HUD-92?91
March 1977

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LOAN CONTRACT AND TRUST AGREEMENT

(Section 106(b) Nonprofit Sponsor Assistance
"Seed Money" Loans/Section 202 Housing for the Elderly or Handicapped Projects)

This Loan Contract and Trust Agreement made and entered into this ____ day of ____________________, 19__

by and between the UNITED STATES OF AMERICA, Secretary of Housing and Urban Development, *(hereinafter called Secretary)* and ________________________________, a private nonprofit corporation organized and existing under and by virtue of the laws of the State of __________________,

having its principal offices at ________________________________, *(hereinafter called Borrower).*

WHEREAS, the Borrower intends to construct a housing project and to make an application to the Secretary for a commitment for a loan under the provisions of Section 202 of the National Housing Act, and the regulations issued pursuant thereto, and

WHEREAS, the Borrower has applied for "seed money" loan in accordance with Section 106(b) of the Housing and Urban Development Act of 1968 and the regulations issued pursuant thereto under Part 271 of Title 24 of the Code of Federal Regulations, and

WHEREAS, the aforesaid application has been reviewed by the appropriate HUD field office which has made a determination that financial assistance applied for will carry out the purposes of Section 106(b) and Part 271 and that the Borrower is eligible for such assistance, and

WHEREAS, funds for the maximum amount of loan assistance available hereunder have been reserved by the Secretary;

NOW, THEREFORE, the parties mutually agree as follows:

1. The Borrower has commenced planning a housing project for the elderly or handicapped under Section 202 of the National Housing Act identified as

and hereby represents that it possesses sufficient financial resources, combined with the advances to be made hereunder by the Secretary, to complete successfully the processing preliminary to disbursement of mortgage proceeds to finance construction or rehabilitation of the project. The Borrower covenants that it shall use its best efforts to meet the requirements of the Secretary to obtain a direct loan under Section 202 of the National Housing Act, as amended, and the relevant regulations.

2. Upon approval of the application for a nonprofit sponsor assistance "seed money" loan under Section 106(b), the Secretary will deliver to the Borrower a copy of this instrument as executed by HUD. Delivery of this instrument shall constitute the Secretary's acceptance of the terms of this agreement and both parties shall thereafter be fully bound by the terms of this agreement and said application which is incorporated herein and made a part hereof. The advance(s) to be made by the Secretary pursuant to this agreement shall not exceed $_______________, and the total loan amount cannot, in any event, be increased beyond $50,000.

3. The Borrower covenants that it has expended, or will expend simultaneous with expenditure of the first disbursement of loan proceeds hereunder, an amount representing at least 20% of the total estimated "seed money" expenses. Such amount shall comprise the Borrower's initial cash contribution which shall be restricted to cash expenditures. The Borrower certifies that it has spent or has available and can document a cash contribution of $_______________, for the expenses listed in the application and that it will contribute such amount in cash as is necessary to complete its 20% contribution. The Borrower further agrees that all funds received from the Secretary shall be held in trust by the Borrower and shall be deposited in a trust account *(comprised exclusively of proceeds from the Section 106(b) loan and any interest which may be earned on the account)* separate from all other accounts, in a bank whose deposits are insured by the Federal Deposit Insurance Corporation. The Borrower's expenditures and funds in the trust account shall be used only for the purposes stated herein and, at the time of the first disbursement of mortgage proceeds, any unexpended funds shall be returned to the Secretary as beneficiary of the trust for appropriate adjustment. This trust shall in no event endure for a period exceeding twenty-one years. Interest, if any, earned on the trust account shall be deposited in the trust account and shall be remitted to the Secretary immediately after such deposit. Any authorized signatory of checks drawn on the trust account must be covered by a fidelity bond equal to the amount of the loan.

4. The Borrower agrees to use "seed money" loan proceeds only for those reasonable and actual expenses *(which must be incurred prior to the initial disbursement of the construction loan)* for planning the rehabilitation or construction of the proposed project and in obtaining the financing for the proposed project. "Seed money" loan

proceeds shall be expended only for the purposes set forth in the application and in the amounts specified herein, unless such other or additional expenditure shall be approved in advance by the Secretary in writing. The Borrower agrees that the following percentages of estimated allowable cost for each of the following items are the maximum permissible percentages *(including the Borrower's initial cash contribution)* for such items:

Item	Maximum Percentages
Preliminary site engineering *(boundary and topographic surveys, and soil tests)*	100
Architectural design	25
Site options	100
Organization expenses *(reasonable travel, telephone, fidelity bond(s), postage, and similar expenses of the proposed mortgagor)*	75*
Legal fees	15
Supplemental management fees	25
Consultant fees	25

*Not to exceed $750

The Borrower expressly covenants to exercise its best efforts to obtain all services at the least possible expense. The Borrower agrees to maintain and keep complete records in accordance with instructions from the Secretary of all disbursements from the trust account, make an accounting of all receipts and disbursements to the Secretary at the time of the first disbursement of mortgage proceeds and at such other times as may be requested by the Secretary, and to make such records available to the Secretary upon request.

5. No interest shall be charged on the "seed money" loan provided the Borrower complies with the terms of this instrument and of Section 106(b) and the Part 271 regulations. In the event the Borrower fails to so comply, the entire amount of the loan shall immediately become due and payable.

6. The Borrower promises to repay to the Secretary the full amount of advances made in accordance with the agreement, including any unexpended funds remaining in the trust account. The loan shall be payable in full   months from the date of the first disbursement by the Secretary under this agreement, or at such earlier time as the Borrower recovers any "seed money" expenses from the proceeds of construction financing or from any other source. Said maturity date may be extended by the Secretary in writing provided there is reasonable assurance that the Section 202 loan will be closed at a later time. Where any portion of the funds disbursed from the trust account is not authorized by HUD to be recovered from the first disbursement of mortgage proceeds, the maturity for this portion of the loan shall be further extended to the date of the final disbursement of mortgage proceeds. In the event the Section 202 reservation expires or the Section 202 proposal proves infeasible as determined by the Secretary or is withdrawn by the applicant, the entire amount of this loan shall immediately become due and payable.

7. The Secretary agrees to accept and process a request for cancellation of all or any portion of the "seed money" loan which is not in excess of 80 percent of the total allowable expenditures certified to by the Borrower and approved by the Secretary, in the event the Section 202 proposal proves infeasible and the Borrower is unable to obtain permanent financing from any source or in the event the Borrower is unable to recover sufficient funds from mortgage proceeds or any other source *(including sale of the Borrower's assets)* to repay the loan, as determined by the Secretary. The Borrower shall be required to submit with such cancellation request a full and complete accounting, satisfactory to the Secretary, of all "seed money" funds expended, including all funds disbursed from the trust account, together with the Borrower's certification that all sums were in payment of expenditures listed in the application and approved by the Secretary. The Secretary will not cancel all or any portion of a "seed money" loan unless the following conditions are met by the Borrower

a) Any unexpended funds in the trust account must be returned to the Secretary for appropriate adjustment along with the written request for cancellation.

b) In the event of partial recovery of "seed money" expenses from mortgage proceeds, all amounts recovered must be applied first toward repayment of the "seed money" loan.

c) In the event the "seed money" loan is secured by a lien on the site or where realty or other assets were purchased in part or totally with "seed money," and such site or assets are not used by the Borrower in connection with an eligible project, such site or assets must be sold at fair market value and the net proceeds *(sales price less indebtedness and sales expense)* used to repay the "seed money" loan to the extent possible.

d) The Borrower must be in compliance with the terms of this agreement.

(e) The Borrower must certify that no other project using the same site and plans is contemplated or feasible.

f) The Borrower must document that it has contributed and is unable to recover an initial cash contribution totaling at least 20% of all "seed money" expenditures.

Dated: ______________________

____
(Name of Borrower)

____
(Signature of Authorized Borrower Official)

Dated: ______________________
(Fund Reservation by OFA)

Dated: ______________________

____
Secretary of Housing and Urban Development
By: Assistant Secretary for Housing/
Federal Housing Commissioner

By: ______________________
(Signature of Authorized Agent)