

Regulatory Agreement for Coinsured Mortgages on Health Care Facilities (Owner-Lessee)

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner



03559

Project Name: _____ FHA Project No : _____
Mortgagee: _____ NP PM Public (Circle One)
Mortgage Note: \$ _____ Dated: _____
Mortgage Recorded: _____ Dated: _____
County: _____ State: _____
Book: _____ Page: _____ Date: _____

This Agreement is entered into this _____ day of _____, 19____, between _____ their successors, heirs, and assigns (jointly and severally, hereinafter referred to as "Owner") and the undersigned Mortgagee and the Mortgagee's successors and assigns (herein called "Mortgagee") This Agreement and the Mortgage cover the real property described in Attachment A

The authority for this Regulatory Agreement is Section 232, pursuant to Section 244, of the National Housing Act (NHA) and the regulations at 24 CFR Part 252. All statutory references, unless otherwise specified, are to Section 232 of the NHA All regulatory references, unless otherwise specified, are to 24 CFR Part 252.

In return for the Secretary's endorsement for mortgage coinsurance of the Note identified above and to comply with the requirements of the National Housing Act and the regulations and administrative requirements adopted by the Secretary pursuant thereto, the Owner agrees to abide by the provisions of this Agreement. This Agreement will continue so long as the contract of coinsurance remains in force and for such additional period of time during which the Secretary may be the holder of the Mortgage or the Owner of the Project The Owner agrees that this Agreement shall be binding on its successors, heirs and assigns. Breach of this Agreement may be a basis for denial of additional participation in the Secretary's programs. The Owner's willingness and ability to prevent or cure violations of this Agreement may have a bearing on the Secretary's review of any Owner request for additional participation in the Secretary's programs.

A. Definitions: As used in this Agreement the term:

1. "Board and Care Home" means a proprietary residential facility, or a residential facility owned by a private nonprofit corporation or association, providing room, board and continuous protective oversight, which facility is regulated by a State in accordance with section 1616(e) of the Social Security Act.
2. "Default" means a default declared by the Mortgagee or the Secretary when a violation of this Agreement is not corrected to its satisfaction (whichever party issued the notice of violation) within the time allowed by this Agreement or such further time as may be allowed by the Mortgagee or Secretary after written notice
3. "Distribution" means the withdrawal of any cash or asset of the project, excluding outlays for:
 - a. mortgage payments;
 - b. reasonable expenses necessary for the proper operation and maintenance of the project;

Note: The word "construction," may be inserted after "proper" and before "operation" if the mortgage is a nonprofit entity.

 - c. repayment of Owner advances while mortgage payments are current for necessary and reasonable operating expenses as authorized by HUD's administrative procedures

4. "Identity-of-interest" means any relationship which would give the Owner or its management agent or operator control or influence over the price paid to an individual or business supplying goods and/or services to the project. An identity-of-interest is construed to exist when any of the situations listed below exist.

a. when (1) the Owner, operator, or management agent; or (2) any officer or director of the Owner, operator or management agent; or (3) any person who directly or indirectly controls 10 percent or more of the voting rights or directly or indirectly owns 10 percent or more of the Owner, operator or management agent; is also (1) the contractor, subcontractor or supplier or (2) an officer or director of the contractor, subcontractor or supplier; or (3) a person who directly or indirectly controls 10 percent or more of the contractor's, subcontractor's or supplier's voting rights or directly or indirectly owns 10 percent or more of the contractor, subcontractor, or supplier

b. when (1) the Owner; or (2) any officer or director of the Owner; or (3) any person who directly or indirectly controls 10 percent or more of the voting rights or directly or indirectly owns 10 percent or more of the Owner; is also (1) an officer or director of the operator or management agent; or (2) a person who directly or indirectly controls 10 percent or more of the operator or management agent's voting rights or directly or indirectly owns 10 percent or more of the operator or management agent.

For purposes of this definition, the term "person" includes any individual, partnership, corporation, or other business entity Any Ownership, control or interest held or possessed by a person's spouse, parent, child, grandchild, brother or sister shall be attributed to such person

5. "Intermediate Care Facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, or if there is no State law providing for such licensing and regulation, then by the municipality or other political subdivision in which the facility is located. The facility must provide for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.
6. "Mortgage" includes "Deed of Trust," "Uniform Commercial Code Security Instrument," and any other security for the Note identified herein that is endorsed for coinsurance by the Secretary.
7. "Mortgaged Property" includes all real and personal property covered by the mortgage or mortgages securing the note endorsed for coinsurance by the Secretary.
8. "Nonprofit Mortgagor" means an entity that is organized for reasons other than financial gain and that the Mortgagee finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operation of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the Mortgagee by means of this Agreement.
9. "Note" means the note which is secured by the Mortgage and which is endorsed for mortgage coinsurance by the Secretary.
10. "Nursing Home" means a public facility, proprietary facility or a facility owned by a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing and related medical services. In all such facilities the nursing care and medical services must be prescribed by, or under general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.
11. "Project" means a Nursing Home, Intermediate Care Facility or Board and Care Home, or any combination of Nursing Home, Intermediate Care Facility, or Board and Care Home approved by the Mortgagee under provisions of 24 CFR Part 252. A Project includes the land on which it is situated and, subject to standards established by the Commissioner, a Project may include:
 - a. Such additional facilities as may be authorized by the Mortgagee for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day; and
 - b. Such major movable equipment as may be authorized by the Mortgagee as necessary for the operation of the Project.
12. "Proprietary Mortgagor" means an Owner that is profit-motivated, and may be a corporation, partnership, trust, individual, or any other qualified legal entity.
13. "Public Mortgagor" means a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to charges, capital structure, rate of return, or methods of operation.
14. "Residual Receipts" means all surplus cash of projects owned by Nonprofit or Public Mortgagors.
15. "Secretary" refers to the Secretary of the Department of Housing and Urban Development.
16. "Surplus Cash" means any unrestricted cash remaining after:
 - a. the payment of:
 - (1) all sums due or currently required to be paid under the terms of the Mortgage insured by the Secretary;
 - (2) all amounts required to be deposited in the Reserve for Replacements; and
 - (3) all obligations of the Project other than the Mortgage insured by the Secretary unless funds for payment are set aside or deferral of payment has been approved by the Mortgagee; and
 - b. the segregation and recording of:
 - (1) an amount equal to the aggregate of all special funds required to be maintained by the Project; and
 - (2) an amount equal to the Project's total liability for patients' or residents' security deposits.

In computing Surplus Cash as defined above, the Owner must follow the administrative requirements prescribed by the Secretary.

B. Obligations of the Owner

The Owner agrees to do the following:

1. Maintain at all times in full force and effect from the State or other licensing authority such license(s) as may be required to operate the Project, in the number of beds approved by the Mortgagee, as a: (Check appropriate box or boxes)
 - Nursing Home
 - Intermediate Care Facility
 - Board and Care Home
2. At all times suitably equip the Project for operation as a: (Check appropriate box or boxes):
 - Nursing Home
 - Intermediate Care Facility
 - Board and Care Home
3. Execute a Security Agreement and one or more Financing Statements (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the Mortgage. The Security Agreement and financing Statement shall constitute a first lien upon such equipment and shall run in favor of the Mortgagee as additional security for the Mortgage. Execute one or more new Financing Statements in the event any previous financing statement shall expire prior to continuance.
4. Establish and maintain a Reserve for Replacements to cover the cost of major repairs to, and replacements of, structural and mechanical components and major moveable equipment that are not provided for in the Project's operating budget.
 - a. Owner agrees to make an initial deposit of \$_____ (applies only to existing facilities) with the Mortgagee on the date that the insured Mortgage loan proceeds are disbursed. Owner agrees to make monthly deposits to the Reserve in the amount of \$_____ commencing on the date that amortization is scheduled to begin and continuing each month thereafter, unless

the Mortgagee establishes a different amount in accordance with the Secretary's administrative requirements. Owner agrees to make the Reserve deposits on the first day of each month. The amount of the monthly deposit may be increased or decreased from time to time without amending this Agreement

b. The Reserve for Replacements will be held by the Mortgagee or by a safe and responsible depository designated by the Mortgagee. Such Reserve shall at all times remain under the control of the Mortgagee.

c. Owner acknowledges that, in order to prevent or cure a default, the Mortgagee may, in accordance with the Secretary's administrative procedures, use Reserve Funds to pay amounts due under the Mortgage. If the Mortgage debt is accelerated pursuant to a default under the Mortgage, the Owner agrees that the Mortgagee may apply the balance in such Reserve to the amount due on the mortgage debt, as accelerated.

d. Owner agrees to analyze the adequacy of the Reserve for Replacements when and as required by the Mortgagee. If the Mortgagee determines, in accordance with the administrative requirements of the Secretary, that a higher monthly deposit is needed to ensure the future adequacy of the Reserve, Owner agrees to increase the monthly deposit as directed by the Mortgagee.

e. Owner agrees to direct the Mortgagee to invest the Reserve for Replacements only in accordance with the administrative requirements of the Secretary. All earnings of the Reserve must accrue to the benefit of the Project. At the option of the Owner, such earnings may be deposited in the Reserve for Replacements or in the Project operating account. Amounts earned on investments are not a substitute for the regular monthly deposits required by Paragraph B.4.a of this Agreement.

5. a. Deposit all resident fees and other receipts of the Project in the name of the Project in accounts which are fully insured as to principal by an agency of the Federal Government. Project funds in excess of those needed to meet short-term Project operating expenses may be invested in accordance with the administrative requirements of the Secretary.

b. Use Project funds only for the purposes and in the priority set forth below:

(1) pay amounts required by the Mortgage;

(2) make required deposits to the Reserve for Replacements;

(3) pay reasonable expenses necessary to the operation and maintenance of the Project;

(4) pay distributions of Surplus Cash permitted by Paragraph B.6. of this Agreement; and

(5) repay Owner advances authorized by the Secretary's administrative procedures.

Project funds may not be used to liquidate liabilities related to the construction of the Project, other than the Mortgage, unless the Mortgagee authorizes such use.

c. Any Owner receiving funds of the Project other than through distributions permitted by Paragraph B.6. of this Agreement must immediately deposit such funds in the Project bank account and failing so to do must hold such funds in trust. Any Owner receiving property of the Project in violation of this Agreement must immediately deliver such property to the Project and failing so to do must hold such property in trust. At such time as the Owner

loses control and/or possession of the Project, all funds held in trust must be delivered to the Mortgagee to the extent that the Mortgage indebtedness has not been satisfied.

d. Deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the Project. This trust account must be held in the name of the Project and the balance in the account must at all times equal or exceed the Project's liability for residents' security deposits. The Owner must comply with any State or local laws regarding investment of security deposits and distribution of any interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the Project or the Project residents.

6. a. Make, or receive and retain, distributions of cash or other assets of the Project only as authorized by this Agreement

(1) Distributions may be paid only from Surplus Cash which existed as of the end of a semi-annual or annual fiscal period. The Owner must compute distributions in accordance with the Secretary's administrative requirements.

(2) The first fiscal period's distribution may not be paid until construction has been completed and the Mortgagee has received any required cost certification.

(3) Distributions may be paid only after the end of the fiscal period in which the Surplus Cash is generated

(4) No Distribution may be paid from borrowed funds or when payments due under the Note, Mortgage or this Agreement have not been made.

(5) If any of the conditions listed below apply, the Owner may distribute Surplus Cash only after obtaining the Mortgagee's written approval to do so

(a) The Owner has not satisfactorily responded to any Mortgagee management review, physical inspection report, annual financial statement correspondence or any other correspondence which requires corrective action and which was received at least 30 days prior to the end of the fiscal period for which the surplus cash computation is made

(b) The Project has significant uncorrected physical deficiencies

(c) There is a default under this Agreement

b. Limit distributions in any one fiscal period to the amount specified below.

(1) No distributions are permitted on projects owned by Nonprofit or Public Mortgagees without the prior written approval of the Mortgagee

(2) On projects owned by Proprietary Mortgagees, distributions may be paid up to the amount of Surplus Cash generated during the prior fiscal period

7. a. Deposit Residual Receipts with the Mortgagee within sixty days after the end of each annual or semi-annual fiscal period in which Surplus Cash is generated. The Residual Receipts must at all times remain under the control of the Mortgagee, who will have the power and authority to direct how the Residual Receipts, or any part thereof, may be used

b. Use Residual Receipts only for the purposes for which the Mortgagee authorizes their withdrawal.

c. Invest the Residual Receipts in accordance with the administrative requirements of the Secretary and add all earnings on such investments to the Residual Receipts Account.

Note: This paragraph applies only to Nonprofit and Public Mortgagees

8. Maintain the Project in good repair and condition and promptly complete necessary repairs and maintenance as required by the Mortgagee.
9.
 - a. Assure that all Project expenses are reasonable in amount and necessary to the operation of the project.
 - b. Comply with the Secretary's administrative requirements regarding payment and reasonableness of management fees and allocation of management costs between the management fee and the Project account.
 - c. Not obligate the Project to pay for costs other than those reasonable and necessary to the operation and maintenance of the Project.
 - d. Purchase goods and services from identity-of-interest individuals or companies only if the charges levied by those individuals or companies are not in excess of the costs that would be incurred in making arms-length purchases on the open market
 - e. Exert reasonable effort to take advantage of available discounts and credit the project with all discounts, rebates or commissions received with respect to purchases, service contracts and other transactions made on behalf of the Project
 - f. Obtain contracts, materials, supplies and services, including the preparation of the annual audit, on terms most advantageous to the Project and at costs not in excess of amounts ordinarily paid for such contracts, materials, supplies and services in the area in which such services are rendered or supplies and materials furnished
 - g. Solicit oral or written cost estimates as necessary to assure compliance with the provisions of this paragraph and document the reasons for selecting other than the lowest estimate. Maintain copies of such documentation and make such documentation available for inspection during normal business hours.
10. The Owner shall not file any petition in bankruptcy, or for a receiver, or in insolvency, 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 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.
11. Require any purchaser to assume all of the Owner's obligations under this Agreement
12. Comply with the Secretary's administrative procedures for Previous Participation Clearance and Transfers of Physical Assets.
13. Obtain the Secretary's and the Mortgagee's written approval before:
 - a. Engaging, except for natural persons, in any business or activity, including the operation of any other project or incurring any liability or obligation not in connection with the Project
 - b. Conveying, assigning, transferring, encumbering or disposing of any legal interest in the Project including rents and security deposits.

c. Entering into any lease of the project or any portion thereof, excluding contracts with individual residents or patients for beds and services. Any lessee must be licensed to operate the Project and must execute an amendment to this Regulatory Agreement which obligates the lessee to comply herewith to the fullest extent possible under the lease and provides the Mortgagee and the Secretary with all rights against the lessee which are available hereunder against the Owner. In such event Owner/lessor shall not be relieved of any of its responsibilities hereunder

14. Obtain the Mortgagee's written approval before:
 - a. Remodeling, adding to, reconstructing, or demolishing of any part of the Project or subtracting from any real or personal property of the Project
 - b. Undertaking self-management, contracting for management services; paying, or incurring any obligation to pay, fees for management services
 - c. Paying, or incurring any obligation to pay, compensation (including wages, supervisory fees or salaries) to themselves, or to any officers, directors, stockholders, trustees, partners, beneficiaries under any trust, or to any of their nominees.
 - d. Permitting the use of the health care facilities for any purposes except the use which was originally intended or permitting commercial use greater than that approved by the Mortgagee.
 - e. Leasing any materials or services for the Project or any portion thereof, including major moveable equipment. Any lease entered into subject to this paragraph shall contain a provision giving the Mortgagee and the Secretary the right to direct an assignment of the rights of the lessor in the event of a default under the lease or this Agreement. Any such lease shall provide that the lessor must notify the lessee and the Mortgagee of any default under the lease and be given a reasonable opportunity to cure the default.
15. Resign or withdraw from the Project only after the Mortgagee and the Secretary have approved a substitute Owner. Resignation or withdrawal from the Project prior to the Mortgagee approving a substitute Owner will be considered abandonment and will place such Owner in default under this Agreement.
16. Provide for operations and management satisfactory to the Mortgagee and the Secretary; execute a written agreement or contract with the operator, if any, and the administrator; assure that all contracts and agreements meet the Secretary's requirements; and deliver to the Mortgagee such information and certifications regarding Project administration and operation as the Secretary may require
 - a. Include in any contract for management, administration or operations entered into on behalf of the Project a provision that the Mortgagee or HUD may terminate the contract without penalty and with or without cause, effective 30 days after the Notice of the Mortgagee's or Secretary's desire to terminate is mailed or otherwise delivered to the contractor. The Owner agrees to mail such notice within seven days of receipt of the Mortgagee's or Secretary's request to do so. Owner also agrees to immediately make arrangements for providing new management satisfactory to the Mortgagee and the Secretary.
 - b. The Owner agrees that the following clause will be included in any contract entered into with an identity-of-interest individual or business for the provision of goods or services to the Project: "Upon request of the Mortgagee, the Secretary, (Name of Owner or operator, contractor or supplier) will make available to the

Mortgagee, at a reasonable time and place, its records and records of identity-of-interest companies, which relate to goods and services charged to the Project. Records and information will be sufficient to permit the Mortgagee to determine the services performed, the dates performed, the location, the time consumed in providing the service, the charges made for materials, and the per unit and total charges levied for said service." The Owner agrees to request such records within seven days of receipt of the Mortgagee's or HUD's request to do so.

17. Establish and maintain the books and accounts of the Mortgaged Property in accordance with the requirements of the Secretary and the Mortgagee. Such books and accounts must be kept current and in such forms as to permit a speedy and effective audit. Such books and accounts must be maintained for such period of time as may be prescribed by the Secretary and the Mortgagee.
18. Permit the Secretary, the Inspector General of HUD, the Comptroller General of the United States, the Mortgagee and their authorized agents to inspect the Project's property, equipment, buildings, plans, offices, apparatus, and devices, books, accounting records, contracts, documents and papers during reasonable business hours.
19.
 - a. Within 60 days following the end of each fiscal year, furnish the Mortgagee and the Secretary with a complete annual financial report on the Project's operations unless the Mortgagee authorizes the Owner to submit the report on a later date. The Owner agrees that the report will be prepared, signed and certified in accordance with the requirements of the Secretary and the Mortgagee.
 - b. If the Owner fails to submit its annual financial report within 60 days of the due date or any other date as may be agreed to in writing by the Mortgagee, the Owner agrees that the Mortgagee may retain a certified public accountant to prepare the report on behalf of the Owner and the cost of such report will be a project expense. The Mortgagee may do so only after giving the Owner 30 days' written notice of its intent to do so.
20. Upon request, the Owner must furnish the Mortgagee with operating budgets, occupancy, accounting and other reports; properly certified copies of minutes of meetings of the directors, officers, stockholders, or beneficiaries of the mortgagor entity; and specific answers to questions raised from time to time by the Mortgagee regarding income, expenses, assets, liabilities, contracts, operations, actual cost of repairs and improvements, disposition of Mortgage funds, conditions of the Project and the status of the Mortgage. The Owner must furnish a response to the Mortgagee's management review reports, physical inspection reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the Mortgagee's report or inquiries.
21. Notify the Mortgagee in writing within five days after instituting litigation seeking recovery, equitable relief, or defense of litigation, excluding litigation related to individual resident evictions. The Owner may use project funds to pay for such litigation only if the Mortgagee authorizes, or a court directs, the Owner to do so.
22.
 - a. Comply with the provisions of Title VIII of the Civil Rights Act of 1968, as amended, and any regulations or administrative procedures issued pursuant thereto. These laws and regulations prohibit discrimination in the rental or financing of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. Owner agrees to administer the Project and related activities in a manner to affirmatively further fair housing. The Owner also agrees to comply with similar State and local fair housing laws and ordinances.

b. Comply with the provisions of Executive Order 11063 on Equal Opportunity in Housing and all regulations issued pursuant thereto. This order and related regulations prohibit discrimination on the basis of race, color, religion, national origin, or sex in housing and related facilities provided through Federal financial assistance.

c. Not discriminate on the basis of race, color, religion, sex or national origin against any employee or applicant for employment. Owner agrees to include a provision to this effect in any contract or subcontract executed for Project repairs and improvements, and to comply with the provisions of Executive Order 11246 and 41 CFR Part 60, when applicable to such contracts.

23. Issue shares of capital stock or beneficial certificates of interest, as applicable, only in the number and form approved by the Mortgagee.
24. The following Owners: (Name of Owner entity and individual partners if a partnership)

do not assume personal liability for payments due under the Note and Mortgage or for payments to the Reserve for Replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement with respect to these matters:

- a. for funds or property of the Project which come into their hands and which they are not entitled to retain; and
- b. for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions of this Agreement.

25. Refrain from executing any document which contains provisions that contradict or oppose the provisions of this Agreement unless the Mortgagee approves that document. If the Owner executes such a document with or without the prior written approval of the Mortgagee, this Agreement will be controlling as to the rights and obligations set forth.
26. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

C. Rights of the Mortgagee and the Secretary

1. If the Owner violates any provisions of this Agreement, the Mortgagee or Secretary may send the Owner written notice of such violation by registered or certified mail. If such violation is not corrected to the satisfaction of the Mortgagee or Secretary (whichever party issued the notice of violation) within 30 days after the date such notice is mailed or within such further time as the Mortgagee or Secretary, as applicable, establishes in writing, without further notice the Mortgagee or Secretary, as applicable, may initiate any of the following actions:
 - a. With the prior written approval of the Secretary, declare the whole indebtedness due and payable and then, if the indebtedness is not satisfied, proceed with foreclosure of the Mortgage.
 - b. Collect all payments for service and other income of the project and use such collections to pay the Owner's obligations under this Agreement and under the Note and Mortgage and the necessary expenses of maintaining and operating the Project.

c. Take possession of the Project, bring any action necessary to enforce any rights of the Owner related to operation of the project, and operate the Project in accordance with the terms of this Agreement until such time as the Mortgagee or Secretary determines that the Owner is again in a position to operate the Project in accordance with the terms of this Agreement, the Note and the Mortgage.

d. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violations of this Agreement, for the appointment of a Receiver to take over and operate the Project in accordance with the terms of the Agreement since the injury to the Secretary 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. With the prior written approval of the Secretary, assess the Owner for the cost of reasonable attorney, audit and other fees incurred in enforcing compliance with this Agreement

2 The damage to the Project as a result of Owner's breach of its duties and obligations under this Agreement will include, but not be limited to, the amounts specified below Any damages collected or recovered by the Mortgagee or the Secretary will be payable to the Project account.

a In the case of unauthorized distributions of Project funds or Project assets, the damages will be the amount of the unauthorized distributions plus interest from the date the distribution was made.

b. In the case of failure to provide administration and operation satisfactory to the Mortgagee and the Secretary, the damage will be the cost to the Project resulting from such failure.

c. In the case of willful or negligent failure to maintain the Project in appropriate physical condition, the damage will be the cost of the repairs required to return the Project to decent, safe, and sanitary condition.

d In the case of incurring costs significantly in excess of amounts ordinarily paid, the damage will be such excess costs

In Witness Whereof, the parties hereto have set their hands and seals on the date first herein above written.

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both

12 U.S.C. §1715z-19 provides that, "Whoever, as an Owner, agent, or manager, or who is otherwise in custody, control, or possession of property that is security for a mortgage note that is insured, acquired, or held by the Secretary pursuant to section . . . 207, . . . 221(d), . . . 223(f), . . . 232, . . . 244, . . . willfully uses or authorizes the use of any part of the rents, assets, proceeds, income or other funds derived from property covered by such mortgage note during a period when the mortgage note is in default or the project is in a nonsurplus cash position as defined by [this] regulatory agreement. . . for any purpose other than to meet actual or necessary expenses that include expenses approved by the Secretary (or the coinsuring lender, if such approval is required under the terms of [this] regulatory agreement), shall be fined not more than \$250,000 or imprisoned not more than 5 years, or both "

Owner

MORTGAGEE

Seal

By _____

By _____

Date _____

Date _____

Acknowledgement of Mortgagor and Mortgagee
(In accordance with Form in State where property is located)

Witness

Date _____

Attachment A

Project Name: _____

FHA Project No.: _____

Provide legal description of the project.