Firm Commitment for Capital Advance Financing Upon Project Completion (Section ___)

Project Number _____ Project Name _____

_____
To (Name of Mixed-Finance Owner)

_____
Street Address

_____
City & State Zip Code

_____
Your Request for Firm Commitment for Capital Advance Financing has been reviewed pursuant to 24 CFR Part 891 and your final plans and specifications and the Contractor/Owner's cost estimates have been found to be acceptable. Our attachment of forms HUD-92264 and 92264-A (see Paragraph 11 below) evidences compliance with the requirements of 24 CFR Part 891.

The Secretary of Housing and Urban Development (hereinafter called "Secretary" and/or "HUD") will make and disburse a capital advance upon completion of the Project 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. The project will consist of
____ Capital Advance-assisted units and

____ non-Capital Advance-assisted units. 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 Mortgage Note, form HUD-93432-CA, the Mortgage Deed of Trust or Security Deed, form HUD-90165-CA, Part I of Project Assistance Contract, form HUD-90173-CA; Part II of Project Rental Assistance Contract, form HUD-90173-B, the Regulatory Agreement, form HUD-92466.1-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. a. There has been filed with HUD a "Master Set" of the aforementioned Drawings and Specifications of the Project together with the general conditions of the contract for the construction of buildings in the standard form of the American Institute of Architects, current edition, and Supplementary Conditions, of the contract for construction which said Master Set shall remain on file with HUD and be the controlling factor with respect to any matters which may arise as to language, provisions, and contents of said "Drawings and Specifications." In addition thereto HUD shall be furnished with three duplicate sets of said Drawings and Specifications at the time of acceptance of this commitment.

   b. Upon closing of the capital advance mortgage, the Project shall have been completed in accordance with the requirements of said Drawings and Specifications except as they have been modified by changes. All changes in the Drawings and Specifications must be in writing signed by the Construction Lender and the Mixed-Finance Owner and shall be submitted to HUD for comment before changes are made. It is understood that HUD at all times has the right to require compliance with the original Drawings and Specifications.

2. Prior to the start of construction the following documents must be filed with HUD:

a. Agreement and Certification (For use in Capital Advance Upon Completion cases), form HUD 93566.1-CA

b. The Owner-Architect Agreement, AIA Form B-181, with HUD Amendment.

c. 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)

3. During the course of construction, HUD representatives shall at all times have access to the property and the right to inspect progress of construction. The inspection of construction by HUD representatives shall be solely for the benefit and protection of HUD and no other party.

4. If under the laws of the jurisdiction in which the project is located, the personal property of the mixed-finance owner, which is used in the operation of the project, is not covered by and subject to the real estate mortgage, the mixed-finance owner shall provide prior to the 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.

5. At least 15 working days prior to the anticipated date for 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 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 for the limited partnership, and Incumbency Certificate, including evidence of good standing.

b. The Regulatory Agreement, which will regulate the Owner's operation of the Capital Advance-assisted units (form HUD-92466.1-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, 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 closing is vested in the Mixed-Finance Owner free of all encumbrances, unless previously approved by HUD, 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 occupancy permits issued by legally constituted authorities.

g. A final “as-built” survey of the mortgaged property (dated no more than 90 days before final closing), together with the Surveyor's Certificate, HUD-92457, (dated within 30 days of final 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. Evidence satisfactory to HUD showing that adequate sewer, water, gas and electric facilities have been fully installed and that necessary public streets, sidewalks and curbing outside the project site have been completed. All off-site facilities or utilities as may be required by special conditions of this commitment shall be included in such evidence.

j. Request for Closing, Certificate of Construction Lender, Mixed-Finance Owner and General Contractor (For Capital Advance Upon Completion only), form HUD 9015.1-CA.

k. The Owner's Attorney's Closing Opinion (59 FR 101443 dated March 3, 1994).

l. Escrow Agreement for Unpaid Construction Costs, form HUD 90171-CA.

m. FHEO Assurance of Compliance with nondiscrimination and equal opportunity requirements. (Appendix 23 of Handbook 4571.2 (Section 811) and 4571.3 (Section 202).

n. Evidence that the Owner has obtained the required property insurance coverage (see form HUD-90164-CA).

o. Use Agreement (form HUD-90163.1-CA).

p. 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.

q. Contractor’s Prevailing Wage Certificate Form 2448.

r. Owner's executed requisition for advance for capital advance funds (form HUD-92403-CA).

s. Evidence that the work of the general contractor is covered by a guarantee, running for a period of one year from the date of 100% project completion, against defects due to faulty materials and/or workmanship.

t. The mixed-finance owner’s cost certification (form HUD-92330) and supporting documentation.

u. Conflict/identity of interest certification.

v. All other applicable documents (as noted below).

6. 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.

7. Construction shall commence upon the Project within 90 days from the date of this commitment and must be continued thereafter diligently to completion. If construction is not started within such time this commitment shall terminate unless the time for commencement of construction is extended by in writing by HUD.

8. This commitment shall expire _____, 20__ unless renewed or extended in writing by HUD and upon such expiration all right and obligations of the respective parties shall cease.

9. Evidence that the Owner has escrowed with HUD or its designee at closing:

   a. 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); and

   b. Operating escrow account for non-capital advance-assisted units in the amount $ _____ to cover operating expenses of those units.

10. Any change in the sponsorship or limited partnership owner upon which this commitment is predicated must be requested in writing by the mixed-finance owner on behalf of any proposed substitute entity, and such request must be approved in writing by HUD. Any sponsor or principal (including the principals of any parent entity of such sponsor), 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 HUD housing programs and a conflict of identity-of-interest certification, shall file such certificates on the form prescribed for HUD approval.

11. The following documents are attached and incorporated herein:

   a. Rental H
   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

Date: _____ By _____

Authorized Agent

The above commitment is hereby acknowledged by the undersigned, and we hereby agree to be bound by the terms thereof.

ATTEST: _____

Mixed-Finance Owner

_____ By _____

ATTEST: _____

Construction Lender

_____ By _____