commission ("HRC") or other compliance agency such (e.g., San Francisco Redevelopment Agency) as they pertain to the Architect and its services provided in regard to the Project, including, but not limited to, the HRC's established participation goals (or other comparable goals established by other agencies) for Disadvantaged Business Enterprises (DBE) with regard to the Project. The Architect agrees to strive to meet or exceed a participation goal of ___% for its subconsultants.

§ 12.3 SECTION 3 LOCAL HIRING PROGRAM

It is understood and agreed that the Project will be subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, or other comparable requirements established by the City and County of San Francisco and/or the San Francisco Redevelopment Agency. Section 3 requires that where training and employment opportunities arise, they will be given – to the greatest extent possible – to lower-income persons residing within the local area in which the project is located—(ZIP code xxxxx).

§ 12.4 CITY ADMINISTRATIVE CODE REQUIREMENTS

The Architect understands and agrees that this Project may be subject to certain requirements stated in the City and County of San Francisco Administrative Code based on the funding sources of the Project. Attention is directed to Exhibit "F" of this Agreement, which lists such requirements. The Architect agrees to comply with all such requirements as they pertain to the services to be performed by the Architect under this Agreement.

§ 12.5 INDEMNIFICATION

The Architect agrees to indemnify, defend and hold Owner, TNDC, Owner's Lenders and other parties identified in Exhibit "H" to this Agreement (including all of their members, partners, directors, employees, consultants, successors, and assigns) (collectively "Indemnitees") harmless from and against any and all personal injury, property damage, economic or other claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees and costs) asserted by any third party against the Indemnitees if said claims, liabilities, suits, demands, losses, costs and expenses are caused or are alleged to have been caused by the Architect's negligent acts, errors or omissions or breach of this Agreement. It is understood and agreed that Architect has no such duty to indemnify, defend and hold Owner harmless if the claims, liabilities, suits, demands, losses, costs and expenses are solely caused by the Owner's active negligence.

§ 12.6 INSURANCE REQUIREMENTS

§ 12.6.1 General

The Architect agrees to obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of the Agreement, at its sole cost, all of the insurance required by and described in this section of the Agreement. All of said insurance must be written by, and secured from, a responsible insurance company or companies that are satisfactory to the Owner and that are authorized to engage in such insurance

business in the State of California, with an A.M. Best Rating of at least A VI, or better. All of said insurance must be written for not less than the limits specified hereinbelow, or as required by law, whichever is greater.

§ 12.6.2 Minimum Insurance Limits

The following are the minimum insurance limits required under this Agreement for the Architect's insurance:

- **Professional liability insurance** in a minimum amount of One Million Dollars (\$1,000,000) per claim with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. If the professional liability policy is a claims-made policy in lieu of an occurrence policy, the Architect agrees to maintain such coverage for at least a period of four (4) years from date of Final Completion of the construction contract.
- **Workers' compensation insurance** and employer's liability insurance in the maximum statutory liability amount.
- **Commercial general liability insurance** in the amount of \$1,000,000 per occurrence / \$1,000,000 aggregate.
- **Business automobile liability insurance**, with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable.

The foregoing provisions requiring the Architect to carry insurance shall not be construed in any manner as waiving, restricting or limiting the liability of the Architect as to any obligations imposed under this Agreement, whether or not same are, or may be covered by insurance.

§ 12.6.3 Additional Insureds / Insurance Endorsements

The Architect agrees that it will arrange to have its general liability, automobile liability, and employer's liability insurance policies be endorsed to name Owner, TNDC, lenders, and the Indemnitees referenced in Section 12.5 of this Agreement as additional insureds under said policies. Also, the policies must be endorsed to provide the following notice: "Insurance Company shall notify Owner at least thirty (30) days prior to the effective date of any cancellation or reduction in coverages in any said policies."

§ 12.6.4 Consultants' Insurance

The Architect agrees to require each of its consultants retained by the Architect to maintain the same minimum liability insurance limits specified in Section 12.6.2, with the exception that the minimum limit for professional liability insurance may be One Million Dollars (\$1,000,000). All other insurance requirements stated herein in this Section 12.5 of this Agreement shall also apply to each of Architect's consultants, including, but not limited to, the naming of Owner, TNDC, Owner's Lenders, and other Indemnitees as additional insureds under certain policies.

§ 12.6.5 Certificates of Insurance

Prior to the beginning of any services under this Agreement, the Architect agrees to submit to the Owner Certificates of Insurance evidencing its compliance with all of the required insurance coverages required under this Agreement. The Certificates must also certify that the insurance policies have been properly endorsed to meet the requirements set forth in these provisions. The Architect agrees to furnish renewal insurance certificates throughout the term of the Agreement. It is understood and agreed that Owner’s acceptance of the Certificates of Insurance submitted by the Architect is not a waiver of any of the requirements herein pertaining to insurance.

§ 12.7 EXHIBITS TO THIS AGREEMENT

The following exhibits are hereby incorporated within this Agreement:

- Exhibit “A” -- Preliminary Project Schedule
- Exhibit “B” -- Architect’s Design Team Consultants & Key Personnel
- Exhibit “D” -- Breakdown of Contract Amount re Consultants
- Exhibit “E” -- Hourly Rates
- Exhibit “F” -- City Administrative Code Requirements
- Exhibit “G” -- Project Funding Source Requirements
- Exhibit “H” -- Additional Indemnitees

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

Amendment to AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services

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

OMB Approval No. 2502-0470
(Expires 8/31/2013)

For Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a current valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

The provisions of this amendment supersede and void all inconsistent provisions of the Agreement.

1. The Owner and the Architect represent that they are familiar with HUD requirements, including the Minimum Property Standards, as set forth in publications given to them by HUD for this Project and will perform all services in accordance with the applicable requirements of HUD.
2. The Owner and the Architect recognize the interest of HUD and any action or determination by either the Owner or the Architect is subject to acceptance or rejection by HUD.
3. The portion of the Architect's services and responsibilities and the Owner's responsibilities shall not be sublet or delegated to anyone not acceptable to HUD.
4. The Architect will advise HUD as well as the Owner of any omissions, substitutions, defects and deficiencies observed in the Work of the Contractor.
5. The Architect shall issue Certificates of Payment and Certificates of Substantial Completion. These certificates shall be in the form prescribed by HUD.
6. The Architect will furnish copies of all field orders to HUD in addition to the Owner.
7. The agreement shall not be terminated without five days prior written Notice to HUD.
8. The Owner and the Architect shall recognize as a valid reason for termination, any request by HUD for termination because of inadequate performance, undue delay or representation which may make the further services of the Architect unacceptable to HUD.
9. If the project for which the drawings or specifications prepared by the Architect has not been completed and there is a default or foreclosure, HUD may use the drawings or specifications to complete construction of the project without additional cost.

Owner:	Architect:
Date:	Date:

HOUSING CONSULTANT'S CERTIFICATE

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

Exempt from OMB approval.
Form is a certification.
5 C.F.R. 1320.3(h)(1)

Public burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits.

Section 207(b)(1) and (2) of the National Housing Act authorizes the Secretary of the Department of Housing and Urban Development to make a determination that the sponsor and/or mortgagor is truly a nonprofit and demonstrates probable success in project development and continuing operation. HUD uses the information collected to determine that a Housing Consultant's efforts are directed exclusively toward serving the nonprofit sponsor and tenants. HUD may disclose this information to Federal, State, and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. The information will not be otherwise disclosed or released outside of HUD, except as required and permitted by law as required by the Freedom of Information Act.

TO: The Secretary of Housing and Urban Development
c/o

SUBJECT: Project No.
Project Name
Location

The undersigned, as Housing Consultant, hereby certifies:

1. That I have not been and will not be during the term of my Contract with the Sponsor an employee, official or member of the Sponsor or Owner of this project except as Housing Consultant and Management Agent, (delete reference to Management Agency, if not applicable) and I have not obtained and will not obtain any financial interest in the project, not the operation thereof;
2. That, except for the fee specified in my Contract with the Sponsor for Housing Consultant Services and Management Agent (delete reference to Management Agent, if not applicable), I have neither accepted nor shared and will neither accept nor share any compensation or remuneration, directly, or indirectly, in any form whatsoever, from or with any party interested in the development or operation of this project, including, but not limited to, the seller of the land, attorney, architect, mortgagee, surety, title company, general contractor, and subcontractor or material man; and
3. That I have not, not to the best of my knowledge and belief has any person employed by me to perform Housing Consultant services or Management Services (delete preferences to Management Services if not applicable), accepted compensation or remuneration contrary to the intention of the aforesaid Contract, and that I understand the intent of the Contract is to prohibit the Housing Consultant and its employees from any transaction which would create a conflict of interest with other persons or entities participating in the development and operation of the project.

(Date)

(Housing Consultant)

WARNING

Section 1010 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements. (18 U.S.C. 1010, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.)

**Part I of the Project
Rental Assistance Contract**

Section 202 Supportive Housing for the Elderly
Section 811 Housing for Persons with Disabilities

See bottom of this page for Public Burden statement.

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0470
(Expires 8/31/2013)

Type of Project <input type="checkbox"/> New Construction <input type="checkbox"/> Substantial Rehabilitation <input type="checkbox"/> Acquisition	PRAC Contract No.	HUD Project No.
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This Project Rental Assistance Contract (Contract) is entered into between the United States of America acting through the Department of Housing and Urban Development (HUD) and (Owner) pursuant to

- Section 811 of the National Affordable Housing Act of 1990 or
- Section 202 of the Housing Act of 1959.

The purpose of this Contract is to provide project rental assistance payments on behalf of Eligible Families leasing decent, safe and sanitary units from the Owner.

1.1 Significant Date and other Items; Contents and Scope of Contract.

- (a) **Effective Date of Contract:** _____
- (b) **Fiscal Year.** The ending date of each Fiscal Year shall be _____ (insert March 31, June 30, September 30, or December 31, as approved by HUD). The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year which is not less than 12 months after the effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual project rental assistance payment in section 1.1(c) will be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.
- (c) **Maximum Annual Contract Commitment.** The maximum annual amount of the commitment for project rental assistance payments under this Contract (see section 2.3) is the amount of contract authority identified in Exhibit 2.
- (d) **Project Description.**
- (e) **Statement of Services, Maintenance and Utilities Provided by the Owner.**
 - (1) Services and Maintenance:

 - (2) Equipment:

 - (3) Utilities:

 - (4) Other:
- (f) **Contents of Contract.** This Contract consists of Part I, Part II and the following exhibits:
 - Exhibit 1: The schedule showing the number of units by size and, in the case of group homes, residential spaces, (Contract Units) and their applicable operating expenses,
 - Exhibit 2: The schedule showing contract and budget authority.
 - Exhibit 3: The Affirmative Fair Housing Marketing Plan

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

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

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

1.2 **Term Of Contract: Obligation to Operate Project for Full Term.**

- (a) **Term Of Contract.** The initial term of this Contract for any unit shall be ___ years, beginning with the effective date of this Contract for such unit, commitments to extend expiring contracts during the year prior to the date of expiration. If the project is completed in stages, the term shall be separately related to the units in each stage. However, the total Contract term for all the stages, beginning with the effective date of the Contract for the first stage, shall not exceed ___ years.
- (b) **Obligation to Operate Project for Full Term.** The Owner agrees to continue operation of the project in accordance with this Contract for the full term specified in paragraph (a).

1.3 **HUD Assurance.** The execution of this Contract by HUD is an assurance by HUD to the Owner that:

- (a) The faith of the United States is solemnly pledged to the payment of project rental assistance payments pursuant to this Contract, and
- (b) HUD has obligated funds for these payments.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (118 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

United States of America
Secretary of Housing and Urban Development

Signature:

Owner:

Signature:

By:

Name:

Official Title:

Date:

By:

Name:

Official Title:

Date:

If the project is to be completed and accepted in stages, execution of the contract with respect to the several stages appears on the following page of this contract.

Stage 1 **Execution of Contract with Respect to Contract Units Completed and Accepted in Stages**
This Contract is hereby executed with respect to the units described in Exhibit Ia.
Effective Date: The effective date of this Contract with respect to the units described in Exhibit Ia.
is _____ .

United States of America
Secretary of Housing and Urban Development

Signature:

Owner: _____
Signature:

By: _____
Name: _____

Official Title:

Date:

By: _____
Name: _____

Official Title:

Date:

Stage 2 **Execution of Contract with Respect to Contract Units Completed and Accepted in Stages**
This Contract is hereby executed with respect to the units described in Exhibit Ib.
Effective Date: The effective date of this Contract with respect to the units described in Exhibit Ib.
is _____ .

United States of America
Secretary of Housing and Urban Development

Signature:

Owner: _____
Signature:

By: _____
Name: _____

Official Title:

Date:

By: _____
Name: _____

Official Title:

Date:

Stage 3 **Execution of Contract with Respect to Contract Units Completed and Accepted in Stages**
This Contract is hereby executed with respect to the units described in Exhibit Ic.
Effective Date: The effective date of this Contract with respect to the units described in Exhibit Ic.
is _____ .

United States of America
Secretary of Housing and Urban Development

Signature:

Owner: _____
Signature:

By: _____
Name: _____

Official Title:

Date:

By: _____
Name: _____

Official Title:

Date:

Exhibit 2

This Exhibit shows the initial and subsequent amounts of contract and budget authority obligated for project number:

		Contract Authority	Budget Authority
As of the Effective Date of Agreement		_____	_____
Effective Date of Agreement Amendment:	Show Increase or Decrease	\$ _____	\$ _____
	Revised Total	\$ _____	\$ _____
Effective Date of Agreement Amendment:	Show Increase or Decrease	\$ _____	\$ _____
	Revised Total	\$ _____	\$ _____
As of the Effective Date of Contract		_____	_____
Effective Date of Contract Amendment:	Show Increase or Decrease	\$ _____	\$ _____
	Revised Total	\$ _____	\$ _____
Effective Date of Contract Amendment:	Show Increase or Decrease	\$ _____	\$ _____
	Revised Total	\$ _____	\$ _____

Exhibit 3

Affirmative Fair Housing Marketing Plan

This exhibit is the Affirmative Fair Housing Marketing Plan provided by the _____ Branch.

Additional Exhibits: (Specify, such as: Special Conditions for Acceptance. If none, insert "None.")_

Part I of the Agreement to Enter into a Project Rental Assistance Contract

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

OMB Approval No. 2502-0470
(Expires 5/31/2010)

For use under Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act

Type of Project <input type="checkbox"/> New Construction <input type="checkbox"/> Substantial Rehabilitation <input type="checkbox"/> Acquisition	PRAC Contract Number	HUD Project Number
-------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------	--------------------

This Agreement to Enter into a Project Rental Assistance Contract (Agreement) is entered into between the United States of America acting through the Department of Housing and Urban Development (HUD) and _____ (Owner).

The Owner proposes to complete a housing project, as described in the approved Application. Upon the acceptable completion of the project, the Owner and HUD will enter into a Project Rental Assistance Contract (Contract) for the purpose of making assistance payments to enable eligible Very Low-Income Households (Households) to occupy units in the project.

1.1 Significant Dates, Contents, and Scope of Agreement.

- (a) **Effective Date of Agreement:** (mm/dd/yyyy) _____.
- (b) **Date of Commencement of Work.** The date for commencement of work (see section 2.1(a)) is not later than _____ calendar days after the effective date of this Agreement.
- (c) **Time for Completion of Project.** The date for completion of the project (see section 2.1(b)) is not later than _____ calendar days after the date for commencement of work.
- (d) **Contents of Agreement.** This Agreement consists of Part I, Part II, and the following exhibits:
 Exhibit A: The Project Rental Assistance Contract (Contract) to be executed upon acceptable completion of the project, complete in all respects except for execution and effective date.
 Exhibit B: The schedule of completion in stages if applicable. (This exhibit should identify the units in each stage.)
 Exhibit C: The schedule of Davis-Bacon wage rates, if applicable.
 Additional Exhibits: Specify additional exhibits, if any. If none, insert "None.")
- (e) **Scope of Agreement.** This Agreement, including the exhibits, whether attached or incorporated by reference, comprises the entire agreement between the Owner and HUD with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Agreement, any applicable regulations, and agreements entered into in writing by the parties which are consistent with this Agreement. Nothing contained in this Agreement shall create or affect any relationship between HUD and any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 HUD Assurance. The approval of this Agreement by HUD is an assurance by HUD to the Owner that:

- (a) The faith of the United States is solemnly pledged to the payment of project rental assistance payments pursuant to the Contract, and
- (b) HUD has obligated funds for these payments.

1.3 Relocation Requirements. (mark one)

- The Owner hereby certifies that the site of the project was without occupants eligible for relocation assistance under 24 CFR 891.510.
- The Owner agrees to provide any relocation benefits required under 24 CFR 891.510 and other HUD issuances.

United States of America
Secretary of Housing and Urban Development

Owner

Signature

Signature

By

By

Name

Name

Official Title

Official Title

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

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)

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.