|  |  |  |
| --- | --- | --- |
| **Commitment for** **Insurance Upon Completion – Supplemental Loan**Section 232 Pursuant to Section 223(d) – COVID  |  | **U.S. Department of Housing** **and Urban Development**Office of Residential Care Facilities |

|  |  |  |
| --- | --- | --- |
|  | FHA Project No.: | **XXX-XXXXX** |
|  | Project Name: | Project Name |
|  | Project Address: | Project Street Address |
|  |  | Project City, State, Zip |
|  |  |  |
|  |  |  |
| Lender Name |  | Borrower Name |
| (Lender) |  | (Name of Borrower) |
| Lender Street Address |  | Borrower Street Address |
| (Address) |  | (Address) |
| Lender City, State, Zip |  | Borrower City, State, Zip |
| (City, State and Zip Code) |  | (City, State and Zip Code) |
|  |  |  |

We understand that you, as Lender, have agreed to make a supplemental loan (the “Supplemental Loan”) to Borrower Name (hereinafter called the “Borrower”), in an amount not exceeding the sum of Loan Amount Written Out Dollars ($     ), evidenced by a supplemental note (the “Supplemental Note”) to be secured by a supplemental security instrument (the “Supplemental Security Instrument”) covering real property thereon identified above (hereinafter called the “Project”), as shown on the legal description of the property attached hereto as **Exhibit A.**

It is your intention to present the said Supplemental Note and Security Instrument to the Federal Housing Commissioner acting herein on behalf of the U.S. Department of Housing and Urban Development (”HUD”) for mortgage insurance under the provisions of Section 232, pursuant to Section 223(d), of the National Housing Act (the “NHA”), consistent with Section 542 of the Consolidated Appropriations Act of 2021, and the Regulations thereunder now in effect (the “Regulations”). All or a portion of the Project is subject to one or more prior Security Instruments insured by HUD under Section 232 of the NHA (whether one or more, the "Prior Security Instrument").

HUD hereby agrees to insure said Supplemental Note and Supplemental Security Instrument under the provisions of Section 223(d) of the NHA, consistent with Section 542 of the Consolidated Appropriations Act of 2021, and the Regulations upon the following conditions:

1. The Supplemental Note 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 not later than the first day of the second month following the date of endorsement of the Supplemental Note for insurance (“Endorsement”). The Supplemental Note 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. Note: Any change in the interest rate will require reprocessing of the mortgage insurance application and amendment of this Commitment prior to Endorsement.

2. The Supplemental Note and the Supplemental Security Instrument to be insured shall be in the forms prescribed by HUD for use in connection with loans insured under Section 232, pursuant to Section 223(d), of the NHA in the locality in which the property is situated, with the security therefore to be coextensive with the real property securing the Prior Security Instrument. If the mortgaged property described in **Exhibit A** includes property that is not encumbered by the Prior Security Instrument, the Prior Security Instrument and related documents shall be modified to the satisfaction of HUD to include such additional property and a satisfactory endorsement to the title insurance policy insuring such Prior Security Instrument shall be provided prior to Endorsement. Said Supplemental Note and Supplemental Security Instrument shall each contain a provision that a default under the Prior Note evidencing and securing the Prior Security Instrument shall constitute a default under the said Supplemental Note and Supplemental Security Instrument. Said Supplemental Security Instrument shall also provide that, except for escrows for mortgage insurance premiums or service charges due to HUD, escrows for items otherwise required thereunder shall not be collected thereunder for so long as escrows for such items are being collected under the Prior Security Instrument. In addition, the Borrower (and, if applicable, the Operator of the Project (the “Operator)) shall provide a security agreement, UCC financing statements, and deposit account control agreement(s) granting a security interest in such tangible and intangible personal property related to the Project as may be required by HUD (subject only to liens for taxes and assessments that are not delinquent, liens related to the Prior Mortgage, and such other liens, as with an accounts receivable financing transaction, as may be approved by HUD).

1. Prior to Endorsement, the Borrower shall present to HUD a title policy in conformity with the Regulations which shall show that title to the property (or, if approved by HUD, a leasehold estate therein) on the date of Endorsement is vested in the Borrower free of all exceptions to title (either junior or prior to said Supplemental Security Instrument) except said Supplemental Security Instrument, the Prior Security Instrument, and such other exceptions to title as are specifically determined to be acceptable by HUD. Said title policy shall (i) by its terms inure to the benefit of the Lender and/or the U.S. Department of Housing and Urban Development, as their interests may appear and (ii) unless otherwise approved by HUD, be on the ALTA Loan Policy 2006 Form and include ALTA Form 9-06, 9.6-06, 8.1-06, 22-06, 17-06, 25-06, 3.1-06, and 18-06 (or 18.1-06, as appropriate) endorsements and an endorsement deleting the arbitration clause. The Borrower shall also furnish satisfactory proof that there exist no unpaid obligations contracted in connection with the insured Loan transaction, except such obligations as may be approved by HUD. If required by HUD, prior to Endorsement the Borrower shall present to HUD a survey of the Project **dated within 120 Days of closing** in form and substance satisfactory to HUD **unless an older survey is approved by HUD**.

4. The Borrower must possess the powers necessary for meeting all the requirements of HUD for insurance of the Supplementary Note and Supplemental Security Instrument. Prior to Endorsement, there shall be delivered to HUD and the Lender (a) copies of ownership entity documentation that complies with applicable requirements of HUD, including a copy of the instrument under which the Borrower entity is created (unless the Borrower is an individual), together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Supplemental Note and Supplemental Security Instrument and the other closing documents, and (b) any amendment (or amendment and restatement) of the Regulatory Agreement between the Borrower and HUD in connection with the Project (the “Regulatory Agreement”) to include references to the Supplemental Note and Supplemental Security Instrument in said Regulatory Agreement and to cause said Regulatory Agreement to be in the form currently prescribed by HUD for use in connection with loans insured under Section 232 of the NHA. Accordingly, Section 38 of the Regulatory Agreement shall apply to the following individuals or Entities:      .

1. It is a condition of this Commitment that any change in ownership upon which this Commitment was predicated must be indicated in writing by the Borrower and such request must be approved in writing by HUD. Any principals of the Borrower or Operator that are added prior to Endorsement and were not disclosed in the mortgage insurance application shall be subject to HUD's credit review and previous participation clearance before Endorsement.
2. Upon Endorsement, the Lender shall pay to HUD, in advance, a mortgage insurance premium equal to 0.95% of the principal amount of the Supplemental Loan to cover the first insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.
3. This Commitment shall expire 90 days from the date hereof unless extended by HUD. Upon such expiration, all rights and obligations of the respective parties shall cease. Prior to any extension of this Commitment, HUD may, at its option, reexamine this Commitment to determine whether it shall be extended, shall be extended in the same amount, or shall be amended to include a lesser amount.
4. A request for the reopening of this Commitment received within 90 days of its expiration must be accompanied by the reopening fee prescribed by the Regulations.
5. The Borrower, Operator and/or Management Agent, as applicable, shall maintain professional liability insurance in accordance with the requirements established by HUD. The Borrower shall annually provide or cause to be provided to HUD, a certification of compliance with HUD’s professional liability insurance requirements. The Regulatory Agreement executed by the Borrower must require compliance with these requirements.
6. If the Project is subject to an operating lease, such lease must (a) incorporate subordination language approved by HUD; (b) provide for lease payments sufficient to cover monthly principal and interest payments under the Prior Security Instrument and Prior Note, Supplemental Note and Supplemental Security Instrument, escrows required under the Prior Security Instrument and deposits to the Reserve Fund for Replacements required by the Prior Regulatory Agreement; and (c) otherwise comply with applicable requirements of HUD.
7. Any accounts receivable financing obtained by the Borrower or Operator with respect to the Project will be subject to approval by HUD and the Lender.
8. All financing arrangements (other than the Mortgages and any other mortgage insured by HUD), including repayment obligations and other secondary financing, and occupancy restrictions must be fully disclosed to, and approved by, HUD and must comply with HUD’s requirements applicable to loans insured under the Section of the NHA applicable to the Supplemental Note and Supplemental Security Instrument.
9. This Commitment is conditioned upon and shall not be enforceable against HUD until and unless all conditions to the endorsement stated herein have been satisfied or waived by HUD.
10. HUD reserves the right to examine the Lender’s file materials related to the underwriting of the Supplemental Loan at any time during the 10-year period following Endorsement. If there is evidence of fraud or misrepresentation by the Lender, HUD reserves its legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Lender agrees to retain, in accessible files, all materials related to the underwriting of the Supplemental Loan for a period of 10 years, even though the Supplemental Loan itself may be sold to another entity.
11. Attention is directed to the Regulations covering the assignment or the transfer of the insured Supplemental Note and Supplemental Security Instrument, in whole or in part, and the transfer of the rights, privileges, and obligations under the contract of mortgage insurance.
12. This Commitment is subject to the conclusions stated on the attachments to this Firm Commitment.
13. Prior to Endorsement, the Borrower shall present to HUD (a) evidence satisfactory to HUD that the holder of the Prior Security Instrument has consented in writing to the liens securing the Supplemental Security Instrument and has agreed not to exercise its right to accelerate the maturity of the Prior Security Instrument by reason of the creation of such liens, and (b) a statement from the holder of the Prior Security Instrument confirming that the Prior Security Instrument is current in all respects.
14. All comments in the Legal Punch List must be addressed to HUD’s satisfaction prior to closing.
15. HUD reserves the right to suspend processing or terminate this Commitment in the event that any of the factors (a)-(d) listed below occur prior to Endorsement. Prior to closing, the Borrower and Operator must certify that between issuance of Firm Commitment and closing, none of the following have occurred: (a) federal, state, municipal and or other regulatory authority action against the project that demonstrates or alleges substantial deficiencies in the operation of the project which may be evidenced by an administrative or judicial proceeding or final audit finding; (b) filing of a bankruptcy petition of Borrower, or Operator; (c) filing of a lawsuit or criminal charges against the Operator or Borrower entity or any principal thereof; or (d) placement of a Special Focus Designation or ban on new admissions on the project.
16. This Commitment is:

[ ]  Subject to Special Conditions numbered 1 through          , which are included below and are made a part hereof.

[ ]  Not subject to any Special Conditions.

1. Long-Term Debt Service Reserve (Form HUD-92476C-ORCF). Borrower shall establish for the life of the loan a debt service reserve account (“Debt Service Reserve” or “Escrow”) in the amount of . The Debt Service Reserve will be funded by loan proceeds and shall be maintained under the control of the Lender. Disbursements from the Debt Service Reserve shall be authorized only upon written approval from HUD. The Escrow is intended to provide the Borrower with a reserve to meet debt service payments on the Loan, or other Project needs as approved by HUD in writing, as necessary to safeguard the Project’s financial viability. Funds in this Escrow shall be used exclusively for payment of principal, interest, and mortgage insurance premiums (MIP) in connection with the Loan, and/or to fund project escrows for insurance premiums, real estate taxes, special assessments and/or MIP, or other Project needs as determined by HUD and approved in writing. This paragraph shall be included in the Borrower Regulatory Agreement (HUD Form 92467-ORCF) paragraph 14 and any other document deemed necessary by HUD at closing.

**Special Conditions:**

[Balance of page intentionally left blank]

Draft closing documents, conforming to the terms of this Commitment, must be submitted not less than 10 business days prior to Endorsement. This Commitment and exhibits referred to herein together with the applicable statute and Regulations constitute the entire agreement among the parties, and acceptance of the terms hereof is evidenced by the signature of the Borrower and Lender upon the lines provided below. Please return one original of this Commitment signed by the Lender and the Borrower, to the ORCF Underwriter within 10 business days of the date of HUD’s execution of this Commitment.

|  |
| --- |
| **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****BY: FEDERAL HOUSING COMMISSIONER** |
| By: |  |  | Date: |  |
|  | Authorized Agent |  |  |  |

The above Commitment for Insurance Upon Completion, including Special Conditions (if applicable), is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof.

|  |  |  |  |
| --- | --- | --- | --- |
| BORROWER: |  |  | Borrower Name |
| Date: |  |  | By: |  |
|  |  |  | Name: |       |
|  |  |  | Title: |       |

|  |  |  |  |
| --- | --- | --- | --- |
| LENDER: |  |  |  |
| Date: |  |  | By: |  |
|  |  |  | Name: |       |
|  |  |  | Title: |       |

Attachments:

Exhibit A Legal Description

Form HUD-92264a-ORCF