

INSTRUCTION FOR LEASEHOLD 811 PROJECTS

The lease must be on the fee. It must have at least 75 years to run from the date of the capital advance. The annual ground rent and the amount for which HUD may acquire the fee in the case of acquisition of the leasehold by the Department must be approved by HUD. The lease must contain nothing in conflict with Section 811 requirements and otherwise be satisfactory to HUD and must include the following provisions:

LEASE ADDENDUM SECTION 811
(Lessor - Lessee)

Notwithstanding any other provisions of this lease, if and so long as this leasehold is subject to a Section 811 Mortgage held by the Secretary of Housing and Urban Development (HUD), or given to the Secretary of HUD in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage:

(1) The Lessee is authorized to obtain a Section 811 Capital Advance from the Secretary of HUD, secured by a mortgage on this leasehold estate. Lessee is further authorized to execute a mortgage on the leasehold and otherwise to comply with the requirements of HUD for obtaining a mortgage.

(2) The Secretary of HUD, or his successors in office, shall have the option in the event that he or his successor in office shall acquire title to the leasehold estate, to purchase good and marketable fee title to the demised premises, free of all liens and encumbrances except such as may be waived or accepted by him or his successor in office, within twelve (12) months after so acquiring the leasehold estate, for the sum of \$_____ payable in cash or by certified or U.S. Treasury check, provided all rents are paid to date of transfer of title, upon first giving sixty (60) days written notice to the Lessor or other person or corporation who may then be the owner of the fee, and the owner of the fee shall thereupon execute and deliver to the Secretary, or his successor in office, a deed of conveyance to the demised premises, containing a covenant against the grantor's acts, but excepting therefrom such acts of the Lessee and those claiming by through or under the holder of the leasehold estate. Nothing in this option shall require the Lessor to pay any taxes or assessments which were due and payable by the Lessee.

(3) If approved by the Secretary of HUD, Lessee may assign, transfer or sell its interest in the demised premises.

(4) (a) Insurance policies shall be in an amount, and by such companies, and in such form, and against such risks and hazards, as shall be required by the mortgagee and/or the Secretary of HUD.

(b) The Lessor shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Lessee to HUD. The Lessor may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be.

(5) (a) If all or any part of the demised premises shall be taken by condemnation that portion of any award attributable to the improvements, or damage to the improvements, shall be paid to the mortgagee or otherwise disposed of as may be provided in the mortgage. Any portion of the award attributable solely to the taking of the land shall be paid to the Lessor. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the Lessor bears to the total value of the land as established by the amount the Secretary of Housing and Urban Development would be required to pay upon acquisition of the fee.

(b) In the event of a negotiated sale of all or any portion of the demised premises in lieu of condemnation, the proceeds shall be distributed and ground rents reduced as provided in cases of condemnation, but the approval of the Secretary of HUD shall be required as to the amount and division of the payment to be received.

(6) The Lessor agrees that, within ten (10) days after receipt of written request from the Lessee, it will join in any authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Lessee may do hereunder, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the demised premises or of any improvements that may be erected thereon, and if at the expiration of such ten (10) day's period, the Lessor shall not have joined in any such application, or grants for easements, the Lessee shall have the right to execute such application and grants in the name of the Lessor, and, for that purpose, the Lessor hereby irrevocably appoints the Lessee as its Attorney-in-fact to execute such papers on behalf of the Lessor.

(7) Nothing in this lease contained shall require the Lessee to pay any franchise, estate, inheritance, succession, capital levy or transfer tax, or any other tax, assessment, charge or levy upon the rent payable by the Lessor under this lease.

(8) Upon any default under this lease which authorizes the cancellation thereof by the Lessor, Lessor shall give notice to the Secretary of HUD, and the Secretary of HUD, his successors and assigns, shall have the right any time within six (6) months from the date of such notice to correct the default and reinstate the lease unless Lessor has first terminated the lease as provided herein.

At any time after two (2) months from the date a notice of default is given to the Secretary of HUD, the Lessor may elect to terminate the lease and acquire possession of the demised premises. Upon acquiring possession of the demised premises, Lessor shall notify the Secretary. The Secretary shall have six (6) months from the date of such notice of acquisition to elect to take a new lease on the demised premises. Such new lease shall have a term equal to the unexpired portion of the term of this lease and shall be on the same terms and conditions as contained in this lease, except that the Secretary's liability for ground rent shall not extend beyond his occupancy under such lease. The Lessor shall tender such new lease to the Secretary within thirty (30) days after a request for such lease and shall deliver possession of the demised immediately upon execution of the new lease. Upon executing a new lease, the Secretary shall pay to Lessor any unpaid ground rentals due or that would have become due under this lease to the date of execution of the new lease, including any taxes which were liens on demised premises and which were paid by Lessor, less any net rentals or other income which Lessor may have received on account of this property since the date of default under the lease.

(9) All notices, demands and requests which are required to be given by the Lessor, the Lessee, or the Secretary shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to: _____ (Insert Field Office _____ Address) _____

unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

(10) This lease shall not be modified without the consent of the Secretary of Housing and Urban Development.
