



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

OFFICE OF GENERAL COUNSEL

May 17, 2013

MEMORANDUM FOR: Mark B. Van Kirk, Director  
Office of Asset Management, HTG

FROM:   
Althea M. Forrester, Associate General Counsel  
Office of Assisted Housing and Community Development, CAHB

SUBJECT: Exception to the General Rule that Projects Subject to a New  
Regulation HAP Contract are Subject to the Procedures in Notice  
H-2012-14 of Using New Regulation Residual Receipts to Offset  
HAP Payments

Notice H-2012-14, captioned "Use of 'New Regulation' Section 8 Housing Assistance Payments (HAP) Contracts Residual Receipts to Offset Project-Based Section 8 Housing Assistance Payments," states at the outset that new regulation section 8 HAP contracts "typically" require that excess income that the project generates be placed in an interest-bearing account, often called the Residual Receipts account, to be used for project purposes, which include the reduction of housing assistance payments.<sup>1</sup> As denoted by the word "typically," some new regulation HAP contracts do not require a Residual Receipts account. As a result, these projects are not subject to Notice H-2012-14. This memorandum is intended to assist Housing staff in identifying such projects.

An August 31, 1981 memorandum from Robert S. Kenison, former Associate General Counsel, Office of Assisted Housing and Community Development, captioned "Modification of Section 8 HAP Contract Where Limitations On Distributions Does Not Apply" (attached), acknowledges that there is a small universe of projects that are subject to a new regulation HAP contract for which the section 8 limitations on distributions and the requirement for a residual receipts account does not apply. See footnote 2 for an explanation of the projects that comprise this small universe.<sup>2</sup> The August 31, 1981 memorandum further directed all HUD Counsel to modify

<sup>1</sup> The first sentence of the Notice states, "When Owner distributions of surplus cash are limited or prohibited and when HUD determines that project funds are more than the amount needed for project operations, reserve requirements, and any permitted distributions, the excess income is *typically* required under the applicable new regulation and/or the Section 8 Housing Assistance Payments (HAP) contract to which the project is subject to be deposited into an interest-bearing account, often called the Residual Receipts account, to be used for project purposes" (emphasis added).

<sup>2</sup> This universe consists of projects for which the notification of selection was issued before the effective date of the new regulation – November 5, 1979 (for part 880 projects); February 20, 1980 (for part 881 projects); and February 29, 1980 (for part 883 projects) – but for which the "Agreement" (i.e., the AHAP), was executed on or after that date. See 24 C.F.R. §§ 880.104(a) and (b), 881.104(a) and (b), and 883.105(a) and (b). See also, December 12, 1979 memorandum from Mr. Kenison to All Regional and Area Counsel captioned "Contract Forms for Projects Subject to Revised Section

the HAP contract provision captioned "Use of Project Funds" (section 2.6(b) of HUD-52522D, which was used for projects subject to parts 880, 881, 885, and 886 subpart C; and section 2.6(c) of HUD-52645B, which was used for projects subject to part 883); and the provision captioned "Limitation on Distributions" (section 2.6(d) of HUD-52522D and section 2.6(e) of HUD-52645B).

In practice, HUD Counsel carried out this direction by striking these two contract provisions and supplementing the contract with a contract rider, typically captioned "Rider to Housing Assistance Payments Contract." The result of these contract modifications was twofold. First, and most importantly for the purposes of this memorandum, the project owner was relieved of the duty that would otherwise apply via the HAP contract and corresponding new regulations to maintain a residual receipts account. This means that Notice H-2012-14 does not apply to such a project. Second, the project was also relieved of the applicability of a section 8 limitation on distributions. However, as stated in the first paragraph of Mr. Kenison's August 31, 1981 memorandum, the project owner remained subject to the limitation on distributions (and any residual receipts account requirement) imposed by any FHA or any State Agency regulatory agreement to which the project was also subject. A sample HAP contract that contains the modifications discussed in this memorandum is attached for reference. The relevant provisions are located on pages 5 – 7 of Part II of the HAP contract, which uses form HUD-52522D. The "Rider to Housing Assistance Payments Contract," referenced above, is printed on an unnumbered page immediately following page 19 of Part II of the HAP contract.

Should Housing have any questions concerning this memorandum, please contact Senior Attorney Jeff Hall of my staff. He may be reached at 402-5115.

Attachments: August 31, 1981 memorandum from Robert S. Kenison  
December 12, 1979 memorandum from Robert S. Kenison  
Long Prairie Housing Association, Inc. HAP Contract (sample)

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8 Regulations (attached). This memo concludes with the following statement, which interprets the foregoing regulatory provisions: "[F]or projects where the Agreement is executed on or after the effective date of the [new] regulations and where the notification of selection was issued before that date, the provisions on the limitation on distributions do not apply . . .". Because the two are inextricably linked to each other, if the project is not subject to a section 8 limitation on distributions, there is no need for a section 8 requirement for a residual receipts account.

# Memorandum

U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT

TO: All Regional Counsel  
All Area Counsel

DATE: August 31, 1981

IN REPLY REFER TO:

FROM: Robert S. Kenison, Office of Assisted Housing  
and Community Development, GU

SUBJECT: Modification of Section 8 HAP Contract Where Limitations On  
Distributions Do Not Apply

The revised form of HAP Contract does not make explicit the procedure which the owner may use in making distributions in those cases where the regulation and Contract provisions on limitations on distributions are not applicable. For FHA insured mortgages, purchase money mortgages held by the Secretary in connection with the sale of HUD-owned projects, or State agency non-insured projects, the owner may take distributions consistent with the FHA or State agency requirements, whichever are applicable. For those projects which are neither FHA insured nor State agency, the owner still has some restriction on distributions. As an example, the owner can only make a distribution at the end of the fiscal year and after all the expenses and obligations of the project are paid or funds have been set aside for payment. (See paragraph 2 below.)

Under Parts 880, 881, and 883, small projects and partially-assisted projects, as defined in the regulations, are not subject to limitations on distributions. Previously HUD-owned projects subject to Part 886, Subpart C, are not subject to section 8 limitations on distributions at this time since that subpart does not provide such a limitation. In addition, certain projects are subject in part to both the old and revised regulations, but not to the limitation on distributions provisions of the revised regulations.

Where you determine that the limitation on distributions provisions do not apply, please modify the HAP Contract (form HUD-52522D for projects under Parts 880, 881, 885, and 886 Subpart C and HUD-52645B for State agency projects), as follows:

1. Delete the parenthetical instruction in the heading to section 2.5(b) of HUD-52522D and section 2.6(c) of HUD-52645B and revise subparagraph (1) of these sections to read as set forth below. Brackets indicate alternative language for State agency projects.

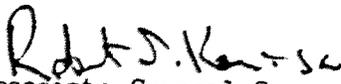
"(1) Project funds must be used for the benefit of the project, to make mortgage payments, to pay operating expenses, and to make required deposits to the replacement reserve in accordance with paragraph (c) [paragraph (d)] of this section, and to pay distributions to the owner as provided in paragraph (d) [paragraph (e)]."

2. Revise section 2.6(d) of HUD-52522D and section 2.6(e) of HUD-52645B to read as set forth below. Brackets indicate alternative language for State agency projects.

"(d)[e] Limitation on Distributions.

- (1) Nonprofit owners are not entitled to distributions of project funds.
- (2) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. From the remaining funds (surplus cash computed in accordance with HUD requirements), the Owner may take distributions [to the extent permitted by the HFA]. The first distribution may not be made until cost certification, where applicable, is completed.
- (3) In the case of HUD-insured projects, or projects on which HUD holds a purchase money mortgage, distributions are subject to the terms of the applicable Regulatory Agreement."

If you have any questions on these changes, please call June Auerbach or Jeff Lischer of my staff on 755-5470.

  
Associate General Counsel

CLWNH + Jim  
 HOLD TO  
 MONDAY

U.S. DEPARTMENT OF  
 HOUSING AND URBAN DEVELOPMENT

# Memorandum

TO : All Regional Counsel  
 All Area Counsel

DATE: DEC 12 1979

IN REPLY REFER TO:

FROM : Robert S. Kenison, Urban Development Division, GU

SUBJECT: Contract Forms for Projects Subject to Revised Section 8  
 Regulations

HUD published a revised regulation for the Section 8 New Construction Program, 24 CFR Part 880, on October 15, 1979, effective November 5, 1979. The revised regulation makes Subparts E and F, concerning the HAP Contract and Management, applicable to projects for which an Agreement was not executed before the effective date of the regulation. The entire regulation applies to those new construction projects for which a Notification of Selection of Preliminary Proposal was not issued before the effective date of this revision. Pending issuance of the revised Forms, you should use the existing Forms, with the changes set forth below. The provisions concerning the term should not be changed for mobile home projects, but the addendum required under paragraph III should be included.

 Conforming amendments to the Substantial Rehabilitation Regulation, Part 881, and the State Agency Regulation, Part 883, will be published soon. After the amendments to these regulations become effective, the appropriate changes to the contract Forms for these programs should also be made.

1. The ACC Part I (HUD-52583, 52623, and 52643B). Revise Section 1.3 to read:

### 1.3 TERM OF CONTRACT AND ACC.

(a) Term of Contract. The Contract term for any unit shall not exceed \_\_\_\_\_ years, [Insert number approved by HUD in accordance with the HUD regulations.] If the Project is completed in stages, the total Contract term for all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the Contract term specified in the first sentence of this paragraph (a), plus 2 years.

2

(b) Term of ACC. This ACC shall remain in effect so long as the Contract is in effect, but in no event shall the term of the ACC exceed \_\_\_\_\_ years from the beginning of the first Fiscal Year. [Insert number specified in the first sentence of paragraph (a), plus 2 years.]

II. The HAP Contract Part I (HUD-52582A, 52585A, 52622A, 52625A, and 52645A).

1. Revise Section 1.1b to read:

Term of Contract. The term of this Contract for any unit shall be \_\_\_\_\_ years beginning with the effective date of this Contract for such unit. [Insert number approved by HUD in accordance with the HUD regulations.] If the project is completed in stages, the term shall be separately related to the units in each stage. However, the total Contract term for all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the Contract term for any unit, plus two years.

2. Delete Sections 1.1c and 1.4a for all Contracts and Section 1.1d of the New Construction and HFDA Contracts.

III. ACC and Agreement. (See Form numbers under I for the ACC. The Agreement Form numbers are HUD-52581A, 52584A, 52621A, 52624A, and 52644A.) Prepare an addendum for each ACC and Agreement executed on or after the effective date of the applicable regulation. [The revised Contract will be available by the time any projects for which Agreements now being signed are completed.] The addendum must be signed by each party to the ACC or Agreement and include the following clause:

The parties to this [ACC] [Agreement] agree that they will reexecute this [ACC] [Agreement] on a revised Form (as prescribed by the Government) as if it had been available on the original date of execution. The revised Form will be consistent with the program regulations revised for effect on [insert appropriate date, e.g., November 5, 1979, in the case of new construction projects under Part 880].

For projects which were processed under the previous regulations where the owner is unwilling to accept a shorter term as required under Section 880.502 (or Section 881.502 or 883.603 when Parts 881 and 883 are amended), the field office should advise the

owner that he or she may submit a request for a waiver to the field office together with justification. An example of justification is where an owner received a financing commitment based on a longer term than now is permitted under the regulation. The field office shall prepare its recommendation and forward the request to the Assistant Secretary for Housing.

There is a technical error in Section 880.502(a)(2). This section should be read without the "(iii)" so that "(ii) 30 years, or (iii) 40 years if . . ." will read "(ii) 30 years, or 40 years if . . ."

Section 880.607, Termination of Tenancy and Modification of Leases, applies to all projects, including those already under contract, in accordance with Section 880.104(c). The Field Office should establish a procedure to advise owners of this new requirement and to require leases to be amended where necessary to be consistent with the new requirements.

A question has arisen concerning the applicability of the provisions concerning limitations on distributions (Section 880.205) in the case of projects where a Notification of Selection of Preliminary Proposal was issued before the effective date of the regulation but the Agreement was not executed by that date. The general rule is that only Subparts E and F apply to such projects. Section 880.612(e), Use of Project Funds, which is in Subpart F, provides that project funds must be used for distributions in accordance with Section 880.205 and for other stated purposes. We interpret this section to mean that project funds must be used for distributions in accordance with Section 880.205 only for projects subject to Subpart B. Accordingly, for projects where the Agreement is executed on or after the effective date of the regulations and where the notification of selection was issued before that date, the provisions on limitations on distributions do not apply even though they are referred to in Subpart F.

*Robert D. Kavan*  
Associate General Counsel

4370.2 REV-1

## Exhibit 2-1

Distributions Earned by Type of Project

<u>Type of Project</u>	<u>Annual Distribution Earned</u>
1. Section 8 - New Construction projects whose notification of selection was issued <u>before</u> 11/5/79 and Section 8 Substantial Rehabilitation projects whose notification of selection was issued before 2/20/80.	Surplus Cash
2. Section 8 - New Construction projects whose notification of selection was issued on or <u>after</u> 11/5/79 and Section 8 Substantial Rehabilitation projects whose notification of selection was issued on or after 2/20/80.	
a. Non-profit	No distribution permitted
b. Small projects (under 50 units) and partially assisted projects (i.e., projects with more than 50 units and less than 20% assistance).	Surplus Cash
c. Elderly projects	6% of initial equity investment
d. Non-elderly	10% of initial equity investment
3. Other projects.	
a. Profit-motivated (PM)	Surplus Cash
b. Limited dividend (LD)	6% of initial equity investment
c. Non-profit (NP)	No distribution permitted

- Note:
- (1) Above represents general rules. Always check the amount specified in the regulatory agreement.
  - (2) Owners may have waived their rights to accrue or pay distributions in return for subsidies or mortgage relief. Be sure to check subsidy and mortgage relief contracts for such clauses.

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

PART I OF THE

HOUSING ASSISTANCE PAYMENTS CONTRACT

Type of Project: Private-Owner/HUD X or PHA-Owner/HUD \_\_\_\_\_  
 Small Project \_\_\_\_\_ or Partially-Assisted Project \_\_\_\_\_ or Other \_\_\_\_\_  
 New Construction, Part 880 \_\_\_\_\_ or Substantial Rehabilitation, Part 881 \_\_\_\_\_  
 Part 885 X Part 855 \_\_\_\_\_  
 Type of Financing: Section 202 Direct Loan for Housing for the Elderly  
or Handicapped  
 [For example: subject to Part 811, HUD-insured; GNMA tandem;  
 State agency tax exempt loan, not HUD-insured.]

ACC/HAP CONTRACT LIST NUMBER AND DATE: C-82-832; 9/22/82

SECTION 8 PROJECT NUMBER: MN46-T811-013

FHA PROJECT NUMBER (if applicable): 092-EH107-WAH-L8

RECEIVED  
 HUD  
 ST. PAUL  
 AREA OFFICE  
 NOV 9 9 40 AM '82

This Housing Assistance Payments Contract (Contract) is entered into between the United States of America acting through the Department of Housing and Urban Development (HUD) and LONG PRAIRIE HOUSING ASSOCIATION, INC.

(Owner), pursuant to the U.S. Housing Act of 1937 (Act), 42 U.S.C. 1437, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq. The purpose of this Contract is to provide housing assistance payments on behalf of Eligible Families leasing decent, safe and sanitary units from the Owner.

**1.1 SIGNIFICANT DATES AND OTHER ITEMS; CONTENTS AND SCOPE OF CONTRACT.**

(a) **Effective Date of Contract:** September 9, 1983.

(b) **Fiscal Year.** The ending date of each Fiscal Year shall be December 31. [Insert March 31, June 30, September 30, or December 31, as approved by HUD.] The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year which is not less than 12 months after the effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in section 1.1(c) will be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

(c) **Maximum Annual Contract Commitment.** The maximum annual amount of the commitment for housing assistance payments under this Contract (see section 2.3) is the amount of contract authority identified in Exhibit 3.

(d) **Project Description.**

The project consists of one 3-story walk-up with elevator building of wood frame construction with brick and dryvit exterior, located at 400 4th Avenue, S.E., in the City of Long Prairie, Minnesota. The building contains 46 one-bedroom units containing 547 square feet, 1 two-bedroom unit containing 735 square feet. Four of the one-bedroom units are designed for the handicapped. The project contains arts, crafts, and community rooms. All 47 units are eligible for Section 8 housing assistance subsidy.

(e) Statement of Services, Maintenance and Utilities Provided by the Owner.

(1) **Services and Maintenance:**

Services include snow and trash removal  
Maintenance is to be provided as described in the approved  
Maintenance Plan on file with the local HUD office.

(2) **Equipment:**

Range	Security system
Refrigerator	Master TV antenna
Air conditioner	Carpet
Kitchen exhaust fan	Drapery rods
Laundry (coin-operated)	

(3) **Utilities:**

Gas (heat, hot water)  
Water  
Sewer

(4) **Other:**

None

(f) Contents of Contract. This Contract consists of Part I, Part II  
(except as indicated in section 1.4), and the following exhibits:

Exhibit 1: The schedule showing the number of units by size  
(Contract Units) and their applicable rents (Contract  
Rents).

Exhibit 2: Daily Debt Service. (If the project is not permanently  
financed when the Contract is executed, this exhibit  
should be added when the necessary information  
becomes available.)

Exhibit 3: The schedule showing contract and budget authority.

Exhibit 4: The Affirmative Fair Housing Marketing Plan, if  
applicable.

Exhibit 5: An agreement between the parties to incorporate the  
Final Proposal by reference, specifying the location  
of the Final Proposal, and identifying each part,  
including any amendments.

Additional exhibits: [Specify additional exhibits, if any, such as  
Special Conditions for Acceptance. If none, insert "None."]

See attached Riders.

(E) Scope of Contract. This Contract, including the exhibits, whether attached or incorporated by reference, comprises the entire agreement between the Owner and HUD with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Contract, any applicable regulations, and agreements entered into in writing by the parties which are not inconsistent with this Contract.

1.2 TERM OF CONTRACT; OBLIGATION TO OPERATE PROJECT FOR FULL TERM.

- (a) Term of Contract. The term of this Contract for any unit shall be 20 years, beginning with the effective date of this Contract for such unit. [Insert number approved by HUD in accordance with the HUD regulations.] If the project is completed in stages, the term shall be separately related to the units in each stage. However, the total Contract term for all the stages, beginning with the effective date of the Contract for the first stage, shall not exceed the Contract term for any unit, plus two years.
- (b) Obligation to Operate Project for Full Term. The Owner agrees to continue operation of the project in accordance with this Contract for the full term specified in paragraph (a).

1.3 HUD ASSURANCE.

The execution of this Contract by HUD is an assurance by HUD to the Owner that:

- (a) The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to this Contract, and
- (b) HUD has obligated funds for these payments.

1.4 APPLICABILITY OF CERTAIN PROVISIONS OF THIS CONTRACT.      Applic.      Not Applic.

- |   |                      |                      |
|---|----------------------|----------------------|
| <p>(a) 2.4(i). <u>Payments to Trustee by PHA Where It Is the Lender. Applicability: Not applicable.</u></p>   | <p>_____</p>         | <p>_____ X _____</p> |
| <p>(b) [If the Contract Rents are adjusted under section 2.4 of the Agreement, and either section 2.7(f), (g), or (h) of this Contract has been checked "applicable" at the time of execution of the Agreement, it should be changed to "not applicable" when the Contract is executed.]</p>  | <p>_____</p>         | <p>_____</p>         |
| <p>(1) 2.7(f). <u>Adjustment of Contract Rents Based on Cost Certification. Applicability: All projects unless (1) the project is subject to Part 811; or (2) the Contract Rents do not exceed comparable rents; or (3) the Contract Rents do not exceed comparable rents by more than 10 percent, for Small and Partially-Assisted Projects.</u></p> | <p>_____ X _____</p> | <p>_____</p>         |
| <p>(2) 2.7(g). <u>Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Financing Not Subject to Part 811. Applicability: All projects where financing is by tax exempt obligations not subject to Part 811 because the issuer is a participating agency under 24 CFR Part 883.</u></p>   | <p>_____</p>         | <p>_____ X _____</p> |
| <p>(3) 2.7(h). <u>Adjustment of Contract Rents: Part 811. Applicability: All non-insured projects subject to Part 811.</u></p>  | <p>_____</p>         | <p>_____ X _____</p> |

Applic. Not Applic.

- (c) 2.13. Training, Employment and Contracting Opportunities. Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$500,000. X \_\_\_\_\_
- (d) 2.14 Flood Insurance. Applicability: All projects in special flood hazard areas. \_\_\_\_\_ X \_\_\_\_\_
- (e) 2.15. Clean Air and Federal Water Pollution Control Acts. Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$100,000. X \_\_\_\_\_

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully 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.

OWNER LONG PRAIRIE HOUSING ASSOCIATION, INC.

By Martin C. Thom President

BY Phil E. Brigh, Secretary  
(Official Title)

Date Nov. 12, 19 83

United States of America  
Secretary of Housing and  
Urban Development

By Robert B. Gerber  
\*Robert B. Gerber, Deputy Manager  
Minneapolis-St. Paul Office  
(Official Title)

Date November 17, 19 83

\* Type name of signatory under signature line.

~~[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]~~

EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 1

This Contract is hereby executed with respect to the units described in Exhibit 1a.

**EFFECTIVE DATE:** The effective date of this Contract with respect to the units described in Exhibit 1a is \_\_\_\_\_, 19\_\_\_\_.

United States of America  
Secretary of Housing and  
Urban Development

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

Date \_\_\_\_\_, 19\_\_\_\_

OWNER \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

Date \_\_\_\_\_, 19\_\_\_\_

EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 2

This Contract is hereby executed with respect to the units described in Exhibit 1b.

**EFFECTIVE DATE:** The effective date of this Contract with respect to the units described in Exhibit 1b is \_\_\_\_\_, 19\_\_\_\_.

United States of America  
Secretary of Housing and  
Urban Development

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

Date \_\_\_\_\_, 19\_\_\_\_

OWNER \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

Date \_\_\_\_\_, 19\_\_\_\_

EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 3

This Contract is hereby executed with respect to the units described in Exhibit 1c.

**EFFECTIVE DATE:** The effective date of this Contract with respect to the units described in Exhibit 1c is \_\_\_\_\_, 19\_\_\_\_.

United States of America  
Secretary of Housing and  
Urban Development

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

Date \_\_\_\_\_, 19\_\_\_\_

OWNER \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

Date \_\_\_\_\_, 19\_\_\_\_

Not Applicable

## EXHIBIT 1

1

## SCHEDULE OF CONTRACT UNITS AND CONTRACT RENTS

Number of Bedrooms	Number of Units <sup>2</sup>	Household Type (elderly, non- elderly family, large nonelderly family)	Contract Rent
1-BR (HC)	4	Elderly	\$396
1-BR	42	Elderly	\$396
2-BR	<u>1</u>	Elderly	\$508
	47		

1/ This Exhibit must be completed and attached to the Contract at the time the Agreement is executed. It may, however, be amended in accordance with program rules before the Contract is executed. When Contract Rents are amended (e.g. at the time of an annual adjustment) this format should be used.

2/ If less than 100 percent of units in the project are covered by this Contract, identify specific units to be leased at initial rent-up to eligible families. See section 2.8(c)(6).

EXHIBIT 2  
DAILY DEBT SERVICE

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Daily Debt Service</u>
0	_____	\$ _____
1	_____46_____	\$ 8.29
2	_____1_____	\$ 11.28
3	_____	\$ _____
4	_____	\$ _____
5	_____	\$ _____

This information is used for computing assistance payments for vacant units under section 2.4(e).

Exhibit 3

This Exhibit shows the initial and subsequent amounts of contract and budget authority obligated for project number: MN46-T811-013. (The Housing Division shall furnish the Legal Division with the information necessary to complete this Exhibit, with appropriate supporting documentation including an ACC/HAP Contract List.)

	<u>Contract Authority</u>	<u>Budget Authority</u>
As of the Effective Date of Agreement	<u>\$233,208.00</u>	<u>\$4,664,160.00</u>
Effective Date of Agreement Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____
Effective Date of Agreement Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____

	<u>Contract Authority</u>	<u>Budget Authority</u>
As of the Effective Date of Contract	<u>\$233,208.00</u>	<u>\$4,664,160.00</u>
Effective Date of Contract Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____
Effective Date of Contract Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____

Exhibit 4

AFFIRMATIVE FAIR HOUSING  
MARKETING PLAN

THIS COPY PRINTED AT U.S. GOVERNMENT PRINTING OFFICE

**AFFIRMATIVE FAIR HOUSING  
MARKETING PLAN**

COMPLETE FORM AND SUBMIT TO: FAIR HOUSING AND EQUAL OPPORTUNITY DIRECTOR/SPECIALIST  
AREA/INSURING OFFICE

**1. INTRODUCTION:**

The Affirmative Fair Housing Marketing Regulations require that each applicant subject to these Regulations carry out an affirmative program to attract prospective buyers or tenants of all minority and non-minority groups to the housing, including Whites (non-minorities) and members of minority groups: Negro/Black, Spanish American, American Indian, Oriental, or other minority groups in the Standard Metropolitan Statistical Areas (SMSA) or housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex or national origin.

**2. APPLICANT AND PROJECT IDENTIFICATION:**

**A. APPLICANT'S:**

NAME: Weis Management Company  
ADDRESS: P.O. Box #6757  
Rochester, Minnesota 55901  
TELEPHONE NO.: (507) 288-7980

**B. PROJECT OR APPLICATION NUMBER:**

092-EH107  
SECTION OF ACT: 202 NUMBER OF UNITS: 47  
PRICE OR RENTAL RANGE OF UNITS:  
FROM \$ 0 TO \$ 597

**C. PROJECT:**

NAME: Prairie View 400  
LOCATION/ADDRESS: Todd & 4th Avenue S.E.  
CITY: Long Prairie STATE: Minnesota  
COUNTY: Todd CENSUS TRACT: ED1274

**D. FOR MULTIFAMILY HOUSING ONLY:**

ELDERLY  NON-ELDERLY

**E. APPROXIMATE STARTING DATES:**

ADVERTISING January 1983 OCCUPANCY April 1983

**3. TYPE OF AFFIRMATIVE MARKETING PLAN:**

Project Plan;  Annual Plan (for scattered sites).  
NOTE: A separate Annual Plan must be developed for each type area in which housing is to be built. Indicate the specific area for which this plan applies:  
 Minority Area  White (non-minority) Area  Mixed Area (with \_\_\_\_\_% minority residents)

**4. DIRECTION OF MARKETING ACTIVITY:**

Each applicant is required to carry out an affirmative marketing program to attract buyers or tenants of all minority and non-minority groups to the housing. The purpose of this program is to assure that any group(s) of persons normally NOT likely to apply for the housing without special outreach efforts (because of existing neighborhood racial or ethnic patterns, price, and/or other factors) know about the housing, feel welcome to apply and have the opportunity to buy or rent. Indicate below which group(s) are less likely to apply for the housing without special outreach efforts.

White (non-minority)  Negro/Black  Spanish American  American Indian  Oriental  Other Minority (specify) \_\_\_\_\_

**5. MARKETING PROGRAM:** All advertising will include: a) methods to attract minority and non-minority persons, especially persons in the group(s) checked above; and b) prominent use of the approved Equal Housing Opportunity Logotype, Slogan and/or Statement.

Advertising will include all of the above.

**A. COMMERCIAL MEDIA:** Check the media to be used to advertise the availability of this housing.

Newspaper(s)/Publication(s)  Radio  TV  Billboard(s)  Others (specify) \_\_\_\_\_  
For the media identified above, provide the requested information: (If more space is needed attach an additional sheet.)

NAME OF MEDIA	STATE IN PERCENTAGES THE RACIAL/ETHNIC IDENTIFICATIONS OF MAJOR READERS/AUDIENCE						ADS/BROADCASTS, ETC	
	White (non-minority)	Negro/Black	Spanish American	American Indian	Oriental	Other Minority	Size and/or Duration	Frequency Intervals
Long Prairie Leader	99			1			1 X 3	Weekly

NOTE: Attach copy of ad or state when it will be submitted.

**B. BROCHURES, SIGNS AND HUD'S FAIR HOUSING POSTER:** 1) Will brochures, leaflets or handouts be used to advertise?  Yes;  No. If yes, attach a copy or submit when available. 2) For project site sign, indicate sign size 4 x 8; Logotype size 1 x 1. Attach a photograph of project sign or submit when available. 3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals and showings take place. Fair Housing Posters will be displayed in the  Sales/Rental Office(s);  Real Estate Office(s);  Model Unit(s);  Other (specify) \_\_\_\_\_

**C. COMMUNITY CONTACTS:** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations located in the housing market area or SMSA listed below. If more space is needed attach an additional sheet. Notify HUD-FHO of any changes in this list. Submit a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information)

Name of Group/Organization	Racial/Ethnic Identification	Approximate Date of Contact or Proposed Contact	Person Contacted or to be Contacted	Address and Telephone No.	Method of Contact(s)	Indicate the specific function group/organization will undertake in implementing this plan
See Attached						

**FUTURE MARKETING ACTIVITIES (Rental Units Only):** Check the block(s) that best describe future marketing activities to fill vacancies as they occur after the project has been initially occupied.

Newspapers/Publications  Radio  TV  Brochure/Leaflets/Handouts  Site Signs  Community Contacts  
 Others (specify) \_\_\_\_\_

**ANTICIPATED OCCUPANCY RESULTS (State in number of units the racial/ethnic mix anticipated as a result of implementation of this affirmative marketing plan):** 46 White (non-minority) 1 Negro/Black 1 Spanish American 1 American Indian 1 Oriental  
Other Minority (specify) \_\_\_\_\_

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**8. STAFFING AND EXPERIENCE:**

(Give the information requested in the below for your organization (Developer/Sponsor) and the other companies/organizations identified, if applicable; provide total staffing figures, i.e., do not limit staffing to those staff persons connected with or working on this housing. NOTE: HUD-FHEO should be notified of any changes in the companies named in this chart.)

Name of Company, Address and Telephone No.	Job Classification	STAFFING										Recruitment steps taken or to be taken to attract all persons	Company's last two experiences with those persons least likely to apply for jobs/housing. Indicate name and address of the housing and racial/ethnic mix.	
		Present							Anticipated				Housing	Jobs
		Totals	White (non-minority)	Negro/Blk	Spanish Am.	Am. Indian	Oriental	Other Minority	Vacancies	Date of 1st Opening				
A. Developer/Sponsor Long Prairie Ind. Dev. Corp. c/o Martin Thom Long Prairie, Mn. 56347	Corp.	M 9	0						0	0	All Volunteer Members	N/A	N/A	
	Prof.	F 0	0						0	0				
		M												
	Other	F												
B. Advertising (Answer if different from A)		M												
	Prof.	F												
		M												
	Other	F												
C. Management and Sales/Rental Staff (Answer if different from A and/or B) Weis Management Co. 2227 7th Street NW Rochester, Minn. 55901 (507) 288-7880		M 4						0	1	Newspaper ad with EO statement	See Attached	No Minorit Persons Have Applied		
	Prof.	F 1						0	0					
		M 2						0	0					
	Other	F 2						0	1					

**9. STAFF INSTRUCTIONS:**

Fair Housing Training: All persons engaged in the sales/rental of real property have to be instructed periodically to insure that they are aware and knowledgeable of Fair Housing requirements.

- A. Are regular sales/rental staff meetings conducted?  Yes, when? Weekly  No.  
If yes, is Fair Housing training provided to the sales/rental staff at that meeting?  Yes;  No.
- B. If you answered "no" for either of the questions in item 9A, when is Fair Housing training provided to the sales/rental staff?

C. Is a copy of the instructions used or proposed to be used for training sales/rental staff in Fair Housing attached to this plan?  Yes.  No; indicate when information will be submitted \_\_\_\_\_

D. Do the instructions include and relate to local, state and Federal Fair Housing Laws, including Executive Order 11063, the Civil Rights Act of 1968 and this Affirmative Marketing Plan?  Yes.  No; explain. All of the above are discussed and given to employees

**10. ADDITIONAL CONSIDERATIONS:**

Other Efforts: Please describe other efforts you plan, as part of your outreach program, to attract persons in those groups that you have designated as least likely to apply for housing in the project under consideration, that are not covered elsewhere in this plan. Efforts to attract female-headed households should be employed.  
Currently there are very few minority persons residing in Long Prairie. We expect we will not attract them from outside this rural community.

11. The applicant agrees to make any changes in a plan covering a multifamily project, which may reasonably be required, after initial rent-up to assure continued compliance with Section 200.620 of HUD's Affirmative Fair Housing Marketing Regulations.

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FOR FHEO'S USE ONLY		SIGNATURE OF PERSON SUBMITTING PLAN	
APPROVAL BY: SIGNATURE <i>Gloria Lemon</i>	DISAPPROVAL BY: SIGNATURE	<i>Martin O. Thom</i>	
NAME (Type or print) GLORIA LEMON	NAME (Type or print)	NAME (Type or print) David A. Busch, Property Manager	
TITLE FAIR HOUSING EQUAL OPPORTUNITY SPECIALIST	TITLE	TITLE AND COMPANY Weis Management Company	
DATE 1-29-82	DATE	DATE December 1, 1981	

Attachment to Affirmative Fair Housing Marketing Plan:  
Prairie View 400, Long Prairie, Minnesota

- 5c) Community Contacts - All will be contacted in writing approximately 90 days prior to the date the units will be ready for first occupancy, encouraging referrals.

Todd County Department of Social Services  
119 3rd Street South  
Long Prairie, Minnesota 56347

American Indian Council  
-c/o Phoebe Saxon  
County Road #51  
St. Cloud, Minnesota 56301

St. Cloud Area Council of the Handicapped  
c/o Cathy Wingen  
351 NE 1st Street  
Sartell, Minnesota 56377

NAACP  
c/o Dr. Norman Jones  
St. Johns University  
Collegeville, Minnesota 56321

Human Rights Office  
c/o Jan Tarvestad  
City Hall  
314 St. Germain  
St. Cloud, Minnesota 56301

Migrant Council  
35 NE Wilson Avenue  
St. Cloud, Minnesota 56301

- 8c) The last two rent up experiences of Weis Management Company, both in small communities which have almost no minority race population. Stewartville Apartments, Stewartville, Minnesota, a 32 unit 202 project. No minority race persons applied.

Kasson Seniors Housing, Kasson, Minnesota, a 36 unit 202 project. No minority race persons applied.

## Attention Senior Citizens

Now You Can Rent A Spacious One Bedroom  
Apartment In The Brand New

Stewartville

Seniors Housing Complex  
Located Just One Block From  
Downtown Stewartville

And

Due To Government Assistance,  
The Low, Low Rent Is Based On  
Your Ability To Pay

Call Today 288-7980  
Wels Management Company  
Rochester

Accessible Units Also Available To  
Handicapped Persons Of Any Age



EQUAL HOUSING  
OPPORTUNITY



Exhibit 5

AGREEMENT TO INCORPORATE  
FINAL PROPOSAL  
BY REFERENCE

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Exhibit 5

Agreement to Incorporate the  
Final Proposal  
By Reference

The parties agree that the Final Proposal as approved by HUD is incorporated by reference into this contract.

Such Final Proposal is on file with the Minneapolis-St. Paul Area Office of HUD and includes the following:

1. Request for Direct Loan Financing, containing the following documents:

<u>Document</u>	<u>Date</u>
FHA Form 2013 - - - - -	8/5/82
FHA Form 2417 (Borrower) - - - - -	8/6/82
Resume of General Contractor - - - - -	8/6/82
Affirmative Marketing Plan - - - - -	12/1/81 approved 2/3/82
Schematic Drawings - - - - -	12/22/81
Owner-Architect Agreement - - - - -	
Outline Specifications - - - - -	12/7/81
Questionnaire for Sponsor - - - - -	12/1/81
Questionnaire for Managing Agent - - - - -	12/1/81
Certification of Managing Agent - - - - -	12/1/81
recertified on - - - - -	8/3/82
Soil Test - - - - -	11/7/80
Special Assessment Search - - - - -	11/9/81
Final Plans and Specifications - - - - -	7/20/82 revised 8/26/82
FHA Form 2328 Cost Breakdown - - - - -	9/7/82
Management Agreement - - - - -	8/1/82
Management Plan - - - - -	12/1/82
Lease (proposed) - - - - -	9/16/82

2. The owner hereby certifies that the documentation as contained in its Application for a Section 202 Fund Reservation has not changed, except as provided below:

None

OWNER: LONG PRAIRIE HOUSING  
ASSOCIATION, INC.

DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT

By Martin O. Thom, President

By Phil E. Berg, Secretary

By Robert B. Gerber  
Robert B. Gerber, Deputy Manager  
Minneapolis-St. Paul Office  
(Official Title)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

PART II OF THE

HOUSING ASSISTANCE PAYMENTS CONTRACT

By and between the DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (CA) and  
LONG PRAIRIE HOUSING ASSOCIATION, INC. (Owner).

Check Type of Project: Private-Owner/HUD X or PHA-Owner/HUD \_\_\_\_\_  
(HUD is the Contract Administrator or "CA.")  
or Private-Owner/PHA \_\_\_\_\_  
(The PHA is the CA)

NEW CONSTRUCTION or SUBSTANTIAL REHABILITATION or PREVIOUSLY HUD-OWNED  
Part 880 \_\_\_\_\_ Part 881 \_\_\_\_\_ Part 886, Subpart C \_\_\_\_\_  
Part 885 X Part 885 \_\_\_\_\_

SECTION 8 PROJECT NUMBER: MN46-T811-013

FHA PROJECT NUMBER (if applicable): 092-EH107-WAH-L8

2.1 OWNER'S WARRANTIES; AMENDMENTS.

- (a) Legal Capacity. The Owner warrants that it has the legal right to execute this Contract and to lease dwelling units covered by this Contract.
- (b) Completion of Work. The Owner warrants that the project as described in section 1.1 is in good and tenantable condition and that the project has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract (Agreement) or will be completed in accordance with the Special Conditions for Acceptance (see attached exhibit, where applicable). The Owner further warrants that it will remedy any defects or omissions covered by this warranty if called to its attention within 12 months of the effective date of this Contract. The Owner and the CA agree that the continuation of this Contract shall be subject to the Owner meeting any Special Conditions for Acceptance.

2.2 FAMILIES TO BE HOUSED; CONTRACT ADMINISTRATOR (CA) ASSISTANCE.

- (a) Families To Be Housed. The Contract Units are to be leased by the Owner to eligible Lower-Income Families (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. (See also section 2.10.)
- (b) CA Assistance.
- (1) The CA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable the Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act.
- (2) If there is a Utility Allowance and if the Allowance exceeds the total Family contribution, the Owner shall pay the Family the amount of the excess. The CA will pay funds to the Owner in trust solely for the purpose of making this payment. Any pledge by the Owner of payments properly payable under this Contract shall not be construed to include payments covered by this paragraph (b)(2). (See 24 CFR section 880.501(e), 881.501(e), or 886.309(a).)

2.3 MAXIMUM HOUSING ASSISTANCE COMMITMENT; PROJECT ACCOUNT.

- (a) Maximum Annual Contract Commitment. Notwithstanding any other provisions of this Contract (other than paragraph (b)(2) of this section) or any provisions of any other contract between the CA and the Owner, the CA shall not be obligated to make and shall not make any housing

assistance payments (or pay any fees where a PHA is a party to this Contract for the purpose of authorizing terminations in the case of previously HUD-owned projects) under this Contract in excess of the amount identified in section 1.1(c). However, this amount may be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents or pursuant to any other provisions of this Contract.

(b) Project Account.

- (1) A project account will be established and maintained by HUD, consistent with its responsibilities under section 8(c)(6) of the Act as a specifically identified and segregated account for the project. The account will be established and maintained, in an amount determined by HUD, out of the amounts by which the Maximum Annual Contract Commitment under section 1.1(c) (for Private-Owner/ HUD or PHA-Owner/ HUD Projects) or Maximum ACC Commitment (for Private-Owner/ PHA Projects) exceeds the amount actually paid out under the Contract or ACC each fiscal year. Payments will be made from the account for housing assistance payments (and fees for PHA administration) when needed to cover increases in Contract Rents or decreases in tenant rents and for other costs specifically approved by the Secretary.
- (2) If funds are available in the project account, the maximum annual contribution payable for any fiscal year will be increased by the amount, if any, as may be required for housing assistance payments (and fees where the CA is a PHA) to cover increases in Contract Rents or decreases in rents payable by Families and other costs approved by HUD.
- (3) Whenever a HUD-approved estimate of the required annual contribution for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum annual commitment, HUD will, within a reasonable period of time, take such additional steps authorized by section 8(c)(6) of the U.S. Housing Act of 1937 as may be necessary to assure that payments under the Contract and ACC (if applicable) will be adequate to cover increases in Contract Rents and decreases in rents payable by Families, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."
- (4) Any amount remaining in the account after payment of the last annual contribution with respect to the project shall be applied by HUD in accordance with law.

2.4 HOUSING ASSISTANCE PAYMENTS TO OWNERS.

(a) Housing Assistance Payments on Behalf of Families.

- (1) Housing assistance payments shall be paid to the Owner for units under lease for occupancy by Families in accordance with the Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of the rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.
- (2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by the Family shall be subject to change by reason of changes in Family Income, Family composition, extent of exceptional medical or other unusual expenses or program rules in accordance with the HUD-established schedules and criteria; or by reason of a change in any applicable Utility Allowance approved or required by the CA. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease term.

- (b) Vacancies During Rent-up. If a Contract Unit is not leased as of the effective date of the Contract (or within 15 days of the effective date of this Contract in the case of previously HUD-owned projects), the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period

not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with section 2.2(d) of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on its waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit in a manner specifically designed to reach eligible families, and (3) has not rejected any eligible applicant, except for good cause acceptable to the CA.

(c) Vacancies after Rent-Up. If an eligible family vacates a unit, the owner is entitled to housing assistance payments in the amount (except as provided in paragraph (d) of this section) of 80 percent of the Contract Rent for the first 60 days of vacancy if the Owner:

- (1) Certifies that it did not cause the vacancy by violating the lease, the Contract or any applicable law or by moving a Family to another unit;
- (2) Notified the CA of the vacancy or prospective vacancy and the reasons for it immediately upon learning of the vacancy or prospective vacancy;
- (3) Has fulfilled and continues to fulfill the requirements specified in paragraphs (b)(1), (2), and (3) of this section; and
- (4) Certifies that any eviction resulting in a vacancy was carried out in compliance with section 2.9.

(d) Payments for Vacancies after Initial Occupancy in Previously HUD-Owned Projects. In the case of previously HUD-owned projects, the Owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the Family's share of the rent for this period, the payment for the vacancy period must be reduced to an amount which, when added to the Family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. Paragraphs (c)(1) through (4) apply.

(e) Vacancies for Longer than 60 Days. Except for previously HUD-owned projects not requiring substantial rehabilitation, if an assisted unit continues to be vacant after the period specified in paragraph (b), (c) or (d) of this section, the Owner may apply to receive additional payments for the vacancy period in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (see Exhibit 2) for up to 12 additional months for the unit if:

- (1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;
- (2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b), (c) or (d) of this section, as appropriate; and

(c) The owner has demonstrated to the satisfaction of HUD that:

- (i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(f) Prohibition of Double Compensation for Vacancies. The owner is not entitled to payments for vacant units to the extent it can collect for the vacancy from other sources (such as security deposits, other amounts collected from the Family, payments from the CA under section 2.8(b), and governmental payments under other programs). If the Owner collects any of the Family's share of the rent for a vacancy period in an amount which, when added to the vacancy payment, results in more than the Contract Rent, the excess must be reimbursed as HUD directs.

(g) CA Not Obligated for Family Rent. The CA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with section 2.8(b) of this Contract.

The financial obligation of the CA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

(h) Owner's Monthly Requests for Payments.

- (1) The Owner shall submit monthly requests to the CA or as directed by the CA for housing assistance payments. Each request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of each unit, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit 1 for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with section 2.2(b)(2)); and (v) the total amount of housing assistance payments requested by the Owner.
- (2) Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief (i) the dwelling units are in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, (iv) none of the amount claimed has been previously claimed or paid under this Contract, and (v) the Owner has not received and will not receive any payments or other consideration from the Family, the PHA, HUD, or any other public or private source for the unit beyond that authorized in this Contract and the lease.
- (3) If the Owner has received an excessive payment, the CA (or HUD where the CA is a PHA), in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.
- (4) The Owner's monthly requests for housing assistance payments are subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully 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.
- (i) Payments to Trustee by PHA Where It Is the Lender. (See section 1.4 for applicability of this paragraph.) The amount of the housing assistance payment determined in accordance with the provisions of this Contract, up to the amount of the mortgage repayments due the PHA from the Owner pursuant to the mortgage loan made by the PHA for the project, shall be credited to the Owner and transferred monthly by the PHA from the account maintained under the General Depositary Agreement pursuant to the ACC to the trustee under the note or bond resolution of the PHA under which the notes or bonds to provide the mortgage loan were issued. Any amount of the housing assistance payment in excess of such credit shall be paid by the PHA directly to the Owner.

2.5 MAINTENANCE, OPERATION AND INSPECTION.

(a) Maintenance and Operation. The Owner agrees to maintain and operate the Contract Units, unassisted units, if any, and related facilities to provide Decent, Safe, and Sanitary housing including the provision of all the services, maintenance and utilities set forth in section 1.1(e). The Owner also agrees to comply with the lead-based paint regulations at 24 CFR Part 35. If the CA determines that the Owner is not meeting one or more of these obligations, the CA shall have the right to take action under section 2.21(b).

(b) Inspection.

(1) Prior to occupancy of any Contract Unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed or approved by the CA, that they have inspected the

unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the forms. The Owner shall keep copies of these reports on file for at least three years.

(2) The CA shall inspect or cause to be inspected the Contract Units and related facilities at least annually and at such other times (including prior to initial occupancy and re-renting of any unit) as may be necessary to assure that the Owner is meeting its obligation to maintain the units in Decent, Safe, and Sanitary condition including the provision of the agreed-upon utilities and other services. The CA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.

(c) Units Not Decent, Safe, and Sanitary. If the CA notifies the Owner that it has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the CA may exercise any of its rights or remedies under the Contract, including reduction or suspension of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the CA does not have other section 8 funds for such purposes, the CA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of rent payable by the Family.

(d) Notification of Abatement. Any reduction or suspension of housing assistance payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Family of any such abatement.

(e) Overcrowded and Underoccupied Units. Where the CA determines a unit is larger or smaller than appropriate for an eligible family, the Owner agrees to correct the situation in accordance with HUD regulations and requirements in effect at the time of the determination.

2.6 FINANCIAL REQUIREMENTS.

(a) Submission of Financial and Operating Statements.

The Owner must submit to the CA:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(b) Use of Project Funds. (Not applicable to Partially Assisted or Previously HUD-Owned Projects.)

~~(1) Project funds must be used for the benefit of the project, to make mortgage payments, to pay operating expenses, to make capital expenditures, to make the replacement reserve in accordance with paragraph (c) of this section and to provide distributions~~

~~to the Owner as provided in paragraph (d). To the extent HUD determines that project funds are more than needed for these purposes, the surplus project funds shall be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only with the approval of HUD for project purposes, including the reduction of housing assistance payments. Upon termination of the Contract, any excess funds must be remitted to HUD.~~

- ~~APPLICABLE TO PARTIALLY ASSISTED PROJECTS~~
- (2) In the case of HUD-insured projects, the provisions of this paragraph (b) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.
- (c) Replacement Reserve. (Not applicable to Partially Assisted or Previously HUD-Owned Projects.)
- (1) The Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations.
- (i) The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of the Contract. For staged projects, the obligation shall commence on a pro rata basis for units in each stage on the effective date of the Contract for that stage. The amount of the deposit to the replacement reserve will be adjusted each year by the amount of the automatic annual adjustment factor. See 24 CFR Part 88.
- (ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.
- (iii) All earnings including interest on the reserve must be added to the reserve.
- (iv) Funds will be held by the mortgagee or trustee for the bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.
- (2) In the case of HUD-insured projects, the provisions of this paragraph (c) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially-assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.
- (d) Limitation on Distributions. ~~(Paragraphs (d)(2)-(4) are not applicable to Small, Partially Assisted or Previously HUD-Owned Projects.)~~
- ~~(1) Nonprofit owners are not entitled to distributions of project funds.~~
- (2) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. ~~Distributions may not exceed the following maximum returns:~~
- (1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.
- (2) For projects for nonelderly families, the first year's distribution will be limited to 10 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.

~~For the purpose of determining the allowed distribution of the Owner's equity investment shall be computed in accordance with HUD regulations and requirements.~~

- ~~(4) Any short-fall in return may be made up from surplus project funds (see paragraph (b)) in future years.~~
- ~~(5) In the case of HUD insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program regulations, except in the case of small, partially assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance regulations.~~

## 2.7 RENT ADJUSTMENTS.

- (a) Funding of Adjustments. Housing assistance payments will be made in amounts commensurate with Contract Rent adjustments under this section up to the maximum amount authorized under section 2.3(a) of this Contract.

### (1) Annual Adjustments.

- ~~(1) Upon request from the Owner to the CH, Contract Rents will be adjusted on the anniversary date of the Contract in accordance with 24 CFR 888 and this Contract. See, however, paragraph (d).~~
- ~~(2) In the case of previously HUD-owned projects, the Contract Rents shall be adjusted in accordance with 24 CFR 886, Subpart C and this Contract.~~
- ~~(3) Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the annual adjustment result in Contract Rents less than the Contract Rents on the effective date of the Contract.~~

- (c) Special Additional Adjustments. Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, assessments, and utilities not covered by regulated rates. The Owner must demonstrate that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by annual adjustments. The Owner shall submit to HUD supporting data, financial statements and certifications which clearly support the increase. See, however, paragraph (d).

- (c) Overall Limitation. Notwithstanding any other provision of this Contract, adjustments after Contract execution or cost certification, where applicable, shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD; except to the extent that the differences existed with respect to the Contract Rents set at Contract execution or cost certification, where applicable.

- (c) Incorporation of Rent Adjustment. Any adjustment in Contract Rents shall be incorporated into Exhibit 1 by a dated addendum to the exhibit establishing the effective date of the adjustment.

- (f) Adjustment of Contract Rents based on Cost Certification.  
(See section 1.4 for applicability of this paragraph.)

- (1) Submission by Owner. Within 60 days after HUD accepts the project (or accepts the last stage, where applicable), or any extensions approved by HUD for good cause, the Owner will certify the actual costs estimated in the Final Proposal or Purchase and Use Plan of the replacement cost, operating expenses, income, and debt service, and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

- (i) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;
- (ii) For projects not insured by HUD, a simplified form of cost certification as prescribed by HUD will be completed and submitted.
- (2) HUD Review. Cost certifications will be subject to review by HUD. As part of this review, the Owner and/or contractor may be required to submit additional documentation.
- (3) Reduction of Contract Rents. If the Owner's certified costs provided in accordance with paragraph (f)(1) of this section, as approved by HUD, are less than the cost estimates provided in the Final Proposal or Purchase and Use Plan, the Contract Rents will be reduced accordingly.
- (4) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (f)(3) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
- (g) Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Obligations Issued by a Participating State Agency Not Subject to Part 811. (See section 1.4 for applicability of this paragraph.) After the project is permanently financed, the financing agency shall submit a certification to HUD specifying the actual financing terms. If the actual debt service to the Owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents or the Contract Rents then in effect shall be reduced commensurately and the amount of savings credited to the project account. The maximum annual Contract commitment (and the maximum annual ACC commitment, in the case of Private-Owner/PHA projects) will not be reduced.
- (h) Adjustment of Contract Rents to Reflect Actual Cost for Projects Subject to Part 811. (See section 1.4 for applicability of this paragraph.)
- (1) Submission by Owner and Financing Agency. The Owner and the financing agency shall submit certified statements as to the financing and other costs as required by Part 811 prior to final endorsement. Based on the certified statements, HUD will determine whether any reduction in initial Contract Rents is required under Part 811. Promptly after HUD notification, the Owner and the financing agency agree to amend the Contract to reduce the initial Contract Rents to the extent required by HUD. See sections 2.3(b)(5) and (6) of the Agreement, as appropriate.
- (2) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (h)(1) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
- (1) Adjustment of Contract Rents Due to Property Tax Exemption or Similar Savings. The Contract Rents may be reduced to reflect real property tax exemption or similar savings where the initial Contract Rents were approved on the assumption that the project would not receive the benefit of tax abatement or similar savings. The Owner agrees to notify the CA in the event such a project begins to receive such an exemption or similar savings so that the initial Contract Rents or the Contract Rents then in effect may be reduced.

2.8 MARKETING AND LEASING OF UNITS.

- (a) Compliance with Equal Opportunity Requirements. Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan (if required), shown as an exhibit, and with all regulations relating to fair housing advertising. Projects shall be managed and operated without regard to race, color, religion, creed, sex, handicap, or national origin and in the case of previously HUD-owned projects in accordance with the tenant selection factors shown as Exhibit 6.
- (b) Security Deposits. The Owner agrees to comply with applicable section 8 regulations and other requirements, as revised from time to time, regarding security deposits and to comply with all State and local law.
- (c) Eligibility, Selection and Admission of Families.
- (1) Except for those families in previously HUD-owned projects determined by HUD at the time of the sale of the project to be eligible for section 8, the Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, computation of the amount of housing assistance payments on behalf of each selected Family and of total Family contributions and recordkeeping in accordance with applicable HUD regulations and requirements.
  - (2) The Owner shall not charge any applicant or assisted Family any amount in excess of the total Family contribution except as authorized by HUD.
  - (3) In the initial renting of the Contract Units, the Owner must lease at least 30 percent to Very Low-Income Families (determined in accordance with HUD-established schedules and criteria). However, if this requirement cannot be met for substantial rehabilitation or previously HUD-owned projects because of families already residing in the project, HUD may permit the leasing of less than 30 percent of the units to Very Low-Income Families. Thereafter the Owner shall exercise best efforts to maintain (or achieve and maintain) at least 30 percent occupancy of the Contract Units by Very Low-Income Families. In addition, at all times, the Owner will use its best efforts to achieve leasing to Families with a range of incomes so that the average of incomes of all Families in occupancy is at or above 40 percent of the median income in the area.
  - (4) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by HUD.
  - (5) (i) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family at least as often as required by HUD regulations or other requirements, and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with applicable HUD regulations and requirements.
    - (ii) If a family reports a change in income or other circumstances that would result in a decrease of total family contribution between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the total family contribution. The Owner may require in its lease that families report increases in income or other changes between scheduled reexaminations.
    - (iii) In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families and what the average Family income is. If there are fewer than 30 percent Very Low-Income Families in occupancy, or the average income is below 40 percent of the median, the Owner shall report the fact to HUD and shall adopt appropriate changes in its admission policies.
    - (iv) A Family's eligibility for housing assistance payments continues until its total Family contribution equals the total housing expense for the unit it occupies. The termination of

eligible at this point will not affect the Family's other rights under the lease nor preclude resumption of payments as a result of later changes in income or other circumstances during the term of this Contract.

- (6) Where fewer than 100 percent of the units in the project are covered by this Contract, assisted Families shall be dispersed throughout. At initial rent-up, the Owner shall lease the units identified in Exhibit 1 to eligible Families. Thereafter, the Owner may lease other units of appropriate size and type to eligible Families in accordance with Exhibit 1. For projects with units for both elderly and non-elderly Families, the respective family types may be grouped together.
- (7) The Owner shall maintain as confidential all information relating to section 8 applicants and assisted Families, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- (d) Rent Redetermination after Adjustment in Utility Allowance.  
In the event that the Owner is notified of a CA determination approving or requiring an adjustment in the Utility Allowance applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.
- (e) Processing of Applications and Complaints. The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable HUD and PHA regulations and requirements and shall maintain records and furnish such copies or other information as may be required by HUD or the PHA.
- (f) Review: Incorrect Payments. In making housing assistance payments to Owners, the PHA or HUD will review the Owner's determinations under this section. If as a result of this review, or other reviews, audits or information received by the PHA or HUD at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or HUD shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

## 2.9 TERMINATION OF TENANCY OR SECTION 8 ASSISTANCE BY THE OWNER.

The Owner agrees not to terminate any tenancy of or assistance on behalf of an assisted Family except in accordance with all HUD regulations and other requirements, in effect at the time of the termination, and any State and local law.

## 2.10 REDUCTION OF NUMBER OF UNITS FOR FAILURE TO LEASE TO ELIGIBLE FAMILIES.

- (a) Limitation on Leasing to Ineligible Families. Except in the case of previously HUD-owned projects, the Owner may not at any time during the term of this Contract lease more than 10 percent of the assisted units in the project to families which are ineligible under section 8 requirements at initial occupancy without the prior approval of HUD. Failure on the part of the Owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. (See also section 2.21.)
- (b) Reduction for Failure to Lease to Eligible Families - New and Rehab Projects. If, at any time beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by families eligible under section 8 requirements at initial occupancy, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the Contract. HUD or the PHA may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible families is permitted in writing by HUD under paragraph (a) of this section.

(c) Reduction -- Previously HUD-Owned Projects.  
If, at any time beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have all of the assisted units leased or available for leasing by families eligible under section 8 requirements at initial occupancy, HUD may, on 30 calendar days' notice, reduce the number of Contract units to not less than the number of Contract units under lease, plus 10 percent of such number if the number is 10 or more, rounded up. Failure by the Owner to make a reasonable effort to lease the units to eligible Families shall be a violation of the Contract and grounds for all legal remedies including those specified in paragraph (a) and section 2.21.

(d) Restoration. HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) or (c) of this section if:

- (1) HUD determines that the restoration is justified by demand,
- (2) The Owner otherwise has a record of compliance with its obligations under the Contract, and
- (3) Contract authority is available. (HUD will take such steps authorized by section 8(c)(6) of the Act as may be necessary to carry out its agreement.

#### 2.11 NONDISCRIMINATION.

- (a) General. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, national origin, or handicap.
- (b) Members of Certain Classes. The Owner shall not automatically exclude anyone from participation in, or deny anyone the benefits of, the Housing Assistance Payments Program because of membership in a class, such as unmarried mothers, recipients of public assistance, handicapped persons.
- (c) Title VIII of the Civil Rights Act of 1968. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, which prohibits discrimination in the sale, rental, financing and advertising of housing on the basis of race, color, religion, sex, or national origin, and any related rules and regulations.
- (d) Title VI of the Civil Rights Act of 1964 and Executive Order 11063. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. et seq.; the HUD Regulations issued thereunder, 24 CFR, Subtitle A, Part 1; the HUD requirements pursuant to these regulations; and Executive Order 11063 and any regulations and requirements issued thereunder, to the end that, in accordance with that Act, Executive Order 11063, and the regulations and requirements of HUD, no person in the United States shall, on the grounds of race, color, creed, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of HUD, 24 CFR, Subtitle A, Part 1 issued under Title VI of the Civil Rights Act of 1964, HUD regulations issued pursuant to Executive Order 11063 and the HUD requirements pursuant to the regulations. The obligation of the Owner to comply therewith inures to the benefit of the United States of America, HUD, and the PHA (where the CA is a PHA), any of which shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Owner.
- (e) Section 504 of the Rehabilitation Act of 1973. The Owner shall comply with all the requirements imposed by section 504 of the Rehabilitation Act of 1973, as amended, and any related rules and regulations. Section 504 provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. Accordingly, the Owner (1) shall not discriminate against any qualified handicapped person on the basis of handicap and (2) shall

cause to be incorporated into all contracts executed in connection with this project a provision requiring compliance with rules and regulations issued pursuant to section 504.

(f) Employees of Owner.

(1) In carrying out the obligations under this Contract, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. The Owner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The Owner will incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.

(g) Age Discrimination Act of 1975. The Owner shall comply with any rules and regulations issued or adopted by HUD under the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

2.12 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS.

The Owner and the PHA (where the CA is a PHA) agree to cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to or permitted by all applicable civil rights statutes, Executive Orders, and rules and regulations.

2.13 TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS. (See section 1.4 for applicability of this section.)

(a) The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

(b) Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Contract. The requirements of the regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph (d) of this section in all contracts for work in connection with the project. The Owner certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

- (c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders issued by HUD thereunder prior to execution of this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to the sanctions specified by this Contract, and to such sanctions as are specified by 24 CFR, Section 135.135.
- (d) The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

- "A The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended. 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- "B The parties to this Contract will comply with the provisions of section 3 and the regulations issued pursuant thereto by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- "C The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- "D The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by HUD, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- "E Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Housing Assistance Payments Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors, and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the Housing Assistance Payments Contract, and to such sanctions as are specified by 24 CFR, Section 135.135."
- (e) The Owner agrees that it will be bound by the above section 3 clause with respect to its own employment practices when it participates in federally assisted work.

2.14 FLOOD INSURANCE. (See section 1.4 for applicability.)

The Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.15 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT. (See section 1.4 for applicability of this section.)

In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees:

- (a) Not to utilize any facility in the performance of this Contract or any nonexempt subcontractor which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- (b) Promptly to notify the CA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- (c) To comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 308 of the Water Act, and all regulations and guidelines issued thereunder; and
- (d) To include or cause to be included the provisions of this Contract in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

2.16 REPORTS AND ACCESS TO PREMISES AND RECORDS.

- (a) The Owner shall furnish any information and reports pertinent to this Contract as reasonably may be required from time to time by HUD and the PHA (where the CA is a PHA).
- (b) The Owner shall permit HUD and the PHA (where the CA is a PHA) or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

2.17 DISPUTES.

(a) For Private-Owner/PHA Projects:

- (1) Any dispute concerning a question of fact arising under this Contract which cannot be resolved by the PHA and the Owner may be submitted by either party to the HUD Field Office which will promptly make a decision and furnish a written copy to the Owner and the PHA.
- (2) The decision of the Field Office will not be reviewable unless, within 30 calendar days from the date of receipt of the Field Office's determination, either party mails or otherwise furnishes to HUD a written appeal with written justification addressed to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Field Office pending resolution of the appeal.

(b) For Private-Owner/HUD or PHA-Owner/HUD Projects:

Any dispute concerning a question of fact arising under this Contract which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Field Office, pending resolution of the appeal.

2.18 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF PHA, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS.

- (a) No person or entity in the following classes shall have an interest, direct or indirect, in this Agreement or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter.
- (1) any member or officer of the PHA (where it is the CA or the Owner), except where his or her interest is as tenant;
  - (2) (i) any employee of the PHA (where it is the CA or the Owner) who formulates policy or influences decisions with respect to the section 8 project;
  - (ii) any other employee of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;
  - (3) any member of the governing body or the executive officer of the locality (city or county) in which the project is situated;
  - (4) any member of the governing body or executive officer of the locality (city or county) in which the PHA (where it is the CA or the Owner) was activated;
  - (5) any other State or local public official (including State legislators), who exercises any functions or responsibilities with respect to the section 8 project;
  - (6) any PHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the project, including an interest by reason of membership on the board of the PHA which is the CA (except an employee who does not formulate policy or influence decisions with respect to the section 8 project may have an interest as a tenant).
- (b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the section 8 program or in a section 8 project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the PHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the PHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to the HUD Headquarters, with appropriate recommendations from the Field Office, for a determination of whether a waiver will be granted.
- (c) No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to an Agreement or a Contract executed, or to be executed, on his or her behalf, or with respect to an Agreement or a Contract to which this person is a party.
- (d) The Owner shall insert in all contracts, subcontracts, and arrangements entered into in connection with the project or any property included or planned to be included in the project, and shall require its contractors and subcontractors to insert in each of the subcontracts, the provisions of paragraphs (a) through (d).
- (e) The provisions of paragraphs (a) through (d) of this section shall not apply to a utility service if the rates are fixed or controlled by a governmental agency or applicable to the Depositary Agreement.

2.19 INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise from it.

1.26 ASSIGNMENT, SALE OR FORECLOSURE.

- (a) The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Contract, the Agreement, the ACC (if applicable), or the project or any part of them or any of its interest in them, without the prior written consent of HUD (and the PHA where it is the CA). However, in the case of an assignment as security for the purpose of obtaining financing of the project, HUD (and the PHA where it is the CA) shall consent in writing if HUD has approved the terms of the financing.
- (b) The Owner agrees to notify HUD (and the PHA where it is the CA) promptly of any proposed action covered by paragraph (a) of this section. The Owner further agrees to request the prior written consent of HUD (and the PHA where it is the CA).
- (c) (1) For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
- (i) A transfer by the Owner, in whole or in part,
  - (ii) A transfer by a party having a substantial interest in the Owner,
  - (iii) Transfers by more than one party of interests aggregating a substantial interest in the Owner,
  - (iv) Any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution of interests by any other method or means, and
  - (v) Any refinancing by the Owner of the project.
- (2) An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer. An assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.
- (3) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.
- (d) The Owner and the party signing this Contract on behalf of the Owner represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect to it.
- (e) Except where otherwise approved by HUD, this Contract, the Agreement, and the ACC (if applicable) shall continue in effect and housing assistance payments will continue in accordance with the terms of the Contract in the event:
- (1) Of assignment, sale, or other disposition of the project or this Contract, the Agreement, or the ACC,
  - (2) Of foreclosure, including foreclosure by HUD,
  - (3) Of assignment of the mortgage or deed in lieu of foreclosure,
  - (4) The PHA or HUD takes over possession, operation or ownership,
  - (5) The Owner prepays the mortgage.

(a) Rights of Owner if PHA Defaults under Contract (for Private-Owner PHA Projects).

(1) Events of Default. The occurrence of any of the following events, if the Owner is not in default, is defined as a default under the ACC:

- (i) If the PHA fails to perform or observe any term or condition of this Contract;
- (ii) If the Contract is held to be void, voidable, or ultra vires;
- (iii) If the power or right of the PHA to enter into the Contract is drawn into question in any legal proceeding; or
- (iv) If the PHA asserts or claims that the Contract is not binding upon the PHA for any such reason.

(2) Owner Request for HUD Determination of Default.

If the Owner believes that an event as specified in paragraph (a)(1) has occurred, and the Owner is not in default, the Owner may, within 30 days of the initial occurrence of the event:

- (i) Notify HUD of the occurrence of the event;
- (ii) Provide supporting evidence of the default and of the fact that the Owner is not in default; and
- (iii) Request HUD to determine whether there has been a default.

(3) HUD Determination of Default and Curing of Default.

HUD, after notice to the PHA giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the PHA is in default and whether the Owner is not in default. If HUD determines that the PHA is in default and that the Owner is not, HUD shall take appropriate action to require the PHA to cure the default. If necessary for the prompt continuation of the project, HUD shall assume the PHA's rights and obligations under the Contract, including any funds. HUD shall continue to pay annual contributions with respect to the units covered by this Contract in accordance with the ACC and this Contract until reassigned to the PHA. All rights and obligations of the PHA assumed by HUD will be returned as constituted at the time of the return:

- (i) When HUD is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements, or
- (ii) When the Contract is at an end, whichever occurs sooner.

(4) Enforcement by Owner. The provisions of this paragraph (a) are made for the benefit of the Owner, the lender, the PHA where it is the lender and then only in its capacity as lender, and the Owner's other assignees, if any, who have been specifically approved by HUD prior to the assignment. These provisions shall be enforceable by these parties against HUD by suit at law or in equity.

(b) Rights of PHA and HUD if Owner Defaults under Contract.

(1) Events of Default.

A default by the Owner under this Contract shall result if:

- (i) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease, including failure to correct any deficiencies

identified by the CA in connection with any annual or other inspection; or

- (ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Contract or under any Lease, or
- (iii) For projects with mortgages insured by HUD or loans made by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance or loan program with the insured mortgage, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the mortgage insurance or loan.

(2) CA Determination of Default:

Upon a determination by the CA that a default has occurred, the CA shall notify the Owner and the lender, with a copy to HUD where the CA is a PHA, of

- (1) The nature of the default,
- (ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner and/or the lender to cure the default), and
- (iii) The time within which the Owner and/or the lender shall respond with a showing that all the required actions have been taken.

If the Owner and/or lender fail to respond or take action to the satisfaction of the CA (and HUD where the CA is a PHA), the CA shall have the right to take corrective action to achieve compliance, in accordance with paragraph (b)(3) or to terminate this Contract with HUD approval, in whole or in part, or to take other corrective action to achieve compliance in its discretion, or as directed by HUD (where the CA is a PHA).

(3) Corrective Actions.

Pursuant to paragraph (b)(2) of this section the CA, in its discretion or as directed by HUD (where the CA is a PHA), may take the following corrective actions either directly or in conjunction with or acting through a PHA:

- (1) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of this Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this Contract. If the CA takes possession, housing assistance payments shall continue in accordance with the Contract.
- (ii) Collect all rents and charges in connection with the operation of the project and use these funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage or other loan documents.
- (iii) Apply to any court, State or Federal, for specific performance of this Contract, for an injunction against any violation of the Contract, for the appointment of a receiver to take over and operate the project in accordance with the Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to the PHA and/or HUD arising from a default under any of the terms of this Contract could be irreparable and the amount of damage would be difficult to ascertain.

(iv) Reduce or suspend housing assistance payments.

(v) Recover any overpayments.

(4) HUD Rights.

(For Private-Owner/PHA projects where the PHA is the lender.)

(i) Notwithstanding any other provisions of this Contract, in the event HUD determines that the Owner is in default of its obligations under the Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the PHA giving them a reasonable opportunity to take corrective action, to proceed in accordance with paragraph (b)(3).

(ii) In the event HUD takes any action under this section, the Owner and the PHA hereby expressly agree to recognize the rights of HUD to the same extent as if the action were taken by the PHA. HUD shall not have the right to terminate the Contract except by proceeding in accordance with paragraphs (b)(1), (2), and (3) of this section and with the ACC.

(c) Remedies Not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Contract or the ACC, where applicable, shall not preclude the exercise of any other remedy under this Contract or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.22 RELATIONSHIP OF PARENT ENTITY PHA AS OWNER TO AGENCY OR INSTRUMENTALITY PHA UNDER PART 811.

The Parent Entity PHA agrees to perform the functions with regard to the Agency or Instrumentality PHA required by the HUD regulations pursuant to which the relationship between the two PHAs was established and to which HUD approved the Agency or Instrumentality PHA.

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Paragraphs 2.6(b)(1) and 2.6(d) of the Contract are deleted and are replaced by the following provisions:

2.6(b)(1) Use of Project Funds

Project funds must be used for the benefit of the project, to make mortgage payments, to pay operating expenses, and to make required deposits to the replacement reserve in accordance with paragraph (c) of this section, and to pay distributions to the owner as provided in paragraph (d).

2.6(d) Limitation on Distributions

- (1) Nonprofit owners are not entitled to distributions of project funds.
- (2) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. From the remaining funds (surplus cash computed in accordance with HUD requirements), the Owner may take distributions. The first distribution may not be made until cost certification, where applicable, is completed.
- (3) In the case of HUD-insured projects, or projects on which HUD holds a purchase money mortgage, distributions are subject to the terms of the applicable Regulatory Agreement.

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SECTION 202 DIRECT LOAN

Paragraph 2.7(b) and (c) of the Contract are deleted and are replaced by the following provision:

- b. Contract Rent Adjustments. Contract Rents shall automatically be adjusted whenever a HUD-approved rent increase as provided under the Regulatory Agreement takes effect, and the HUD-approved rents shall become the new Contract Rents.

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