

Revised 1/26/09

**U. S. Department of Housing and Urban Development  
Federal Housing Commissioner  
Office of Insured Health Care Facilities  
Commitment for Insurance of Advances  
Supplemental Loan  
Section 232 pursuant to Section 241(a)**

**Commitment for  
Insurance of Advances –  
Supplemental Loan  
Section 232 Pursuant to  
Section 241(a)**

**U. S. Department of Housing  
and Urban Development  
Office of Healthcare Programs**

OMB Approval No. 9999-9999  
(exp. mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Privacy Act Notice: The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in the form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

FHA Project No.:     XXX-XXXX  
Project Name:     Project Name  
Project Address:     Project Street Address  
    Project City, State, Zip

    Lender Name  
(Mortgagee)

    Mortgagor Name  
(Name of Mortgagor)

    Lender Street Address  
(Address)

    Mortgagor Street Address  
(Address)

    Lender City, State, Zip  
(City, State and Zip Code)

    Mortgagor City, State, Zip  
(City, State and Zip Code)

We understand that you, as Mortgagee, have agreed to make a supplementary loan to      (hereinafter called the "Mortgagor"), in an amount not exceeding the sum of      and no/100-Dollars (\$     ) to be secured by a supplementary credit instrument and supplementary security instrument (hereinafter jointly called the "Supplementary

Mortgage”) covering real property with existing building(s) (if any) thereon identified above (hereinafter called the “Project”), as shown on the legal description of the property attached hereto as **Exhibit A**.

It is your intention to present the said Supplementary Mortgage to the Federal Housing Commissioner acting herein on behalf of the Secretary of Housing and Urban Development (the “Secretary”) for mortgage insurance under the provisions of Section 232, pursuant to Section 241(a), of the National Housing Act (the “NHA”) and the Regulations thereunder now in effect (the “Regulations”). All or a portion of the Project is subject to one or more prior mortgages insured by the Secretary under Section 232 (and/or Section 232, pursuant to Section 241(a)) of the NHA (whether one or more, the “Prior Mortgage”).

The Secretary hereby agrees to insure said Supplementary Mortgage under the provisions of the NHA and the Regulations upon the following conditions:

- 1.(a) The Supplementary Mortgage shall bear interest at the rate of [redacted] percent (~~\_\_\_\_\_~~%) [redacted]%) per annum **[during the construction period and at the rate of [redacted] percent ([redacted]%) per annum thereafter. As used herein, construction period means the period beginning on the date of Initial Endorsement and ending on the cost-cut off date approved by the Secretary (or such other date as may be approved by the Secretary)]**. Note: Any change in the interest rate will require reprocessing of the mortgage insurance application and amendment of this Commitment prior to Initial Endorsement.
- (b) Payments of interest only on the outstanding principal balance shall be due and payable on the first day of each month, commencing not later than the first day of the month following initial endorsement of the Supplementary Mortgage for insurance (“Initial Endorsement”) and continuing through the first day of the month immediately prior to the date on which the first monthly payment of principal is due.
- (c) The first payment to principal (commencement of amortization) shall be due on the first day of the ~~\_\_\_\_\_~~ month following the month in which Initial Endorsement occurs. The Supplementary Mortgage shall be payable on a level annuity basis by [redacted] monthly payments of principal and interest in the amount of \$[redacted] each. Monthly principal and interest payments due prior to, or on the first day of the month after, final endorsement of the Supplementary Mortgage (“Final Endorsement”) shall be adjusted to the extent that the full principal amount of the Supplementary Mortgage has not yet been advanced in order for such payments to equal the sum of (i) interest on the outstanding principal balance plus (ii) the regularly scheduled principal amortization payments due on the Supplementary Mortgage assuming that the full amount thereof has been advanced. The maturity and final payment date shall be ~~\_\_\_\_\_~~ years and [redacted] months following the due date of the first payment to principal (commencement of amortization).

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- 2.(a) Certain improvements to the Project (which improvements may include renovation of existing structures and/or the construction of additional structures) are to be constructed in accordance with a construction contract approved by the Secretary and with the Drawings and Specifications (which Drawings and Specifications may, with the approval of the Secretary, consist of a work write-up rather than detailed construction drawings and specifications) filed with the Secretary and designated as [REDACTED], FHA Project No. [REDACTED], dated [REDACTED] and identified in the Index attached hereto as **Exhibit B** (the "Work"). The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (HUD-2554), shall be identified in a manner acceptable to the Secretary by the following parties or their authorized agents: Mortgagor, design architect, architect administering the construction contract, contractor and, if applicable, the contractor's surety. The Secretary encourages mortgagors to utilize energy saving devices and methods.
- (b) At or prior to Initial Endorsement, there shall be submitted to the Secretary assurance of completion of the Project in the form of (i) payment and performance bonds, each in the amount of 100% of the construction contract amount, in form and substance satisfactory to the Secretary and issued by a surety acceptable to the Secretary, or (ii) a completion assurance agreement reflecting a deposit thereunder of not less than [REDACTED] % **[15% or 25%, as applicable]** of the construction contract amount, in form and substance satisfactory to the Secretary.
- (c) The Mortgagor shall cause the Project to be equipped in order for the Project to operate in accordance with applicable laws, such equipment to include, but not be limited to, the major moveable equipment listed in **Exhibit C** attached hereto.
3. The supplementary credit instrument and the supplementary security instrument to be insured shall be in the forms prescribed by the Secretary for use in connection with loans insured under Section 232, pursuant to Section 241(a), of the NHA in the locality in which the property is situated, with the security therefor to be coextensive with the real property securing the Prior Mortgage. If the mortgaged property described in **Exhibit A** includes property that is not encumbered by the Prior Mortgage, the Prior Mortgage and related documents shall be modified to the satisfaction of the Secretary to include such additional property and a satisfactory endorsement to the title insurance policy insuring such Prior Mortgage shall be provided prior to Initial Endorsement. Said supplementary credit instrument and supplementary security instrument shall each contain a provision that a default under the credit instrument and/or security instrument evidencing and securing the Prior Mortgage shall constitute a default under the said supplementary credit instrument and supplementary security instrument. Said supplementary security instrument shall also provide that, except for escrows for mortgage insurance premiums or service charges due to the Secretary, escrows for items otherwise required thereunder shall not be collected thereunder for so long as escrows for such items are being collected under the Prior Mortgage. In addition, the Mortgagor (and, if applicable, the lessee/operator of the Project) shall provide a

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security agreement and UCC financing statements granting a security interest in such tangible and intangible personal property related to the Project as may be required by the Secretary (subject only to liens for taxes and assessments which are not delinquent, liens related to the Prior Mortgage and such other liens as may be approved by the Secretary).

- 4.(a) Prior to Initial Endorsement, the Mortgagor shall present to the Secretary a title policy in conformity with the Regulations which shall show that title to the property (or, if approved by the Secretary, a leasehold estate therein) on the date of Endorsement is vested in the Mortgagor free of all exceptions to title (either junior or prior to said Supplementary Mortgage), except said Supplementary Mortgage, the Prior Mortgage, and such other exceptions to title as are specifically determined to be acceptable by the Secretary. Said title policy shall (i) by its terms inure to the benefit of the Mortgagee and/or the Secretary of Housing and Urban Development, as their interests may appear and (ii) unless otherwise approved by the Secretary, 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. Said policy may contain a pending disbursements clause if customary in the area in which the Project is located.
- (b) If required by the Secretary, prior to Initial Endorsement, and again prior to Final Endorsement, the Mortgagor shall present to the Secretary a survey of the Project in form and substance satisfactory to the Secretary. At the request of the Secretary or the Mortgagee, such survey will be updated from time to time during construction to show that the improvements on the site have been erected solely upon the mortgaged property and within applicable building restriction lines, if any, and do not encroach upon or overhang any land not covered by the Supplementary Mortgage or any easement or right-of-way.
5. The Mortgagor must possess the powers necessary for operating the Project and meeting all the requirements of the Secretary for insurance of the Supplementary Mortgage. Prior to Initial Endorsement, there shall be delivered to the Secretary and the Mortgagee (a) copies of ownership entity documentation that complies with applicable requirements of the Secretary, including a copy of the instrument under which the Mortgagor entity is created (unless the Mortgagor is an individual), together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Supplementary Mortgage and the other closing documents, and (b) an amendment (or amendment and restatement) of the Regulatory Agreement between the Mortgagor and the Secretary in connection with the Project (the "Regulatory Agreement") to include references to the Supplementary Mortgage in said Regulatory Agreement and to cause said Regulatory Agreement to be in the form currently prescribed by the Secretary for use in connection with loans insured under Section 232 of the NHA. Such Regulatory Agreement, as so amended, shall provide, among other things, for additional deposits to be made to the Reserve Fund for Replacements (the "Reserve Fund for Replacements") established thereunder under the control of the Mortgagee by payment of an additional \$ [REDACTED] per annum, to be accumulated

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monthly at the rate of \$ [REDACTED] per month (*rounded to the nearest dollar*), commencing on the date of the first payment to principal as established in the Supplementary Mortgage unless a later date is agreed upon by the Secretary. In addition to the per annum amount required to be accumulated monthly under the control of the Mortgagee for the Reserve Fund for Replacements, there shall be an additional deposit in the amount of not less than \$ [REDACTED] made to the Reserve Fund for Replacements by the Mortgagor at the time of Initial Endorsement. Deposits required under this paragraph are in addition to, and not in lieu of, deposits due under the Regulatory Agreement in connection with the Prior Mortgage.

The amount of the annual deposits to the Reserve Fund for Replacements shall be subject to change in accordance with the requirements of the Secretary. In connection therewith, every ten years the Mortgagee shall obtain a new Project Capital Needs Assessment ("PCNA") for the Secretary to evaluate. The cost of each such PCNA report may be paid from the Reserve Fund for Replacements. The Mortgagee's Certificate to be delivered prior to Initial Endorsement and the Regulatory Agreement shall each include a statement confirming the requirement for such periodic PCNA reports.

6. At or before Initial Endorsement, the Mortgagee or its nominee shall collect the following escrows (in the form of cash and/or, except with respect to clause (c) below, one or more unconditional and irrevocable letters of credit) to be applied to the following items:
  - (a) Funds for application to taxes, mortgage insurance premiums, property insurance premiums and assessments required by the terms of the Supplementary Mortgage accruing subsequent to Initial Endorsement, and not included in the proceeds of the Supplementary Mortgage in the amount of \$ [REDACTED].
  - (b) Funds for application to the cost of purchasing minor moveable equipment for use in Project operations in the amount of \$ [REDACTED].
  - (c) Funds required over and above Supplementary Mortgage proceeds for completion of the Work in the amount of \$ [REDACTED]. This sum represents the difference between the Secretary's estimate of the total cash required for carrying charges, financing, and for performance of the Work, including contractor's fees and overhead, architect's fees, and other fees, and the maximum amount of the Supplementary Mortgage to be insured. These funds may be reduced by (i) so much of the contractor's fees up to a maximum of \$ [REDACTED], as the closing documents show are not to be paid in cash and (ii) amounts that have been prepaid by or on behalf of the Mortgagor, as evidenced by a certification of the Mortgagor.
  - (d) Funds for application to the costs of off-site improvements in the amount of \$ [REDACTED], and demolition in the amount of \$ [REDACTED].

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- (e) Funds in the amount of \$ [REDACTED] for application to the expenses of the Project beginning on the date of substantial completion of the Work and ending on the later of (1) 12 months after the date of Final Endorsement or (2) ~~a determination by when the Secretary project has demonstrated to HUD's satisfaction that the Project project has achieved sustaining occupancy and positive cash flows for a period a debt service coverage ratio (including Mortgage Insurance Premium) of at least 90 days 1.45 for each month of three consecutive months.~~

At Initial Endorsement, the Mortgagee shall deliver to the Secretary a Mortgagee's Certification evidencing the collection of the amounts set forth in this paragraph. All funds deposited with the Mortgagee or its nominee under this paragraph shall be held and disbursed by the Mortgagee or its nominee in accordance with the applicable requirements of the Secretary.

- 7.(a) Approval of advances of Supplementary Mortgage proceeds in accordance with the Building Loan Agreement (Form HUD-92441) must be obtained on a form prescribed by the Secretary prior to the date of each advance to be insured. If the Davis-Bacon Act applies to the Work, a Contractor's Prevailing Wage Certificate shall be filed with the request for approval of each advance which includes a payment for construction costs. The Secretary's execution of applications for insurance of advances of mortgage proceeds (Form HUD-92403) shall be required only for advances made at Initial Endorsement or Final Endorsement and for advances of all or part of the contractor's retainage, and the Mortgagee shall have the authority to approve all other advances of Supplementary Mortgage proceeds on behalf of the Secretary.
- (b) During the course of construction, the Secretary and his representatives shall at all times have access to the property and the right to inspect the progress of construction, and an inspection fee in the amount of \$ [REDACTED] shall be paid at or before Initial Endorsement. The inspection of construction by a representative of the Secretary shall be only for the benefit and protection of the Secretary.
- (c) Upon completion of the Work in accordance with the Drawings and Specifications, the supplementary credit instrument will be finally endorsed for insurance to the extent of the advances of Supplementary Mortgage proceeds approved by the Secretary, subject to reduction as provided in the Regulations.
8. 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 the Secretary, and must be approved by the Secretary prior to Initial Endorsement. Any such change occurring subsequent to Initial Endorsement that requires the Secretary's approval under this paragraph must be brought to the attention of the Secretary immediately upon occurrence, and must be approved by the Secretary prior to the date on which the Secretary is requested to approve any further advance for insurance. Changes in

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the Drawings and Specifications which result in any net construction cost increase, or will, change the design concept, or will result in a net cumulative construction cost decrease of more than 2% of the contract amount may be effected only with the prior written approval of the Mortgagee and the Secretary. The Secretary's approval of any change described above may be subject to such conditions and qualifications as the Secretary in his/her discretion may prescribe.

9. 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 Mortgagor and such request must be approved in writing by the Secretary. Any principals of the Mortgagor or lessee/operator which are added prior to Initial Endorsement and which were not disclosed in the mortgage insurance application shall be subject to the Secretary's credit review and previous participation clearance before Initial Endorsement. Project principals have been identified to be relied on for financial capacity. Withdrawal of any individual/firm relied on for financial capacity requires prior approval by the Secretary. In addition, withdrawal of such individual/firm prior to Initial Endorsement could result in the Secretary declaring this Commitment null and void.
10. Upon Initial Endorsement, the Mortgagee shall pay to the Secretary in advance, a mortgage insurance premium equal to       % of the principal amount of the Supplementary Mortgage to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.
11. This Commitment shall expire 60 days from the date hereof unless extended by the Secretary. Upon such expiration, all rights and obligations of the respective parties shall cease. Prior to any extension of this Commitment, the Secretary may, at his/her 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.
12. A request for the reopening of this Commitment received within 90 days of its expiration must be accompanied by the reopening fee prescribed by the Regulations.
13. The Mortgagor, lessee/operator and/or management agent, as applicable, shall maintain professional liability insurance in accordance with the requirements established by the Secretary. The Mortgagor shall annually provide, or cause to be provided, to the Secretary a certification of compliance with the Secretary's professional liability insurance requirements. The Regulatory Agreement executed by the Mortgagor must require compliance with these requirements.
14. If the Project is subject to an operating lease, such lease must (a) incorporate subordination language approved by the Secretary, (b) provide for lease payments sufficient to cover monthly principal and interest payments under the Prior Mortgage and Supplementary Mortgage (collectively, the "Mortgages"), escrows

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required under the Mortgages and deposits to the Reserve Fund for Replacements required by the Regulatory Agreement, and (c) otherwise comply with applicable requirements of the Secretary. In addition, the lessee/operator must execute and deliver an Operator Regulatory Agreement in the form specified by the Secretary.

15. Any accounts receivable financing obtained by the Mortgagor or lessee/operator with respect to the Project will be subject to approval by the Secretary and the Mortgagee.
16. All financing arrangements (other than the Mortgages and any other mortgage insured by the Secretary), including repayment obligations and other secondary financing, and occupancy restrictions must be fully disclosed to, and approved by, the Secretary and must comply with the Secretary's requirements applicable to loans insured under the Section of the NHA applicable to the Supplementary Mortgage.
17. Any interest savings resulting purely from a differential between the processed interest rate and the actual final interest rate may not be construed as excess funds offsetting costs in other categories at the time of cost certification. To the extent that the amount of the Supplementary Mortgage set forth in this Commitment has been determined based upon replacement cost, any such savings must be applied as a reduction in the amount of the Supplementary Mortgage.
18. Pursuant to Form HUD-2880, this Commitment is based on Mortgagor certifications regarding the absence or use of Tax Credits or Other Government Assistance. If the Mortgagor's intentions subsequently change, and Tax Credits or Other Government Assistance is applied for or eliminated, Form HUD-2880 must be updated, and the Secretary reserves the right to unilaterally alter any and all of his/her underwriting determinations, or revise the terms of the mortgage insurance commitment or regulatory agreement accordingly.
19. This Commitment is conditioned upon and shall not be enforceable against the Secretary until and unless all conditions to the endorsement stated herein have been satisfied or waived by the Secretary.
20. The Secretary reserves the right to examine the Mortgagee's file materials related to the underwriting of the Supplementary Mortgage at any time during the ten-year period following Initial Endorsement. If there is evidence of fraud or misrepresentation by the Mortgagee, the Secretary reserves his/her legal rights under the contract of mortgage insurance and Mortgagee Review Board requirements. The Mortgagee agrees to retain, in accessible files, all materials related to the underwriting of the Supplementary Mortgage for a period of ten years, even though the Supplementary Mortgage itself may be sold to another entity.

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21. To the extent that the Mortgagor has not done so prior to Initial Endorsement, the Mortgagor must provide to the Secretary evidence/documentation from the appropriate local/state licensing authorities showing approval or conditional approval for the operation of the Project (or applicable portions thereof) prior to occupancy of the Project (or applicable portions thereof).
22. At least 10 calendar days prior to Initial Endorsement, an Estimated Progress Schedule of Work must be submitted by the general contractor for review and approval by the Secretary. The progress schedule is required by Article 3.10.1 of the AIA General Conditions, which is an integral part of the FHA Construction Contract, Form HUD-92442 ~~or 92442A~~.
23. Should any asbestos containing materials (ACMs) or environmental contaminants be encountered in the course of demolition or construction, they are to be handled in accordance with all applicable federal, state, and local requirements.
24. Prior to Initial Endorsement, both the design architect and supervising architect shall provide evidence of errors and omissions (liability) insurance and shall agree to maintain errors and omissions through acceptance of the 12-month warranty inspection.
25. Attention is directed to the Regulations covering the assignment or the transfer of the insured mortgage, in whole or in part, and the transfer of the rights, privileges, and obligations under the contract of mortgage insurance.
26. This Commitment is subject to the conclusions stated on the ~~attached forms: HUD-92264-HCF, Health Care Facility Summary Appraisal Report; HUD-92264A, Supplement to Project Analysis; HUD-92447, Property Insurance Requirements; HUD-92329, Property Insurance Schedule; HUD-2328, Contractors' and/or Mortgagor's Cost Breakdown; and, HUD-92438, Underwriting Summary attachments to this Firm Commitment.~~
27. Davis-Bacon Act (check one):
  - The mortgagor(s), its contractors and subcontractors, shall comply with all applicable Federal labor standards provisions as expressed in the Supplementary Conditions of the Contract for Construction (HUD-2554), in connection with the construction of said Project.
  - The Davis-Bacon Act is not applicable to the performance of the Work.
28. Prior to Initial Endorsement, the Mortgagor shall present to the Secretary (a) evidence satisfactory to the Secretary that the holder of the Prior Mortgage has consented in writing to the liens securing the Supplementary Mortgage and has agreed not to exercise its right to accelerate the maturity of the Prior Mortgage by reason of the creation of such liens, (b) a statement from the holder of the Prior

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Mortgage confirming that the Prior Mortgage is current in all respects and (c) a statement from the holder of the Prior Mortgage consenting to the performance of the Work.

29. This Commitment is

Subject to Special Conditions numbered 1 through , attached hereto.

Not subject to any Special Conditions.

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Attached to this Commitment is a form closing checklist identifying documents required for loans insured under Section 232 of the NHA. The Mortgagee or its counsel shall revise the form closing checklist to conform to the requirements of this Commitment. Draft closing documents, conforming to the terms of this Commitment, must be submitted not less than 15 business days prior to Initial 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 Mortgagor and Mortgagee upon the lines provided below. Please return one original of this Commitment signed by the Mortgagee and the Mortgagor, to the OHP Underwriter within 10 business days of the date of the ~~Secretary's~~Secretary's execution of this Commitment.

**SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
BY: FEDERAL HOUSING COMMISSIONER**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Agent

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The above Commitment for Insurance of Advances, including Special Conditions (if applicable), is hereby accepted by the undersigned, and we hereby agree to be bound by the terms hereof.

**Date:** \_\_\_\_\_ **Enter Mortgagor Name** Formatted Table

**MORTGAGOR:** - -

**Date:** - - **By:** - -  
- - **Name:** - -  
- - **Title:** - -

**MORTGAGEE:** - - **Enter Lender Name**

**Date:** - - **By:** - -  
- - **Name:** - -  
- - **Title:** - -

**MORTGAGOR ENTITY**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **MORTGAGEE**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Attachments:**

- Special Conditions, if applicable
- Exhibit A: Legal Description
- Exhibit B: Index to Drawings and Specifications

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- Exhibit C: List of Major Moveables ~~(if applicable)~~
- ~~HUD Forms as specified in Condition 26~~
- HUD 2328, Contractor's and/or Mortgagor's Cost Breakdown
- Form HUD-92264-HCF and Form HUD-92264A
- Property Insurance Requirements Form
- Closing Checklist for Initial Endorsement

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