



## Federal Housing Finance Board

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www.fhfb.gov



### MEMORANDUM

**TO:** Federal Home Loan Bank Presidents, General Counsels and Community Investment Officers

**FROM:** Bruce A. Morrison, Chairman *BAM*

**SUBJECT:** Guidance for expedited approval of projects using funds from both the Affordable Housing Program (AHP) and the Department of Housing and Urban Development's (HUD's) Section 202 or 811 Programs

We are pleased to announce that the Federal Housing Finance Board (Finance Board) and HUD have entered into a Memorandum of Understanding (MOU) (Attachment A) providing for expedited approval of projects using funds from both the AHP and HUD's Section 202 or 811 programs.

The Finance Board and HUD recognize that they have mutual interests in enabling funds from both the AHP and Section 202 or 811 programs to be used to finance rental housing with supportive services for very low-income elderly persons and persons with disabilities. Staff of the Finance Board and HUD have developed the MOU and attached legal documents to ensure compliance with both the Finance Board and HUD regulations for their respective programs, and thereby eliminate lengthy delays in processing applications for projects seeking funds from both the AHP and Section 202 or 811 programs.

Pursuant to the MOU, local HUD Offices (pursuant to authority delegated in HUD Notice 99-7 (Attachment B)) will process and approve, on an expedited basis, requests from sponsors of such projects to use AHP funds for subordinate financing, provided that the provisions identified in the legal documents attached to the MOU are included in the relevant project financing documentation. Applicants whose documentation meets these requirements will no longer need to obtain waivers from HUD to use AHP subordinate financing. In particular, Exhibit A to the MOU (the Rider to the Deed of Trust [or Mortgage]) should be used by all Federal Home Loan Bank (FHLBank) member institutions for execution by the borrower and the member institution. The Finance Board has determined that the MOU and the attached legal documents are consistent with the Finance Board's AHP regulation.

We urge you and your staff to familiarize yourselves with all of the provisions of the MOU and its attachments, which specify obligations of HUD regarding: consultation with and providing monitoring notice to the FHLBanks; assumption of AHP obligations upon transfer of the project to HUD or a HUD transferee; and payments to the member institution from Residual Receipts of the project upon default or foreclosure of the project.

If you have any questions regarding the MOU and its attachments or need further assistance with these transactions, please contact Janet Fronckowiak of the Program Assistance Division at (202) 408-2575, or Sharon Like or Jane Converse of the Office of General Counsel at (202) 408-2930 or 408-2976.

**Attachments**



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Special Attention of:

**Notice** H 99-7 (HUD)

Multifamily Hub Directors,  
Program Center Directors,  
Supervisory Project Managers,  
Secretary's Representatives,  
Community Builders

Issued: April 30, 1999  
Expires: April 30, 2000

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Cross References:

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Subject: Subordinate Financing by Federal Home Loan Banks for  
Section 202 and Section 811 Projects

- I. **PURPOSE:** This Notice is to advise HUD offices of the Department's policy regarding the use of Federal Home Loan Bank (FHLB) System Affordable Housing Program (AHP) funds for subordinate financing of Section 202 and Section 811 projects. It also transmits the Memorandum of Understanding (MOU) between HUD and the Federal Housing Finance Board which sets forth the policy for such financing as well as the legal documents that must be used.
- II. **BACKGROUND:** Sponsors of Section 202 and 811 projects are increasingly approaching FHLBs for AHP subordinate financing because of problems related to front end cash requirements and cash requirements related to project management. Previously, each such request was submitted to Headquarters, along with the proposed mortgage documents, for approval on a case-by-case basis.
- In order to decentralize and simplify the process for approving subordinate financing with AHP funds, HUD and the Federal Housing Finance Board have entered into an MOU (Attachment A). The MOU establishes the framework for the use of such financing and outlines HUD's responsibilities, including monitoring, in connection with Section 202 and Section 811 projects receiving the financing.
- III. **POLICY:** Subordinate financing by FHLB's in Section 202 and 811 projects may be used for project related purposes allowed under the AHP Regulation and as provided in the project's approved AHP application. However, HUD does not permit subordinate financing for such items as the minimum capital investment or items that would change the character of the project, such as nursing stations. Examples of items that HUD would allow to be covered by such subordinate loans are excess land costs, unusual off-site costs, excess amenities and the cost of major structural repairs.

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: Distribution: W-3-1,

Examples of items that HUD would not permit for such subordinate loans would be amenities that would raise the operating expenses such as swimming pools (unless the owner is prepared to pay such operating expenses out of its own or other non-HUD funds).

In order to expedite the handling of such requests, the Multifamily Hub or Program Center Director authorized to process Section 202 and Section 811 projects is being delegated the responsibility for reviewing and approving these requests. The HUD Counsel for that Office will review the subordinate financing documents for legal sufficiency. The Multifamily Hub or Program Center Director will review any comments from the HUD Counsel and request the borrower/owner to make modifications to the documents as appropriate.

After the documents have been determined to be legally acceptable, they are approvable by the Multifamily Hub or Program Center Director if, upon review, the provisions identified in the Exhibits to the attached MOU, or provisions similar in all material respects, are included in the relevant AHP subordinate financing documents and HUD capital advance financing documents. As with all subordinate financing involving Section 202 and 811 projects, HUD's review will include a determination that:

- (1) The subordinate mortgage holder cannot impose any requirements which interfere or conflict with HUD's requirements concerning the project's development or operation, nor can they in any way jeopardize the continued operation of the project on terms at least as favorable to existing as well as future tenants. (FHLB AHP projects utilizing the attached documents will meet the test.)
- (2) The subordinate financing does not become due and payable in whole or in part until the Section 202 or 811 capital advance (mortgage and note) is fully amortized, except in the following cases:
  - (a) payments can be made on the subordinate mortgage prior to full amortization from Residual Receipts to the extent available after approval by the local HUD Office; (In the event of a default in the subordinate mortgage based on noncompliance with AHP covenants and regulations, HUD shall approve payments to the Lender from Residual Receipts to the extent available as determined by the Multifamily Hub or the Multifamily Program Center Director.), or

- (b) the sponsor agrees to make payments from its own funds, and such funds do not come from the Section 202 or 811 project.
- (3) Pursuant to Paragraph 1.c. of the Rider (Exhibit A of the MOU), no default under the subordinate mortgage can be declared without HUD approval and HUD has agreed in the MOU that its approval shall not be unreasonably withheld.
- (4) HUD's approval of a Transfer of Physical Assets (TPA) also constitutes approval of the TPA by the subordinate mortgage holder. In the event of a transfer, such transferee shall notify the FHLB of its intent to acquire Borrower's interest in the property and shall assume Borrower's obligations under the AHP covenants.

This reflects only a summary of the requirements set forth in the MOU and attached Exhibits; HUD offices should read the MOU and attached Exhibits carefully for more detailed information.

IV. THE MEMORANDUM OF UNDERSTANDING (MOU): As stated above, the MOU establishes the framework for processing Section 202 and Section 811 projects receiving subordinate financing under a FHLB's AHP. The MOU identifies HUD's responsibility, including: for monitoring projects receiving AHP funds; for notifying the FHLB when there are changes in the ownership of the project and assuming the Borrower's obligations under the AHP for projects transferred to HUD; and for notifying the FHLB of instances where:

- (1) Tenant rents or incomes are in noncompliance with the Section 202 or Section 811 program rent or income requirements; and/or
- (2) Projects are not suitable for occupancy, taking into account local health, safety and building codes.

The MOU also transmits the Rider that must be attached to any Lender's Deed of Trust or Mortgage and the HUD capital advance financing documents as modified consistent with the MOU. The documents are described below:

- (1) RIDER: The subordinate Lender and the Owner/Borrower shall execute the Rider to Lender's Deed of Trust or Mortgage which is attached to the MOU as Exhibit A. The Director of the Multifamily Hub or Multifamily Program Center authorized to process Section 202 and 811 projects shall execute HUD's approval of the Rider by signing on the "Approved" line.

- (2) HUD FORMS: The modified Capital Advance Agreement (HUD Form-90167-CA (9/92)) and Regulatory Agreement (HUD Form-92466-CA (4/92)) attached as Exhibits B and C to the MOU, must be used for all Section 202 and 811 projects receiving AHP subordinate financing.

The Multifamily Hub or Multifamily Program Center Director authorized to process Section 202 and 811 projects shall be responsible for carrying out the requirements set forth in paragraphs (1) through (4) of the MOU.

If you have any programmatic questions concerning this policy, you may direct them to Aretha Williams, Project Manager at (202) 708-2866 and any legal questions to Attorneys Michael Reardon or Betty Park at (202) 708-0470.

Attachment

  
Assistant Secretary for Housing-  
Federal Housing Commissioner

**Attachment A**

**MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN THE  
FEDERAL HOUSING FINANCE BOARD  
AND  
THE UNITED STATES DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT**

WHEREAS, this Memorandum of Understanding (MOU) establishes the framework for a continued working relationship between the Federal Housing Finance Board (FHFB) and the United States Department of Housing and Urban Development (HUD) in connection with the financing of affordable housing projects using funds from both HUD's Section 202 or 811 programs and the Federal Home Loan Banks' (FHLBank) Affordable Housing Program (AHP), regulated by the FHFB;

WHEREAS, HUD and the FHFB recognize that they share mutual interests in ensuring that the public interest is served by enabling funds from both the AHP and Section 202 or 811 programs to be used to finance eligible very low-income housing projects with supportive services for the elderly and persons with disabilities (Property);

WHEREAS, HUD's Section 202 program is authorized under Section 202 of the Housing Act of 1959 (12 U.S.C. § 1701q), as amended by Section 801 of the National Affordable Housing Act of 1990 (P.L. 101-625, 104 Stat. 4079, Nov. 28, 1990) (Section 202 program). The purpose of the Section 202 program is to provide financial assistance to expand the supply of housing with supportive services for the elderly. Capital advances (interest free) are made by

HUD to eligible single-purpose private, nonprofit owners to finance the development of rental housing with supportive services for very low-income elderly persons, for a minimum of 40 years;

WHEREAS, HUD's Section 811 program is authorized under Section 811 of the National Affordable Housing Act of 1990 (P.L. 101-625, 104 Stat. 4079; Nov. 28, 1990) (42 U.S.C. § 8013) (Section 811 program). The purpose of the Section 811 program is to provide financial assistance to expand the supply of housing with supportive services for persons with disabilities. Capital advances (interest free) are made by HUD to eligible single-purpose nonprofit organizations with a section 501(c)(3) tax exemption to finance the development of rental housing with supportive services for very low-income persons with disabilities, for a minimum of 40 years;

WHEREAS, the AHP is mandated by the Federal Home Loan Bank Act, as amended (12 U.S.C. § 1430(j)). Under the AHP, each of the twelve FHLBanks has established a program to provide grants and advances (loans) at subsidized interest rates to FHLBank member financial institutions to finance long-term, very-low-, and low- and moderate-income owner-occupied and affordable rental housing. In the case of rental housing, AHP funds may be used to finance the purchase, construction or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for 15 years. The FHLB has issued regulations implementing the AHP (12 C.F.R. part 960);

WHEREAS, HUD and the FHFB wish to encourage maximum and timely consultation between HUD Multifamily Hubs and Multifamily Program Centers and the FHLBanks on financing matters related to projects funded under the Section 202 or Section 811 programs, in order to avoid needless delays in the financing of such projects;

WHEREAS, the FHLBanks provide AHP funds in the form of grants or loans to a member lender (Lender) which, in turn, provides such funds (Loan) to the Borrower for the Property, pursuant to the terms and conditions set forth in the Loan documents and the covenants of the Lender's AHP Application (AHP Covenants) approved by the FHLBank.

NOW, THEREFORE, in consideration of the mutual premises set forth herein, with respect to projects to be financed with both AHP funds and HUD Section 202 or Section 811 program capital advances, the parties hereby agree as follows:

1. Legal Documents

Pursuant to a Notice to be issued by HUD, HUD Multifamily Hubs or Multifamily Program Centers will have delegated authority to approve requests from sponsors of such projects to use AHP funds for subordinate financing, and the HUD capital advance financing documents and AHP subordinate financing documents shall be approvable, on an expedited basis, by the Multifamily Hub or Multifamily Program Center Director authorized to process Section 202 and Section 811 projects, pursuant to the Notice, if the provisions identified in the following attached Exhibits, or provisions similar in all material respects, are included in the relevant documents:

(a) Rider to Lender's Deed of Trust [or Mortgage] (Exhibit A) -- HUD agrees that it will indicate its approval by executing the attached Rider to Lender's Deed of Trust [or Mortgage] (Rider), and that the provisions of the Rider shall govern and control over any conflicting provisions in other HUD capital advance documentation required under the Section 202 or Section 811 programs.

(b) HUD Capital Advance Agreement. Form HUD-90167-CA (9/92) (Exhibit B) -- The third sentence of Paragraph 4(d) is revised by inserting at the end of the sentence: ", and where subordinate financing was provided, for the purposes for which such financing was provided."

The second sentence of Paragraph 9 is revised by inserting "capital advance" after the word "any".

(c) HUD Capital Advance Program Regulatory Agreement. Housing For The Elderly Or Handicapped (Nonprofit). Form HUD-92466-CA (4/92) (HUD Regulator Agreement) (Exhibit C) -- Paragraph 17(a) is revised by inserting at the end of the sentence: ", or a default in a subordinate mortgage as approved by HUD".

With respect to Paragraph 14 of the HUD Regulatory Agreement, HUD agrees that it shall consult with the appropriate FHLBank providing AHP subsidy prior to making the determination of whether to consent to any litigation or other action pursuant to Paragraph 14.

Where it is required in the project financing documentation that HUD approval shall not be unreasonably withheld, HUD agrees to consult with the appropriate FHLBank providing AHP subsidy to a particular project in determining whether to provide such approval.

Where the documents are approvable as provided above, HUD waives to use AHP subordinate financing for projects also receiving financing under the Section 202 or Section 811 programs shall not be required.

For projects receiving AHP subordinate financing, HUD agrees to issue a Notice in accordance with this MOU and the Exhibits attached hereto.

The FHFB agrees that the provisions identified in the above-referenced documents are consistent with the FHFB's AHP regulatory requirements. See 12 C.F.R. part 960.

## 2. HUD Monitoring Notice to FHLBanks

Where a project financed under the Section 202 or Section 811 program is transferred to HUD or a designee of HUD, upon the request of the FHLBank providing AHP funds to such project, HUD agrees to inform the FHLBank of any instances where tenant rents or incomes are found to be in noncompliance with the Section 202 or Section 811 program rent or income requirements being monitored by HUD or where the project is not suitable for occupancy, taking into account local health, safety and building codes.

### 3. Transfer of the Property or a Beneficial Interest in Borrower

In the event of a transfer of the Property to HUD, or to a transferee of HUD, by Borrower (other than in the event of foreclosure), HUD or such transferee shall notify the FHLBank of its intent to acquire Borrower's interest in the Property, and HUD or such transferee shall assume Borrower's obligations under the AHP Covenants.

### 4. Default or Foreclosure and Payment From Residual Receipts

In the event of a default or a foreclosure on the Deed of Trust [or Mortgage] on the Property, if the Loan secured thereby is not in compliance with the AHP Covenants and AHP Regulation due to an act or omission of Borrower, which Borrower has failed to cure, and Lender has declared all amounts due and payable, after providing ten days prior written notice to HUD and Borrower, then, and pursuant to Paragraph 5(c) of the HUD Regulatory Agreement by and between HUD and Borrower, HUD shall approve payments to be made by Borrower to Lender from Residual Receipts (as such term is defined in Paragraph 17(g) of the HUD Regulatory Agreement) of the Property, if and to the extent Residual Receipts are available as determined by the HUD Multifamily Hub or Multifamily Program Center Director. As used in Paragraph 17(g)(1)(ii) of the HUD Regulatory Agreement, the term "obligations" shall not include any non-HUD sources of financing.

### 5. Notice to HUD Multifamily Hubs and Multifamily Program Centers and FHLBanks

HUD agrees to promptly advise all of its Multifamily Hubs and Multifamily Program Centers of the provisions of this MOU, and the FHLBank agrees to promptly advise all of the FHLBanks of the provisions of this MOU.

COUNTERPARTS: EFFECTIVE DATE

This MOU may be executed in any number of counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument and the entirety of the agreement.

This MOU shall be effective on the date of the last signature hereto.

IN WITNESS WHEREOF, HUD and the FHFB have executed this MOU as follows:

THE UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

By: William C. Capper  
Assistant Secretary For Housing--  
Federal Housing Commissioner

Date: March 18, 1999

FEDERAL HOUSING FINANCE BOARD

By: Sam A. Maricay  
Chairman

Date: March 24, 1999

Loan No. \_\_\_\_\_

RIDER TO LENDER'S DEED OF TRUST [or MORTGAGE]

For value received, the undersigned all agree that the following provisions shall be incorporated into that certain deed of trust [or mortgage] ("Deed of Trust" [or "Mortgage"]) of even date executed by \_\_\_\_\_ ("Borrower"), in favor of \_\_\_\_\_ ("Lender" or "Beneficiary"), as Beneficiary, to which Deed of Trust [or Mortgage] this Rider is attached, as well as the promissory note which said Deed of Trust [or Mortgage] secures (the "Note"). In addition, and to the extent that this Rider, and, consequently the Deed of Trust [or Mortgage], affect the rights and responsibilities of the United States Department of Housing and Urban Development ("HUD") under the HUD Section 202 Supportive Housing for the Elderly program (12 U.S.C. § 1701q) ("Section 202 program"), or the HUD Section 811 Supportive Housing for Persons with Disabilities program (42 U.S.C. § 8013) ("Section 811 program"), HUD agrees to have a duly authorized official approve this document by execution on the signature line set forth below. To the extent that the provisions of this Rider are inconsistent with the provisions of the Note, Deed of Trust [or Mortgage], or any other HUD capital advance documentation, including but not limited to Paragraph 21 of the HUD Capital Advance Program Regulatory Agreement ("HUD Regulatory Agreement"), required to be executed pursuant to the HUD Section 202 or Section 811 programs, the provisions of this Rider shall prevail and shall supersede any such inconsistent provisions of the Note, Deed of Trust [or Mortgage], or HUD capital advance documentation.

1. Transfer of the Property or a Beneficial Interest in Borrower. With respect to [insert: number of Paragraph in this Deed of Trust [or Mortgage] pertaining to the acceleration of payment in the event of the sale or transfer of all or any part of the Property, or any interest therein] of this Deed of Trust [or Mortgage], such Paragraph is amended as follows:

a. Excluded from the provisions of this Paragraph shall be a transfer to HUD or to a transferee of HUD, provided that in the event of such transfer by Borrower (other than in the event of foreclosure), HUD or such transferee notifies Lender of its intent to acquire Borrower's interest in the subject Property, and HUD or such transferee expressly agrees to assume Borrower's obligations under the Loan documents, including compliance with the Affordable Housing Program ("AHP") Covenants.

b. This Deed of Trust [or Mortgage] is subordinate to a first Deed of Trust made by Trustor in favor of the Secretary of HUD ("Secretary") to be recorded securing a Capital Advance made by the Secretary pursuant to [Insert: the Section 202 program, or Insert: the Section 811 program, as applicable,] ("HUD Deed of Trust"), and to a HUD Regulatory Agreement and HUD Capital Advance Program Use Agreement ("HUD Use Agreement") between Trustor

Exhibit A

and the Secretary, and to [Insert any other agreements applicable to, or required by, other priority lienholders] with respect to the Property referred to herein.

c. During the period the HUD Deed of Trust, HUD Regulatory Agreement and HUD Use Agreement are in effect, except as otherwise provided in this Rider, no default under this Deed of Trust [or Mortgage] may be declared without prior written approval of the Secretary, as applicable including, but not limited to, Lender's rights in the event of Borrower's default set forth in [Insert number(s) of Paragraph(s) in this Deed of Trust [or Mortgage] pertaining to acceleration of payment in the event of Borrower's default] of this Deed of Trust [or Mortgage] (which approval shall not be unreasonably withheld).

d. In the event that during the period the HUD Deed of Trust, HUD Regulatory Agreement and HUD Use Agreement are in effect, the Secretary acquires title to the Property by foreclosure, the lien of this Deed of Trust [or Mortgage] shall automatically terminate.

e. In the event Borrower defaults under the HUD Deed of Trust, HUD Regulatory Agreement or HUD Use Agreement, HUD shall give written notice thereof to Lender at the following address: [Insert Lender's address]. The notice shall specify the nature of the violation and the agreement violated.

f. This Deed of Trust [or Mortgage] shall not be modified during the period the HUD Deed of Trust, HUD Regulatory Agreement, HUD Use Agreement, or [Insert applicable agreements of other subordinate financing sources, including the Federal Home Loan Bank of \_\_\_] are in effect without the prior written approval of the Secretary, and the [Insert any other subordinate sources other than the Federal Home Loan Bank of \_\_\_\_\_] or the Federal Home Loan Bank of \_\_\_\_, as applicable.

g. During the period the HUD Deed of Trust, HUD Regulatory Agreement and HUD Use Agreement are in effect, in the event of any conflict between any provisions of this Deed of Trust [or Mortgage] and [Insert: 12 U.S.C. § 1701q (if a Section 202 program); or Insert: 42 U.S.C. § 8013 (if a Section 811 program)], HUD regulations, or the HUD Regulatory Agreement, this Deed of Trust [or Mortgage] shall be deemed amended to comply with said statute, HUD regulations and HUD Regulatory Agreement, except as follows:

(i) Notwithstanding any term or condition to the contrary in this Rider, neither Lender nor Trustee shall declare a default hereunder, or foreclose this Deed of Trust [or Mortgage], either by judicial action or under the power of sale herein granted, without the prior written approval of the Secretary (which approval shall not be unreasonably withheld) for so long as the HUD Capital Advance evidenced by a first deed of trust remains outstanding; provided, however, that in the event the Loan secured hereby is not used in compliance with the AHP Application or the AHP Covenants, due to an action or omission of Borrower, which Borrower has failed to cure, then Lender may, after ten (10) days prior written notice to HUD and Borrower, declare all amounts due hereunder due and payable. In such event, and pursuant to Paragraph 5(c) of the HUD Regulatory Agreement by and between HUD and Borrower, dated \_\_\_\_\_, HUD shall approve payments to be made by Borrower to Lender from Residual Receipts (as such term is

Exhibit A

defined in Paragraph 17(g) of the HUD Regulatory Agreement) of the Project, if and to the extent Residual Receipts are available as determined by the HUD Multifamily Hub or Multifamily Program Center Director. As used in Paragraph 17(g)(1)(ii) of the HUD Regulatory Agreement, the term "obligations" shall not include any non-HUD sources of financing.

(ii) Borrower shall comply with the AHP Covenants and all other requirements of the Federal Home Loan Bank of \_\_\_ and the Federal Housing Finance Board relating to the AHP, and shall also comply with the requirements of HUD with respect to the development and operation of the Project. Notwithstanding Borrower's compliance with the requirements of HUD, in the event that Borrower's acts or omissions result in noncompliance with the AHP Application or the AHP Covenants, then Borrower shall, to the extent possible, eliminate the circumstances of noncompliance by requesting a modification of the terms of the AHP Application pursuant to 12 C.F.R. §§ 960.7 or 960.9, as applicable. If the circumstances of any noncompliance by Borrower with the AHP Application or the AHP Covenants cannot be, or are not, eliminated by a modification or cured within a reasonable period of time, then the provisions hereof, including notice of noncompliance and repayment of the Loan secured by this Deed of Trust [or Mortgage], shall apply. All capitalized terms used in this Paragraph \_\_\_ and not defined in this Rider or the Note shall be as defined in the [Insert name of Federal Home Loan Bank of \_\_\_ Subsidy Agreement] by and among the Federal Home Loan Bank of \_\_\_\_\_, Lender and Borrower, dated \_\_\_\_\_.

h. Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Project referred to in the Note secured by this Deed of Trust [or Mortgage] shall constitute approval of the TPA by Lender, provided that prior written notice of the TPA is given to Lender and the transferee expressly assumes all of Borrower's obligations under the Loan documents and AHP Covenants.

2. Retention Agreement. Borrower agrees as follows:

(i) The Property's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP Application for the duration of the retention period (as defined in the AHP Covenants).

(ii) Lender will be given notice of any transfer or refinancing of the Property occurring prior to the end of the retention period.

(iii) In the case of a transfer or refinancing of the Property prior to the end of the retention period, an amount equal to the Loan Amount shall be repaid to the Federal Home Loan Bank of \_\_\_, unless the Property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP Application for the duration of the retention period.

(iv) The income-eligibility and affordability restrictions applicable to the Property pursuant to the AHP Covenants terminate after any foreclosure.

Exhibit A

IN WITNESS WHEREOF, Borrower and Lender (and HUD by indicating its approval) have executed this Rider as follows:

[Insert: NAME OF BORROWER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

[Insert: NAME OF LENDER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved:

UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN  
DEVELOPMENT

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

# 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. 12/31/83)

Section 202  Section 811

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. 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 (2502-0470), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-0000. 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. Do not send this form to the above address.

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.

This Agreement, made the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, 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  elderly persons or  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 Sponsor. 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 projects, structures (existing housing and related facilities) without rehabilitation may only be acquired from the Resolution Trust Corporation under Section 21A(c) of the Federal Home Loan Bank Act. Section 811 projects may be acquired from the Resolution Trust Corporation or other sources. 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 HUD. The Owner shall execute or cause to be executed a Use Agreement restricting use of 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 (4.1.4, 4.3.2, 4.3.4, 4.4.4, 4.5, 8.3.1, 10.1.2, 11.3.9, 11.3.10) (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 have 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 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 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 accor-

dance 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 disbursed 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 quitclaims to HUD all sums undischarged 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, 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 the form specified in the applicable Regulations in effect on the date of this Agreement. 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 construction 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 202(j)(5) of the Housing Act of 1959, as amended and Section 811 (j)(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.

By:

(Seal)  
Attest

(Name of Owner)

Secretary

(Signature & Date)

By: President

UNITED STATES OF AMERICA  
Secretary of Housing and Urban Development

Date

By:

# 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

his agreement entered into \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_, 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 licensing 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;
    - (1) 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.

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