

Firm Commitment for Capital Advance Financing

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

☐ Section 202 ☐ Section 811 ☐ New Construction ☐ Reconstruction ☐ Rehabilitation ☐ Acquisition ☐ From Resolution Trust Corporation

Project Number

Project Name

TO (Name of Owner)

Street Address

City & State

Your Request for Firm Commitment for Capital Advance Financing has been reviewed pursuant to 24 CFR Part 889 or Part 890 and your final plans and specifications and the Contractor/Owner's cost estimates have been found to be acceptable. The issuance of this Firm Commitment further denotes the reaffirmation of the conclusions reached during Conditional Commitment processing except as may be modified herein. **Note:** Where the Conditional Commitment stage has been bypassed, our attachment of forms HUD-92264 and 92264-A (see Paragraph 11 below) evidences compliance with the requirements of 24 CFR Part 889 or Part 890.

The Secretary of Housing and Urban Development (hereinafter called "Secretary" and/or "HUD") will make and disburse a capital advance under the provisions of Section 202 of the Housing Act of 1959, or Section 811 of the National Affordable Housing Act (NAHA), and the Regulations now in effect, pursuant to a mortgage note in the amount of \$ _____ to be secured by a mortgage or deed of trust on the property located at _____ and consisting of approximately _____ square feet. Estimated project development cost (based on the replacement cost minus grants/loans for replacement cost items, excess unusual land improvements, cost of ineligible amenities, value of leased fee and unpaid special assessments) is _____. The capital advance will be subject to compliance with the requirements of the Regulations, the Regulatory Agreement, form HUD-92466-CA, the Use Agreement, form HUD-90163-CA, and the terms and conditions set forth below. The capital advance amount, however, is subject to reduction at final closing as provided in the Regulations.

1. The mortgage note shall bear no interest and shall be repayable only if the above-described project does not remain available for very low-income eligible individuals/families as approved by HUD for no less than 40 years. In no event may the capital advance be repaid without the permission of HUD.
2. A project shall be constructed on the mortgaged property in accordance with Drawings and Specifications filed with HUD and designated as _____, Project No. _____ dated _____. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201), as amended, and "Supplementary Conditions of the Contract for Construction," form HUD-2554, as amended, shall be identified in a manner acceptable to HUD by the following parties or their authorized agents: Owner, Design Architect, Architect administering the Construction Contract, Contractor, and the Contractor's Surety.
3. Any change in the Drawings and Specifications or in the conditions upon which this commitment is based, which may occur after the date hereof, shall be explained in writing or in a supplementary application, if required by HUD, prior to initial closing. Any such change occurring subsequent to initial closing may be effected only with the prior written approval of HUD. The approval of any change may be subject to such conditions and qualifications as may be prescribed by HUD.
4. Approval of advances in accordance with the Capital Advance Agreement must be obtained on form HUD-92403-CA prior to the date of each advance. A Contractor's Certification concerning Labor Standards and Prevailing Wage Requirements (if required) on the back of form HUD-92448 will be filed with the request for approval of each advance which includes a payment for construction costs.
5. During the course of construction, HUD representatives shall at all times have access to the property and the right to inspect the progress of construction. The inspection of construction by HUD representatives shall be solely for the benefit and protection of HUD and no other party.
6. At least 15 working days prior to the anticipated date for initial closing, two draft copies (executed where noted) of each of the

following documents and exhibits shall be submitted to HUD. After review, the place and date of the initial closing will be designated, at which time the following documents and exhibits in final form shall be delivered to HUD for approval:

- a. The Owner's organization documents, e.g., Certificate of Incorporation and By-Laws, as required by applicable State or local laws (see form HUD-91732-A-CA), Incumbency Certificate, including evidence of good standing.
- b. The Regulatory Agreement which will regulate the Owner's operation of the project (form HUD-92466-CA). Such instrument shall provide, among other things, for the establishment of a Reserve Fund for Replacements under the control of HUD by payment of \$ _____ per annum.
- c. Resolution by Owner's Board authorizing execution of Use Agreement, Note, Mortgage, Capital Advance Agreement, Regulatory Agreement, Incumbency Certificate and updating conflict of interest certifications and other closing documents.
- d. Lease in conformance with Lease Addendum (if mortgage is on a leasehold).
- e. Title evidence in conformity with the Regulations which shall show that title to the property on the date of initial closing is vested in the Owner free of all encumbrances other than the mortgage and free of all reservations of title (either junior or prior to said mortgage), except such as are specifically determined to be acceptable by HUD. If such title evidence is in the form of a title insurance policy, it shall by its terms inure to the benefit of the Secretary of Housing and Urban Development.
- f. Evidence of zoning compliance and building permits issued by legally constituted authorities.
- g. The survey of the mortgaged property (dated no more than 90 days before initial closing), together with the Surveyor's Certificate, HUD-92457, (dated within 30 days of initial closing), showing that there are no easements or encroachments upon the subject property except those acceptable to HUD.
- h. Mortgage or Deed of Trust (using form HUD-90165-CA as a guide) and a Mortgage Note, HUD-93432-CA, to ensure HUD's interest in the capital advance.
- i. The Construction Contract, HUD-92442-CA, for competitively-bid contracts (or HUD-92442A-CA for negotiated contracts) between the Owner and the General Contractor whereunder the project is to be built. (Contractor's and/or Mortgagor's Cost Breakdown, HUD-2328, shall be attached, if applicable.)
- j. The Assurance of Completion of the project in the form of:
 - (1) Separate performance (FHA-2452) and payment (HUD-92452-A) bonds, each in the amount of 100% of the amount of the HUD-estimated construction or rehabilitation, or a 100% performance-payment bond (HUD-92452-CA); or
 - (2) Cash escrow (25% of the estimated HUD construction or rehabilitation cost) using the Completion Assurance Agreement, HUD-92450-CA. All percentages relate to total construction, reconstruction or rehabilitation cost of the housing and related facilities.
- k. The Owner-Architect Agreement, AIA Form B-181, with HUD Amendment.
- l. Escrow Agreement for Off-Site Facilities, HUD-90170-CA, in the Amount of \$ _____ to be funded by cash deposit or letter of credit. (In lieu thereof, an Off-Site Bond, form HUD-90177-CA may be provided.)
- m. Assurance that adequate sewer, water, gas and electric facilities will be fully installed prior to completion of the project and that necessary public streets, sidewalks and curbing outside the project site, if not yet constructed, will be fully completed within a reasonable time after completion of the project.
- n. The Owner's Internal Revenue Service tax exemption ruling under Section 501(c)(3) or (4) of the Internal Revenue Code.
- o. The Owner's Certificate, HUD-2433-CA, certifying to the priority of the mortgage and to other matters set forth therein.
- p. The Owner's Attorney's Closing Opinion as to legal status of the Owner, building permit and compliance with zoning laws and requirements (form HUD-90166-CA).
- q. Evidence that the Owner has deposited with the depository the following sums to be applied to its following items:
 - (1) A minimum capital investment of \$ _____, representing one-half of one percent of the total HUD-approved capital advance (not to exceed \$10,000 for Section 811 projects or \$25,000 for Section 202 projects), to be escrowed with HUD or its designee at initial closing.
 - (2) Funds, if any, required over and above the capital advance proceeds for completion of the project: \$ _____. This sum represents the difference between HUD's estimate of the total cash required for completion of the project and the approved capital advance amount.
 - (3) Funds in the amount of \$ _____ to meet the expenses of the project from the date of initial occupancy until _____ months after the date of final closing as HUD estimates are necessary, (form HUD-90168).
- r. FHEO Assurance of Compliance with nondiscrimination and equal opportunity requirements. (Appendix 23 of Handbook 4571.2 (Section 811) and 4571.3 (Section 202).
- s. Evidence that the Owner has obtained the required property insurance coverage (see form HUD-92329).
- t. Blanket Fidelity Bond covering all the Owner's officers and employees, including noncompensated officers, during the construction period, unless a title company is handling all disbursements on behalf of the Owner.
- u. The Agreement to Enter Into a Project Rental Assistance Contract (forms HUD-90172-A-CA and HUD-90172-B-CA). (To be prepared by HUD)
- v. Use Agreement (form HUD-90163-CA).
- w. The Capital Advance Agreement, HUD-90167-CA, governing advances of the capital advance proceeds. (Executed copies rather than draft copies of form HUD-90167-CA should be submitted to facilitate initial disbursement.) This instrument, prepared by HUD, is attached for execution.
- x. Agreement and Certification (form HUD-93566-CA).
- y. Direct Deposit Sign-Up Form, SF 1199A (executed). The designated depository must be insured by the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund.

- z. Owner's executed initial requisition for advance for capital advance funds (form HUD-92403-CA).
- aa. All other applicable documents (as noted below).
7. If under the laws of the jurisdiction in which the project is located, the personal property of the Owner, which is used in the operation of the project, is not covered by and subject to the real estate mortgage, the Owner shall provide prior to the final closing, a Security Agreement and a Financing Statement (UCC-1) or such other security instrument as may be necessary to effect a first lien on such personal property in favor of HUD.
8. Any change in the sponsorship upon which this commitment is predicated must be requested in writing by the Owner on behalf of any proposed substitute sponsor, and such request must be approved in writing by HUD. Any sponsor or principal (including the principals of any parent entity of such sponsor or principal), who is now or who may later become involved in this project by way of financial interest, employment or otherwise, who has not filed a certificate with HUD fully disclosing his/her previous participation in FHA mortgage insurance and other HUD housing programs, shall file such certificate on the form prescribed for HUD approval.
9. All certificates, documents and agreements called for by this commitment, shall be on forms approved or prescribed by HUD and shall be completed, executed and filed in the number of copies and in such manner as prescribed by HUD.
10. This commitment shall terminate 60 days from the date hereof unless renewed or extended by HUD. Prior to any renewal or extension of this commitment, HUD may, at its option, reexamine the commitment to determine whether it shall be extended in the same amount, or shall be amended to include a lesser amount.
11. The following documents are attached and incorporated herein:
- (a) Rental Housing Program Income Analysis and Appraisal, HUD-92264.
 - (b) Supplement to Analysis, HUD-92264-A.
- Special conditions set forth below or attached hereto and identified as additional numbered paragraphs are made a part hereof.

Secretary of Housing and Urban Development

By (Authorized Agent)

Dated