|  |  |  |
| --- | --- | --- |
| **Commitment to Insure Upon Completion**Pursuant to Section 232(i) – Fire Safety Equipment Installation |  | **U.S. Department of Housing** **and Urban Development**Office of Residential Care Facilities |

|  |  |  |
| --- | --- | --- |
|   | FHA Project No.: | **XXX-XXXXX** |
|   | Project Name: | Project Name |
|   | Project Address: | Project Street Address |
|   |   | Project City, State, Zip |
| Lender Name |   | Borrower Name |
| (Lender) |   | (Name of Borrower) |
| Lender Street Address |   | Borrower Street Address |
| (Address) |   | (Address) |
| Lender City, State, Zip |   | Borrower City, State, Zip |
| (City, State, & Zip Code) |   | (City, State, & Zip Code) |
|  |   |   |
|  |  |  |  |

We understand that you, as Lender, have agreed to make a loan to Borrower Name (hereafter called the “Borrower”), in an amount not exceeding the sum of Loan Amount Written Out Dollars ($     ), evidenced by a note (the “Note”) to be secured by a security instrument (the “Security Instrument”) covering real property with existing building(s) thereon identified above (hereinafter called the "Project"), as shown on the legal description of the property attached hereto and marked **Exhibit A**.

It is your intention to present the said Note and Security Instrument to the Federal Housing Commissioner acting herein on behalf of the Department of Housing and Urban Development (“HUD”) for mortgage insurance under the provisions of Section 232(i) of the National Housing Act (the “NHA”), and the regulations thereunder now in effect (the “Regulations”).

HUD hereby agrees to insure said Note and Security Instrument under the provisions of the NHA and the Regulations upon the following conditions:

1. The Note shall bear interest at the rate of       percent per annum payable on the first day of each month on the outstanding balance of principal. The first payment to principal (commencement of amortization) shall be due not later than the first day of the second month following the date of endorsement of the Note and Security Instrument for insurance (“Endorsement”). The Note and Security Instrument shall be payable on a level annuity basis by       monthly payments of principal and interest in the amount of $     . The maturity and final payment date shall be       years and       months following the due date of the first payment to principal. *Note: Any change in the interest rate may require reprocessing of the mortgage insurance application.*

2. The Note and Security Instrument to be insured shall be in the form prescribed by HUD for use in connection with loans insured under Section 232(i) of the NHA in the locality in which the property is situated. In addition, the Borrower (and, if applicable, the lessee/operator of the Project) shall provide a security agreement, UCC financing statements, and deposit account control agreement(s) (if applicable) granting a first lien security interest in such tangible and intangible personal property related to the Project as may be required by HUD (subject only to liens for taxes and assessments which are not delinquent and such other liens, such as with an accounts receivable financing transaction, as may be approved by HUD).

3. Prior to Endorsement, the Borrower shall present to HUD a title policy in conformity with the Regulations that shall show that title to the property (or, if approved by HUD, a leasehold estate therein) on the date of Endorsement is vested in the Borrower free of all exceptions to title (either junior or prior to said Security Instrument) except said Security Instrument and such other exceptions to title as are specifically determined to be acceptable by HUD. Said title policy shall (a) by its terms inure to the benefit of the Lender and/or HUD, as their interests may appear and (b) unless otherwise approved by HUD, be on the ALTA Loan Policy 2006 Form and include ALTA Form 8.1-06, 9-06, (or 9.3-06), ALTA 17-06 and ALTA 22-06 endorsements and an endorsement deleting the arbitration clause. The Borrower shall also furnish satisfactory proof that there exist no unpaid obligations contracted in connection with the Note and Security Instrument transaction, the purchase of the Project or refinancing of existing indebtedness, or the completion of any repairs, except such obligations as may be approved by HUD. Unless waived by HUD, prior to Endorsement, the Borrower shall present to HUD a survey of the Project in form and substance satisfactory to HUD.

4. The Borrower must possess the powers necessary for operating the Project and meeting all the requirements of HUD for insurance of the Note and Security Instrument. Prior to Endorsement, there shall be delivered to HUD and the Lender copies of ownership entity documentation that complies with applicable requirements of HUD, including a copy of the instrument under which the Borrower entity is created (unless the Borrower is an individual) together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Note and Security Instrument and the other closing documents.  Attached hereto as **Exhibit B** is the Reserve for Replacement Funding Schedule that supports the per annum deposits to the Reserve for Replacements, if applicable.

The amount of the annual deposits to the Reserve Fund for Replacements shall be subject to change in accordance with the requirements of HUD.

5. The provisions of this Paragraph 5 shall apply to any critical repairs required by this Commitment to be completed and inspected prior to Endorsement. All repairs shall be completed in accordance with the Work Write-up attached hereto as **Exhibit C** (“Critical Repairs List”, if applicable)and must meet the specific requirements contained in Chapters 5 and 6 of HUD’s Minimum Property Standards. HUD estimates that these critical repairs will cost $     . HUD encourages Borrowers to utilize energy saving devices and methods when making repairs.

During the course of such repairs, if any, HUD and its representatives shall at all times have access to the Project and the right to inspect the progress of the repairs. In addition, if required by HUD, the Borrower will furnish at the Project site all necessary facilities for the use of HUD's inspector. The inspection of the repairs by a representative or representatives of HUD shall be for the benefit and protection of HUD. HUD shall have no obligation to endorse the Note and Security Instrument for insurance unless and until all critical repairs have been completed to the satisfaction of HUD.

6. If any repairs are to be made that require additional sewer, water, gas or electrical facilities, evidence satisfactory to HUD shall be submitted prior to Endorsement showing that adequate sewer, water, gas and electrical facilities (as applicable) have been or will timely be fully installed. All off-site facilities or utilities required in connection with the repairs shall be included in such evidence.

7. Upon Endorsement, the Lender shall pay to HUD, in advance, a mortgage insurance premium equal to one percentum of the principal amount of the Note and Security Instrument to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.

8. Prior to Endorsement, the Borrower must certify to the actual cost of this Note and Security Instrument using form HUD-2205A-ORCF, Borrower’s Certificate of Actual Costs. A draft form HUD-2205A-ORCF with supporting documentation is required at least 10 days prior to Endorsement. Supporting documentation must include a current pay off statement for any existing indebtedness and evidence of prepaid third party costs.

9. The Borrower shall not be required to pay to the Lender an initial service charge in excess of one and one half percent (1.5%) of the original amount of the Note and Security Instrument.

10. This Commitment shall expire       days from the date hereof, unless extended by HUD. Upon such expiration, all rights and obligations of the respective parties shall cease. Prior to any extension of this Commitment, HUD may, at its option, reexamine this Commitment to determine whether it shall be extended, shall be extended in the same amount, or shall be amended to include a lesser amount.

11. A request for reopening received within ninety (90) days of expiration of this Commitment must be accompanied by a reopening fee of $0.50 per $1,000.00 of the amount of the expired commitment.

12. It is a condition of this Commitment that any change in ownership upon which this Commitment was predicated must be indicated in writing by the Borrower and such request must be approved in writing by HUD.  Any principals of the Borrower or lessee/operator which are added prior to Endorsement and which were not disclosed in the mortgage insurance application shall be subject to HUD’s credit review and previous participation clearance before Endorsement.

13. If the Project is subject to an operating lease, the lessee/operator lease must comply with the Healthcare Regulatory Agreement-Operator (Form HUD-92466A-ORCF) and incorporate subordination language approved by HUD. The security agreement between the lessee/operator and the Lender must also be approved by HUD. Lease payments must cover the costs of the Note and Security Instrument (i.e., mortgage insurance premiums, taxes, mortgage payments, and any other costs that might be required by HUD). If the Project is operated by a management agent, the management agreement must comply with the Healthcare Regulatory Agreement-Operator (Form HUD-92466A-ORCF) and incorporate subordination language approved by HUD. The management agent will be required to sign the Healthcare Regulatory Agreement-Operator (Form HUD-92466A-ORCF). The management agreement must address costs of the Note and Security Instrument. If the management agent is not the licensee and does not operate the facility, the management agent shall sign the Management Certification-Residential Care Facility, HUD-9839-ORCF.

14. In the event that additional code requirements are imposed by any state or local authority after the issuance of this Commitment that would cause the total cost of all required repairs to exceed fifteen percent (15%) of HUD’s total estimate of value after repairs, this Commitment shall be null and void.

15. HUD reserves the right to examine the Lender’s file materials related to the underwriting of the Note and Security Instrument at any time during the 10-year period following Endorsement. If there is evidence of fraud or misrepresentation by the Lender, HUD reserves its legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Lender agrees to retain, in accessible files, all materials related to the underwriting of the Note and Security Instrument for a period of 10 years, even though the Note and Security Instrument itself may be sold to another entity.

16. All financing arrangements (other than the Note and Security Instrument and any other note and security instrument insured by HUD), including repayment obligations and other secondary financing, and occupancy restrictions must be fully disclosed to and approved by HUD and must comply with HUD’s requirements applicable to loans insured under the Section of the NHA applicable to the Note and Security Instrument.

17. This Commitment is conditioned upon and shall not be enforceable against HUD until and unless all conditions to Endorsement stated herein have been satisfied or waived by HUD.

18. Prior to Endorsement the Borrower must provide evidence that a management conference has been scheduled with the HUD Account Executive assigned to the project. The contact information for the Account Executive assigned to this project is below.

Name: The Account Executive will complete this

Telephone: The Account Executive will complete this

Email: The Account Executive will complete this

19. This Commitment is:

 [ ]  Subject to Special Conditions numbered 1 through          , which are included below and are made a part hereof.

 [ ]  Not subject to any Special Conditions.

**Special Conditions:**

[Insert Special Conditions]

Draft closing documents, conforming to the terms of this Commitment must be submitted not less than 10 business days prior to Endorsement. This Commitment and exhibits referred to herein together with the applicable Regulations constitute the entire agreement among the parties, and acceptance of the terms hereof is evidenced by the signature of the Borrower and Lender upon the lines provided below. Please return one original of this Commitment, signed by the Lender and the Borrower, to the ORCF Underwriter within 10 business days of the date of HUD's execution of this Commitment.

|  |
| --- |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENTBY:  FEDERAL HOUSING COMMISSIONER |
|   By: |  |   | Date: |  |
|   | Authorized Agent |   |   |   |

The above Commitment to Insure Upon Completion, including Special Conditions (if applicable), is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof.

Both Borrower and Lender hereby certify that each of their statements and representations contained in this Commitment and all supporting documentation thereto are true, accurate, and complete. This Commitment has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Note and Security Instrument, and may be relied upon by HUD as a true statement of the facts contained therein.

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | **BORROWER:**Borrower Name |
| Date: |  |  | By: |  |
|  |  |  | Name: |       |
|  |  |  | Title |       |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | **LENDER:**Lender Name |
| Date: |  |  | By: |  |
|  |  |  | Name: |       |
|  |  |  | Title |       |

Attachments:

Exhibit A Legal Description

Exhibit B Reserve for Replacement Funding Schedule

Exhibit C Critical, Non-Critical & Borrower-Elective Repairs List

Form HUD-92264a-ORCF

Insurance:

* ORCF Insurance Requirements
* Form HUD-92329 (for submissions prior to 11/1/14)
* Form HUD-92447 (for submissions prior to 11/1/14)