

Surplus Cash Note

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

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Project Name: _____
HUD Project No: _____

FOR VALUE RECEIVED, _____
("Maker") promises to pay to

_____ ("Payee") the sum of
_____ Dollars

(\$ _____), payable at _____ with
interest on any remaining balance of principal at _____ per cent
(_____%) per annum payable annually or semi-annually, commencing
_____, 20____, and thereafter on the first day of

_____ until the entire indebtedness has been paid. Any interest not so
paid shall not create any default in the terms of this note but shall accrue and be
payable in full on the maturity date hereof. In any event, the balance of principal, if any
remaining unpaid, plus accrued interest, shall be due and payable on
_____, 20____ ("**Maturity Date**"). The definition of any capitalized
term or word used herein can be found in this Surplus Cash Note, the Regulatory
Agreement dated _____ between Maker and the Secretary of Housing and Urban
Development ("**HUD**"), or the Security Instrument dated _____ securing that
certain Note ("**Note**") in the principal amount of \$_____ made by
Maker to _____. [Note: The Maturity Date of this Surplus Cash
Note must be on or after the maturity date of the Note.]

This Surplus Cash Note is subject to the following terms and conditions:

1. In the event that the maturity date of that certain Note referenced above is extended and such extension is approved in writing by HUD, then in such event the Maturity Date shall automatically be extended to the extended maturity date of the Note without the consent of Payee.

2. Except as provided in Section 5 below, as long as HUD is the insurer or holder of the Note secured by the Security Instrument, payments due under this Surplus Cash Note shall be payable only from no more than 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of Maker to pay the indebtedness evidenced by this Surplus Cash Note. In no event may payments due under all subordinate debt of Maker cumulatively exceed 75% of available Surplus Cash.
3. In the event the Indebtedness secured by the Security Instrument is paid in full and the Security Instrument released of record, then the holder of this Surplus Cash Note may, at its option, declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

Notwithstanding the foregoing, in the event said indebtedness is paid in full by way of any substitute indebtedness of Maker secured by any substitute security instrument insured or held by HUD under Section 223(a)(7) of the National Housing Act, as amended, the maturity date of this Surplus Cash Note shall automatically be extended to the maturity date of the note evidencing the substitute indebtedness without the consent of Payee.

4. Maker may pay any part or all of the principal of this Surplus Cash Note on any interest payment date, provided no such prepayment of principal in any amount or any payment of interest shall be made except from Surplus Cash in accordance with the conditions prescribed in the Regulatory Agreement.
5. Notwithstanding the provisions of paragraphs numbered 2, 4, and 7, Maker may also make payments due hereunder from sources other than Project income or Project Assets.
6. Any unauthorized payments, as determined by HUD, shall be returned to the Project immediately upon discovery.
7. Except as permitted pursuant to Paragraph 5 hereof, no prepayment of this Surplus Cash Note shall be made until after final endorsement for mortgage insurance by HUD of the Note, unless such prepayment is made from non-Project sources.
8. This Surplus Cash Note is non-negotiable and may not be sold, transferred, assigned, or pledged by Payee.
9. Interest on this Surplus Cash Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument. **{The preceding may be stricken and replaced with “Intentionally Omitted” upon prior written approval of HUD in conformance with Program Obligations.}**

10. Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Surplus Cash Note.

The terms and provisions of this Surplus Cash Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Surplus Cash Note may not be modified or amended without the written consent of HUD.

IN WITNESS WHEREOF, Maker has signed this Surplus Cash Note on this _____ day of _____, 20 ____.

MAKER: _____

By: _____

Name:

Title: