

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CIRCULAR

4615.2

February 7, 1973

**SUBJECT:** Supplement to Mortgage Insurance For Hospitals

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1. This Circular Transmits:  
HUD Handbook 4615.2, Supplement to Mortgage Insurance for Hospitals, Section 242.
2. Purpose:  
This Handbook contains supplementary information to the basic Handbook and is intended primarily for HUD and HEW personnel, as well as for mortgagees. The supplement contains forms and instructions for processing Section 242 projects.
3. Applicability:  
This Handbook contains rules, regulations and policy matters in effect as of January 31, 1973.
4. Cancellations:  
The following issuances are cancelled:  
  
FHA Manual - Volume VII, Book 2,  
Paragraphs 73102 thru 73102.12  
  
Guide - HPMC-FHA G 4447.3 SUPP - Supplement to Mortgage Insurance  
for Hospitals (Section 242)  
dated August 31, 1971  
  
HPMC-FHA G 4447.3 SUPP - Revision to the Supplement to  
Mortgage Insurance for Hospitals  
dated October 25, 1972

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Distribution: O-3, R-1, R-2, R-3, R-3-2, R-4,  
R-5, R4FA, W-1, W-2, W-3-1  
(Special Distribution to HEW Regional Offices)

4615.2

SUPPLEMENT  
TO  
MORTGAGE INSURANCE  
FOR  
HOSPITALS  
(SECTION 242)  
FEBRUARY 1973  
PROGRAM PARTICIPANTS  
AND  
HUD STAFF  
A HUD HANDBOOK  
HOUSING PRODUCTION AND MORTGAGE CREDIT-FEDERAL HOUSING ADMINISTRATION

Distribution: O-3, R-1, R-2, R-3, R-3-2, R-4,  
R-5, R4FA, W-1, W-2, W-3-1  
(Special Distribution to HEW Regional Offices)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D. C. 20410

FOREWORD

These instructions supplement the Mortgage Insurance for Hospitals Handbook. This supplement is intended primarily for HUD and HEW personnel, as well as for mortgagees. The supplement contains forms and instructions for processing Section 242 projects.

Reference:

- (1) HPMC-FHA 4200.15 (4480.1)\* - Multifamily Reports and Forms  
Catalog

\*The information in parentheses indicates the location of the referenced material in the new classification system.

Cancellations: This Handbook cancels Volume VII, Book 2, Paragraphs 73102 thru 73102.12 of the FHA Manual; Guide HPMC-FHA G 4447.3 SUPP and 4447.3 SUPP Change 1.

## FHA FORMS

1. FHA Form No. 1022, FHA Legal Requirements for Closing, with instructions. Shows the documents needed for the initial and final closings in an insurance of advances cases, and for the one closing in an insurance upon completion case.
2. FHA Form No. 1732, Guide Form of Certificate of Incorporation for Nonprofit Hospitals. This model form should be used when the mortgager corporation is to be formed. Existing nonprofit corporations will be required to amend their charters to include the specific purposes set out in Article II of the model form; and the power to specifically execute the Regulatory Agreement, as set out in Article III (c) of the form. (Form proprietary hospitals, see instructions for FHA Form 2466 - Regulatory Agreement - Figure 22).
3. FHA Form No. 2530, Previous Participation Certificate. Proprietary sponsors/mortgagors prior to filing the initial HEW application will submit a completed form 2530 to the local HUD Area or Insuring Office with a covering letter stating that the proposal will be for a proprietary hospital. Upon clearance of the sponsors, the HUD office will notify the sponsors by letter that they may file the Part I application with the HEW Regional Office. (Not applicable to nonprofit mortgagor/sponsors).
4. FHA Form No. 2023, Request for Final Endorsement of Credit Instrument, with instructions. Submitted by mortgagee when all parties are ready to go to final closing in an insurance of advances case.
5. FHA Form No. 2070, Lease Addendum. Conditions to be included in lease when a leasehold is involved.
6. FHA Form No. 2264(Hosp.), Replacement Cost and Maximum Insurable Mortgage, with instructions. Prepared by HUD office as basis for issuance of firm commitment, after receipt of final approval letter from HEW regional office, and (amended) Form 2013-HOSP., from sponsor.
7. FHA Form No. 2283(Hosp.), Financial Requirements for Closing, with instructions. Prepared by HUD office subsequent to issuance of commitment in insurance of advances cases.

8. FHA Form No. 2403, Application for Insurance of Advance of Mortgage Proceeds, with instructions. Submitted to HUD Office by mortgagee.
9. FHA Form No. 2415, Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, with instructions. Executed by mortgagor, mortgagee and contractor if start of construction is approved by HUD office with concurrence of HEW regional office, prior to initial endorsement of mortgage note in insurance of advances cases.
10. FHA Form No. 2432, Commitment for Insurance of Advances, with instructions. Issued by HUD office to mortgagee, after receipt of final approval letter from HEW regional office, and amended application, FHA Form No. 2013-HOSP. (if needed) from sponsor through mortgagee.
11. FHA Form No. 2433, Mortgagor's Certificate, with instructions. Executed by mortgagor in insurance of advances cases.
12. FHA Form No. 2434, Mortgagee's Certificate, with instructions. Executed by mortgagor and mortgagee in insurance of advances cases.
13. FHA Form No. 2441, Building Loan Agreement, with instructions. Executed by mortgagor and mortgagee in insurance of advances cases.
14. FHA Form No. 2448(Hosp.), Contractor's Requisition, with instructions. Submitted by contractor for payment of completed work included in construction contract in insurance of advances cases.
15. FHA Form No. 2451, Financial Record of Mortgage Loan Transaction, with instructions. Prepared by HUD office for internal use to maintain a record of available funds and the allocation thereof.
16. FHA Form No. 2452, Performance Bond-Dual Obligee. Executed by contractor and surety in insurance of advances cases.
17. FHA Form No. 2452-A, Payment Bond. Executed by contractor and surety in insurance of advances cases.
18. FHA Form No. 2453, Commitment to Insure Upon Completion, with instructions. Issued by HUD office to mortgagee, after receipt of final approval letter from HEW regional office, and amended application, FHA Form No. 2013-HOSP (if needed) from sponsor through mortgagee.

19. FHA Form No. 2455, Request for Endorsement of Credit Instrument, Certificate of Mortgagee, Mortgagor and General Contractor, with instructions. Executed by mortgagor and mortgagee in insurance upon completion cases.
20. FHA Form No. 2456, Escrow Deposit Agreement with instructions. Submitted to HUD office when there are incomplete on-site and/or off-site items to be completed subsequent to final endorsement of mortgage note.
21. Instructions to Closing Attorney, FHA Form No. 2466-GP, Regulatory Agreement for nonprofit hospitals.  
FHA Form 2466-GP, Regulatory Agreement, with instructions. To be executed by the nonprofit mortgagor in all nonprofit cases.
22. Instructions to Closing Attorney, FHA Form No. 2466, Regulatory Agreement, for proprietary hospitals.  
FHA Form No. 2466, Regulatory Agreement, with instructions. To be executed by the proprietary mortgagor in all proprietary cases.
23. FHA Form No. 2580, Maximum Insurable Mortgage with instructions. Prepared by HUD office after completion of project to determine amount of maximum insurable mortgage to be finally endorsed.
24. Copy of the Memorandum of Agreement between HUD and HEW, together with a copy of the Amendment to the memorandum.

INSTRUCTIONS FOR FHA FORM 1022  
FHA LEGAL REQUIREMENTS FOR CLOSING

Legal Requirements for Closing: FHA Form No. 1022, FHA Legal Requirements for Closing will be used. The following forms need not be obtained:

Part A: 17, 19, 22, 25, 26, 27

Part B: 17, 18, 24, 25, 26, 27

Part C: 8, 11

The following forms which will be obtained are the responsibility of HEW for approval and acceptance of form and substance:

Part A: 7, 8, 14, 16, 18, 24

Part B: 14, 23

Part C: 9

FHA LEGAL REQUIREMENTS FOR CLOSING  
Sections 207, 220, 221(d)(4), 231 and 232

Project Name: \_\_\_\_\_ Project No.: \_\_\_\_\_

Name of Mortgagor: \_\_\_\_\_ Address: \_\_\_\_\_

Name of Mortgagee: \_\_\_\_\_ Address: \_\_\_\_\_

The Closing Attorney will obtain three copies of all closing documents. These will be Originals ("Or"), Executed ("E"), Certified ("C") or Conformed ("Cn") as indicated below.

PART A. FOR INSURANCE OF ADVANCES

Instruments:	Copies
1. Assignment of Commitment, if any	E, 2 Cn
2. Regulation of Mortgagor:	
(a) Regulatory Agreement (2466) For 231-NP and 232-NP use 2466 e. For 232 use 2466 or 2466 e signed by Mortgagor and 2466 NHI. signed by Lessee, if any.	E, 2 Cn
(b) Corporate Charter, Partnership Agreement, or other agreement establishing mortgagor (required provisions in instructions to 2466)	C, 2 Cn
3. Deferred Note, if any (2223)	3 Cn
4. Lease (if mortgage is on leasehold)	C, 2 Cn
5. Land Disposition Contract and Deed, if any (Required only for projects in urban renewal areas)	E, 2 C
6. Title Policy	E, 2 Cn
7. Evidence of Zoning Compliance	3 Cn
8. Building Permits	3 Cn
9. Surveyor's Plat	3 Cn
10. Surveyor's Certificate (2457)	Or, 2 Cn
11. Note (FHA Form for State)	3 Cn
12. Mortgage (FHA Form for State)	3 Cn
13. Building Loan Agreement (2441)	E, 2 Cn
14. Construction Contract, Lump Sum (2442) or Cost Plus (2442 A)	E, 2 Cn
15. Assurance of Completion:	
(a) Contract Bond Dual-Obligee (2452) or	E, 2 Cn
(b) Completion Assurance Agreement (2450)	E, 2 Cn
16. Owner-Architect Agreement (2719-A, or 2719-B, or 2719-C)	E, 2 Cn
17. Assurance of Completion of Off-Site Facilities:	
(a) Off-Site Bond (2479) or	E, 2 Cn
(b) Escrow Agreement for Off-Site Facilities (2446) with Schedule "A"	E, 2 Cn
18. Assurance of Utility Services (Water, Electricity, Sewer, Gas, Heat)	E, 2 Cn
19. Contractor's and/or Mortgagor's Cost Breakdown (2328)	Or, 2 Cn
20. Mortgagee's Certificate (2434)	Or, 2 Cn
21. Mortgagor's Certificate (2433)	Or, 2 Cn
22. Mortgagor's Oath (2478)	Or, 2 Cn
23. Mortgagor's Attorney's Opinion	Or, 2 Cn
* 24. Contractor's Certification (2482)	Or, 2 Cn
* 25. Agreement and Certification (3305 for 207) or	Or, 2 Cn
Agreement and Certification (3306 for 220 and 221(d)(4))	Or, 2 Cn
26. Sponsor's Certification (3437) for 231-NP and 232-NP	Or, 2 Cn
27. Guaranty Agreement (3436) for 231-NP and 232-NP if subsidized	E, 2 Cn

\* To have been filed with Director at least 30 days prior to initial closing.

PART B. FOR INSURANCE UPON COMPLETION

NOTE: In cases of Insurance upon Completion, the required closing documents will vary substantially from those in cases of Insurance of Advances. The required closing documents in cases of Insurance Upon Completion will be the following:

- 1 through 13 will be identical with 1 through 13 in cases of Insurance of Advances. The additional documents will be:
- |  |     |      |
|--|-----|------|
| 14. Construction Contract, if used   | E,  | 2 Cn |
| 15. Guarantee Against Latent Defects (Bond [3259] or Escrow)   | E,  | 2 Cn |
| 16. Escrow Deposit Agreement for Incomplete On-Site Improvements with Schedule A (2456)                              | E,  | 2 Cn |
| 17. Assurance of Completion for Off-Site Facilities:   |     |      |
| (a) Escrow Agreement for Incomplete Off-Site Facilities (2446) with Schedule "A"                                     | E,  | 2 Cn |
| 18. Mortgagor's Oath (2478), None in 232   | Or, | 2 Cn |
| 19. Mortgagor's Attorney's Opinion   | E,  | 2 Cn |
| 20. Contractor's Prevailing Wage Certificate (2403-A)  | Or, | 2 Cn |
| 21. Chattel Mortgage, or Security Agreement and Financing Statement or Attorney's Opinion that neither are necessary |     | 3 Cn |
| 22. Request for Endorsement of Credit Instrument, Certificate of Mortgagor and Mortgagee (2455)                      | Or, | 2 Cn |
| **23. Contractor's Certification (2482)  | Or, | 2 Cn |
| **24. Agreement and Certification (3305-A) for 207 or (3306-A) for 220 and 221(d)(4)                                 | Or, | 2 Cn |
| 25. Sponsor's Certification (3437) for 231-NP and 232-NP   | Or, | 2 Cn |
| 26. Guaranty Agreement (3436) for 231-NP and 232-NP if subsidized  | E,  | 2 Cn |
| 27. For 232 projects:  |     |      |
| (a) Instrument evidencing acquisition of equipment, if any (e.g. lease, conditional sale contract etc.)              |     | 3 Cn |
| (b) Chattel Mortgage on Mortgagor's Interest in equipment  |     | 3 Cn |
- \*\* To have been filed with Director before start of construction.

PART C. FINAL CLOSING IN CASES OF INSURANCE OF ADVANCES

In these cases, the documents required for initial closing have, of course, been obtained. There will, however, be required these additional documents at final closing:

- |  |     |      |
|--|-----|------|
| *** 1. (a) The Increase Note   |     | 3 Cn |
| (b) The Increase Mortgage  |     | 3 Cn |
| (c) The Consolidation Agreement or New Note and Mortgage for the total   |     | 3 Cn |
| *** 2. Mortgagor's Attorney's Opinion as to Increase   | E,  | 2 Cn |
| 3. Chattel Mortgage or Security Agreement and Financing Statement or Attorney's Opinion that neither are necessary |     | 3 Cn |
|  | Or, | 2 Cn |
| 4. New Title Policy or Original Title Policy brought up to date  | E,  | 2 Cn |
| 5. Survey showing completed project  |     | 3 Cn |
| 6. Surveyor's Certificate (2457)   | Or, | 2 Cn |
| 7. Escrow Deposit Agreement for incomplete on-site improvements (2456) with Schedule "A"                           | E,  | 2 Cn |
| 8. Assurance of Completion of Off-Site Facilities  |     |      |
| (a) Escrow Deposit Agreement (2446) with Schedule "A" or   | E,  | 2 Cn |
| (b) Off-Site Bond (2479)   | E,  | 2 Cn |
| 9. Contractor's Prevailing Wage Certificate (2403-A)   | Or, | 2 E  |
| 10. Request for Final Endorsement of Credit Instrument (2023)  | Or, | 2 Cn |
| 11. For 232 projects:  |     |      |
| (a) Instrument evidencing acquisition of equipment, if any (e.g. lease, conditional sales contract, etc.)          |     | 3 Cn |
| (b) Chattel Mortgage on Mortgagor's Interest in equipment  |     | 3 Cn |

\*\*\* Required only if increase is involved.

# Certificate of Incorporation

For use by a non profit corporation under  
the National Housing Act

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

Certificate of Incorporation of \_\_\_\_\_

This is to certify that we, the undersigned, all being of legal age, do hereby associate ourselves for the purpose of forming a nonprofit Corporation under and by virtue of the laws of the State of \_\_\_\_\_, and further certify that;

## Article I

- (a) The name of the Corporation is (hereinafter referred to as "the Corporation") \_\_\_\_\_
- (b) The existence of the Corporation will be \_\_\_\_\_
- (c) The principal office of the Corporation will be located at \_\_\_\_\_
- (d) The resident agent of the Corporation is \_\_\_\_\_  
whose post office address is \_\_\_\_\_

## Article II

The purposes for which the Corporation is formed, and the business and objects to be carried on and promoted by it, are as follows: (Choose applicable sub-paragraph (a))

- (a) To provide, on a nonprofit basis, housing for low and moderate income families and families displaced from urban renewal areas, or as a result of governmental action, or as a result of a major disaster, where no adequate housing exists for such groups, pursuant to Section 221(d)(3) of the National Housing Act, as amended.
- (a) To provide, on a nonprofit basis, housing for low an moderate income families and families displaced from urban renewal areas, or as result of governmental action, or as a result of a major disaster, where no adequate housing exists for such groups, pursuant to Section 221(h) of the National Housing Act, as amended.
- (a) To provide elderly persons and handicapped persons with housing facilities and services specially designed to meet their physical, social and psychological needs, and to promote their health, security, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance and operation thereof on a nonprofit basis, where no adequate housing exists for such groups, pursuant to Section 231 of the National Housing Act, as amended.
- (a) To provide, on a nonprofit basis, nursing home facilities, non-resident care, board and care homes, and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, where no adequate housing exists for such groups, pursuant to Section 232 of the National Housing Act, as amended.
- (a) To provide, on a nonprofit basis, housing for lower income families, where no adequate housing exists for such groups, pursuant to Section 235(j) of the National Housing Act as amended; to undertake the purchase of housing and the rehabilitation of such housing where appropriate; and to sell or rent such housing pursuant to Section 235(j) of the National Housing Act as amended; to provide continued social services for the benefit of the individual purchasers of such housing in order to aid them in achieving and sustaining home ownership; and to perform activities which give reasonable promise that a stable environment will be created in the neighborhood such housing.

- (a) To provide, on a nonprofit basis, housing for lower income families and families displaced from urban renewal areas, or as a result of governmental action, or as a result of a major disaster, where no adequate housing exists for such groups, pursuant to Section 236 of the National Housing Act, as amended. Such housing may include facilities for the elderly and handicapped.
- (a) To provide, on a nonprofit basis, hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.
- (a) To provide, on a nonprofit basis, group practice facilities for the provision of personal health services to ambulatory patients, pursuant to Title XI of the National Housing Act, as amended.

**Sub-paragraph (b) must appear in each certificate.**

- (b) The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes; and no part of the income or assets of the corporation shall be distributed to, nor inure to the benefit of, any individual.

## Article III

**The Corporation is empowered:**

- (a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in Article II hereof.
- (b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property.
- (c) To do and perform all acts reasonably necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Corporation, its successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

(d) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation: PROVIDED, however, that the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his/her nominee.

**Article IV**

The number of directors (trustees) of the Corporation shall be \_\_\_\_\_, and shall be elected by the members of the Corporation from the membership. The director, (trustees) of the Corporation must, at all times, be members of the Corporation. No nonmember of the Corporation may sit as a director (trustee).

The original directors (trustees) and the term for which each shall serve, are set below.

Term:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The directors (trustees) shall serve without compensation.

Membership in the Corporation shall, at all times, be limited to individuals who are either (1) trustees (directors) of \_\_\_\_\_

\_\_\_\_\_, \*  
or (2) members of \_\_\_\_\_

\_\_\_\_\_, \*  
and who have the approval of the Board of Trustees (Directors) of \_\_\_\_\_

In the event that a member of the Corporation ceases to be a trustee (director) of \_\_\_\_\_

\_\_\_\_\_, \*  
or, if the aforesaid approval is withdrawn, then, in either event, such shall constitute automatic resignation as a member and director (trustee) of the Corporation.

The officers of the Corporation, as provided by the By-Laws of the Corporation, shall be elected by the directors (trustees) of the Corporation, in the manner therein set out, and shall serve until their successors are elected and have qualified. The directors (trustees) shall elect the regular officers of the Corporation at the annual meeting, for terms of one year. The secretary and treasurer may be one and the same person, and need not be a director (trustee) of the Corporation. Other officers must be directors (trustees) of the Corporation.

The annual meeting shall be held on the \_\_\_\_\_ of each year.

**Article V**

By-laws of the Corporation may be adopted by the directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provisions of these Articles or of the Regulatory Agreement between the Corporation and the Secretary of Housing and Urban Development, pursuant to Article II hereof.

**Article VI**

So long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development, these Articles may not be amended without the prior written approval of the said Secretary.

Signed by the incorporators this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**U.S. Department of Housing and Urban Development**  
By (Authorized Agent)

\*Insert name of sponsoring organization.

# Previous Participation Certification

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

U.S. Department of Agriculture  
Farmers Home Administration

OMB Approval No. 2502-0118  
(exp. 2/29/2004)

**Part I To be completed by Principals of Multifamily Projects. See Instructions Reason for Submitting Certification**

**For HUD HQ/FmHA use only**

1. Agency Name and City where the application is filed

2. Project Name, Project Number, City and Zip Code contained in the application

3. Loan or Contract Amount

4. Number of Units or Beds

5. Section of Act

6. Type of Project (check one)

Existing

Rehabilitation

Proposed (New)

**List of All Proposed Principal Participants**

7. Names and Addresses of All Known Principals and Affiliates (people, businesses & organizations) proposing to participate in the project described above. (list names alphabetically; last, first, middle initial)

8. Role of Each Principal in Project

9. Expected % Ownership Interest in Project

10. Social Security or IRS Employer Number

**Certifications:** I (meaning the individual who signs as well as the corporations, partnerships or other parties listed above who certify) hereby apply to HUD or USDA-FmHA, as the case may be, for approval to participate as a principal in the role and project listed above based upon my following previous participation record and this Certification.

I certify that all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule A and Exhibits signed by me and attached to this form.

**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)

I further certify that:

1. Schedule A contains a listing of every assisted or insured project of HUD, USDA-FmHA and State and local government housing finance agencies in which I have been or am now a principal.

2. For the period beginning 10 years prior to the date of this certification, and except as shown by me on the certification.

- a. No mortgage on a project listed by me has ever been in default, assigned to the Government or foreclosed, nor has mortgage relief by the mortgagee been given;
- b. I have not experienced defaults or noncompliances under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
- c. To the best of my knowledge, there are no unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning me or my projects;
- d. There has not been a suspension or termination of payments under any HUD assistance contract in which I have had a legal or beneficial interest;
- e. I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony.

(A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);

- f. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.
- g. I have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond.
- 3. **All** the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above.
- 4. I am not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in Standards of Ethical Conduct for Employees of the Executive Branch in 5 C.F.R. Part 2635 (57 FR 35006) and HUD's Standard of Conduct in 24 C.F.R. Part O and

USDA's Standard of Conduct in 7 C.F.R. Part O Subpart B.

- 5. I am not a principal participant in an assisted or insured project as of this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.
- 6. To my knowledge I have not been found by HUD or FmHA to be in noncompliance with any applicable civil rights laws.
- 7. I am not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.
- 8. Statements above (if any) to which I cannot certify have been deleted by striking through the words with a pen. I have initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances which I think helps to qualify me as a responsible principal for participation in this project.

Typed or Printed Name of Principal	Signature of Principal	Certification Date (mm/dd/yyyy)	Area Code and Telephone No.

This form was prepared by (Please print name)

Area Code and Telephone No.

**Schedule A: List of Previous Projects and Section 8 Contracts.** By my name below is the complete list of my previous projects and my participation history as a principal; in Multifamily Housing programs of HUD/FmHA, State, and Local Housing Finance Agencies. **Note:** Read and follow the instruction sheet carefully. Abbreviate where possible. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If you have no previous projects write, by your name, "**No previous participation, First Experience.**"

1. List each Principal's Name (list in alphabetical order, last name first)	2. List Previous Projects (give the I.D. number, project name, city location, & government agency involved if other than HUD)	3. List Principals' Role(s) (indicate dates participated, and if fee or identity of interest participant)	4. Status of Loan (current, defaulted, assigned, or foreclosed)	5. Was Project ever in Default, during your participation?		6. Last Mgmt. and/or Physical Inspctr Rating
				Yes	No If "Yes," explain	

**Part II – For HUD Internal Processing Only**

Received and checked by me for accuracy and completeness; recommend approval or transferral to Headquarters as checked below:

Date (mm/dd/yyyy)	Telephone Number and Area Code	<input type="checkbox"/> A. No adverse information; form HUD-2530 approval is recommended.	<input type="checkbox"/> C. Disclosure or Certification problem
Staff	Processing and Control	<input type="checkbox"/> B. Name match in system	<input type="checkbox"/> D. Other, our memorandum is attached.
Supervisor	Director of Housing / Director, Multifamily Division	Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	Date (mm/dd/yyyy)

## Instructions for Completing the Previous Participation Certificate, form HUD-2530

Carefully read these instructions and the applicable regulations. A copy of those regulations published at 24 C.F.R. 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Office. Type or print neatly in ink when filling out this form. Mark answers in all blocks of the form. If the form is not filled completely, it will delay approval of your application.

Attach extra sheets as you need them. Be sure to indicate "Continued on Attachments" wherever appropriate. Sign each additional page that you attach if it refers to you or your record. If you have many projects to list (20 or more) and expect to be applying frequently for participation in HUD projects, you should consider filing a Master List. See Master List instructions below under "Instructions for Completing Schedule A."

**Carefully read the certification before you sign it.** Any questions regarding the form or how to complete it can be answered by your HUD Office Multifamily Housing Representative.

**Purpose:** This form provides HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application. The information requested in this form is used by HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency. HUD requires that you certify your record of previous participation in HUD/USDA-FmHA, State and Local Housing Finance Agency projects by completing and signing this form, before your project application or participation can be approved.

HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose. If you do not file this certification, do not furnish the information requested accurately, or do not meet established standards, HUD will not approve your certification.

**Note** that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

## Who Must Sign and File Form HUD-2530:

Form HUD-2530 must be completed and signed by all parties applying to become principal participants in HUD multifamily housing projects, including those who have no previous participation. The form must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Use a separate form for each role in the project unless there is an identity of interest.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, non-profit organizations, any other public or private entity, that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, managing agent, nursing home administrator or operator, packager, or consultant. Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries is a principal.

**Exception for Corporations** – All principals and affiliates must personally sign the certificate except in the following situation. When a corporation is a principal, all of its officers, directors, trustees and stockholders with 10 percent or more of the common (voting) stock need not sign personally if they all have the same record to report. The officer who is authorized to sign for the corporation or agency will list the names and title of those who elect not to sign. However, any person who has a record of participation in HUD projects that is separate from that of his or her organization must report that activity on this form and sign his or her name. The objective is full disclosure.

**Exemptions** – The names of the following parties do not need to be listed on form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others whose interests were acquired by inheritance or court order.

**Where and When Form HUD-2530 Must Be Filed:** The original of this form must be submitted to the HUD Office where your project application will be processed at the same time you file your initial project application. This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 C.F.R. 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- Proposed substitution or addition of a principal, or principal participation in a different capacity from that previously approved for the same project.
- Proposed acquisition by an existing limited partner of an additional interest in a project resulting in a total interest of 25 percent or more, or proposed acquisition by a corporate stockholder of an additional interest in a project resulting in a total interest of 10 percent or more.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, form HUD-2530 should be filed with the appropriate applications directly to those agencies.

**Review of Adverse Determination:** If approval of your participation in a HUD project is denied, withheld, or conditionally granted on the basis of your record of previous participation, you will be notified by the HUD Office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

## Specific Line Instructions:

**Reason for submitting this Certification:** e.g., refinance, management, change in ownership, transfer of physical assets, etc.

**Block 1:** Fill in the name of the agency to which you are applying. For example: HUD Office, Farmers Home Administration District office, or the name of a State or local housing finance agency. Below that, fill in the name of the city where the office is located.

**Block 2:** Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown." Below that, enter the HUD contract or project identification number, the Farmers Home Administration project number, or the State or local housing finance agency project or contract number. Include all project or contract identification numbers that are relevant to the project. Also enter the name of the city in which the project is located, and the ZIP Code of the site location.

**Block 3:** Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

**Block 4:** Fill in the number of apartment units proposed, such as "40 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

**Block 5:** Fill in the section of the Housing Act under which the application is filed.

**Block 7:** Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File...."

**Block 8:** Beside the name of each principal, fill in the role that each will perform. The following are possible roles that the principals may perform: Sponsor, Owner, Prime Contractor, Turnkey Developer, Managing Agent, Packager, Consultant, General Partner, Limited Partner (include percentage), Executive Officer, Director, Trustee, Major Stockholder, or Nursing Home Administrator. Beside the name of each affiliate, write the name of the person or firm of affiliation, such as "Affiliate of Smith Construction Co."

**Block 9:** Fill in the percentage of ownership in the proposed project that each principal is expected to have. Also specify if the participant is a general or limited partner. Beside the name of those parties who will not be owners, write "None."

**Block 10:** Fill in the Social Security Number or IRS employer number of every party listed, including affiliates.

**Instructions for Completing Schedule A:**

Be sure that Schedule A is filled-in completely, accurately and the certification is properly dated and signed, because it will serve as a legal record of your previous experience. All Multifamily Housing projects involving HUD/FmHA, and State and local Housing Finance Agencies in which you have previously participated **must** be listed. Applicants are reminded that previous participation pertains to the individual principal within an entity as well as the entity itself. A newly formed company may not have previous participation, but the principals within the company may have had extensive participation and disclosure of that activity is required. To avoid duplication of disclosure, list the project and then the entities or individuals involved in that project. You may use the name or a number code to denote the entity or individual that participated. The number code can then be used in column 3 to denote role.

**Column 2** List the project or contract identification of each previous project. **All previous projects must be included or your certification cannot be processed.** Include the name of all projects, the cities in which they are located and the government agency (HUD, USDA-FmHA or State or local housing finance agency) that was involved. At the end of your list of projects, draw a straight line across the page to separate your record of projects from that of others signing this form who have a different record to report.

**Column 3** List the role(s) of your participation, dates participated, and if fee or identity of interest with owners.

**Column 4** Indicate the current status of the loan. Except for current loans, the date associated with the status is required. Loans under a workout arrangement are considered assigned. An explanation of the circumstances surrounding the status is required for all non-current loans.

**Column 5** Explain any project defaults during your participation.

**Column 6** Enter the latest Management and/or Physical Inspection Review rating. If either of the ratings are below average, the report issued by HUD is required to be submitted along with the applicant's explanation of the circumstances surrounding the rating.

**No Previous Record:** Even if you have never participated in a HUD project before, you must complete form HUD-2530. If you have no record of previous projects to list, fill in your name in column 1 of Schedule A, and write across the form by your name – "No previous participation, first experience."

**Master List System:** If you expect to file this form frequently and you have a long list of previous projects to report on Schedule A, you should consider filing a Master List. By doing so, you will avoid having to list all your previous projects each time you file a new application.

To make a Master List, use form HUD-2530. On page 1, in block 1, enter (in capital letters) the words "Master List." In blocks 2 through 6 enter in "N.A." meaning Not Applicable. Complete blocks 7 through 10.

In the box below the statement of certification, fill in the names of all parties who wish to file a Master List together (type or print neatly). Beside each name, every party must sign the form. In the box titled "Proposed Role," fill in "N.A." Also, fill in the date you sign the form

and provide a telephone number where you can be reached during the day. No determinations will be made on these certificates.

File one copy of the Master List with each HUD Office where you do business and mail one copy to the following address:

**HUD-2530 Master List  
Participation and Compliance  
Division – Housing  
U.S. Department of Housing and  
Urban Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410**

Once you have filed a Master List, you do not need to complete Schedule A when you submit form HUD-2530. Instead, write the name of the participant in column 1 of Schedule A and beside that write "See Master List on file." Also give the date that appears on the Master List that you submitted. Below that, report all changes and additions that have occurred since that date. Be sure to include any mortgage defaults, assignments or foreclosures not listed previously.

**If you have withdrawn from a project** since the date the Master List was filed, be sure to name the project. Give the project identification number, the month and year your participation began and/or ended.

**Certification:**

After you have completed all other parts of form HUD-2530, including Schedule A, read the Certification carefully. In the box below the statement of certification, fill in the name of all principals and affiliates (type or print neatly). Beside the name of each principal and affiliate, each party must sign the form, with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File form

HUD-2530"). Beside each signature, fill in the role of each party (the same as shown in block 8). In addition, each person who signs the form should fill in the date that he or she signs, as well as providing a telephone number where he or she can be reached during business hours. By providing a telephone number where you can be reached, you will help to prevent any possible delay caused by mailing and processing time in the event HUD has any questions.

If you cannot certify and sign the certification as it is printed because some statements do not correctly describe your record, use a pen and strike through those parts that differ with your record, then sign and certify to that remaining part which does describe you or your record.

Attach a signed letter, note or an explanation of the items you have struck out on the certification and report the facts of your correct record. Item A(2)(e) relates to felony convictions within the past 10 years. If you have been convicted of a felony within 10 years, strike out all of A(2)(e) on the certificate and attach your statement giving your explanation. A felony conviction will not necessarily cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by law (42 U.S.C. 3535(d) and 24 C.F.R. 200.217) and by regulation at 24 CFR 200.210. This information is needed so that principals applying to participate in multifamily programs can become HUD-approved participants. The information you provide will enable HUD to evaluate your record with respect to established standards of performance, responsibility and eligibility. Without prior approval, a principal may not participate in a proposed or existing multifamily project. HUD uses this information to evaluate whether or not principals pose an unsatisfactory underwriting risk. The information is used to evaluate the potential principals and approve only individuals and organizations who will honor their legal, financial and contractual obligations.

**Privacy Act Statement:** The Housing and Community Development Act of 1987, 42 U.S.C. 3543 requires persons applying for a Federally-insured or guaranteed loan to furnish his/her Social Security Number (SSN). HUD must have your SSN for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources. HUD may disclose certain information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. You must provide all of the information requested in this application, including your SSN.

**Public reporting burden** for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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.

A response is mandatory. Failure to provide any of the information will result in your disapproval for participation in this HUD program.

INSTRUCTIONS FOR PREPARATION OF  
FHA FORM 2023

- FRONT - Add the words "including off-site improvements" immediately  
After the word "project" in the opening paragraph.
- BACK - Add the words "including off-site improvements" immediately  
After the word "project" in Item 2, Certificate of Mortgagor.
- .

# Request for Final Endorsement of Credit Instrument

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

OMB Approval No. 2502-0016 (Exp. 02/29/2004)

**Public Reporting Burden** for this collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This collection is authorized under Section 207 of the National Housing Act (Public Law 479; 48 Stat. 1426; 12 U.S.C. 1701 et seq.) to insure mortgages on multifamily housing. This form is completed by the mortgagee to indicate the schedule of advances made on the project and the final advance to be disbursed immediately upon final endorsement. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, U.S. Department of Housing and Urban Development, 451 7<sup>th</sup> Street SW, Washington, DC 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0016), Washington, DC 20503. **Do not send this completed form to either of the above addresses.**

Project Name:	Project Number
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Project Address: \_\_\_\_\_

Date of Commitment:	Mortgagor:
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**To the Department of Housing and Urban Development**

The undersigned declares that construction of this project is complete\*; and that advances have been made to the above mortgagor in accordance with your Certificate of Insurance on the dates and in the amounts set forth in the schedule below; that the undersigned has paid no kickback and no fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this mortgage transaction, including the purchase or sale of the mortgaged property, except for compensation paid, if any, for the actual performance of services and approved by you; and that to the best of the undersigned's knowledge and belief the said loan is now eligible for mortgage insurance and accordingly, the undersigned hereby requests final endorsement of the attached credit instrument for mortgage insurance in the total sum of \$ \_\_\_\_\_.

**Schedule of Advances**

Date	Amount	Date	Amount

Subtotal (amount advanced to date): \$

A final advance in the following amount will be disbursed immediately upon your final endorsement of the note for insurance when added to the advances previously made. \$

Total: \$

Mortgagee:	By: (Signature, Title & Date)
	X

\* Minor items of construction still to be completed are covered by an Escrow Deposit Agreement (form HUD-2456), three conformed copies whereof are herewith delivered to you. There is held in escrow as a guarantee of the completion thereof the amounts determined by your office as necessary for such purpose.

**Certificate of Mortgagor**

Project Number:

**To: Department of Housing and Urban Development**

In order to induce the Commissioner to finally endorse the credit instrument for mortgage insurance, and with the intent that the Commissioner rely upon the statements hereinafter set forth, the undersigned makes the following certifications:

1. That it has received the sum of \$ \_\_\_\_\_ which when added to the final advance will total \$ \_\_\_\_\_, constituting the full insurable amount of the mortgage for this project.
2. That construction of the project is complete and is in accordance with the plans and specifications approved by the Federal Housing Commissioner; that said mortgage is a good and valid first lien on the property therein described; that the property is free and clear of all liens other than that of subject mortgage except for a lien approved by the Commissioner given in favor of government entity or other HUD-approved lien expressly subordinate to HUD's first lien; that all outstanding unpaid obligations and past due interest payments contracted by or on behalf of the mortgagor entity directly or indirectly, in connection with the mortgage transaction, the acquisition of the property, the construction of the project, or the arrearage relative to any project are listed below :

* (a)	HUD-approved notes (copies attached)	\$
(b)	Due General Contractor	\$
* (c)	Other	\$

3. That, except for the amounts due on notes listed in item (a) of paragraph 2 above, the undersigned agrees to pay the foregoing obligations in cash and to furnish the Commissioner receipts, or other evidence of payment satisfactory to the Commissioner, within 45 days following receipt of the final advance of mortgage proceeds on its "Certificate of Actual Cost:" (form HUD-92330), supported by the documentation required therein. The Mortgagor further agrees, that if the Commissioner accepts estimates for any items, the Mortgagor will, at final endorsement, establish a cash escrow in the amount of \$ \_\_\_\_\_ to pay all the "to be paid in cash items" identified on its Certification of Actual Cost and debts to third parties who made the original disbursements for an item listed as paid on Form 92330. Unless documentation, satisfactory to the Commissioner, evidencing that these amounts were paid by the Mortgagor subsequent to the submission of its Certification of Actual Cost. The Mortgagor understands that the items covered by this cash escrow must be paid within 45 days of the date of final endorsement.

Mortgagor:	By: (Signature & Title)	Date
	X	

\* **Note:** This includes any past due amount under the construction loan. (If the space provided is inadequate to list all unpaid obligations, insert the total in each category and attach itemizations. If there are no outstanding obligations, so state.)

**Certificate of General Contractor**

Project Number:

**To the Department of Housing and Urban Development**

The undersigned, as general contractor of the above project, makes the following certifications:

1. That construction is in accordance with the plans and specifications which were approved by the Federal Housing Commissioner.
2. That all outstanding unpaid obligations contracted by or on behalf of the undersigned in connection with the construction contract are listed below. (If space below is inadequate, continue listing on an attached sheet and so note.)

(a)	\$
(b)	\$
(c)	\$

3. That, except for unfinished work covered by an approved escrow deposit, the undersigned agrees to pay the foregoing obligations in cash, within 15 days following receipt of payment from owner.

General Contractor:	By: (Signature & Title)	Date
	X	

**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)

INSTRUCTIONS FOR LEASEHOLD 207 PROJECTS

The lease must be on the fee. It must have 75 years to run from the date of the endorsement of the mortgage for insurance or it must be a lease for 99 years which is renewable. Such a renewable lease for 99 years would not need to have 75 years to run to the renewal date. The annual ground rent and the amount for which the Commissioner may acquire the fee in the case of acquisition of the leasehold by him must be approved by the Commissioner. The lease must contain nothing in conflict with FHA requirements and otherwise be satisfactory to the Commissioner and must include the following provisions:

207 LEASE ADDENDUM

Notwithstanding any other provisions of this lease, if and so long as this leasehold is subject to a mortgage insured, reinsured, or held by the Federal Housing Commissioner or given to the Commissioner in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage:

1. The tenant is authorized to obtain a loan, the repayment of which is to be insured by the Federal Housing Commissioner and secured by a mortgage on this leasehold estate. Tenant is further authorized to execute a mortgage on this leasehold and otherwise to comply with the requirements of the Federal Housing Commissioner for obtaining such an insured mortgage loan.
2. The Federal Housing Commissioner, or his successors in office, shall have the option, in the event that he or his successor in office, through the operation of his contract of mortgage insurance, shall acquire title to the leasehold interest, to purchase good and marketable fee title to the demised premises, free of all liens and encumbrances except such as may be waived or accepted by him or his successor in office, within twelve (12) months after so acquiring the leasehold interest, for the sum of  
payable in cash, or by Treasury check, provided all rents are paid to date of transfer of title, upon first giving sixty (60) days' written notice to the Landlord or other person or corporation who may then be the owner of the fee, and the owner of the fee shall thereupon execute and deliver to the Federal Housing Commissioner, or his successor in office, a deed of conveyance to the said demised premises, containing a covenant against the grantor's acts, but excepting therefrom such acts of the Tenant and those claiming by, through or under the Tenant of the leasehold interest. Nothing in this option shall require the Landlord to pay any taxes or assessments which were due and payable by the Tenant.
3. If approved by the Federal Housing Commissioner, tenant may assign, transfer or sell his interest in the demised premises.

- 4.(a) Insurance policies shall be in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by such mortgagee and/or the Federal Housing Commissioner.
  - (b) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to the mortgagee. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant.
- 5.(a) If all or any part of the demised premises shall be taken by condemnation that portion of any award attributable to the improvements or damage to the improvements shall be paid to the mortgagee or otherwise disposed of as may be provided in the insured mortgage. Any portion of the award attributable solely to the taking of land shall be paid to the Landlord. After the date of taking the annual ground rent shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the land as established by the amount the Federal Housing Commissioner would be required to pay upon acquisition of the fee as set out in paragraph 2 of this addendum.
  - (b) In the event of a negotiated sale of all or a portion of demised premises in lieu of condemnation, the proceeds shall be distributed and ground rents reduced as provided in cases of condemnation, but the approval of the Commissioner and the mortgagee shall be required as to the amount and division of the payment to be received.
6. The Landlord agrees that, within ten (10) days after receipt of written request from Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Tenant may do hereunder, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the demised premises or of any improvements that may be erected thereon; and if, at the expiration of such ten (10) days' period, the Landlord shall not have joined in any such application, or grants for easements, the Tenant shall have the right to execute such application and grants in the name of the Landlord, and, for that purpose, the Landlord hereby irrevocably appoints the Tenant as its Attorney-in-fact to execute such papers on behalf of the Landlord.
  7. Nothing in this lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon the rent payable by the Tenant under this lease.

8. Upon any default under this lease which authorizes the cancellation thereof by the Landlord, Landlord shall give notice to the mortgagee and the Federal Housing Commissioner, and the mortgagee and the Federal Housing Commissioner, their successors and assigns, shall have the right within any time within six (6) months from the date of such notice to correct the default and reinstate the lease unless Landlord has first terminated the lease as provided herein.

At any time after two (2) months from the date a notice of default is given to the mortgagee and the Commissioner, the Landlord may elect to terminate the lease and acquire possession of the demised premises. Upon acquiring possession of the demised premises Landlord shall notify Commissioner and mortgagee. Mortgagee and Commissioner shall have six (6) months from the date of such notice of acquisition to elect to take a new lease on the demised premises. Such new lease shall have a term equal to the unexpired portion of the term of this lease and shall be on the same terms and conditions as contained in this lease, except that the mortgagee's and Commissioner's liability for ground rent shall not extend beyond their occupancy under such lease. The Landlord shall tender such new lease to the mortgagee or Commissioner within thirty (30) days after a request for such lease and shall deliver possession of the demised premises immediately upon execution of the new lease. Upon executing a new lease the mortgagee or Commissioner shall pay to Landlord any unpaid ground rentals due or that would have become due under this lease to the date of the execution of the new lease, including any taxes which were liens on demised premises and which were paid by Landlord, less any net rentals or other income which Landlord may have received on account of this property since the date of default under this lease.

9. All notices, demands and requests which are required to be given by the Landlord, the tenant, the mortgagee or the Commissioner shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.
10. This lease shall not be modified without the consent of the Federal Housing Commissioner.

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM 2264 (Hosp.)

Purpose. To determine total replacement cost, the maximum insurable mortgage amount, and estimated financial requirements for completion of the hospital.

Prepared by. Mortgage Credit Section

Number. Original and six copies

Distribution. Mortgagee (original)  
Closing Attorney  
Washington Docket  
HUD Office Docket  
Director of Unsubsidized Insured Housing Programs  
(together with a copy of the HEW final approval letter)  
Assistant Regional Administrator for Housing Production  
and Mortgage Credit (HPMC)  
HEW Regional Office

Section A. Estimated Replacement Cost.

Column 1. Insert the cost figures given in the final HEW Approval letter for the various items and enter the subtotal.

Column 2. Carrying charges and financing expense shall be estimated by the Mortgage Credit Section with the assistance of the Valuation Section, if necessary, based on basic multifamily instructions and the following exceptions.

When a large project requires an estimated construction period exceeding 24 months, the usual FNMA/GNMA fee of 1 ½% is increased by ¼ of 1% of the original principal amount of the loan for each estimated three month period in excess of 24 months, but not in excess of a total of 36 months.

Real estate taxes, normally, will not have to be estimated on nonprofit hospitals since in most states nonprofit hospitals are exempt. However the HEW letter will indicate the amount of taxes applicable. Also, hazard insurance usually will not be included in carrying charges as the contractor usually will furnish such coverage. HEW's approval letter will also show whether or not tax exemption is applicable, and will give an estimate of construction time which shall be used in calculating carrying charges.

FIGURE 6

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To calculate carrying charges and total replacement cost, the formula in Reference (1) of the Foreward shall be used; except in nonprofit proposals when a grant (loan or gift) is involved and the total amount exceeds 10% of the total replacement cost shown in the application, the formula shall be modified as follows:

Step (1). Deduct the amount of the grant from the sum of all the known costs, including land.

Step (2). Using the amount determined in Step (1) after deducting the amount of the grant, calculate the total carrying charges as shown for other cases using a percentage of 100 as the ratio of loan to cost. Then add to the total carrying charges 2% of the amount of the grant and/or loan or gift.

The sum calculated in Step (1) plus the final total determined in Step (2) rounded to the lowest \$100 multiple, should equal the HUD-FHA insured mortgage amount.

Step (3). To determine total replacement cost, add the amount deducted in Step (1) to the sum of the totals in Steps (1) and (2) above.

NOTE: (a) When the project involves rehabilitation or reconstruction of an existing structure, change Item 25 to read "As-Is Value and Rehabilitation cost." In rehabilitation, the inspection fee of 0.5% is based on the total of Items 1 thru 10 of the FHA 2264 HOSP Form.

(b) When a grant (loan or gift) is not involved and the Mortgage loan applied for is less than 90% of the total estimated replacement cost in the application, the requested mortgage amount shall be used in calculating carrying charges instead of the suggested formula.

(c) Insert in Column 2 between items 20 and 21 a line for FNMA or placement fee (1 ½%).

Section B. Determination of Maximum Insurable Mortgage.

Complete only those criteria required for the type of project being processed on the basis of the limitations applicable to Section 242.

NEW CONSTRUCTION: Complete criteria 1, 2, 3, and 6 (if applicable).

Criterion 1 - Self-explanatory.

Criterion 2 - Enter the statutory dollar limit of \$50,000,000.

Criterion 3a - Enter the replacement cost from Line 25, insert 90% as the percentage and record the product of the two entries in Column 2.

Criterion 3b - If leasehold, enter the value of the leased fee on the dotted line and insert "x 90%." Multiply the value of the leased fee by the percentage and record the product in Column 1.

Criterion 3c - If special assessments are to remain unpaid, enter the total amount of such assessments in Column 1.

Criterion 6 - Is self-explanatory and shall be completed when a Grant is involved.

REHABILITATION: Complete criteria 1, 2, 3, 4, 5, and 6 (if applicable).

Criteria 1, 2, 3 - Complete as in New Construction. Amend criterion 3a to read "As Is Value and Rehabilitation Cost."

Criterion 4a - Estimated Cost of New Improvements and Mortgageable Equipment. Enter the sum of the amounts shown in Section A, Column 1 for Items 1, 2, 3, 4, 6, 7, and 8.

Criterion 4b - Enter both fees from Section A, Items 5 and 10, and show the total in Column 1.

Criterion 4f - When additional land is being acquired in connection with the expansion of an existing facility, enter as an item above Item "f" 90% of the lesser of (i) the cost, or (ii) the as-is market value of the additional land as shown in A-11. Amend Item "f" to read "Sum of Items 4a through 4e plus 90% of additional land" and enter the amount so determined in Column 2.

FIGURE 6

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Criterion 4g - Enter the "as is" market value of land and improvements before rehabilitation as shown in Section A, Item 12. In the space provided for percentage, enter 90% when the property is owned and 100% when the property is to be acquired. Multiply the "as-is" value by the percentage and record the product in Column 1. (If leasehold, deduct the value of the leased fee from the "as-is" value before multiplying. Special assessments, if any, shall be deducted from the product and the remainder enter in lieu of the product.)

Criterion 4h - Property owned - Enter the amount of existing indebtedness against the property.

Property to be acquired - Enter the purchase price of the property as shown in the approval letter submitted by HEW.

Criterion 4j - Property owned - Enter 100 in the space provided for percentage. Multiply Item 4i by this percentage and record the product in Column 3.

Property to be acquired - Enter 90% for the percentage and multiply as above for property owned.

Criterion 5a - Enter the sum of Items A-1 thru A-4 plus A-6.

Criterion 5b - Enter the sum of Items A-7 and A-8.

Multiply the sum of 5a and 5b by 5 and record the product in Column 3.

However, if 5b exceeds 5a, line thru the amount in 5b and insert an amount equal to 5a before multiplying by five.

Criterion 6 - Complete as in New Construction, if applicable.

Criterion 6a - When the existing property is owned by the mortgagor, change this item to read, "Existing outstanding indebtedness plus total rehabilitation cost." If the property is to be acquired, change the item to read: "Purchase price plus total rehabilitation cost."

In either case, enter in Column 2 the amount Inserted for Criterion 4, Item i.

(Note: If an HEW Grant and an HEW Loan are also involved, special HEW limiting criteria are applicable, HEW will advise the local office in this eventuality.

Section C. Estimated Requirements for Completion of the Project.

Complete only in those projects involving insurance of advances.

1. Subtract the amounts entered for A-11 and/or A-12 from A-25 and enter the remainder.
2. Self-explanatory.
3. Self-explanatory.

Remarks: Indicate 2% working capital deposit required on proprietary hospitals. Also show operating deficit (if any) as indicated on HEW approval letter.

FHA FORM NO 2264 (Rev.)  
(May, 1968)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION  
**REPLACEMENT COST AND MAXIMUM INSURABLE MORTGAGE**  
**HOSPITAL PROJECT**

Project No. \_\_\_\_\_ Project No. \_\_\_\_\_

A. ESTIMATED REPLACEMENT COST:	
COLUMN 1 MORTGAGEABLE ITEMS AND AMOUNTS APPROVED BY N.E.W.	COLUMN 2 FHA ESTIMATES
1. Construction Contract(s) Cost ----- \$ _____	14. Carrying Charges & Financing: Int. _____ Nos. @ _____ \$ on \$ _____ \$ _____
2. Site Survey and Soil Investigation ----- \$ _____	15. Taxes - Real Est. \$ _____ Equip. _____ Spec. Assess. _____
3. Architect's Fee (Design) ----- \$ _____	Total Taxes ----- \$ _____
4. Architectural Supervision and Inspection ----- \$ _____	16. Ins. (Not in Constr. Contract) ----- \$ _____
5. Appraisal Fee ----- \$ _____	17. FHA Mgt. Ins. Prem. _____ \$ of \$ ----- \$ _____
6. Other Costs (Demolition, etc.) ----- \$ _____	18. FHA Exam. Fee _____ \$ of \$ ----- \$ _____
7. Cost of Mortgageable Equipment and Furnishings (Movable) ----- \$ _____	19. FHA Inspec. Fee _____ \$ of \$ ----- \$ _____
8. Fixed Mortgageable Equipment not in Construction Contracts ----- \$ _____	20. Financing Exp. _____ \$
9. Legal and Organization Costs ----- \$ _____	21. Title and Recording Expenses ----- \$ _____
10. Consultants' Fees ----- \$ _____	22. Total Carrying Charges and Financing ----- \$ _____
11. As-to Market Value of Land ----- \$ _____	23. AMPO ----- \$ _____
12. As-to Market Value of Land and Improvements (Before Rehabilitation) ----- \$ _____	24. Total From Column 1 (Item 13) ----- \$ _____
13. SUBTOTAL (N. E. W. Approved Costs) ----- \$ _____	25. TOTAL REPLACEMENT COST ----- \$ _____

B. DETERMINATION OF MAXIMUM INSURABLE MORTGAGE:	CRITERIA		
	FA-1	FA-2	FA-3
1. Mortgage Amount Stated in Application or Approved by N. E. W. ----- \$ _____			
2. Statutory Dollar Limit (Less Value of Leased Fee and Less any Special Assessments) ----- \$ _____			
3. Amount Based on Replacement Cost:			
a. Replacement Cost of Property \$ _____ x _____ % ----- \$ _____			
b. Value of Leased Fee, if Leasehold ----- \$ _____			
c. Principal Amount of Special Assessments, if any ----- \$ _____			
d. Total (Item 3 Plus c) ----- \$ _____			
e. Item 3 Minus Item d) ----- \$ _____			
4. Amt. Based on Est. Cost of Rehab., Plus (i) Fair Market Price of, or (ii) Acquisition Cost of, or (iii) Existing Indebtedness against Property before Rehab.:			
a. Estimated Cost of new improvements and Mortgageable Equipment ----- \$ _____			
b. Fees - (Appraisal \$ _____ - Consultants \$ _____) ----- \$ _____			
c. Total Carrying and Financing (A-22) ----- \$ _____			
d. Total Legal and Organizational (A-9) ----- \$ _____			
e. AMPO (A-23) ----- \$ _____			
f. Sum of Items 4.a through 4.e) ----- \$ _____			
g. Fair Market Price of Property before Rehab. \$ _____ x _____ % ----- \$ _____			
h. Purchase Price of Property or Existing Indebtedness ----- \$ _____			
i. Items 4.f Plus 4.g or 4.h, whichever is lesser ----- \$ _____			
j. Item 4.i x _____ % ----- \$ _____			
5. Amount based on Cost of New Improvements:			
a. Est. Cost of New Improvements \$ _____ )			
b. Est. Cost of Mortgageable Equip. \$ _____ ) x _____ % ----- \$ _____			
6. Mortgage Amount after Deduction of Grant:			
a. Total Replacement Cost ----- \$ _____			
b. Grant ----- \$ _____			
c. Item 6.a Minus 6.b ----- \$ _____			
7. Maximum Insurable Mortgage ----- \$ _____			

(NOTE: For Purpose of this Comparison Item 5.b may not exceed Item 5.a.)

C. ESTIMATED REQUIREMENTS FOR COMPLETION OF THE PROJECT:

1. FHA Total Estimated Cost Exclusive of Land (Item A-25 LESS Item A-21 or A-22) ----- \$ \_\_\_\_\_

2. LESS Mortgage Loan Proceeds Plus Grant, if any ----- \$ \_\_\_\_\_

3. Amount Required for Completion of the Project ----- \$ \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_ Mortgage Credit Examiner \_\_\_\_\_ Date \_\_\_\_\_ Chief Mortgage Credit Examiner  Deputy

Date \_\_\_\_\_ Chief Underwriter \_\_\_\_\_  Deputy

INSTRUCTIONS FOR PREPARATION OF  
FHA FORM 2283 (Hosp.)

Purpose. To provide the HUD office and the HUD closing attorney with accurate and final financial details needed to close the mortgage transaction in insurance of advances cases.

Prepared by. Mortgage Credit Section subsequent to the issuance of commitment when the necessary data to complete have been obtained.

Number. Original and four copies

Distribution. Original to Multifamily Coordinator for transmittal to HUD Closing Attorney. Copies to credit control binder, HEW regional office, and to the HUD office docket and Washington docket.

This form has been designed especially for hospital projects and is self-explanatory. Except for the reclassification of various items and the exception below, the form in general shall be completed as provided in basic instructions for Form 2283.

Items 1 thru 20. The amounts for the various items shall be transcribed from FHA Form 2264 (Hosp.) Section A. Pending reprinting of the form, insert the 1 ½% FNMA placement fee between items 17 and 18.

Item 21. When a grant is involved, enter the mortgage loan amount plus the amount of the grant.

Item 23. Cash to be Deposited in Escrow by Mortgager. As permitted by FHA Regulations under Section 242, the mortgagee may accept an unconditional, irrevocable "Letter of Credit" in lieu of the required cash deposit on nonprofit projects. Indicate between items 24 and 25 the amount of operating deficit, if any, as indicated in the HEW final approval letter. On proprietary facilities between item 24 and 25 insert the 2% working capital deposit.

FHA FORM NO. 2283 (Rev. 1969)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION

FINANCIAL REQUIREMENTS FOR CLOSING

Hospital Mortgage - Section \_\_\_\_\_

Name of Hospital \_\_\_\_\_ Project No. \_\_\_\_\_

Mortgagor \_\_\_\_\_

Mortgagee \_\_\_\_\_

REQUIREMENTS FOR COMPLETION

Table with 18 rows of requirements for completion, including Construction Contract, Architect's Fees, Appraisal Fee, Equipment and Furnishings, Site Survey and Soil Investigation, Other Costs, Total Cash Required for Construction, Equipment, Other Costs and Fees, Legal and Organization Expense, Allowance to Make Operational (AMPO), Consultants' Fees, Interest during Construction, Taxes during Construction, Insurance during Construction, FHA Mortgage Insurance Premium, FHA Examination Fee, FHA Inspection Fee, Initial Service Charge, Title and Recording Expense, Total Carrying Charges and Financing, Total for Improvements, Mortgage Loan, and Cash to be Deposited in Escrow by Mortgagor.

SUMMARY OF ALL CASH REQUIREMENTS

Table with 3 rows: 23. Cash to be Deposited in Escrow by Mortgagor to Complete above Requirements (Item 22), 24. Cash Required for Discount on Mortgage, 25. TOTAL CASH REQUIRED FROM MORTGAGOR FOR ALL REQUIREMENTS

ALLOCATION OF TOTAL CASH REQUIRED FOR CONSTRUCTION, EQUIPMENT, FEES, CARRYING CHARGES AND FINANCING, LEGAL AND ORGANIZATION

Table with 10 rows allocating cash requirements: 26. Cash Required by Construction Contract(s), 27. Architect's Fees-Design and Supervision, 28. Equipment and Furnishings, 29. Miscellaneous Costs, 30. Carrying Charges and Financing, 31. Legal and Organization Expense, 32. Allowance to Make Operational (AMPO), 33. Consultants' Fees, 34. Cash Available to Mortgagor, 35. TOTAL (AMOUNT MUST EQUAL ITEM 25, INCLUDING ANY GRANT PLUS ITEM 34, IF ANY)

Date \_\_\_\_\_ Prepared By: \_\_\_\_\_ Chief Mortgage Credit Examiner

Date \_\_\_\_\_ Approved By: \_\_\_\_\_ Chief Underwriter

138459-P

HUJ-Wash., D. C.

INSTRUCTIONS FOR PREPARATION OF  
FHA FORM 2403

Advances of insured mortgage proceeds will be requested on Form 2403, as revised, and processed in the same manner as under other programs, except as indicated in the instructions for the completion of Form 2448 (Hosp.) and as modified herein.

Revision of Form. On the back page under "Payments Requested", second paragraph, the word "(Hosp.)" is to be inserted after "2448", and the second sentence of that paragraph is to be deleted.

General. The sum to be approved for advance is the net amount approved for payment on the Contractor's Requisition, Form 2448 (Hosp.) plus the other items eligible for approval appearing in the request for payment on the reverse side of Form 2403.

When the mortgagee has accepted a letter of credit in lieu of the mortgagor's cash escrow deposit on a nonprofit project, all mortgage proceeds may be approved for advance before funds are drawn under the letter of credit.

Final Advance. When the mortgagee has accepted a letter of credit on a nonprofit project in lieu of a cash escrow deposit at initial closing, the following instructions shall apply:

The sum to be approved for advance from mortgage proceeds and/or the undrawn funds under the letter of credit, shall be based on the redetermination of the Maximum Insurable Mortgage on Form 2580, Item 10.

When the redetermination of the Maximum Insurable Mortgage amount results in a decrease in the original mortgage amount and mortgage process have been fully disbursed, the mortgagee shall be notified of the amount of reduction and instructed to make demand for payment from the undrawn funds under the letter of credit.

Also, if mortgage proceeds have been fully disbursed and there is a portion of AMPO unused reflected in Column K of Form 2451, financial Record of Mortgage Loan Transaction, the mortgagee and mortgagor shall be notified that such unused portion of AMPO shall be drawn under the letter of credit and placed in the mortgagor's general operating fund.

# Application for Insurance of Advance of Mortgage Proceeds

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

OMB Approval No. 2502-0097  
(exp. 3/31/2004)

**Public reporting burden** for this collection of information is estimated to average 0.20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The form is used by mortgagors for funds expended or obligated for construction related items; by mortgagees to request mortgage insurance for funds so advanced. The information will be used by the Department to as its certificate of mortgage insurance for funds it approves for advance. This is a requirement under Section 207, 213, 220, 221, 231, 232, 234(d), 236, 241, 242 and 810 of the National Housing Act, P.L. 479 48 Stat. 1246 U.S.C. et. seq. Furnishing of this information is required to obtain benefits, and failure to provide it may result in your not receiving your benefits.

**Privacy Act Notice** - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this 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 assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Name of Project	Project Number	Advance Number
-----------------	----------------	----------------

## Request for Payment

**Instructions to Mortgagor:** This request is to be submitted to your mortgagee in triplicate. All items requested shall be clearly identified by description. No item shall be applied for until payment is due. A request covering construction cost shall show one entry for the total payment requested to meet the net amount due according to the Contractor's Requisition (form HUD-92448) attached hereto. The request for the first payment on account of the Architect's cash fee shall be accompanied by the Mortgagor's and Architect's Certificate (form HUD-92403.1) attached hereto.

**To Mortgagee:** The undersigned mortgagor hereby requests the mortgagee identified below to advance funds as provided for by the Building Loan Agreement heretofore executed on (mm/dd/yyyy) \_\_\_\_\_ as indicated by the total amount of the individual payments set forth in the schedule below.

Item Number and Description	(A) Amount Claimed	(B) HUD-Approved Amt.
1. Construction cost per form HUD-92448	\$	\$
2. Interest from (mm/dd/yyyy) ( ) to (mm/dd/yyyy) ( )		
3. Architect's Fee		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
<b>Total Due on This Requisition</b>	<b>\$</b>	<b>\$</b>

The undersigned hereby certifies that all of the above items have been paid or will be paid within five (5) days of receipt of the requisitioned funds. We hand you herewith full supporting invoices and/or receipts, as required, covering such items enumerated, to be forwarded with this request to HUD for review. With respect to any item of interest enumerated above, we herewith authorize you to advance same and charge our account therewith. The undersigned further certifies that all prior work, labor, and materials to be paid for under this request are satisfactory and are in accordance with the contract drawings.

Name of Mortgagor	By: Signature of Authorized Mortgagor Official	Date (mm/dd/yyyy)
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**For Use by Mortgagee**

**Instructions:** This request is to be submitted to HUD in triplicate (original and all copies must be signed).

**To HUD:** To the best of our knowledge, information and belief, the sum requested above is now payable. We intend to disburse said sum within five (5) days following the date of your approval. \$ \_\_\_\_\_ will be advanced from mortgage proceeds; and the undersigned, therefore, requests that you issue a certificate approving the amount of such advance for mortgage insurance. The undersigned certifies that hazard insurance as required by the Department of Housing and Urban Development is in full force and effect upon whatever improvements are now upon the mortgage premises including, but not limited to, materials stored on the site for which an advance is being requested. You are further advised that after the payment herein first mentioned is made, a total sum of \$ \_\_\_\_\_ will have been disbursed from mortgage proceeds and that the total sum of \$ \_\_\_\_\_ will have been disbursed from the mortgagor's cash escrow funds required, if any, over mortgage proceeds to complete the project.

**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)

Name and Address of Mortgagee	By: Signature of Authorized Mortgagee Official	Date (mm/dd/yyyy)
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**Certificate of Mortgage Insurance****For Use by HUD**

**To Above Mortgagee:** You are hereby notified that the amounts shown in Column (B) above have been approved for advance in accordance with the provisions of the Building Loan Agreement applicable to the project. Of the above total, \$ \_\_\_\_\_ is hereby approved for mortgage insurance if advanced by you from mortgage proceeds in accordance with the above request, and this amount, when advanced, will thereupon constitute principal of that certain mortgage dated (mm/dd/yyyy) \_\_\_\_\_; signed by the above named mortgagor and covering the subject project, which mortgage has been endorsed by the undersigned for insurance to the extent of advances approved by the Federal Housing Commissioner and this certificate does hereby constitute the approval of the Federal Housing Commissioner for mortgage insurance under Section \_\_\_\_\_ of the National Housing Act and Regulations thereunder for the amount set forth herein, within the meaning of the aforesaid contract of insurance evidenced by such endorsement; provided, that if the above advance constitutes the final advance to be made under the terms of said Building Loan Agreement, this advance shall not be considered insured nor shall the original credit instrument be finally endorsed for insurance unless said instrument is first presented to HUD together with an original and two (2) conformed copies of a Request for Final Endorsement of Credit Instrument (form HUD-92023) completed and executed by both Mortgagor and Mortgagee, and if there are any items of construction still incomplete, as per attached list, the sum of \$ \_\_\_\_\_ shall have been placed in escrow under the provisions of an Escrow Deposit Agreement (form HUD-2456).

**Explanation of Disallowed Amounts:** (Attach additional sheets if required.)

Mortgage Credit Examiner	By: Signature of Authorized HUD Official	Date (mm/dd/yyyy)
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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM 2415

Item 4. Delete the phrase from the word "until" in the first line through the word "accepted" in the fifth line.

Item 5. Delete the phrase "prior to execution of FHA Form No. 2482 by the contractor nor."

Item 7. Delete in entirety.

Item 8. Delete the parenthetical phrase "(FHA Form No. 2442 or 2442A, as the case may be)."

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION

REQUEST FOR PERMISSION TO COMMENCE CONSTRUCTION  
PRIOR TO INITIAL ENDORSEMENT FOR MORTGAGE INSURANCE

(For use in all cases except Sec. 213 projects and Sec. 221(d)(3) Management and Investor-Sponsor Type Projects.)

TO THE FEDERAL HOUSING ADMINISTRATION

Re: Project No.

The undersigned mortgagor and contractor in connection with the subject project request the permission of the Federal Housing Administration to commence construction prior to the initial endorsement of the mortgage for insurance.

It is agreed that in consideration of such permission being granted, it will be upon the following terms and conditions:

1. All construction prior to the recordation of the insured mortgage is to be at the risk of the mortgagor.
2. In order to permit the assignment of a construction inspector, Federal Housing Administration will be notified of the date when construction is to commence, which is defined as that date upon which initial site clearance and preparation and/or excavation is begun, provided that such site clearance and related rough grading, etc., continues without appreciable delay from such date and is pursued diligently. Such facilities as are required for the construction inspector will be made available.
3. A release of liens will be furnished by the contractor and by each subcontractor who performed any work or services to the project, such release to be delivered to the mortgagee at the initial endorsement of the mortgage for insurance.
4. No work shall be commenced on construction of this project until such plans and specifications as may be deemed by the Federal Housing Administration to be sufficient to cover the work to be done prior to execution and recordation of the insured mortgage and the closing of the transaction have been filed with and accepted by the mortgagee and the Federal Housing Administration nor shall work on the project proceed beyond the scope indicated on the plans and specifications thus filed and accepted, until complete plans and specifications for the entire project shall have been approved and accepted by all parties.
5. No construction shall be commenced prior to execution of FHA Form No. 2482 by the contractor nor except pursuant to a current prevailing wage determination by the Secretary of Labor.
6. The inspection fee set forth in the Commitment for Insurance has been paid.
7. We hand you herewith executed Agreement and Certification (FHA Form No. 3305, 3305A, 3306 or 3306A, as the case may be).
8. There is submitted herewith a conformed copy of the executed construction contract (FHA Form No. 2442 or 2442A, as the case may be).
9. Permanent financing has either been arranged as evidenced by the attached copy of Lender's commitment; or an application for permanent financing has been filed with the Federal National Mortgage Association.
10. The project land is owned in fee simple (is subject to an approved leasehold).
11. The date upon which the commitment requires the first payment to principal to be made shall be considered amended so that the total period allowed therein for construction and occupancy shall begin on the first day of the first month after the date of execution of this agreement by the mortgagee.
12. It is understood that approval of this request by the FHA shall not be construed as varying the terms of the outstanding FHA commitment except to permit the commencement of construction prior to endorsement for mortgage insurance and as provided in paragraph 11, hereof, and the mortgage will not be endorsed unless all other commitment requirements are complied with.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mortgagor

\_\_\_\_\_  
Date

The undersigned,  
the mortgagee in the Commitment on the captioned project dated \_\_\_\_\_ consents to the foregoing request and agrees, in consideration of the Administration's approval, that all mechanics' and materialmen's liens and encumbrances filed or recorded before the first advance is made on said mortgage, will be discharged on record before any advances are made, or, if not so discharged, no advances will be made on said mortgage.

It is understood that the Federal Housing Commissioner will not be held to be responsible for any liens or any other objection to title which might result from the fact that construction of this project commenced prior to recordation of the insured mortgage, and shall not in any respect be deemed to have approved the title prior to closing of the transaction or to have waived in any way the provisions of the FHA Regulations which place the responsibility of mechanics' and materialmen's liens upon the mortgagee and the date of completion of the project shall be advanced as set forth in agreement # 11 foregoing.

Approved by \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Mortgagee

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2432

Page 2.

1. In paragraph two, second sentence, delete the phrase "which included General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions for the Contract for Construction" (FHA Form No. 2554)."
2. Paragraph three:  
  
Put an asterisk immediately after (c) and delete the words "(FHA Form No. 2442 of 2442 A)."  
  
Put an asterisk immediately after (d).  
  
Delete (e).  
  
Put an asterisk immediately after (f) and delete the words "(appropriate FHA Form)."  
  
Put an asterisk immediately after (i).
3. At the bottom of the page insert \*"These instruments in Section 242 cases will be submitted to the appropriate HEW regional office."

Page 3.

1. On nonprofit proposals only, delete the last sentence in paragraph 4.
2. On proprietary facilities the amount of the Reserve Fund for Replacements in paragraph 4 will be entered as indicated on the HEW final approval letter.
3. Delete the last sentence in paragraph 5.(a) and insert in 5.(c) the words "including off-site improvements" after the word "project."

4615.2

FIGURE 10

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4. In paragraph 6, third sentence, after the word "Specifications" delete the phrase "which result in any net construction cost increase, or will change the design concept, or will result in a net cumulative construction decrease of more than 2% of the contract amount."
5. On nonprofit proposals only, in paragraph 8, delete the second sentence.

# Commitment for Insurance of Advances

Sections 207, 220, 221, 231, 232, 242 and 810; and Title XI

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

Project Number	Name of sponsor
To (Borrower)	Street address
Street Address	City & State
City & State	Name of proposed Lender

The Federal Housing Commissioner, acting herein on behalf of the Secretary of Housing and Urban Development, will endorse for insurance under the provisions of Section \_\_\_\_\_ of the National Housing Act, and the Regulations thereunder now in effect, a mortgage note in the amount of \$ \_\_\_\_\_, to be secured by a mortgage, on the property locate at \_\_\_\_\_ and consisting of approximately \_\_\_\_\_ square feet. The insurance endorsement will be subject to compliance with the requirements of the Regulations, and the terms and conditions set forth below. The mortgage amount, however, is subject to reduction prior to final insurance endorsement of the mortgage note as provided in the Regulations.

1. The mortgage note shall be payable in monthly installments in accordance with the payment provision checked and completed below:

(a)  **Combination Declining Annuity Plan**

The loan 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 on the first day of the \_\_\_\_\_ month following the month in which the mortgage is dated. The mortgage shall provide that the first payment to principal shall be in the amount of \$ \_\_\_\_\_. Thereafter, on the first day of each succeeding month until the \_\_\_\_\_ installment has been paid, an installment of principal shall be paid in an amount equal to \_\_\_\_\_ percent of the principal payment which became due on the first day of the next preceding month. The \_\_\_\_\_ payment and, until the mortgage is paid in full, each succeeding payment shall be in an amount equal to \_\_\_\_\_ percent of the last preceding payment. The maturity and final payment date shall be \_\_\_\_\_ years and \_\_\_\_\_ months following the due date of the first payment to principal (commencement of amortization).

(b)  **Accelerating Curtail Declining Annuity Plan**

The loan 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 on the first day of the \_\_\_\_\_ month following the month in which the mortgage is dated. The mortgage shall provide that the first payment to principal shall be in the amount of \$ \_\_\_\_\_. Thereafter, on the first day of each succeeding month until the entire indebtedness has been paid, an installment of principal shall be paid in an amount equal to \_\_\_\_\_ percent of the principal payment which became due on the first day of the preceding month. The maturity and final payment date shall be \_\_\_\_\_ years and \_\_\_\_\_ months following the due date of the first payment to principal (commencement of amortization).

(c)  **Level Annuity Monthly Payment Plan**

The loan 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 on the first day of the \_\_\_\_\_ month

following the month in which the mortgage is dated. The loan 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 (commencement of amortization).

(d)  **Level Annuity Monthly Payment Plan**

(Sec. 221(d)(3) Below Market Interest Rate Mortgage)

The loan shall bear interest at the rate of \_\_\_\_\_ percent per annum payable on the first day of each month on the outstanding balance of principal up to and including the date of final endorsement of the secured note. Thereafter, the loan 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 on the first day of the \_\_\_\_\_ month following the month in which the mortgage is dated. The loan 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 (commencement of amortization).

2. A project shall be constructed on the mortgaged property in accordance with Drawings and Specifications filed with the Commissioner and designated as \_\_\_\_\_ FHA Project No. \_\_\_\_\_ dated \_\_\_\_\_. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A 201) and "Supplementary Conditions of the Contract for Construction (form HUD-2554), shall be identified in a manner acceptable to the Commissioner by the following parties or their authorized agents: Mortgagor, Design Architect, Architect administering the Construction Contract, Contractor and the Contractor's Surety.

3. At least 15 days prior to the anticipated date for initial insurance endorsement of the mortgage note, two draft copies of each of the following documents and exhibits shall be submitted to the Commissioner. 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 the Commissioner for approval:

- (a) The mortgage and the note evidencing the debt secured.

(b) The Building Loan Agreement (form HUD-92441) between the Mortgagee and the Mortgagor governing advances of the mortgage proceeds.

(c) The Construction Contract (form HUD-92442 or 92442A) between the Mortgagor and the General Contractor whereby the project is to be built.

(d) Contractor's Certification of Labor Standards and Prevailing Wage Requirements.

(e) Agreement and Certification executed by the Mortgagee and Mortgagor.

(f) Owner-Architect Agreement (appropriate HUD form).

(g) Title evidence in conformity with the Regulations which shall show that title to the property on the date of initial endorsement of the mortgage for insurance is vested in the Mortgagor 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 the Commissioner. If such title evidence is in the form of a title insurance policy, it shall by its terms inure to the benefit of the Mortgagee and the Secretary of Housing and Urban Development, as interest may appear. Such title evidence must be accompanied by a survey of the property, together with the Surveyor's Certificate showing that there are no easements or encroachments upon the subject property except those acceptable to the Commissioner, which survey will be extended from time to time during construction to show that the improvements on the site have been erected solely upon the land covered by the mortgage and within the building restriction lines, if any, on said land and do not encroach upon or overhang any land not covered by the mortgage nor upon any easement or right-of-way. Evidence will be required to show that the premises are not zoned or restricted so as to prevent the construction of the improvements, and that building and other permits have been issued by legally constituted authorities having jurisdiction.

(h) Assurance of the completion of the project.

(i) 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.

(j) The Mortgagee's Certificate itemizing the charges made by you in connection with the mortgage transaction and evidencing the collection by you or your nominee from the Mortgagor of the following sums to be applied to the following items:

(1) Deposit to meet cost of equipping and renting the project subsequent to completion of the entire project or units thereof, and to be applied to taxes, mortgage insurance premiums, property insurance premiums and assessments required by the terms of the mortgage accruing subsequent to initial endorsement of the mortgage for insurance, and not included in the proceeds of the mortgage ..... \$\_\_\_\_\_. (Note: For Section 232 Nursing Home Projects this deposit is required only for accruals of taxes, mortgage insurance premiums, property insurance premiums and assessments.)

(2) Funds, if any, required over and above mortgage proceeds for completion of the project \$\_\_\_\_\_. This sum represents the difference between the Commissioner's estimate of the total cash required for carrying charges, financing, and for construction of the project, including builder's fees (or builder's and sponsor's profit and risk allowance, if any), architect's fees, and the maximum amount of the mortgage to be insured. These funds may be

reduced by so much of the profit and risk allowance and fees, up to a maximum of \$\_\_\_\_\_, as the closing documents show are not to be paid in cash.

(3) Escrow deposit, if any, to cover off-site utilities and streets... \$ \_\_\_\_\_ .

(4) The Mortgagor shall establish to the Commissioner's satisfaction that, in addition to the proceeds of the insured mortgage, the Mortgagor has funds in the amount of \$\_\_\_\_\_, or has made financial arrangements acceptable to the Commissioner in order to meet the expenses of the project from the date of initial occupancy until \_\_\_\_\_ months after the date of final endorsement as the Commissioner estimates is necessary to establish a profitable operation. The funds shall be deposited with the Mortgagee or other depository acceptable to the Commissioner on or before the date of initial endorsement, and such funds shall be held in a special account under an agreement approved by the Commissioner.

(k) The Escrow Agreement providing for the deposit, if any, required by Item (i)(3) of this paragraph and covering off-site utilities and streets.

(l) The Mortgagor's Certificate certifying to the priority of the mortgage and to other matters set forth therein.

(m) The instrument under which the Mortgagor entity is created, unless the Mortgagor is an individual.

4. The Mortgagor must possess the powers necessary for operating the project and meeting all the requirements of the Secretary of Housing and Urban Development for insurance of the mortgage. At the initial insurance endorsement of the mortgage note, there shall be filed with the Commissioner copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize the execution of the mortgage and the other closing documents, and a Regulatory Agreement or other instrument to permit the Commissioner's regulation of the Mortgagor as to rents, charges, and methods of operation. Such instrument shall provide, among other things, for the establishment of a Reserve Fund for Replacements under control of the Mortgagee by payment of \$\_\_\_\_\_ per annum, to be accumulated monthly commencing on the date of the first payment to principal as established in the insured mortgage, unless a later date is agreed to by the Commissioner.

5. (a) Approval of advances in accordance with the Building Loan Agreement must be obtained on a form prescribed by the Commissioner prior to the date of each advance to be insured. A Contractor's Prevailing Wage Certificate will be filed with the request for approval of each advance which includes a payment for construction costs.

(b) During the course of construction, the Commissioner 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 \$\_\_\_\_\_ shall be paid upon the initial insurance endorsement of the mortgage note. The inspection of construction by a representative of the Commissioner shall be only for the benefit and protection of the Secretary of Housing and Urban Development.

(c) Upon completion of the project in accordance with the Drawings and Specifications the mortgage note will be finally endorsed for insurance to the extent of the advances of mortgage proceeds approved by the Commissioner, subject to reduction as provided in the Regulations.

6. 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 Commissioner, and must be approved by the Commissioner prior to initial endorsement. Any such change occurring subsequent to initial endorsement must be brought to the attention of the Commissioner immediately upon occurrence, and, except for such changes in the Drawings and Specifications which may be authorized by the Architect, must be approved by the Commissioner prior to the date on which the Commissioner is requested to approve any further advance for insurance. Changes in 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 Lender and the Commissioner. The Commissioner's approval of any change described above may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe.

7. If under the laws of the jurisdiction in which the project is located, the personal property of the Mortgagor, which is used in the operation of the project, is not covered by and subject to the real estate mortgage, the Mortgagee shall require and receive from the Mortgagor, prior to the final insurance endorsement of the mortgage note, a Security Agreement and a Financing Statement or such other security instrument as may be necessary to effect a first lien on such personal property in favor of the Mortgagee.

8. Any change in the sponsorship upon which this commitment is predicated must be requested in writing by the Mortgagee on behalf of any proposed substitute sponsor, and such request must be approved in writing by the Commissioner. 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, and who has not filed a certificate with the Commissioner fully disclosing his previous participation in FHA mortgage insurance programs, shall file such certificate on the form prescribed by the Commissioner and must be approved by the Commissioner.

9. All certificates, documents and agreements called for by this commitment shall be on forms approved or prescribed by the Commissioner and shall be completed, executed and filed in the number of copies and in such manner as he shall prescribe.

10. This commitment shall terminate \_\_\_\_\_ days from the date hereof unless renewed or extended by the Commissioner. Prior to any renewal or extension of this commitment, the Commissioner may, at his 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. A request for the reopening of this commitment within 90 days of its termination must be accompanied by the reopening fee prescribed by the Regulations.

12. The Design Architect and the Architect administering the construction contract shall each be covered by a policy of professional liability insurance in an amount consistent with insurance industry practice. At initial closing, there shall be provided for each Architect the writing agent's certificate in substantially the following form:

To: Mortgagee and Secretary of Housing and Urban Development  
I certify that \_\_\_\_\_(Name of Architect)  
is insured in the amount of \$ \_\_\_\_\_  
under \_\_\_\_\_ (Name of Insurer)  
Policy No. \_\_\_\_\_ of Architect and/or Engineers  
Professional Liability Insurance.

Your 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 your rights, privileges, and obligations under the contract of mortgage insurance.

Special conditions set forth below or attached hereto and identified as additional numbered paragraphs are made a part hereof.

Dated \_\_\_\_\_

Secretary of Housing and Urban Development  
By: Federal Housing Commissioner

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

INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2433Page 1.

1. Delete the words "rental housing" in the second line and substitute "Section 242."
2. On line one of paragraph (6) insert a period after the phrase "Construction Contract" and delete the remainder of the paragraph.
3. Delete from the second line of paragraph (7) everything but the words "Building Loan Agreement."

Page 2.

1. Delete paragraph (16).
2. In the triple asterisk (\*\*\*) found at the bottom of the page insert "and hospitals" after "nursing homes."

# Mortgagor's Certificate

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

To Federal Housing Commissioner  
c/o

Project Name:

Project Number:

The undersigned hereby agrees to accept a loan insured by you upon the terms set forth in your Commitment dated \_\_\_\_\_, 19\_\_\_\_\_, for the above captioned Project (hereinafter referred to as the "Project") and extensions and amendments thereof, and certifies to you as follows:

- 1) That the undersigned possesses the powers necessary for and incidental to the ownership, construction, and operation of a multifamily project as required by the provisions of the Housing Act and the Regulations applicable thereto.
- 2) That the instrument securing said loan is a good and valid first lien on the property therein described, and the mortgaged premises are free and clear of all liens other than that of the insured Mortgage except those specifically permitted by you.
- 3) That upon completion of the Project there will not be outstanding any unpaid obligations contracted in connection with the purchase of the property, construction of the Project, or the mortgage transaction except such obligations as may be approved by you as to terms, form, and amount.
- 4) That the undersigned has read the Mortgagee's Certificate submitted to you concurrently herewith and agrees to be bound by the terms thereof wherever applicable.
- 5) That, except as has been previously approved in writing by you, no construction has been commenced on the mortgaged premises prior hereto.
- 6) That the Project will be constructed in accordance with applicable local, State, and Federal Building Codes, the terms of the Construction Contract, if any, and with the "Drawings and Specifications" which include the "AIA General Conditions of the Contract" prescribed by you, and the FHA Supplementary General Conditions, three copies of which Contract, together with the "Master Set," and three sets of said "Drawings and Specifications" are herewith delivered to you as required by your Commitment.
- 7) That the requests for payment of Mortgage money will be made to the Mortgagee on the basis of the "Trade Payment Breakdown" as set forth in the Construction Contract, if any, and the Building Loan Agreement. Further, that no material or equipment, for which mortgage proceeds will be available, will be purchased on a conditional sale contract or financed by a chattel mortgage, and that all work performed and material and equipment furnished will be paid for in cash following receipt of the advance of mortgage proceeds intended for these items.
- 8) That, as the construction of the Project progresses, the undersigned will procure and submit to you all necessary building and other permits from the legally constituted authorities and that all such permits now obtainable have been procured as witness the certified copies thereof hereby presented.
- 9) That the determination of the Department of Labor with respect to prevailing wages (Davis Bacon) has been received by the undersigned and is included as a part of the aforesaid specifications for the construction of the Project, and all Contractors employed by the undersigned have been or will be fully advised prior to performance of any work that all laborers and mechanics employed on construction of the Project must be paid not less than such prevailing wages, and that each such Contractor, as a condition precedent to any payment to him/her, must certify in the form prescribed by HUD, that all laborers and mechanics employed by him/her or his/her subcontractors on the Project have been paid not less than such wages.
- 10) That the fees and expenses enumerated in the Mortgagee's Certificate have been fully paid or payment provided for as set forth therein, and that the funds deposited with the Mortgagee, as enumerated in the said Mortgagee's Certificate will be used for the purposes indicated therein.
- 11) That you and your authorized representatives are hereby granted the right to enter upon the mortgaged premises at any and all times for the purposes of the inspection thereof.
- 12) That occupancy of the Project in whole or in part will not be permitted without first having received your written permission and proper permits from all legal authorities having jurisdiction.
- 13) That the undersigned has no obligations except those approved by HUD and that except for such approved obligations the land included in the mortgage has been paid for in full by the undersigned and is free from any liens at the time of closing.

- 14) That,
- a) from this date and for so long as the mortgage is insured or held by HUD:
    - 1) the Project books and records will be established and maintained in accordance with the requirements of HUD, and in such condition as to permit a speedy and effective audit;
    - 2) such books and records will be retained for such period as may be prescribed by HUD;
  - b) the Project books and records will be available to HUD and to the Comptroller General of the United States for such examination and audits as they may desire to make.
- 15) That neither it nor anyone authorized to act for it will refuse to rent, after the making of a bona fide offer, or refuse to negotiate for the rental of, or otherwise make unavailable or deny the property covered by the Mortgage to any person because of race, creed, color, religion, sex, age, disability, familial status, or national origin; that any restrictive covenant on such property relating to race, creed, color, religion, sex, handicapping condition, or national origin is recognized as being illegal and void and is hereby specifically disclaimed; and that civil action for preventive relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.
- 16) That if the project is occupied during construction, the undersigned will submit an accounting for all receipts and disbursements during the period beginning of marketing and rent-up activities and ending, at the option of the undersigned, either (a) the last day of the month in which the Project is determined by you as acceptably complete, the date of such determination to be furnished by you, or (b) one month from the date the Project is determined by you as acceptably complete. The undersigned further agrees that the excess of receipts over proper disbursements as determined by you during the accountable period shall be treated as a recovery of constructions cost.
- 17) That if the scheduled date of the first payment to principle under the mortgage is more than three months after the date the Project is determined by you as acceptably complete, the undersigned will submit an accounting for all receipts and disbursements for the period prescribed by you. The undersigned further agrees that any "net income" as defined by you for such period shall be applied to advance amortization or in such other manner as you may direct.
- 18) \*\*\* That the undersigned has not collected, nor will the undersigned collect, from Project residents or from prospective Project residents, admission fees, founders' fees, life-care fees, or similar payments pursuant to any agreement, oral or written, whereby the undersigned agrees to furnish accommodations or services in the Project to persons making such payments.

Date: \_\_\_\_\_

Mortgagor: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature and Title Officer)

Secretary of Housing and Urban Development  
Acting By and Thru the  
Federal Housing Commissioner

\_\_\_\_\_ Date \_\_\_\_\_

\*\* Not applicable for non-profit and builder-seller mortgagors.  
\*\*\* Applicable only to housing for the elderly projects and Section 232 projects.

INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2434

Page 1.

1. In the "NOTE" to (6)(a), insert "242" prior to "or 236;" and in the "NOTE" (6)(b), insert "242" prior to "236."

Page 2.

1. Delete paragraph (13) in nonprofit projects.

FHA FORM NO. 2434  
Revised 6/70

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION

### MORTGAGEE'S CERTIFICATE

(Execute in triplicate)

To the Federal Housing Commissioner

Project Name \_\_\_\_\_

Project No. \_\_\_\_\_

We hand you herewith a check for \$ \_\_\_\_\_ covering the first mortgage insurance premium, together with the other items called for in your Commitment dated \_\_\_\_\_, 19\_\_\_\_, and in any extensions or amendments thereof, and we certify that all conditions thereof have been fulfilled to date.

(1) We are the Mortgagee under \_\_\_\_\_ (hereinafter referred to as the Mortgagee) dated \_\_\_\_\_, 19\_\_\_\_, executed by \_\_\_\_\_ (hereinafter referred to as the Mortgagor), securing a credit instrument evidencing a loan by us as Mortgagee to the Mortgagor in the principal sum of \$ \_\_\_\_\_ which we have agreed to make on condition that it be insured by you pursuant to your Regulations for Section \_\_\_\_\_ of the National Housing Act, effective as of the date of your Commitment.

(2) The agreement providing for the advancement of said loan is embodied in a Building Loan Agreement dated \_\_\_\_\_, 19\_\_\_\_, three copies of which are submitted herewith.

(3) There is submitted herewith a certified Survey of the property and title evidence in form specified in the Regulations together with evidence that the mortgaged premises are not zoned or restricted so as to prevent the construction of the improvements.

(4) All applications for insurance of an advance of mortgage proceeds will be submitted to you at least five days prior to the date we wish to disburse such advance. Such application will be accompanied by forms as required by you.

(5) The charges enumerated below have been collected in cash or will be so collected not later than the date of initial endorsement:

- (a) FHA application and commitment fee . . . . . \$ \_\_\_\_\_
- (b) Initial service charge, if any (not exceeding 2%) . . . . . \$ \_\_\_\_\_
- (c) Title and recording expense (including cost of surveys, recording fees, mortgage and stamp taxes, etc.) . . . . . \$ \_\_\_\_\_
- (d) FHA Inspection Fee . . . . . \$ \_\_\_\_\_

(6)(a) The undersigned has received from the Mortgagor a working capital deposit in the form of \_\_\_\_\_ in the sum of \$ \_\_\_\_\_  
(Cash) - (Letter of Credit)

While under our control, it is understood that funds in this deposit may be released or allocated for the purposes indicated below and for no other purpose unless approved by you:

- (1) \*Primarily for meeting the cost of equipping and renting the project subsequent to substantial completion of construction of the project;
- (2) Also, in our discretion, for accruals during the course of construction for mortgage insurance premiums, taxes, ground rents, property insurance premiums and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted; and also for allocation to such accruals after completion of construction if the income from the project, at that time, is insufficient to meet such accruals.

Any balance of said funds remaining in our hands subsequent to final endorsement of the mortgage for insurance will be returned to the Mortgagor, provided the mortgage is not then in default, unless you have directed other disposition.  
(NOTE: Paragraph (6)(a) is not applicable to nonprofit mortgagor projects under Section 221, 231, 232 or 236).

(6)(b) We certify that the allowance to make the project operational included in the FHA estimate of replacement cost shall be disbursed under the Building Loan Agreement, for the same purposes as set forth in paragraph (6)(a). We agree that no disbursement up to and including final endorsement will be made from such allowance without your Director's prior written approval. (NOTE: Paragraph (6)(b) is applicable only to nonprofit mortgagors under Section 221, 231, 232 or 236).

\*Paragraph (6)(a)(1) is not applicable to Section 232 profit-motivated nursing home projects.

(7) The Mortgagor has deposited with us or subject to our order in a depository satisfactory to us, the following sums required by your Commitment: (Check applicable paragraphs.)

- Cash required, if any, over the proceeds of the Mortgage, to complete the project, which will be used before any mortgage proceeds are advanced, in the amount of \$\_\_\_\_\_.
- Escrow deposit guaranteeing payment for off-site utilities and streets in the amount of \$\_\_\_\_\_. This deposit is in the form of \_\_\_\_\_ (Cash) - (Letter of Credit)

(8) We hand you herewith: (Check applicable paragraphs.)

- Off-site bond in the amount of \$\_\_\_\_\_.
- Evidence to the effect that required off-site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the project.

(9) We hand you herewith a duplicate copy of the following assurance for the completion of the project: (Check applicable paragraph.)

- Performance bond of an approved Surety in the penal sum of \$\_\_\_\_\_.
- Assurance of Completion Agreement reflecting the deposit with \_\_\_\_\_ of a fund in the amount of \$\_\_\_\_\_ in the form of \_\_\_\_\_ which fund has been deposited and is subject to our order and will be disbursed with your written approval in the manner and for the purposes provided for in said agreement. (Cash) - (Letter of Credit)

(10) We hand you herewith the Sponsor's guarantee to meet an initial operating deficit as required by your Commitment: (If required, check and complete the applicable paragraph.)

- Agreement of Sponsors to Furnish Additional Funds in the amount of \$\_\_\_\_\_ and Bond Guaranteeing Sponsor's Performance.
- Escrow Agreement evidencing a deposit of  cash,  U. S. bearer bonds, or  a letter of credit in the amount of \$\_\_\_\_\_.

(11) We hand you herewith the Sponsor's Guaranty Agreement to meet a subsidy differential in the amount of \$\_\_\_\_\_. (Applicable only to nonprofit projects under Section 231 or 232 if required by the Commitment.)

(12) If, upon completion of construction, there is any property on the premises which is not, under the laws of the jurisdiction, clearly subject to the lien of the real estate mortgage, we will require from the mortgagor a chattel mortgage or other appropriate security instrument covering such property. If the law of the jurisdiction is such that no additional security instrument is necessary to cover such property, we will submit our attorney's opinion to that effect.

(13) Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by you in writing, we shall require a monthly deposit with us or in a depository satisfactory to us of one-twelfth (1/12) of the sum set forth in your Commitment for Insurance constituting a "Reserve Fund for Replacements" which fund will be subject to our order and from which fund withdrawals may be made only upon the receipt of your written permission. These funds will be deposited with us by the Mortgagor in cash or in the form of obligations of or guaranteed as to principal by the United States of America. We will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to the Commissioner within 60 days.

(14) We understand that nothing herein contained or contained in the said credit instrument or Mortgage securing the same, or in the other contract documents, is to be deemed a waiver of any of the provisions of the aforesaid FHA Regulations, but all of said instruments are intended to be subject thereto. We hereby agree to conform with and abide by such FHA Regulations in all matters with respect to the aforesaid loan and the project in so far as they are applicable to us. We agree to furnish you with a complete report of the results of our annual inspection of the mortgaged premises required by the said Regulations.

(15) We certify that, in the event of a default by the Mortgagor in its obligation to complete the construction of the improvements on the mortgaged premises, we have the right to complete the project, which right is transferable to the Commissioner, and for that purpose the undisbursed balance of the Mortgage will be available in the event the completion of the project is undertaken by either of us. Such undisbursed balance may be used to discharge any and all valid liens or claims against the project and all such advances will be considered as made for the account of the Mortgagor and will be covered by the terms of the Mortgage. It is understood that all funds so advanced for the completion and preservation of the property will be covered by the Contract of Mortgage Insurance.

(16) So long as the Contractor, and/or Mortgagor, or upon default, the Surety or any other person acting on behalf of, or in substitution for them, shall be ready, able and willing to complete the Contract for the construction of the project, we will, upon notice from you, advance the undisbursed balance of the Mortgage for that purpose. The term "Contractor" shall mean all persons, firms or corporations contracting directly with the Mortgagor for the construction of all or any portion of the project.

(17) We certify that all insurance policies on the project required by the terms of the insured Mortgage will have attached thereto a standard Mortgagee clause making the loss payable to the Mortgagee and the Secretary, Department of Housing and Urban Development, as their interest may appear.

(18) We certify and agree that:

(Check and complete the following applicable subparagraphs (a), (b), (c), (d), (e) or (f).)

(a) We have not imposed and will not impose a financing charge of any kind directly or indirectly, other than the initial service charge, if any, set forth above.

(b) In addition to the initial service charge, we have collected in the form of \_\_\_\_\_ (Cash) - \_\_\_\_\_ (Letter of Credit) the amount of \$ \_\_\_\_\_ as a discount or financing charge for the construction loan.

(c) We intend to retain the permanent loan. In addition to the initial service charge, we have collected in the form of \_\_\_\_\_ (Cash) - \_\_\_\_\_ (Letter of Credit) the amount of \$ \_\_\_\_\_.

(d) We have a firm commitment from \_\_\_\_\_ to purchase the loan when fully disbursed and fully insured at a financing charge or discount of \_\_\_\_\_ and we have collected in the form of \_\_\_\_\_ (Cash) - \_\_\_\_\_ (Letter of Credit) the sum of \$ \_\_\_\_\_ to cover said charge or discount.

(e) The loan was originated for sale by the undersigned who does not, at this time, have a firm commitment or agreement to purchase the loan from which the amount of its loss, if any, in connection with such sale can be determined. The undersigned has collected in the form of \_\_\_\_\_ (Cash) - \_\_\_\_\_ (Letter of Credit) the amount of \$ \_\_\_\_\_ to be held in escrow under an agreement to cover any discount or additional financing charge incurred by the undersigned in the bona fide sale of the mortgage. Such agreement provides that any part of the escrowed deposit not necessary to reimburse the undersigned for such discount as it may have to pay will be repaid to the mortgagor or applied to the reduction of the insured mortgage or will be deposited in the Reserve Fund for Replacements of the mortgagor as you may direct. We hereby agree to notify you of the amount of any excess deposit as soon as same has been determined and to hold such excess pending receipt of your instructions for its disposition.

(f) Additional financing charges or discount of \$ \_\_\_\_\_ are to be collected pursuant to the attachment hereto for the purpose shown in (b), (c), (d), (e). (Strike inapplicable letters).

\* To be used where collection of additional financing charge or discount will be deferred. The deferral arrangement must be in accordance with forms and procedures prescribed by the Commissioner.

No financing charges other than charges disclosed herein have been or will be made. Until final endorsement for insurance by the Commissioner, all funds collected pursuant to items (c), (d), or (e) above and not paid over to the permanent lender, plus any funds returned by the permanent lender, shall be held for the account of the mortgagor and shall be subject to your control and direction in the event of claim under the contract of insurance.

(19) Except for mortgage advances approved by the Commissioner or notes executed pursuant to (18) (f), we do not have outstanding and will not make loans or advances to the mortgagor, any of the sponsors, the general contractor, or the architect for any purpose connected directly or indirectly with this project without prior written approval of the Commissioner. We have not made or offered, and will not make or offer, any guarantees, pledges, reservations of sums to become due or other inducements to any entity or person to make loans or advances which we would be prohibited from making under the terms of this paragraph.

4615.2

FIGURE 12

(20) We certify that in any case where a letter of credit has been accepted in lieu of cash, (a) such letter of credit is unconditional and irrevocable, (b) in the event a demand under the letter of credit is not immediately met, we will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the mortgagor, any sponsor, the general contractor or the architect; (c) we have not made and will not make any inducements as described in Paragraph (19) above to procure issuance of letters of credit; and (d) we have made every reasonable effort to satisfy ourselves that both the mortgagor and the institution which issued the letter of credit are aware that it is entirely possible that demands will be made for cash under the terms of the letter and that no possibility exists that mortgage proceeds will be available to reimburse the issuing bank for such cash payouts.

(21) Whenever the terms "Mortgage", "Mortgagor", or "Mortgagee" are used herein, the same shall be deemed to include respectively: the security instrument whether the same be a Mortgage or a Deed of Trust; the Obligor of the debt secured thereby, the Obligeo, or the Trustee(s) and the Beneficiary of said credit instrument. The term "financing charge(s)", as used herein shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the mortgagor. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Date \_\_\_\_\_ Mortgagee \_\_\_\_\_

Attest:

By \_\_\_\_\_

\*\*\* \*\*

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2441

Page 1.

1. In first "Whereas" clause insert "including off-site improvement," between the word "project" and the parenthetical phrase.
2. Insert in paragraph (2) after the word "project" the words "and the required off-site improvements." Delete last sentence of paragraph (2).
3. Delete the third sentence from paragraph (4)(a).

Page 3.

1. Delete paragraph (14)(b).

Page 4.

1. Delete paragraph (14)(d).
2. Delete paragraph (15) and substitute "The Lender and Borrower agree that the mortgage loan may be reduced as required by the Commissioner."

# Building Loan Agreement

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

OMB Approval No. 2502-0011 (Exp. 1/31/2004)

**Public Reporting Burden** for this collection is estimated to average 1 hour per response, including the time for reviewing, searching existing data sources, gathering and maintaining the data needed, and compiling and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2502-0011), U.S. Department of Housing and Urban Development, 451 7<sup>th</sup> Street SW, Washington, DC 20410-3600.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article I.E of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C. 1701 et. seq.) This information is provided to the FHA-Commissioner to obtain approval by contractors, mortgagors and mortgagees for changes in the drawings and specifications or any terms of the contract documents, or order for extra work, or changes by altering or adding to the work, or which will change the design concept. The information is used by HUD to ensure that viable projects are developed. Furnishing of this information is mandatory, and failure to provide it may result in your not receiving your benefits.

**Privacy Act Notice.** The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this 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 assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number

**This Agreement**, made the \_\_\_\_\_ day of \_\_\_\_\_, by and between

\_\_\_\_\_ ,  
a corporation organized and existing under the laws of \_\_\_\_\_ ,

with an office and place of business in \_\_\_\_\_ , County of \_\_\_\_\_ ,

and State of \_\_\_\_\_ (hereinafter called the "Borrower"), and

\_\_\_\_\_ , a corporation organized

and existing under the laws of \_\_\_\_\_ , having an office and place of business in

\_\_\_\_\_ , County of \_\_\_\_\_ ,

and State of \_\_\_\_\_ (hereinafter called the "Lender").

**Whereas**, the Borrower as the owner in fee simple of, or the owner of the leasehold estate in, the property described in Exhibit "A", attached hereto and made a part hereof, has applied to the Lender for a mortgage loan of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$) )  
to aid the Borrower in the construction on said property of a project (identified as HUD Project No. \_\_\_\_\_ )  
in accordance with Drawings and Specifications hereinafter referred to; and

**Whereas**, The Borrower understands that the Lender has received a commitment from the Federal Housing Commissioner (hereinafter called the "Commissioner") for insurance of said loan under the provisions of the National Housing Act and intends upon execution of the hereinafter-mentioned Note and Mortgage to have said Note endorsed for insurance by the Commissioner.

**Now, Therefore**, in consideration of the mutual promises hereinafter set out and of other valuable considerations, the undersigned agree as follows:

(1) The Lender shall make and the Borrower shall take a building loan in the principal sum of \_\_\_\_\_ Dollars (\$) ),  
to be advanced as hereinafter provided, and to bear interest from the date of each advance at the rate of \_\_\_\_\_ percent ( % ) per annum. Said loans shall be evidenced by a credit instrument (hereinafter called the "Note") dated

(mm/dd/yyyy) \_\_\_\_\_ , shall be payable in monthly installments, and shall have a maturity date of (Mm/dd/yyyy) \_\_\_\_\_ . Said Note shall be executed by the Borrower and payable to the Lender, or order, and shall be secured by a \_\_\_\_\_

\_\_\_\_\_ ( hereinafter called the "Mortgage"), of even date, on the property described in Exhibit "A". The Mortgage shall constitute a valid first lien on said property and the improvements to be erected thereon, and the only lien thereon except for liens for taxes and assessments not yet payable and other liens acceptable to the Lender and the Commissioner.

(2) The Borrower shall complete on the aforesaid property, by \_\_\_\_\_ , a project in accordance with Drawings and Specifications filed with the Commissioner and designated HUD Project No. \_\_\_\_\_ , dated (mm/dd/yyyy) \_\_\_\_\_ . Such Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (form HUD-2554), have been identified by the Borrower, the Design Architect, the Architect administering the Construction Contract (hereinafter called the "Architect"), the Contractor and the Contractor's Surety.

- (3) Changes in the Drawings and Specifications, or changes by altering or adding to the work contemplated, or orders for extra work, or which change the design concept, may be effected only with the prior written approval of the Lender and the Commissioner and under such conditions as either the Lender or the Commissioner may establish.
- (4) (a) The Borrower shall make monthly applications on form HUD-92403 for advances of mortgage proceeds from the Lender. Applications for advances with respect to construction items shall be for amounts equal to (i) the total value of classes of the work acceptably completed; plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (iii) the value of components stored off-site in compliance with applicable HUD requirements; less (iv) 10 percent (holdback) and less prior advances. The "values" of both (i), (ii), and (iii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown", attached hereto as Exhibit "B", and made a part hereof. Each application shall be filed at least \_\_\_\_\_ days before the date the advance is desired, and the Borrower shall be entitled thereon only to such amount as may be approved by the Lender and the Commissioner.
- (b) Upon completion of the improvements, including all landscape requirements and off-site utilities and streets, the Borrower shall furnish to the Lender and the Commissioner satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; and that all requisite certificates of occupancy and the approvals have been issued. The balance due the Borrower hereunder shall be payable at such time after completion as the Commissioner authorizes the release of the holdback. However, the Lender may withhold final payment until after the expiration of any period which mechanics and materialmen may have for filing liens.
- (c) The Borrower agrees that any funds required for the completion of the Project over and above the proceeds of the loan which have been deposited with the Lender for that purpose shall be advanced by the Lender to the Borrower prior to the advance of any proceeds of the loan "(i) if any portion of these funds is to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of such grant or loan funds, (ii) if all or part of the funds are provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the mortgagee may accept, in lieu of the funds, an agreement which shall be entered into by HUD, the governmental agency or instrumentality, the mortgagor and the mortgagee."
- (d) The Borrower covenants that it will hold in trust each advance hereunder for application to the items for which such advance was requested and approved.
- (e) The Borrower agrees that the loan shall at all times remain in balance. The Lender shall, in accordance with the provisions of this agreement, continue to advance to the Borrower funds out of the proceeds of the loan as long as the loan remains in balance and the Borrower is not in default hereunder or under the Note or Mortgage. The loan shall be deemed to be in balance only when the undistributed proceeds of the loan (after provision for reserves, fees, expenses and other deposits required by the Lender or the Commissioner) equal or exceed the amount necessary (based on the Commissioner's estimate of the cost of construction) to pay for all work completed and all materials delivered, for which payment has not been made, and the cost of completing construction of the project in accordance with the Drawings and Specifications.
- (5) The Lender shall advance to the Borrower out of the funds referred to in (4)(c) above, or out of the proceeds of the loan, amounts for application to the charges or items enumerated below, but only to the extent that such charges have accrued, or that the Borrower is otherwise entitled to payment on account of such items.
- |   |          |
|---|----------|
| (a) Interest during construction          | \$ _____ |
| (b) Real estate taxes during construction | \$ _____ |
| (c) Insurance during construction         | \$ _____ |
| (d) FHA mortgage insurance premium        | \$ _____ |
| (e) FHA examination fee                   | \$ _____ |
| (f) Initial service charge                | \$ _____ |
| (g) Title and recording expense           | \$ _____ |
| (h) Inspection fee                        | \$ _____ |
| (i) _____                                 | \$ _____ |
| (j) _____                                 | \$ _____ |
| (k) _____                                 | \$ _____ |
- (6) The Borrower shall cause either this instrument or the construction contract under which the improvements are to be erected to be filed in the public records, if the effect thereof will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any advance hereunder, the Lender may require the Borrower to obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor acknowledgments of payment and releases of lien down to the date covered by the last advance, and concurrently with the final payment for the entire project. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the project.

- (7) The Borrower shall, as a condition precedent to the first advance hereunder, furnish the Lender with a certified, current survey of the mortgaged property and a mortgagee's title policy (or other evidence of title) in form, substance and amount satisfactory to the Lender and the Commissioner. Said policy (or other title evidence) shall be extended so as to cover each and every advance of said loan at the time of payment thereof and shall show no mechanics' or materialmen's liens against the mortgaged property. The Borrower shall furnish duplicate originals of said survey and title policy (or title evidence) for the Commissioner.
- (8) The Borrower agrees that said project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities, and any rating or inspection organization, bureau, association or office having jurisdiction. The Borrower further agrees that said project shall be constructed entirely on the aforesaid property and will not encroach upon any easement or right-of-way, or the land of others; and that the buildings when erected shall be wholly within the building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. The Borrower shall furnish from time to time such evidence with respect thereto as may be required by the Lender or the Commissioner and, upon completion of construction, shall furnish a survey, certified by a registered surveyor, which shows the project to be entirely on said property and to be free from any such violations.
- (9) If the Borrower at any time prior to the completion of the project abandons the same or ceases work thereon for a period of more than 20 days or fails to complete the erection of the project strictly in accordance with the Drawings and Specifications, or makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof, or otherwise fails to comply with the terms hereof, any such failure shall be a default hereunder, and the Lender, at its option, may terminate this agreement. If the Lender so elects to terminate this agreement, it may use and apply any funds deposited with it by the Borrower, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as the Commissioner may prescribe. If the Lender elects not to terminate this agreement, it may enter into possession of the premises and perform any and all work and labor necessary to complete the improvements substantially according to the Drawings and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by the Lender shall be deemed to have been paid to the Borrower and secured by the Mortgage. For this purpose, the Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the project in the name of the borrower. The Borrower hereby empowers said attorney as follows: (a) To use any funds of the Borrower, including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the project in the manner called for by the Drawings and Specifications; (b) to make such additions, changes and corrections in the Drawings and Specifications as shall be necessary or desirable to complete the project in substantially the manner contemplated by the Drawings and Specifications; (c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the mortgaged property, or as may be necessary or desirable for the completion of the project, or for clearance of title; (e) to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the mortgaged premises or the construction of the project and to take such action and require such performance as he deems necessary under the accepted guaranty of completion; and (g) to do any and every act which the Borrower might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The Borrower hereby assigns and quitclaims to the Lender all sums unadvanced under the Mortgage and all sums due in escrow conditioned upon the use of said sums for the completion of the project, such assignment to become effective only in case of the Borrower's default.
- (10) The Borrower shall provide or cause to be provided workmen's compensation insurance and public liability and other insurance required by applicable law or by the general conditions included in the Specifications. The Borrower further agrees to purchase and maintain fire insurance and extended coverage on the mortgaged property. All such policies shall be issued by companies approved by the Lender and shall be in form and amounts satisfactory to the Lender and the Commissioner. Such policies shall be endorsed with standard mortgagee clauses making loss payable to the Lender or its assigns; and may be endorsed to make loss during construction payable to the Contractor, as interest may appear. The originals of such policies shall be deposited with the Lender.
- (11) The Lender and its agents and the Commissioner also have the right to inspect building components stored offsite.
- (12) The Borrower shall execute and deliver to the Lender, upon completion of the project, a security agreement and financing statement, or other similar instrument, covering all property of any kind whatsoever purchased with mortgage proceeds and concerning which there may be any doubt as to such property's being subject to the lien of the Mortgage under the laws of the state in which the project is situated.
- (13) The Borrower shall furnish to the Lender assurance of completion of the project in the form specified in the applicable HUD Regulations in effect on the date of this agreement. Such assurance of completion shall run to the Lender as obligee and shall contain a provision granting to the Lender the authority to assign all rights thereunder to the Commissioner.

(14) (a) The Borrower understands that the wages to be paid laborers and mechanics employed in the construction of the project are required by the provisions of Section 212(a) of the National Housing Act, as amended, to be not less than the prevailing wage rates for corresponding classes of laborers and mechanics employed on construction of a similar character in the locality in which the work is to be performed, as determined by the Secretary of Labor with respect to this project. The Borrower hereby states that it has read the aforesaid determination by the Secretary of Labor and is fully familiar with the same.

(b) The Borrower shall, as a condition precedent to any advance hereunder, submit to the Lender (i) with each application for advance prior to the final application, certifications, in form approved by the Commissioner, that all laborers and mechanics employed in the construction of the project whose work is covered by that or any previous application and who have been paid in whole or in part on account of said employment, have been paid at rates not less than the said prevailing wage rates; and (ii) with the final application for advance, certifications, in form satisfactory to the Commissioner, that the project has been fully constructed in accordance with the provisions of this agreement and that all laborers and mechanics employed in the construction of the completed project have been paid not less than the said prevailing wage rates. The Secretary's prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be made prior to the beginning of construction.

(c) The Borrower agrees that should any advances hereunder be ineligible for insurance under the National Housing Act by reason of (i) the nonpayment of the said prevailing wage rates, or (ii) violation of any of the applicable labor standards provisions of the Regulations of the Secretary of Labor, the Lender may withhold from the Borrower all payments or advances payable to the Borrower hereunder

until the Borrower establishes to the satisfaction of the Commissioner that all laborers and mechanics or other persons employed in the construction of the project have been paid said prevailing wage rates and that such violation of the said Labor Standards provisions no longer exists. The written statement of any officer of the Federal Housing Administration or authorized agent of the Commissioner declining to insure any advance of funds hereunder by reason of such nonpayment or violation shall be deemed conclusive proof that such advances are ineligible for mortgage insurance.

(d) The Borrower shall insert the labor standards provisions of the aforesaid Supplementary Conditions of the Contract for Construction in any contract made by him for the construction of the project, or any part thereof, and shall require the Contractor to insert similar provisions in each subcontract relating to the construction of the project.

(15) The Lender and the Borrower agree that the mortgage loan shall be reduced by any amount required by the Agreement and Certification (Form \_\_\_\_\_) between the parties hereto and the Commissioner, which agreement is incorporated herein by reference to the same extent as if set forth herein at length.

(16) The Borrower shall furnish such records, papers and documents relating to the project as the Lender or the Commissioner may reasonably require from time to time.

(17) The Borrower shall not transfer, assign or pledge any right or interest in, or title to, any funds deposited by the Borrower with the Lender, or reserved by the Lender for the Borrower, without the prior written approval of the Lender and the Commissioner.

(18) As used in this instrument, the term "Lender" shall be deemed to include any person to whom the Note and Mortgage referred to above shall be assigned with the knowledge and consent of the Commissioner. This instrument shall be binding upon the parties hereto and their respective successors and assigns.

(Seal) Attest	Owner
Witness	By
Witness	Title
(Seal)	Lender
Witness	By
Witness	Title

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM 2448 (Hosp.)

This form is designed only for hospital projects. It is executed by the contractor(s) and submitted with Form 2403 when advances are requested for completed construction. Advances for mortgageable equipment (not in construction contract) will be requested separately on Form 2403, and a 10% holdback will not be required on equipment.

The contractor's entries shall be checked by the Mortgage Credit Section for mathematical errors and corrections made when necessary without obliterating the contractor's figures.

With the exception of the following, the items are self-explanatory:

Item 4. This amount must agree with the net decrease in cost reported to the HUD office by the HEW regional office, if any.

Item 6. When a grant (or loan, or gift) is involved on a nonprofit proposal, the percentage inserted by the contractor for the pro rata share to be paid from the grant must agree with the percentage determined by the Mortgage Credit Section in the completion of Form 2451, Column 1, Construction.

Item 8. When HEW submits written approval waiving the necessity for any further retainage, the amount inserted by the contractor must agree with the amount shown in the last previous requisition.

Remarks. When a correction has been made in any of the amounts inserted by the contractor, an appropriate explanation should be stated in this portion of the form.

Distribution. A copy of the completed form shall be distributed to the mortgagee, HEW regional office, mortgagor, Washington Docket and the temporary insured advances file.

NOTE: When the mortgagee has accepted a letter of credit in a nonprofit project in lieu of a cash escrow deposit, all references to "Mortgagor's Cash Escrow" shall be construed to mean "Letter of Credit."

On proprietary proposals delete the word "NONPROFIT" from the title of the form.

4615.2

FIGURE 14

FHA FORM NO. 2448 (Hosp.)  
Rev. 7/69  
(Previous Edition Obsolete)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION  
**NONPROFIT HOSPITAL - SECTION 242  
CONTRACTOR'S REQUISITION**  
(To Be Submitted To Mortgagee In Quintuplicate)

Form Approved  
Budget Bureau No. 63-R1240

To: \_\_\_\_\_ Mortgagee  
Name of Hospital \_\_\_\_\_ Project No. \_\_\_\_\_  
Location \_\_\_\_\_ Requisition No. \_\_\_\_\_

1. Total Work Completed (Original Construction Contract)
2. Inventory of Materials Stored On Site ----- \$
3. TOTAL ----- \$
4. LESS: Net Decrease in Cost as a result of Approved Construction Changes -----  
*(If there is a net increase, enter zero (0). Increases must be paid for by Mortgagee)*
5. BALANCE ----- \$
6. LESS: Pro Rata Share (    %) To be Paid from Hill-Burton or other Grants, etc. -----
7. BALANCE: (Item 5 Minus Item 6, If Any) ----- \$
8. LESS: Retained 10% (10% of Item 7) (After Completion of at Least 50% of Construction, and upon written approval of HEW, further retainage shall not be required (Insert amount shown for last previous retainage)) -----
9. BALANCE: Amount Due to Date for Construction From Mortgage Proceeds and/or Mortgagee's Cash Escrow \$
10. LESS: Previous Payments from Mortgage Proceeds and/or Mortgagee's Escrow -----
11. NET AMOUNT DUE ON THIS REQUISITION From Mortgage Proceeds and/or Mortgagee's Cash Escrow --- \$

Date \_\_\_\_\_ Signature \_\_\_\_\_ (Contractor)

FOR USE OF FEDERAL HOUSING ADMINISTRATION

Date \_\_\_\_\_ Net Amount Approved For Payment From Mortgage Proceeds and/or Mortgagee's Cash Escrow ----- \$

Remarks:

Completed By \_\_\_\_\_ Mortgage Credit Examiner  
Reviewed By \_\_\_\_\_ Chief Mortgage Credit Examiner  
Approved \_\_\_\_\_ Chief Underwriter

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2451

Complete and maintain as shown in basic instructions, except as modified herein.

Allocation of the total cash shall be made as set forth on Form 2283 (Hosp.) Items 26 thru 34.

Column (D). When the mortgagee has accepted a letter of credit on a nonprofit project in lieu of a cash deposit for "over and above" money, as permitted by the FHA Regulations, advances from mortgage proceeds will be permitted before funds are drawn under the letter of credit. In such cases change Column (D) to read "Mortgagor's Letter of Credit."

When mortgage proceeds are completely advanced, any subsequent amount approved for advance shall be reflected in Column (D) and drawn under the letter of credit. Of course, if the undisbursed mortgage proceeds are insufficient to cover the total amount being approved for advance, only that portion not covered by mortgage proceeds will be reflected in Column (D) and drawn under the letter of credit.

Column I. To simplify bookkeeping in a nonprofit project when a grant (or gift or loan) is involved, the total grant shall be allocated to the cost of construction. Enter in Column (I) the construction amount from line 26 of Form 2283 (Hosp.). Subtract the amount of grant and show the remainder. Also determine the percentage that the grant bears to the total amount for construction (amount of grant divided by total amount for construction) and record the percent in the heading of the column, i.e., "grant--% of Construction Cost."

For reference purposes, as to the status of the grant, maintain a record in the column provided on the reverse of the form by showing the total grant and disbursements therefrom. The construction cost to be paid from the grant will be the amount shown in Item 6 of Form 2448 (Hosp.) or the total of Item 6 on all contractors' requisitions if more than one contractor.





INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2452

Page 1.

In the first "Whereas" clause "Hospital" should be substituted  
for "Housing."

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FHA FORM NO. 2452  
Revised January 1968

Project No. \_\_\_\_\_

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION**PERFORMANCE BOND-DUAL OBLIGEE**

Know All Men By These Presents, THAT WE, \_\_\_\_\_  
 \_\_\_\_\_ of \_\_\_\_\_  
 \_\_\_\_\_ as Principal, (hereinafter called the Principal)  
 and \_\_\_\_\_ a \_\_\_\_\_ as Surety,  
 (hereinafter called the Surety) are held and firmly bound unto \_\_\_\_\_  
 \_\_\_\_\_ Owner, (hereinafter called the "Owner-Obligee")  
 and unto \_\_\_\_\_, its successors and assigns,  
 of \_\_\_\_\_ (hereinafter called the "Leader")  
 as their respective interests may appear, as OBLIGEEES, in the sum of \_\_\_\_\_  
 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the  
 United States of America, for the payment of which Principal and Surety bind themselves, their heirs, ex-  
 ecutors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a Construction Contract dated \_\_\_\_\_ with  
 Owner-Obligee for the construction of a Housing Project designated as \_\_\_\_\_

a copy of which Construction Contract is by reference made a part hereof; and

WHEREAS, Leader has agreed to lend to Owner-Obligee a sum of money to be secured by a mortgage  
 on said project and to be used in making payments under said Contract, and desires protection as its in-  
 terests may appear, in event of default by Principal under said Contract, said protection to be subject to  
 the performance by the Obligees, or either of them, of the obligations to Principal in connection with  
 said Contract.

NOW, THEREFORE, the condition of this obligation is such that, if Principal shall well and truly  
 perform all the undertakings, covenants, terms, conditions and agreements of said Contract on its part,  
 and fully indemnify and save harmless Obligees from all cost and damage which they may suffer by rea-  
 son of failure so to do, and fully reimburse and repay Obligees all outlay and expense which Obli-  
 gees may incur in making good any such default, then this obligation shall be null and void; otherwise  
 it shall remain in full force and effect.

The foregoing, however, is subject to the following further provisions:

1. The Surety shall not be liable under this Bond to the Obligees, or either of them, unless the said  
 Obligees, or either of them, shall make payments to the Principal strictly in accordance with the terms  
 of said Contract as to payments, and shall perform all the other obligations to be performed under said  
 Contract at the time and in the manner therein set forth.
2. Surety agrees that any right of action that either of Obligees herein might have under this bond  
 may be assigned to the Secretary of Housing and Urban Development, acting by and through the Federal  
 Housing Commissioner, and that such assignment will in no manner invalidate or qualify this instrument.

4615.2

FIGURE 16

3. No suit, action, or proceeding by reason of any default whatever shall be brought on this bond after two years from the day on which the final payment under the Contract falls due.

4. The prior written approval of Surety shall be required with regard to any changes or alterations in said Contract where the cost thereof, added to prior changes or alterations, causes the aggregate cost of all changes and alterations to exceed 10 percent of the original Contract price; but, except as to the foregoing, any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Obligees of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Obligees or Principal to the other, shall not in any way release Surety or Principal of the obligations of this instrument, notice to Surety of any such alteration, extension, or forbearance being hereby waived.

5. The aggregate liability of Surety hereunder to the Obligees or their assigns is limited to the penal sum above stated, and Surety, upon making any payment hereunder, shall be subrogated to, and shall be entitled to an assignment of, all rights of the payee, either against Principal or against any other party liable to the payee in connection with the loss which is the subject of the payment.

SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Witness as to Principal-

\_\_\_\_\_  
(Principal) (SEAL)

By \_\_\_\_\_

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_

\$ \_\_\_\_\_  
 \_\_\_\_\_  
 (Surety)  
**PERFORMANCE BOND-DUAL OBLIGEE**  
 No. \_\_\_\_\_  
 On Behalf of \_\_\_\_\_  
 To \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Date \_\_\_\_\_, 19\_\_\_\_  
 Expires \_\_\_\_\_, 19\_\_\_\_  
HUD-100-108-1/108 HUD-100-108-1, D.C.

INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2452-A

Page 1.

In the first "Whereas" clause "Hospital" should be substituted  
for "Housing."

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**Payment Bond**

(This bond is issued simultaneously with Performance Bond in favor of the owner conditioned on the full and faithful performance of the contract)

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



Project No. \_\_\_\_\_

Know All Men By These Presents, THAT WE, \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ as Principal, (hereinafter called the Principal)  
and \_\_\_\_\_, a \_\_\_\_\_ as Surety,  
(hereinafter called the Surety) are held and firmly bound unto \_\_\_\_\_  
\_\_\_\_\_ as Oblige, (hereinafter called the "Owner"), for the use  
and benefit of claimants as hereinafter defined, in the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United  
States of America, for the payment of which Principal and Surety bind themselves, their heirs, execu-  
tors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a Construction Contract dated \_\_\_\_\_  
with Owner for the construction of a Housing Project designated as \_\_\_\_\_

a copy of which Construction Contract is by reference made a part hereof; and is hereinafter referred  
to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a) Unless claimant, other than one having direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

replaces form FHA 2452-A  
which is obsolete

form HUD-92452-A (5/89)  
ref. Handbook 4571.1



b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED and SEALED this

day of \_\_\_\_\_, 19

Witness as to Principal—

\_\_\_\_\_  
(Principal) (SEAL)

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_

\$ \_\_\_\_\_  
\_\_\_\_\_  
(Surety)

**PAYMENT BOND**

No. \_\_\_\_\_  
On Behalf of \_\_\_\_\_

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2453

Page 1.

1. In the first paragraph, line seven, insert the words "including off-site improvements" after the words "Of the property." Delete the remainder of the paragraph starting with "which Drawings and Specifications" and ending with "Architect(s); and."
2. Delete paragraph 1.(a).

Page 2.

1. On nonprofit projects only, delete the last sentence in paragraph 6.
2. On proprietary projects the Reserve Fund for Replacements figure in paragraph 6 will be entered as indicated on the HEW Final Approval letter.
3. Delete the last paragraph in paragraph 8.

Page 3.

1. Delete entire paragraph 14.
2. Delete paragraph 18.
3. Delete paragraph 19 and substitute "Prior to endorsement of the mortgage for insurance, the mortgagor and mortgagee shall execute an agreement that the commitment and mortgage amount is subject to appropriate reduction in accordance with instructions from HUD.
4. Delete paragraph 20.

Page 4.

1. Delete everything on the bottom of the page under the lines for the date and the signature of the Commissioner's authorized agent.

FHA FORM NO. 2453  
Revised July 1970

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION

COMMITMENT TO INSURE UPON COMPLETION

(Section \_\_\_\_\_)

TO:

_____	Project No. _____
(Mortgagee)	
_____	_____
(Street)	(Name of Sponsor(s))
_____	_____
(City and State)	(City, county, and State)
	_____
	(Name of Proposed Mortgagee)

We understand that you, as Mortgagee, have agreed to make a loan to \_\_\_\_\_ (hereinafter called the "Mortgagee"), in an amount not exceeding the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to be secured by a credit instrument and security instrument (hereinafter jointly called the "Mortgage") covering real property situated in the \_\_\_\_\_ and State of \_\_\_\_\_, as shown on the survey or plat and legal description of the property attached hereto and marked "Exhibit A," upon which property there is to be erected a certain Multifamily Housing project (hereinafter called the "Project"), in accordance with certain Drawings and Specifications prepared by \_\_\_\_\_, Architect (s), and entitled \_\_\_\_\_ which Drawings and Specifications have been identified by the signature and initials of the Mortgagee, Mortgagee, and this Administration, and by the Architect(s); and

That upon the completion of the Project it is your intention to present the said Mortgage to this Administration for mortgage insurance under the provisions of Section \_\_\_\_\_ of the National Housing Act, and the Regulations thereunder now in effect.

The Federal Housing Commissioner acting herein in behalf of the Secretary of Housing and Urban Development hereby agrees to insure said Mortgage under the provisions of said Act and Regulations upon the following conditions:

1. (a) There has been filed with the Commissioner a "Master Set" of the aforesaid Drawings and Specifications of the Project together with the general conditions of the contract for the construction of buildings in the standard form of the American Institute of Architects, current edition, and Supplementary Conditions, of the contract for construction which said Master Set shall remain on file with the Commissioner and be the controlling factor with respect to any matters which may arise as to the language, provisions, and contents of said "Drawings and Specifications." In addition thereto the Commissioner shall be furnished with three duplicate sets of said Drawings and Specifications at the time of acceptance of this commitment.
- (b) Upon endorsement of the Mortgage for insurance, the Project shall have been completed strictly in accordance with the requirements of said Drawings and Specifications except as they may have been modified by changes formally approved in writing by the Commissioner before the changes are made. All requests for changes in the Drawings and Specifications must be in writing signed by the Mortgagee and the Mortgagee and shall be conditioned upon the approval of the Commissioner, which approval may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe, it being understood that the Commissioner at all times has the right to require compliance with the original Drawings and Specifications.
2. During the course of construction the Commissioner and his representatives shall at all times have access to the property and the right to inspect progress of construction, and the Commissioner will require payment of \$ \_\_\_\_\_ to cover cost of said inspection. In addition, if required by the Commissioner, the Mortgagee will furnish at the Project site all necessary facilities for the use of the Commissioner's inspector such as office space, use of a telephone, typewriter, etc. The inspection of construction by a representative or representatives of the Commissioner shall be for the benefit and protection of the Secretary of Housing and Urban Development. If deviations from the Drawings and Specifications or unsatisfactory workmanship or defective material are not corrected to the satisfaction of the Commissioner prior to completion of construction, the Mortgage will not be considered eligible for insurance.
3. Prior to endorsement of the Mortgage for insurance, the Mortgagee shall present to the Commissioner a title policy or title evidence in conformity with the Regulations above mentioned which shall show that title to the property on the date of endorsement of the mortgage for insurance is vested in the Mortgagee free of all encumbrances other than said Mortgage and all reservations of title (either junior or prior to said Mortgage) except such as are specifically determined to be acceptable by

the Commissioner. The Mortgagor shall also furnish satisfactory proof that there exists no unpaid obligations contracted in connection with the Mortgage transaction, the purchase of the mortgaged property or the construction of the improvements, except such obligations as may be approved by the Commissioner. If such title evidence is in the form of a title insurance policy, it shall by its terms insure to the benefit of the Mortgagee and/or the Secretary of Housing and Urban Development, as interest may appear. If under the laws of the jurisdiction in which the Project is located the chattels and personal property of the Mortgagor required in the operation of the Project are not covered by and subject to the terms of the Mortgage, the Mortgagee must require and receive from the Mortgagor a chattel mortgage or such other security instrument as may be necessary covering such personal property and chattels.

(NOTE: Insert in the space above, the appropriate payment provision as set forth in 63312 of the FHA Manual.)

5. The credit instrument and the security instrument ("Mortgage") to be insured shall be in the form prescribed by the Commissioner for use in connection with the aforesaid Section \_\_\_\_\_ in the locality in which the property is situated.

6. The Mortgagor must possess the powers necessary for operating the project and meeting all the requirements of the Commissioner for insurance of the mortgage. Prior to endorsement of the mortgage for insurance, there shall be filed with the Commissioner a copy of the instrument under which the Mortgagor is created (unless the Mortgagor is an individual) together with copies of all instruments or agreements as may be necessary under the laws of the applicable jurisdiction to authorize execution of the mortgage and the other closing documents, and a Regulatory Agreement or other instrument as will permit the Commissioner's regulation of the Mortgagor as to rents, charges and methods of operations. Such instrument shall provide among other things for the establishment of a Reserve Fund for Replacements by payment of \$ \_\_\_\_\_ per annum to be accumulated monthly under control of the Mortgagee, commencing on the date of the first payment to principal as established in the insured mortgage unless a later date is agreed to by the Commissioner.

7. Prior to the endorsement of the Mortgage for insurance, evidence satisfactory to the Commissioner shall be submitted showing that adequate sewer, water, gas, and electric facilities have been fully installed and that necessary public streets, sidewalks, and curbing outside the Project site have been completed. All off-site facilities or utilities as may be required by the special conditions of this commitment shall be included in such evidence.

8. The Mortgage will not be endorsed for insurance unless there is filed with the request for such endorsement a certificate or certificates in the form required by the Commissioner, executed by the General Contractor, certifying that the laborers and mechanics employed in the construction of the Project have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor with respect to the above-captioned Project in accordance with Section 212 of the National Housing Act.

The Mortgagor shall include General Conditions of the Contract for Construction (AIA Document A 201) and Supplementary Conditions of the Contract for Construction in any contract made by him for the construction of the project or any part thereof and shall require such contractor to insert similar provisions in each of his subcontracts.

9. Prior to the endorsement of the Mortgage for insurance evidence shall be submitted to the Commissioner that the buildings, including electric wiring, plumbing, gas, and other appliances therein have been inspected and approved by all departments, boards, or agencies of the municipality, county or State, or other governmental bureau or departments having jurisdiction thereof, and by the rating or inspection organization, bureau, association or body performing similar functions and that such certification as may be required with respect to the approval of the said buildings for occupancy and otherwise as may be required by the Commissioner have been issued to the Mortgagor, and neither the whole nor any part of the Project shall be opened for occupancy without prior approval of the Commissioner is or prior to approval of a rental schedule.

10. Prior to the endorsement of the Mortgage for insurance the Commissioner shall be furnished with a survey duly certified to by a registered surveyor satisfactory to the Commissioner showing that there are no encroachments or encroachment upon the subject property except those approved by the Commissioner and that the improvements of the Project have been constructed upon the land covered by the Mortgage and within the building restriction lines, if any, on said land and do not encroach upon or overhang any land not covered by the Mortgage or beyond the said building restriction lines, if any, nor upon

- 3 -

any easement or right-of-way, and showing the exact location of water, sewer, gas, and electric mains, and all easements for such utilities then existing.

11. Upon endorsement of the Mortgage for insurance it must be current with respect to all payments required to be made by its terms, including all deposits required to be made with the Mortgagee for mortgage insurance premiums, fire, and other property insurance premiums, ground rents, water rates, taxes and other assessments; and there shall be in full force and effect fire and other property insurance as required by the Insured Mortgage.

12. Upon the endorsement of the Mortgage, the Mortgagee shall pay to the Commissioner in advance, a mortgage insurance premium equal to one-half of one per centum of the principal amount of the Mortgage insured to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.

13. Upon completion of the Project the Mortgagor shall furnish satisfactory evidence that the work of the Contractor is covered by a guarantee, running for a period of at least 1 year, against latent defects and faulty workmanship and defective materials, which guarantee will be secured by (a) a valid surety bond in an amount not less than ten percent (10%) of the cost of construction, running for a period of not less than 2 years following substantial completion of the Project, assignable to the Mortgagee and to the Commissioner and assigned to the Mortgagee prior to the endorsement of the Mortgage for insurance; or (b) a sum equal to two and one-half percent (2 1/2%) of the face amount of the Mortgage retained in escrow and subject to the control of the Mortgagee for a period of 1 year as an assurance for the correction of latent defects, faulty workmanship, and defective materials, which sum, upon failure of the Mortgagor to make such corrections as are required by the Mortgagee or the Commissioner within said 1-year period, may be used by the Mortgagee, or its assigns, for making such required corrections or, with the consent of the Commissioner, may be applied to the last maturing installment of principal of the indebtedness evidenced and secured by the Mortgage.

14. Prior to endorsement of the Mortgage for insurance, the Mortgagor must certify under oath that in selecting tenants for the property covered by the Mortgage, the Mortgagor will not discriminate against any family by reason of the fact that there are children in the family, and that the Mortgagor will not sell the property while mortgage insurance is in effect unless the purchaser also so certifies, such certifications to be filed with the Commissioner.

Prior to insurance of the Mortgage the Mortgagor must certify under oath that so long as the Commissioner has any interest in the Mortgage transaction no part of any building will be rented for a period of less than 30 days or operated in such manner as to offer any hotel services to any tenant in the building or buildings; and that the property will not be sold so long as the Commissioner retains any interest therein, unless the purchaser files with the Commissioner a like certification executed by such purchaser under oath.

15. Construction shall commence upon the Project within 90 days from the date of this commitment and must be continued thereafter diligently to completion. If construction is not started within such time this commitment shall terminate unless the time for commencement of construction is extended in writing by the Commissioner.

16. The Mortgagor shall not be required to pay to the Mortgagee an initial service charge in excess of 2 percent of the original amount of the Mortgage.

17. This commitment shall expire \_\_\_\_\_, 19\_\_\_\_, unless duly extended in writing by the Commissioner and upon such expiration all rights and obligations of the respective parties shall cease.

18. Prior to the execution of any construction contracts relative to the subject Project the Agreement and Certification Form \_\_\_\_\_ shall be executed by the Mortgagor, Mortgagee and the Federal Housing Commissioner and the Mortgagor shall be bound thereby with respect to any subsequent contracts or subcontracts.

19. The commitment amount hereinabove is subject to appropriate reduction in accordance with the terms of the Agreement and Certification.

20. For the purpose of ascertaining the applicable interest rate of any debentures which may be issued in connection with the Mortgage transaction under the provisions of this commitment, the term "rate in effect at the time the Mortgage is insured" appearing in the Housing Act of 1954 shall be construed to have reference to the going rate as of the date the commitment was issued.

21. This commitment is conditioned upon the payment of an Inspection Fee of \$ \_\_\_\_\_. The Inspection Fee is payable prior to the beginning of construction. A request for reopening received within ninety (90) days after this commitment expires will be considered only if such request is accompanied by payment of the stipulated commitment fee, and a reopening fee of 50¢ per \$1,000 of the amount of the expired commitment.

22. (a) Any contract or subcontract executed for the performance of the construction of the project shall comply with all applicable Labor Standards and provisions of the Regulations of the Secretary of Labor, Part 5 (29 CFR Part 5).

(b) Prior to the commencement of construction the Mortgagor shall deliver to the Commissioner a statement executed by the General Contractor setting forth the name of such contractor, together with the names of all persons having a substantial interest therein, and the names of any firm, corporation, partnership, or association engaged in any construction activity within the scope of the Labor Standards Provisions of any of the Acts listed in the Regulations of the Secretary of Labor, Part 5 (29 CFR Part 5), in which such contractor or such persons have substantial interest.

(c) Prior to the commencement of construction the Mortgagor shall deliver to the Commissioner Contractor's Certification of Labor Standards and Prevailing Wage Requirements (FHA Form 2482) executed by the General Contractor.

4615.2

FIGURE 18

23. It is a condition of this commitment that any change in the sponsorship upon which this commitment is predicated must be requested in writing by the Mortgagee on behalf of the proposed substitute sponsor(s), and such request must be approved in writing by the Commissioner

This commitment and exhibits referred to herein together with the applicable Federal Housing Administration Regulations constitute the entire agreement between us, and acceptance of the terms hereof is evidenced by the signature and seals of the Mortgagor and Mortgagee upon the lines provided therefor below.

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

Dated \_\_\_\_\_ By \_\_\_\_\_  
*Authorized Agent*

[Empty rectangular box]

The above commitment to insure is hereby acknowledged by the undersigned, and we hereby agree to the terms thereof.

\_\_\_\_\_  
*Mortgagor*  
By \_\_\_\_\_  
\_\_\_\_\_  
*Mortgagee*  
By \_\_\_\_\_

HUD-Wash., D. C.

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2455

Page 1.

1. In paragraph 1, first line, insert the words "including off-site Improvements" after the word "project."
2. In paragraph 4, line 6, following "For nursing homes" insert "and hospitals."
3. In paragraph 4, line 7, following "nursing facilities" insert "and hospitals."

Page 2.

1. Delete asterisked sentence found after paragraph 4.(b) and substitute "\*For this purpose the date of substantial completion is such date as determined by the Commissioner."
2. Delete paragraph 8 in nonprofit cases.

Page 4.

1. In paragraph 8.(b) first line, insert the words "including off-site improvements" after the word "project."

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION**

**REQUEST FOR ENDORSEMENT OF CREDIT INSTRUMENT  
CERTIFICATE OF MORTGAGEE, MORTGAGOR AND GENERAL CONTRACTOR  
(For insurance Upon Completion only)**

Project Name \_\_\_\_\_ Project No. \_\_\_\_\_

Location \_\_\_\_\_ Date of Commitment \_\_\_\_\_

Date \_\_\_\_\_ Principal Amount of Loan \$ \_\_\_\_\_

To the Federal Housing Commissioner:

We hand you herewith the original credit instrument drawn upon the form approved by you for use in the State in which the above-captioned project is located in connection with loans insured under Section \_\_\_\_ of the National Housing Act, as amended, evidencing a loan to the undersigned Mortgagor, together with three conformed copies thereof, and three conformed copies of the Security Instrument of even date securing the same recorded as shown thereon, also drawn, upon the form approved by you for use in said State.

We request endorsement of said instrument for mortgage insurance in the total sum of \$ \_\_\_\_\_ in accordance with the Regulations for Section \_\_\_\_\_ of the National Housing Act, as amended.

We hand you herewith a check for \$ \_\_\_\_\_ covering the first mortgage insurance premium called for in said Regulations.

We also hand you (a) a certified and two conformed copies of a Chattel Mortgage or Security Agreement and Financing Statement recorded as indicated thereon from the Mortgagor to us covering all personal property in the project not otherwise covered by the real estate mortgage to be insured or (b) certificate of Mortgagee's Attorney that no chattel mortgage or security agreement and financing statement are required to protect the interest of the Mortgagee and the Secretary, Department of Housing and Urban Development in respect to such personal property. (NOTE: For nursing homes, the personal property referred to includes the equipment required to operate the nursing facilities.)

We hand you herewith the Sponsors' Guaranty Agreement to meet a subsidy differential in the amount of \$ \_\_\_\_\_. (Applicable only to Sec. 231 and Sec. 232 nonprofit projects if required by the Commitment.)

We understand that nothing herein contained or contained in the said credit instrument or Mortgage securing the same, or in the other contract documents, is to be deemed a waiver of any of the provisions of the aforesaid Regulations, but all of said instruments are intended to be subject thereto. We hereby agree to conform with and abide by such Regulations in all matters with respect to the aforesaid loan and the project insofar as they are applicable to us. We agree to furnish you with a complete report of the results of our annual inspection of the mortgaged premises required by the said Regulations.

**CERTIFICATE OF MORTGAGEE**

We, the undersigned Mortgagee, hereby certify that:

1. To the best of our knowledge and belief the project has been completed, with the exception of the minor items enumerated on the Exhibit attached hereto, strictly in accordance with the Drawings and Specifications heretofore approved by you except for such changes as have heretofore been approved in writing by us and by your authorized representatives.

2. The Mortgage to be insured is current with respect to all of its requirements.

3. The project is fully covered by fire and other insurance as required by the terms of the insured mortgage in the form and amounts heretofore stipulated by you; and that all insurance policies on the project have attached thereto a standard mortgagee clause making the loss payable to the Mortgagee and the Secretary, as their interests may appear.

4. We have received a guarantee against defects due to faulty workmanship and defective materials in the form of:

(Check applicable paragraph(s))

(a) A Surety Bond on a form prescribed by you and in an amount not less than ten percent (10%) of the cost of construction, running for a period of not less than two years from the date of substantial completion\* of the project, which bond has been assigned to the Mortgagee (or under which bond the Mortgagee is a joint obligee) and which is assignable to the Secretary.

(b) By agreement between ourselves and the Mortgagor and Contractor, we retain in our possession for a period of one year following the date of substantial completion\* of the project, a sum equal to two and one-half (2 1/2%) percent of the principal amount of the mortgage, in the form of \_\_\_\_\_,  
(Cash) - (Letter of Credit)

which sum, upon failure of the Mortgagor or the Contractor to cure any such defects due to faulty workmanship and defective materials to the satisfaction of ourselves and your authorized representative, can be used for the purpose of curing such defects, or can be applied to the mortgage Indebtedness with your consent.

\* For this purpose the date of substantial completion is construed as the date the FHA Chief Underwriter signs the final Project Inspection Report.

5. We have received: (Check applicable paragraphs)

An Escrow Agreement guaranteeing the completion of off-site utilities and streets. The Mortgagor has made the deposit called for therein in the form of cash.

Evidence to the effect that required off-site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the project.

An Escrow Deposit Agreement covering the incomplete on-site improvements. The Mortgagor has made the deposit called for therein in the form of cash.

A copy of the Escrow Agreement or other evidence is delivered herewith.

6. The Mortgagor has deposited with us or in a depository satisfactory to us and subject to our control, a deposit, as required by your commitment, for operating expenses from the date of initial occupancy until \_\_\_\_\_ months after endorsement in the amount of \$ \_\_\_\_\_, such funds to be disbursed only with your approval. This deposit is in the form of \_\_\_\_\_.  
(Cash) - (Letter of Credit)

**(NOTE: For Section 232 Nursing Home projects only.)**

7. An Escrow Agreement evidencing the deposit by the Sponsor of cash, U. S. Bearer bonds, or an unconditional irrevocable letter of credit in the amount of \$ \_\_\_\_\_ as required by your Commitment to meet a possible initial operating deficit has been received by us. A copy of the Escrow Agreement is delivered herewith. (Complete, if required.)

8. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by you in writing, we will require a monthly deposit with us or in a depository satisfactory to us of one-twelfth (1/12) of the sum set forth in your Commitment to Insure Upon Completion constituting a "Reserve Fund for Replacements" which fund will be subject to our control and from which fund withdrawals may be made only upon the receipt of your written permission. These funds will be deposited with us by the Mortgagor in the form of cash or in the form of obligations of or guaranteed as to principal by the United States of America. We will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the deposits required herein will be forwarded to the Commissioner within 60 days.

9. In compliance with the provisions of the Commitment of Insurance issued with respect to the above identified case, to its best knowledge and belief no restriction upon the sale or occupancy of the mortgaged property, on the ground of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950, and prior to the recording of the mortgage offered for insurance. This certification is based upon our examination of the title evidence received by us.

10. No financing charges other than charges disclosed herein have been made and we agree that no other charges for financing will be made. The term "financing charges" as used herein means any charge, direct or indirect, for supplying the loan to or servicing the loan for the mortgagor.

(Check and complete the following applicable subparagraphs a, b, c, d, e, f, g or h.)

- a. No financing charges of any kind have been or will be imposed directly or indirectly.
- b. We have collected in cash an initial service charge in the amount of \$ \_\_\_\_\_.
- c. In addition to the initial service charge referred to in (b), we have collected the amounts set forth in subparagraph(s) \_\_\_\_\_.
- d. In addition to the initial service charge, we have collected in the form of cash the amount of \$ \_\_\_\_\_ as a discount or financing charge for the construction loan.
- e. We are retaining the permanent loan. In addition to the initial service charge, we have collected in the form of cash the amount of \$ \_\_\_\_\_.
- f. We have a firm commitment from \_\_\_\_\_ to purchase the loan when insured at a financing charge or discount of \_\_\_\_\_ and we have collected in the form of cash the sum of \$ \_\_\_\_\_ to cover said charge or discount.
- g. The loan was originated for sale by the undersigned who does not, at this time, have a firm commitment or agreement to purchase the loan from which the amount of its loss, if any, in connection with such sale can be determined. The undersigned has collected in the form of cash the amount of \$ \_\_\_\_\_ to be held in escrow under an agreement to cover any discount or additional financing charge incurred by the undersigned in the bona fide sale of the mortgage. Such agreement provides that any part of the escrowed deposit not necessary to reimburse the undersigned for such discount as it may have to pay will be repaid to the mortgagor or applied to the reduction of the insured mortgage or will be deposited in the Reserve Fund for Replacements of the mortgagor as you may direct. We hereby agree to notify you of the amount of any excess deposit as soon as same has been determined and to hold such excess pending receipt of your instructions for its disposition.

\*h. Additional financing charges or discount of \$\_\_\_\_\_ are to be collected pursuant to the attachment hereto for the purpose shown in (d), (e), (f), (g). (Strike inapplicable letters).

\*The arrangement for the collection of additional financing charges or discount must be in accordance with forms and procedures prescribed by the Commissioner.

11. In any case where a letter of credit has been accepted in lieu of cash, (a) such letter of credit has been issued to us by another banking institution and is unconditional and irrevocable; (b) in the event a demand under the letter of credit is not immediately met, we will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the mortgagor, any sponsor, the general contractor or the architect; and (c) we have made every reasonable effort to satisfy ourselves that both the mortgagor and the institution which issued the letter of credit are aware that it is entirely possible that demands will be made for cash under the terms of the letter.-5-

12. We certify that we have not paid any kickback, fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this mortgage transaction, including the purchase or sale of the mortgaged property, except for compensation paid, if any, for the actual performance of services and approved by you.

\_\_\_\_\_  
**Mortgagee**

ATTEST:

By \_\_\_\_\_

*(Signature and Title of Officer)*

**CERTIFICATE OF MORTGAGOR**

The undersigned Mortgagor hereby certifies that:

1. It possesses the powers necessary for and incidental to the ownership and operation of a project as required by the appropriate provisions of the National Housing Act and the Regulations applicable thereto.
2. The undersigned has read the items above and certified to by the Mortgagee concurrently herewith and to the best of its knowledge and belief considers them correct.
3. The project books and records will be kept in accordance with the requirements of the Commissioner from the date of this certificate, and shall be kept available to permit a speedy and effective audit. The undersigned further agrees that if the project has been occupied prior to the date of this certificate, financial reports covering the entire period of occupancy will be furnished the Commissioner, if requested.
4. That neither it nor anyone authorized to act for it will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin; that any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and in hereby specifically disclaimed; and that civil action for preventive relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

The undersigned understands that the mortgage contains a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, the mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, religion or national origin, and that such covenant will be binding upon the mortgagee and his assigns and provides that upon violation thereof the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

5. All funds escrowed with the Mortgagee as enumerated in the Mortgagee's Certificate, if applicable, may be held by the Mortgagee for the purposes indicated therein, or in the event of a default may be applied to the accelerated Mortgage indebtedness.
6. The Federal Housing Commissioner and his authorized agents and the Mortgagee are hereby granted the right to enter upon the mortgaged premises at any and all times for the purpose of inspection.
7. No material or equipment, for which mortgage proceeds were made available, has been purchased on a conditional sale contract or financed by a chattel mortgage.
8. Further, in order to induce the Commissioner to endorse the credit instrument for mortgage insurance, and with the intent that the Commissioner rely upon the statements hereinafter set forth, the undersigned makes the following certifications:

(a) That it has received the sum of \$ \_\_\_\_\_, constituting the full principal amount of the mortgage for this project.

(b) That construction of the project is substantially complete and is in accordance with the plans and specifications approved by the Federal Housing Commissioner; that said mortgage is a good and valid first lien on the property therein described; that the property is free and clear of all liens other than that of subject mortgage; that all outstanding unpaid obligations contracted by or on behalf of the mortgagor entity directly or indirectly, in connection with the mortgage transaction, the acquisition of the property, or the construction of the project are listed below:

- \* (1) FHA-approved notes (copies attached) \$
- (2) Due General Contractor \$
- \* (3) Other \$

(c) That, except for the amounts due on notes listed in item (1) of paragraph (b) above, the undersigned agrees to pay the foregoing obligations in cash and to furnish the Commissioner receipts, or other evidence of payment satisfactory to the Commissioner within 45 days following the date hereof.

\_\_\_\_\_  
*Mortgagor*

Date \_\_\_\_\_

BY \_\_\_\_\_  
*Title*

\*(NOTE: If the space provided is inadequate to list all unpaid obligations, insert the total in each category and attach itemizations. If there are no outstanding obligations, so state.)

INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2456

Page 1.

1. In the first "WHEREAS" clause delete the words "housing project" and insert "hospital."

# Escrow Deposit Agreement

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

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between (Mortgagor) \_\_\_\_\_ (hereinafter called "Mortgagor") party of the first part, and (Depository) \_\_\_\_\_, (hereinafter called "Depository"),

## Witnesseth:

Whereas, The above-named Mortgagor is now constructing a housing project in \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, identified as (Name of Project) \_\_\_\_\_, (HUD Project No. \_\_\_\_\_) under a certain Building Loan Agreement between the Mortgagor and (Mortgagee) \_\_\_\_\_, (hereinafter called "Mortgagee"), dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which Building Loan Agreement is by reference incorporated herein and made part hereof; and

Whereas, the said Mortgagor has not at the present time completed certain improvements required by said Building Loan Agreement as listed in the exhibit attached hereto, identified as "Exhibit A", but intends to complete said improvements; and

Whereas, in order to induce the Mortgagee to advance the entire amount of the loan provided for in said Building Loan Agreement and in order to induce the Department of Housing and Urban Development to insure said loan in its entirety prior to completion of all said improvements, the Mortgagor desires to provide security for the completion of said improvements;

Now, therefore, for and in consideration of the premises hereinabove set forth, the parties hereto agree as follows:

### 1. The Mortgagor covenants and agrees:

(a) To complete the improvements enumerated in Exhibit A on or before the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the said work to be done and completed free and clear of all liens and in accordance with the Drawings and Specifications referred to in said Building Loan Agreement. The Mortgagor further agrees to pay for all work and material necessary for completion of said work.

(b) That all work performed pursuant to the provisions of this agreement shall be subject to the Labor Standards Procedures and Prevailing Wage Requirements accepted by the original general contractor in executing the Contractor's Prevailing Wage Certificate on the back of form HUD-92448, Contractor's Requisition Project Mortgages. The terms and provisions of said Certificate are hereby specifically accepted by the Mortgagor. Prior to release of any funds provided for herein, Mortgagor shall submit a Contractor's Prevailing Wage Certificate duly executed by each and every contractor performing any of the work and dated subsequent to completion of such work.

2. The Mortgagor herewith deposits with the Depository, and the Depository acknowledges receipt thereof, the sum of \$ \_\_\_\_\_, which said sum shall be held by the Depository and disbursed as follows:

(a) In the event the Mortgagor completes the construction of said improvements in accordance with the Drawings and Specifications above referred to on or before the date agreed to in Paragraph 1 above, and there is no default under the mortgage, the Depository shall upon receipt of written approval of said work from HUD return to the Mortgagor, without interest, the sum herewith deposited.

(b) In the event the Mortgagor fails to complete the improvements on or before the date agreed to in Paragraph 1, or defaults under the mortgage, the Depository, upon receiving written instructions from HUD so to do, shall pay to the Mortgagee the unexpended balance of the sum herewith deposited to be applied in the amount and manner specified by said Administration to the obligations of the Mortgagor.

(c) In the event the Mortgagor fails to complete the said improvements on or before the date agreed in Paragraph 1 above in accordance with said Drawings and Specifications and fails to produce to the Depository the written approval of said work by HUD, or in the event the Depository receives from HUD on or after said date notice that the said improvements have not been completed in accordance with Drawings and Specifications, the Mortgagee, subject to the approval of HUD, shall have the right and/or option to proceed to complete said work in accordance with the Drawings and Specifications and pay the cost thereof, including all costs and charges of the Depository and Mortgagee from the sum herewith deposited, and for this purpose the Mortgagor hereby irrevocably authorizes and empowers the Mort-

gagee to do and perform for it, the said Mortgagor and in its name, place and site with full powers of substitution, all matters and things which the said Mortgagee shall in its judgment deem necessary and proper to be done to effectuate the completion of the same improvements in accordance with the Drawings and Specifications and to apply the moneys herewith deposited to the payment of debts contracted or incurred for work done or for materials furnished therefor, or either, in and about said work and for all expenses, costs and charges in connection therewith, and this warrant of attorney shall be the Mortgagee's full and sufficient authority and the orders given and signed by the Mortgagee as attorney-in-fact for the Mortgagor shall be good and sufficient vouchers for all payments made by virtue thereof. Further, in such event the Mortgagor hereby irrevocably authorizes and empowers the Mortgagee to enter into and upon the said Project and take charge thereof together with all materials and appliances thereunto belonging, and in the name of the Mortgagor, as its attorney-in-fact, to call upon and require the several contractors for work to be done and for materials to be furnished in and about the completion of said improvements to proceed to complete the said improvements in accordance with the Drawings and Specifications or any changes, alterations, additions or modifications of the same as may be deemed expedient or necessary by HUD and to do whatsoever in the Mortgagee's judgment shall be necessary to be done to secure the completion of the said improvements according to the Drawings and Specifications and in accordance with the instructions of HUD. In the event the work is completed by the Mortgagee in accordance with provisions hereof and written approval of said work is given by HUD, any unexpected balance of the sum deposited with the Depository shall thereupon be returned to the mortgagor without interest unless the mortgage is in default. The Mortgagee shall in no event be responsible for the completion of the said work beyond the expenditure of the sum herewith deposited and if said sum is insufficient for such purpose the Mortgagee shall be under no obligation to proceed further with the work or to demand or obtain additional sums from the Mortgagor. This warrant of attorney is granted with full power of substitution and the Mortgagor hereby specifically agrees that all powers granted to the Mortgagee hereunder may be assigned by it to HUD.

3. It is the intention of the parties to this Agreement that the Depository shall act solely at all times on instructions from HUD with respect to the said sum deposited with it by the Mortgagor and for so acting the Mortgagor hereby expressly releases and relieves the said Depository of any and all liability or claims of any nature. The said Depository shall have a prior lien on said fund, however, for any and all cost or expenses incurred by it (including court costs and reasonable attorney's fees) by reason of acting as Depository of the said fund.

4. In the event the Mortgagee acts as Depository, the name Depository wherever used herein shall be construed as referring to said Mortgagee acting in the capacity of Depository.

5. This Agreement is entered into by the parties hereto for the benefit of the holder of any mortgage on said project insured by the Federal Housing Commissioner and for the benefit of the Federal Housing Commissioner either of which shall have the right to act as Depository and/or enforce the provisions hereof.

**In witness whereof**, the parties hereto have hereunto caused these presents to be executed on their behalf and their seals affixed the day and year first above written.

**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)

Attest	(Mortgagor)
	By (President)
Attest	(Depository)
	(President)

## INSTRUCTIONS TO CLOSING ATTORNEY

## REGULATORY AGREEMENT - NONPROFIT HOSPITALS

1. The attached Regulatory Agreement must be executed and recorded before the Note is endorsed for insurance.
2. You will note that there is space left on the last page of the printed form for proper execution of the instrument.
3. The Agreement is to be executed in the name of the Commissioner. Ordinarily, it will be signed for a Commissioner by the field office director who endorses the Note for insurance.
4. The Agreement must also be executed by the nonprofit mortgagor.
5. The execution by the Commissioner and by the mortgagor must be in accordance with the requirements of the jurisdiction and must permit the instrument to be recorded. Ordinarily, this will require separate acknowledgments by the field office director and by the person signing the mortgage. Generally, the acknowledgment by the person signing for the mortgagor can be in the same form as is used on the mortgage.
6. Recording must be in the proper office in the jurisdiction where the mortgaged property is located. Usually this will be the same office in which the mortgage was recorded, but recording may be in a different book or set of records.
7. Recording must be at the expense of the mortgagor.
8. Where there is a substitution of mortgagor and the mortgaged property is being transferred from one mortgage to another, approval of such transfer by the Commissioner is required by the Regulatory Agreement. Before such approval is given a new Regulatory Agreement must be executed and recorded by the new mortgagor. This Regulatory Agreement may be used in this situation since it provides in the second paragraph that the consideration for the agreement may be "the consent of the Commissioner to the transfer of the mortgaged property."
9. Sufficient space is left on the last page for the insertion of any necessary additional provisions. Any substantial changes in the terms of the Agreement should receive the approval of the Washington office.

INSTRUCTIONS FOR REVISION OF  
FHA FORM 2466-GP  
REGULATORY AGREEMENT FOR NONPROFIT HOSPITALS

- Heading: Delete "Title XI - Group Practice Facilities" and insert "Section 242 - Nonprofit Hospitals."
- Item (2): Delete in entirety.
- Item (4)(f): Change "group practice" to "nonprofit hospital."
- Item (5): Delete in entirety.
- Item (10): Delete in entirety.
- Item (11): Delete in entirety.
- Item (13): Delete portion of first sentence reading "As security for payment due under this Agreement to the Reserve Fund for Replacements, and", and capitalize the word "to."
- Item (15): Insert a new item (g) as follows: "Hospital means a facility which provides community service for inpatient medical care of the sick or injured (including obstetrical care) not more than 50 percentum of the total patient days of which during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis, and which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, of may lawfully inure, to the benefit of any private shareholder or individual."

FHA FORM NO. 2466-GF  
Rev. 12/71

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL HOUSING ADMINISTRATION

REGULATORY AGREEMENT

Section 242 Nonprofit Hospitals - Title XI Group Practice Facilities

Project No.

Mortgagee

Amount of Mortgage Note

Date

Mortgage Recorded: State

County

Date

This agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between  
whose address is \_\_\_\_\_

hereinafter called Mortgagee, and the undersigned Secretary of Housing and Urban Development (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described Note or in consideration of the consent of the Secretary to the transfer of the mortgaged property, and in order to comply with the requirements of the National Housing Act and the Regulations adopted by the Secretary pursuant thereto, the Mortgagee agrees for itself, its successors and assigns, and any owner of the mortgaged property, that in connection with the mortgaged property and the project operated thereon and so long as the Contract of Mortgage Insurance continues in effect, and during such further period of time as the Secretary and his successors shall be the holder or reinsurer of the Mortgage:

- (1) It shall promptly make all payments due under the Note and Mortgage, and shall hold the Secretary harmless under his Contract of Mortgage Insurance.
- \*(2) (a) It will establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the Mortgagee or in a safe and responsible depository designated by the Mortgagee, concurrently with the beginning of payments toward amortization of the principal of the Mortgage insured or held by the Secretary of an amount equal to \$ \_\_\_\_\_ per month unless a different date or amount is approved in writing by the Secretary. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the Mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements, and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event of a default in the terms of the Mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.
- (b) Where Mortgagee is acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Mortgagee acquires such project, and payment hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.
- (3) The real property covered by the mortgage and this agreement is described in Schedule A attached hereto.
- (4) It shall not without the prior written approval of the Secretary:
  - (a) Transfer, dispose of or encumber any of the mortgaged property. Any such transfer, shall be only to a person or persons or corporation satisfactory to and approved by the Secretary, who shall, by legal and valid instrument in writing, to be recorded or filed in the same recording office in which conveyances of the property covered by the mortgage are required to be filed or recorded, duly assume all obligations under this agreement and under the insured Note and Mortgage;
  - (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, and shall not disburse or pay out any funds except for usual operating expenses and necessary repairs;
  - (c) Remodel, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
  - (d) Pay any compensation or make any distribution of income or other assets to any of its officers, directors or stockholders.

\*This section is not applicable to §242 nonprofit hospitals and should be deleted.

- (e) Enter into any contract or contracts for supervisory or managerial services.
- (f) Use, or permit the use of, the mortgaged property for any purpose other than the operation of a (nonprofit group practice facility)(nonprofit hospital).\*
- \*\* (5) The Mortgagor agrees to deposit in a residual receipts fund any residual receipts realized from the operation of the mortgaged property. No distribution from such fund shall be made without the prior written approval of the Secretary. No distribution from such fund, which the party receiving such distribution is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds.
- (6) It shall maintain the mortgaged premises, accommodations, and the grounds and equipment appurtenant thereto, in good and substantial repair and condition. PROVIDED THAT, in the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the insured mortgage.
- (7) Mortgagor shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within 45 days.
- (8) It shall immediately satisfy or release any mechanic's lien, attachment, judgment, lien, or any other lien which attaches to the mortgaged property or any personal property used in the operation of the project, and shall dismiss or have dismissed or vacated any receivership or petition in bankruptcy or assignment for benefit of creditors, creditors bill or insolvency proceedings involving the project or the mortgaged property.
- (9) (a) If the Mortgagor has any business or activity other than the project and operation of the mortgaged property, it shall maintain all income and other funds of the project segregated from any other funds of the Mortgagor and segregated from any funds of any other corporation or person. Income and other funds of the project shall be expended only for the purposes of the project and in connection with the mortgaged property.
- (b) Mortgagor shall provide for the management of the project in a manner satisfactory to the Secretary. Any management contract entered into by the Mortgagor involving the project shall contain a provision that it shall be subject to termination without penalty and with or without cause, upon written request by the Secretary addressed to the Mortgagor and the management agent. Upon receipt of such request the Mortgagor shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.
- (c) It shall make no payment for services, supplies, or materials unless such services are actually rendered for the project or such supplies or materials are delivered to the project and are reasonably necessary for its operation. Payments for such services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
- (d) The mortgaged property, equipment, buildings plans, office apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall be subject to examination and inspection at any reasonable time by the Secretary or his duly authorized agents; the Mortgagor shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.
- (e) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.
- (f) Within 60 days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, certified to and by an officer of the Mortgagor and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.
- (g) At the request of the Secretary, his agents, employers, or attorneys, the Mortgagor shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage and any other information with respect to the Mortgagor or the mortgaged property and of the project which may be requested.
- (h) All receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this agreement for expenses of the project. Funds of the project shall be immediately deposited in the project bank account and failing to do so in violation of this Agreement such funds shall be deemed to be held in trust. Property of the project received in violation of this Agreement shall be immediately delivered to the project and failing to do so, such property shall be deemed to be held in trust.

\*Delete inapplicable phrase.

\*\*This section is not applicable to §242 nonprofit hospitals and should be deleted.

- (i) Mortgagor or its lessee shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect a license to operate the project from the state and/or other licensing authority. Mortgagor shall not lease all or part of the project except on terms approved by the Secretary.
- (10) The Mortgagor shall make its project and services, if any, available to eligible occupants at charges approved in writing by the Secretary. Such charges shall be subject to annual review by the Secretary. If the Secretary determines in his review that some adjustment (either upward or downward) of charges is required, the Mortgagor shall immediately comply with such requirements.
- (11) (a) The Mortgagor shall be required to suitably equip the project for group practice operations. Mortgagor agrees to perform all obligations of any chattel mortgage, conditional sale, lease or lease purchase agreement, or other type of financing arrangement designed to acquire equipment for the project. Any plan for the acquisition of equipment (other than outright purchase) must be approved in writing by the mortgagor and the Secretary and shall contain provision extending to the mortgagor, its successors or assigns, the option to assume such financing (or leasing) obligation of the Mortgagor upon default; further, such financing (or leasing) arrangement shall require the vendor/lessor to furnish written notice of default to the mortgagor and the Secretary before exercising any of its rights or remedies.
- (b) The Mortgagor shall execute and record a chattel mortgage in favor of the mortgagee covering the Mortgagor's interest in all equipment used for the group operation except for such equipment as the Secretary may exempt from such coverage. Said chattel mortgage shall provide that a default in the terms of the Note and Mortgage upon the realty shall also constitute a default thereunder.
- (12) Mortgagor will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. 2000d-1), Title VIII of the Civil Rights Act of 1968 (P.L. 90-284, 42 U.S.C. 3601), and Executive Order 11063 (27 F.R. 11527), and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development (24 CFR) issued pursuant to Title VI, Title VIII, or Executive Order 11063.
- (13) Upon a violation of any of the above provisions of this Agreement by Mortgagor, the Secretary may give written notice thereof, to Mortgagor, by registered or certified mail, addressed to the address stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Mortgagor as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within 30 days after the date of such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration and upon such default the Secretary may:
- (1) (a) If the Secretary holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage.
  - (b) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and the holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;
  - (2) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Mortgagor's obligations under this Agreement and under the note and mortgage, and the necessary expenses of preserving the property and operating the project.
  - (3) Take possession of the project, bring any action necessary to enforce any rights of the Mortgagor growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Mortgagor is again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.
  - (4) Apply to any court, State or Federal, for specific performance of this Agreement, for any injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the property in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this agreement would be irreparable and the amount of damage would be difficult to ascertain.
- (14) As security for the payment due under this Agreement to the Reserve Fund for Replacements, and\*\* to secure the Secretary because of his liability under the endorsement of the Note for insurance, and as security for the obligations under this Agreement, the Mortgagor respectively assigns, pledges and mortgages to the Secretary its rights to the income and charges of whatever sort which it may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents or project income in the mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Mortgagor to collect and retain under the provisions of this Agreement such profits, income, and charges, but upon default this permission is terminated.
- (15) As used in this Agreement the term:
- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the Note identified herein, and endorsed for insurance or held by the Secretary;

\*This section is not applicable to §242 nonprofit hospitals and should be deleted.  
 \*\*Delete this portion of the first sentence of this section when project is §242 nonprofit hospital.

- (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (c) "Mortgaged Property" includes all property, real, personal, or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;
- (d) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said property.
- (e) "Distribution" means any withdrawal or taking of cash or other assets of the project other than for mortgage payments or for payment of reasonable expenses incident to its construction operation and maintenance;
- (f) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;
- (g) "Residual Receipts" means any cash remaining after:
- (1) The payment of:
    - (i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary of Housing and Urban Development;
    - (ii) All amounts required to be deposited in the reserve fund for replacements;
    - (iii) All obligations of the project other than the mortgage insured or held by the Secretary unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
  - (2) The segregation of:
    - (i) An amount equal to the aggregate of all special funds required to be maintained by the project;
    - (ii) All tenant security deposits held;
- (h) "Group practice facility" means an establishment designed for operation primarily by a medical or dental group which provides preventive, diagnostic, and treatment service to ambulatory patients under professional supervision of persons licensed to practice dentistry, medicine, or optometry;
- (i) "Hospital" means a facility -
- (1) Which provides community service for inpatient medical care of the sick or injured;
  - (2) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and
  - (3) Which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inure, or may lawfully inure to the benefit of any private shareholder or individual.
- (16) The Secretary shall not be liable for any of his acts hereunder except for flagrant misfeasance.
- (17) This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns, and all owners of the mortgaged property, so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner or reinsurer of the Mortgage.
- (18) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- (19) Mortgagee warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

(To be executed with formalities for recording a deed to real estate)

SPD 317.021

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INSTRUCTIONS TO CLOSING ATTORNEY

REGULATORY AGREEMENT - FHA FORM 2466-  
PROPRIETARY HOSPITALS UNDER SECTION 242

1. Form of Mortgagor

- (a.) Corporate Mortgagor - any form of Corporate Charter may be used which:
- (1) contains nothing inconsistent with the Regulatory Agreement,
  - (2) gives the corporation powers necessary to operate the project and execute the note and mortgage, and
  - (3) specifically authorizes the execution of the Regulatory Agreement.

Suggested charter provisions to accomplish the above purposes are attached.

- (b.) Partnership Mortgagor - Unless all partners execute the Regulatory Agreement, a copy of the partnership agreement should be furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement. It should further contain a provision substantially as follows:

The partnership is authorized to execute a note and mortgage in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming partner shall as a condition of receiving an interest in the partnership property agree to be bound by the note, mortgage, and Regulatory Agreement and other documents required in connection with the HUD-FHA insured loan to the same extent and on the same terms as the other partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

FIGURE 22

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- (c.) Trust - any Trust Agreement before it is finally accepted generally should:
- (1) give the trustee the powers necessary to execute the note and mortgage;
  - (2) specifically authorize the execution of the Regulatory Agreement;
  - (3) contain nothing inconsistent with the Regulatory Agreement;
  - (4) prohibit the transfer of beneficial interest prior to completion of the project without the prior written consent of the Secretary and prohibit the transfer to such interest subsequent to completion of the project unless the new beneficiary assumes and agrees to be bound by the Regulatory Agreement; and
  - (5) require that the Secretary be advised ten (10) days prior to any proposed transfers of beneficial interests.
2. The Section of the National Housing Act under which the mortgage was originally endorsed for insurance or the fact that the mortgage originally was a Secretary-held purchase money mortgage shall be set out in the heading of the Agreement under the item "mortgage."
3. The names of all mortgagors including all beneficiaries of any trust shall be set out in the first unnumbered paragraph of the Agreement in the place for listing the names of the parties. Where any such person is signing the Agreement as trustee or in some other representative's capacity, this fact shall be clearly set out both in this first paragraph and in an identical manner at the end of the Agreement where such person signs. The name of a person signing in a representative capacity should also be set out in his individual capacity in Paragraph 18. For example: a party may be designated, "Mr. Jones, as trustee or Sara Jones Trust," be listed in Paragraph 18 as "Mr. Jones, individually," and sign the Agreement as "Mr. Jones, trustee of the Sara Jones Trust." This would make the Sara Jones Trust responsible for carrying out the provisions of the Regulatory Agreement, but Mr. Jones would be responsible individually only for his own acts.
4. In all cases involving the issuance of a commitment to insure there shall be added to the mortgage a provision substantially as follows:

"The Regulatory Agreement of even date herewith entered into between the Mortgagors (Grantors) herein and the Secretary of Housing and Urban Development which is being recorded simultaneously herewith, is incorporated in and made a part of this mortgage (deed of trust). Upon default under the Regulatory Agreement and upon request by the Secretary, the Mortgagee, at its option, may declare the whole of the indebtedness secured hereby to be due and payable."

If the mortgage is already on record, it should be modified to incorporate the Regulatory Agreement. Ordinarily this may be done by a separate Modification Agreement executed by the mortgagor and mortgagee.

5. The Regulatory Agreement shall be executed by the Mortgagor and Secretary and recorded at the expense of the mortgagor prior to endorsement for insurance, prior to consent to a conveyance in existing insured mortgage cases, or prior to the conveyance to a purchaser in sales cases.
6. Since the requirements for execution vary from state to state, space is left at the end of the printed form for proper execution. Generally, acknowledgement by each party will be required and the form of acknowledgement used in the mortgage or deed of trust would be acceptable.
7. Paragraph 4 of the Regulatory Agreement shall be stricken and the deletion appropriately approved by the parties.
8. The Agreement is to be executed in the name of the Secretary by the Field Office Director.
9. A legal description of the property shall be attached.
10. Whenever this Agreement is executed by a person not liable for the payment of the note and mortgage, such person shall be listed in Paragraph 18. If all persons executing this Agreement are so liable, the word "none" should be inserted in Paragraph 18 or Paragraph 18 should be stricken in its entirety.
11. The dollar amount to be inserted in the first paragraph of 2(a) is 1/12 the annual Reserve for Replacements recited in the commitment.

## CORPORATE CHARTER PROVISIONS

## ARTICLE      PURPOSES

The purpose for which the corporation is formed and the business to be carried on and the objectives to be effected by it are:

- (a) To provide hospital facilities and services for the care and treatment of persons who are acutely ill, who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.
- (b) To enable the financing of the construction of such a facility or project with the assistance of mortgage insurance under the National Housing Act,
- (c) to enter into, perform and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to rents, sales, charges, capital structure, rate of return and methods of operation;
- (d) to acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary for the construction and operation of such facility or project and
- (e) to borrow money, and to issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien, in furtherance of any or all of the objects of its business in connection with said facility or project.

## ARTICLE      POWERS

Section 1. The corporation shall have the power to do and perform all things whatsoever set out in Section 1 of Article \_\_\_\_\_ Purposes above, and necessary or incidental to the accomplishment of said purposes.

Section 2. The corporation, specifically and particularly, shall have the power and authority to enter into a Regulatory Agreement setting out the requirements of the Secretary of Housing and Urban Development.

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INSTRUCTIONS FOR REVISION OF  
FHA FORM NO. 2466  
REGULATORY AGREEMENT - FOR PROPRIETARY HOSPITALS

Page 1.

1. In parentheses beneath the title after "232" insert "and 242."
2. In paragraph 1, change "paragraph 17" to read "paragraph 18."
3. In the parenthetical sentence between paragraphs 3 and 4 after "Section 232" insert "and Section 242."

Page 2.

1. In paragraph 5, line 2, after "or 232" insert "or 242."

Page 3.

1. In paragraph 6, subparagraph (h), first line, delete word "nursing" and insert "hospital."
2. In paragraph 9, subparagraph (h) after "Section 232" insert "or section 242."
3. In paragraph 9, subparagraph (h), item 1, line 2, delete "nursing home" and insert "hospital."
4. In paragraph 9, subparagraph (h), item 2, delete "nursing home" and insert "hospital."

Page 4.

1. In paragraph 9, subparagraph (h), item 4, delete "4" and insert "10" making that item paragraph 10.
2. In paragraph 9, delete subparagraph (i).
3. On pages 4 and 5 progressively renumber paragraphs 10 thru 17 to read 11 thru 18.

Page 5.

1. In paragraph 13, subparagraph (e), third line, delete word "housing" and insert "hospital facilities."

FIGURE 22

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2. In paragraph 13, add a new subparagraph (j) to read  
"Hospital" means a facility which provides community service for inpatient medical care of the sick or injured (including obstetrical care) not more than 50 percentum of the patient days of which during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis.
  
3. (See Page 4 Instruction No. 3 regarding renumbering of paragraphs 10-17 to become paragraphs 11-18.)

# Regulatory Agreement Multifamily Housing Projects

## Instructions to Closing Attorney

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

### Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits

#### 1. Form of Mortgagor

- a. Corporate Mortgagor - any form of Corporate Charter may be used which:
- (1) contains nothing inconsistent with the Regulatory Agreement,
  - (2) gives the corporation powers necessary to operate the project and execute the note and mortgage, and
  - (3) specifically authorizes the execution of the regulatory Agreement.

Suggested charter provisions to accomplish the above purposes are attached.

- b. Partnership Mortgagor - Unless all general partners execute the Regulatory Agreement, a copy of the partnership agreement should be furnished and should be examined to determine that it contains nothing inconsistent with the Regulatory Agreement. It should further contain a provision substantially as follows:

“The partnership is authorized to execute a note and mortgage in order to secure a loan to be insured by the Secretary of Housing and Urban Development and to execute a Regulatory Agreement and other documents required by the Secretary in connection with such loan. Any incoming general partner shall as a condition of receiving an interest in the partnership agree to be bound by the note, mortgage, and Regulatory Agreement and other documents required in connection with the FHA insured loan to the same extent and on the same terms as the other general partners. Upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

- c. Trust - any Trust Agreement before it is finally accepted generally should:
- (1) Give the trustee the powers necessary to execute the note and mortgage;
  - (2) specifically authorize the execution of the Regulatory Agreement;
  - (3) contain nothing inconsistent with the Regulatory Agreement;
  - (4) prohibit the transfer of beneficial interest prior to completion of the project without the prior written consent of the Secretary and prohibit the transfer of such interest subsequent to completion of the project unless the new beneficiary assumes and agrees to be bound by the Regulatory Agreement; and
  - (5) require that the Secretary be advised ten (10) days prior to any proposed transfers of beneficial interests.

2. The Section of the National Housing Act under which the mortgage was originally endorsed for insurance or the fact that the mortgage originally was a Secretary-held purchase money mortgage shall be set out in the heading of the Agreement under the item “mortgage.”

3. The names of all mortgagors including all beneficiaries of any trust shall be set out in the first unnumbered paragraph of the Agreement in the place for listing the names of the parties. Where any such person is signing the Agreement as trustee or in some other representative capacity, this fact shall be clearly set out both in this first paragraph and in an identical manner at the end of the Agreement where such person signs. The name of the person signing in a representative capacity should also be set out in his individual capacity in Paragraph 17. For example: a party may be designated, “Mr. Jones, as trustee of

Sara Jones Trust,” be listed in paragraph 17 as “Mr. Jones, individually,” and sign the Agreement as “Mr. Jones, trustee of the Sara Jones Trust.” This would make the Sara Jones Trust responsible for carrying out the provisions of the Regulatory Agreement, but Mr. Jones would be responsible individually only for his own acts.

4. In all cases involving the issuance of a commitment to insure there shall be added to the mortgage a provision substantially as follows:

“The Regulatory Agreement of even date herewith entered into between the Mortgagors (Grantors) herein and the Secretary of Housing and Urban Development which is being recorded simultaneously herewith, is incorporated in and made a part of this mortgage (deed of trust). Upon default under the Regulatory Agreement and upon request by the Secretary, the Mortgagee, at its option, may declare this mortgage (deed of trust) in default and may declare the whole of the indebtedness secured hereby to be due and payable.”

If the mortgage is already on record, it should be modified to incorporate the Regulatory Agreement. Ordinarily this may be done by a separate Modification Agreement executed by the mortgagor and mortgagee.

5. The Regulatory Agreement shall be executed by the Mortgagor and Secretary and recorded at the expense of the Mortgagor prior to endorsement for insurance, prior to consent to a conveyance in existing insured mortgage cases, or prior to the conveyance to a purchaser in sales cases.
6. Since the requirements for execution vary from state to state, space is left at the end of the printed form for proper execution. Generally, acknowledgment by each party will be required and the form of acknowledgment used in the mortgage or deed of trust would be acceptable.
7. If the mortgage is insured pursuant to Section 232, Par. 4 of the Regulatory Agreement shall be stricken and the deletion appropriately approved by the parties.
8. The Agreement is to be executed in the name of the Secretary by the Field Office Manager.
9. A **legal description** of the property shall be attached.
10. Whenever this Agreement is executed by a person not liable for the payment of the note and mortgage, such person shall be listed in Paragraph 17. If all persons executing this Agreement are so liable, the word “none” should be inserted in Paragraph 17 or Paragraph 17 should be stricken in its entirety.

11. In the event the project is to be insured under section 232, and the owner is to lease the project, the lessee shall execute FHA Form No. 2466-nhl.

12. The dollar amount to be inserted in the first paragraph of 2(a) is 1/12 the annual Reserve for Replacements recited in the commitment.

#### Corporate Charter Provisions

#### Article Purposes

The purpose for which the corporation is formed and the business to be carried on and the objectives to be effected by it are:

**Section 1.** (a) To create a private corporation to construct or to acquire a housing project or projects, and to operate the same; (b) to enable the financing of the construction of such rental housing with the assistance of mortgage

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insurance under the National Housing Act; (c) to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to rents, sales, charges, capital structure, rate of return and methods of operation; (d) to any acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary for the construction and operation of such project; and (e) to borrow money, and to issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien, in furtherance of any or all of the objects of its business in connection with said project.

**Article Powers**

**Section 1.** The corporation shall have the power to do and perform all things whatsoever set out in Section 1 of Article \_\_\_\_\_ Purposes above, and necessary or incidental to the accomplishments of said purposes.

**Section 2.** The corporation, specifically and particularly, shall have the power and authority to enter into a Regulatory Agreement setting out the requirements of the Secretary of Housing and Urban Development.

# Regulatory Agreement for Multifamily Housing Projects

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

## Under Sections 207, 220, 221(d)(4), 231 and 232, Except Nonprofits

Project Number		Mortgagee	
Amount of Mortgage Note		Date	
Mortgage Recorded	State	County	Date
	Book	Page	Originally endorsed for insurance under Section

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
between \_\_\_\_\_  
whose address is \_\_\_\_\_

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors (hereinafter referred to as Secretary).

In consideration of the endorsement for insurance by the Secretary of the above described note or in consideration of the consent of the Secretary to the transfer of the mortgaged property or the sale and conveyance of the mortgaged property by the Secretary, and in order to comply with the requirements of the National Housing Act, as amended, and the Regulations adopted by the Secretary pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage, or during any time the Secretary is obligated to insure a mortgage on the mortgage property:

1. Owners, except as limited by paragraph 17 hereof, assume and agree to make promptly all payments due under the note and mortgage.
2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Secretary of an amount equal to \$ \_\_\_\_\_ per month unless a different date or amount is approved in writing by the Secretary.

Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Secretary. In the event that the owner is unable to make a mortgage note payment on the due date and that payment cannot be made prior to the due day of the next such installment or when the mortgagee has agreed to forgo making an election to assign the mortgage to the Secretary based on a monetary default, or to withdraw an election already made, the Secretary is authorized to instruct the mortgagee to withdraw funds from the reserve fund for replacements to be applied to the mortgage payment in order to prevent or cure the default. In addition, in the event of a default in the terms of the mortgage, pursuant to which the loan has been accelerated, the Secretary may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.

- (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by the Secretary.

3. Real property covered by the mortgage and this agreement is described in Schedule A attached hereto.

(This paragraph 4 is not applicable to cases insured under Section 232.)

4. (a) Owners shall make dwelling accommodation and services of the project available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing by the Secretary, for any project subject to regulation of rent by the Secretary. Accommodations shall not be rented for a period of less than thirty (3) days, or, unless the mortgage is insured under Section 231, for more than three years. Commercial facilities shall be rented for such use and upon such terms as approved by the Secretary. Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the tenant thereof, shall be prohibited without prior written approval of Owners and the Secretary and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Secretary thereof.
- (b) Upon prior written approval by the Secretary, Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule. Approval of charges for facilities and services is not required for any project not subject to regulation of rent by the Secretary.
- (c) For any project subject to regulation of rent by the Secretary, the Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

- (i) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Owners have no effective control or;
  - (ii) Deny the increase stating the reasons therefor.
5. (a) If the mortgage is originally a Secretary-held purchase money mortgage, or is originally endorsed for insurance under any Section other than Sections 231 or 232 and is not designed primarily for occupancy by elderly persons, Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.
- (b) If the mortgage is originally endorsed for insurance under Section 221, Owners shall in selecting tenants give to displaced persons or families an absolute preference or priority of occupancy which shall be accomplished as follows:
- (1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by the Secretary, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants;
  - (2) Thereafter, and on a continuing basis, such preferred applicants shall be given preference over nonpreferred applicants in their placement on a waiting list to be maintained by the Owners; and
  - (3) Through such further provisions agreed to in writing by the parties.
- (c) Without the prior written approval of the Secretary not more than 25% of the number of units in a project insured under Section 231 shall be occupied by persons other than elderly persons.
- (d) All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of the Owners to obtain occupancy by elderly persons.
6. Owners shall not without the prior written approval of the Secretary:
- (a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property.
  - (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from surplus cash, except for reasonable operating expenses and necessary repairs.
  - (c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property.
  - (d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project.
  - (e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except surplus cash and except on the following conditions:
    - (1) All distributions shall be made only as of and after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction;
    - (2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;
    - (3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds; and
    - (4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.
  - (f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project.
  - (g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.
  - (h) Permit the use of the dwelling accommodations or nursing facilities of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Secretary.
7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.
8. Owners shall not file any petition in bankruptcy or for a receiver or in insolvency or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy or the taking possession of the mortgaged property or any part thereof by a receiver or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale, and fail to have such adverse actions set aside within forty-five (45) days.
9. (a) Any management contract entered into by Owners or any of them involving the project shall contain a provision that, in the event of default hereunder, it shall be subject to termination without penalty upon written request by the Secretary. Upon such request Owners shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Secretary for continuing proper management of the project.
- (b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
- (c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Secretary or his

- duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Secretary or his duly authorized agents.
- (d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Secretary.
- (e) Within sixty (60) days following the end of each fiscal year the Secretary shall be furnished with a complete annual financial report based upon an examination of the books and records of mortgagor prepared in accordance with the requirements of the Secretary, prepared and certified to by an officer or responsible Owner and, when required by the Secretary, prepared and certified by a Certified Public Accountant, or other person acceptable to the Secretary.
- (f) At request of the Secretary, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.
- (g) All rents and other receipts of the project shall be deposited in the name of the project in a financial institution, whose deposits are insured by an agency of the Federal Government. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash as permitted by paragraph 6(e) above. Any Owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall hold such funds in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.
- (h) If the mortgage is insured under Section 232:
- (1) The Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as a nursing home and shall not lease all or part of the project except on terms approved by the Secretary.
  - (2) The Owners shall suitably equip the project for nursing home operations.
  - (3) The Owners shall execute a Security Agreement and Financing Statement (or other form of chattel lien) upon all items of equipment, except as the Secretary may exempt, which are not incorporated as security for the insured mortgage. The Security Agreement and Financing Statement shall constitute a first lien upon such equipment and shall run in favor of the mortgagee as additional security for the insured mortgage.
    - (i) If the mortgage is insured under Section 231, Owners or lessees shall at all times maintain in full force and effect from the state or other licensing authority such license as may be required to operate the project as housing for the elderly.
10. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, or national origin, including Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 82 Stat. 73), as amended, Executive Order 11063, and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development implementing these authorities (including 24 CFR Parts 100, 107 and 110, and Subparts I and M of Part 200).
11. Upon a violation of any of the above provisions of this Agreement by Owners, the Secretary may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Secretary, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as the Secretary determines is necessary to correct the violation, without further notice the Secretary may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Secretary may:
- (a) (i) If the Secretary holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;
  - (ii) If said note is not held by the Secretary - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Secretary as provided in the Regulations;
  - (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Owners' obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project.
  - (c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Secretary in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage.
  - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Secretary arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.
12. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Secretary because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Secretary their rights to the rents, profits, income and charges of whatsoever sort which they may receive or be entitled to receive from the operation of the

mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

**13.** As used in this Agreement the term:

- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", "Security Instrument", and any other security for the note identified herein, and endorsed for insurance or held by the Secretary;
- (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (c) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors, heirs and assigns;
- (d) "Mortgaged Property" includes all property, real, personal or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Secretary;
- (e) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto;
- (f) "Surplus Cash" means any cash remaining after:
  - (1) the payment of:
    - (i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;
    - (ii) All amounts required to be deposited in the reserve fund for replacements;
    - (iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary; and
  - (2) the segregation of:
    - (i) An amount equal to the aggregate of all special funds required to be maintained by the project; and
    - (ii) All tenant security deposits held.
- (g) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project.

(h) "Default" means a default declared by the Secretary when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Secretary after written notice;

(i) "Section" refers to a Section of the National Housing Act, as amended.

(j) "Displaced persons or families" shall mean a family or families, or a person, displaced from an urban renewal area, or as the result of government action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970.

(k) "Elderly person" means any person, married or single, who is sixty-two years of age or over.

**14.** This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Secretary and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Secretary shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

**15.** Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

**16.** The invalidity of any clause, part or provisions of this Agreement shall not affect the validity or the remaining portions thereof.

**17.** The following Owners:

Do not assume personal liability for payments due under the note and mortgage, or for the payments to the reserve for replacements, or for matters not under their control, provided that said Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

(a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and

(b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

**(To be executed with formalities for recording a deed to real estate.)**

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INSTRUCTIONS FOR PREPARATION OF  
FHA FORM NO. 2580

Purpose. This is an administrative form used as a worksheet to redetermine the maximum insurable mortgage amount resulting from actual project costs after completion.

Prepared by. Mortgage Credit Section

Number. One copy.

Distribution. As noted in basic instructions plus one copy to HEW regional office.

After completion and before final endorsement of the mortgage, the Mortgage Credit Section shall redetermine the maximum insurable mortgage amount based on the actual costs of the hospital as determined and reported to the HUD office by the HEW regional office.

Upon receipt of the actual costs from HEW, the Form will be completed as in basic instructions, except as follows:

Item 1. Complete as in basic instructions except when HUD, upon advice from HEW has approved a mortgage increase to cover the cost of significant betterments to the mortgage security. If such approval is given, modify Item (1) to show the amount of increase approved. Add the increase to the original mortgage amount and show the total on the line representing the "adjusted original mortgage amount."

Item 2 and 3. Leave blank.

Item 4. Change to read "Actual Cost Determined by HEW." If the summary of the actual costs furnished by HEW does not include the discount on the mortgage and AMPO (nonprofit projects only), these amounts should be added to the total given by HEW and the product entered for this item.

Item 5. New Construction. Enter the as-is value of land from Item A.11 on Form 2264(Hosp.).

Rehabilitation. When the property is owned, leave blank (see Item 8).

If the property was acquired, enter the lesser of:

(a) Item A.12, Form 2264(Hosp.) or (b) the actual purchase price of the land and improvements before rehabilitation.

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FIGURE 23

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Item 6. Enter the sum of Items 4 and 5.

Item 7. Insert 90% (100% is rehabilitation - property owned) in the space provided for the percentage. Multiply Item 6 by this percentage and record the result.

Item 8. Complete this item only in rehabilitation cases when the property was owned by the mortgagor or sponsors prior to rehabilitation and is subject to outstanding indebtedness. Enter the lesser of:

- (i) the amount of existing indebtedness against the property, or
- (ii) 90% of the as-is market value of the land and improvements before rehabilitation (Item A.12, Form 2264(Hosp.)).

Item 9. Enter the sum of Item 7 and, if applicable, Item 8.

Item 10. Enter the amount of Item 1 or item 9 whichever is lesser, except when a grant is involved and the sum of Item 9 and the grant exceeds Item 6 plus Item 8 (if any). In such cases, make the following computations on the reverse side of this form prior to completing Item 10 to determine the amount of reduction in the insurable mortgage. Otherwise, enter in Item 10 the lesser of Item 1 or Item 9.

Computation

Step 1. Add the entry for Item 9 to the amount of grant and show the total.

Step 2. Record Item 6. If Item 8 is applicable, add Item 6 and Item 8 and show the total for Step 2.

Step 3. Subtract Item 6 (or the sum of Item 6 and Item 8 if applicable) from the total in Step 1 and show the remainder which will represent the excess of funds (mortgage and grant) over the total actual cost.

Step 4. Subtract the excess determined in Step 3 from Item 9 and enter the remainder as Item 10, Maximum Insurable Mortgage.

NOTE. Form 2580 will be used merely as a worksheet and the result of the redetermination shall be furnished the mortgagor, mortgagee and HEW in a letter signed by the HUD area director or his deputy.

In cases where a letter of credit on a nonprofit project has been accepted by the mortgagee in lieu of a cash escrow deposit and the redetermination of the insurable mortgage results in a decrease in the original mortgage amount, refer to the instructions for Form 2403, under Final Advance.

# Maximum Insurable Mortgage

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

Project Name		Project Number
To Lender (Mortgagee)	Borrower (Mortgagor)	
Street Address	Street Address	
City & State	City & State	

Dear Sirs:

Pursuant to the Agreement and Certification executed in connection with the above project, this office has reviewed the mortgagor's certified statement of actual cost and in reliance thereon has made certain related determinations as required under Section 227 of the National Housing Act. Accordingly, HUD will finally endorse, the above project, secured by a first mortgage upon the land and property included in the project, in an amount not to exceed that set forth herein below.

It is understood, however, that any estimated items of cost may result in a further reduction of the mortgage when the actual costs are established, that such a reduction, if any, must be made in accordance with the aforesaid Agreement and Certification, and that acceptance of items "to be paid in cash within 45 days after final endorsement" is conditioned upon proof of payment of such items in cash. Failure to comply with this requirement may result in a mandatory mortgage reduction.

Pursuant to Section 227 of the National Housing Act, all items approved herein are final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor, as of the date of the final endorsement, except that items shown on Form HUD-92330 to be paid within 45 days, shall not be considered final and incontestable until the date of HUD's Recomputation of the mortgage based upon its Reconciliation of the "to be paid items" with actual receipts.

- |  |          |          |
|--|----------|----------|
| 1. (a) Original Mortgage Amount  |          | \$ _____ |
| (b) Less: Effect of Construction Changes, if any   | \$ _____ |          |
| (c) Unused Contingency Reserve, if any (Rehabilitation)  | \$ _____ |          |
| (d) Other: _____   | \$ _____ |          |
| (e) Total Deductions from Original Mortgage Amount   |          | \$ _____ |
| (f) Adjusted Original Mortgage Amount  |          | \$ _____ |
| 2. Certified "Actual Cost" (From Form HUD-92330)   | \$ _____ |          |
| 3. Disallowed Amounts (Schedule 2)   | \$ _____ |          |
| 4. Recognized "Actual Cost" of Improvements  | \$ _____ |          |
| 5. Land (New Construction & Substantial Rehabilitation Involving an Acquisition)                   | \$ _____ |          |
| 6. <b>Total Land and Improvements</b>  | \$ _____ |          |
| 7. Statutory Percentage of Total Cost ( _____% x Item 6)   | \$ _____ |          |
| 8. For Substantial Rehabilitation-Property Owned, enter the Lesser of:                             |          |          |
| (i) \$ _____ Existing Mortgage Indebtedness (Land and Improvements)                                |          |          |
| or   |          |          |
| (ii) _____% x \$ _____ AS IS Value of Land and Improvements (before repair or rehabilitation)      | \$ _____ |          |
| 9. <b>Total</b> —line 7 plus line 8, (if applicable)   |          | \$ _____ |
| 10. Maximum Insurable Mortgage in Multiples of \$100 (item 1(f) or item 9 whichever is the lesser) |          | \$ _____ |
| if Grants involved see attached sheet to this form for Reconciliation of Adjustments, if required  |          |          |

**Schedule 1.** Approval of the Maximum Insurable Mortgage, as stated on Line 10, is conditioned upon the following:

- A. At final closing, satisfactory evidence must be provided that the "to be paid" items listed on form HUD-92330 have been paid or an escrow established to satisfy those items remaining to be paid.

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**Schedule 1** (continued)

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**Schedule 2.** Disallowed Costs

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**Schedule 3.** Computation of Mortgagor's Initial Equity Investment

- |   |          |
|---|----------|
| 1. Total Land and Improvements (Line 6 above)       | \$ _____ |
| 2. Less: Maximum Insurable Mortgage (Line 10 above) | \$ _____ |
| 3. Mortgagor's Initial Equity Investment            | \$ _____ |

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**Schedule 4.** Tentative Disallowances. Those items which appear below are classified as tentative disallowances and may be recognized and approved as certifiable costs subsequent to the issuance of this form provided that satisfactory clarifying documentation is submitted within 30 days. Whether or not these items are subsequently approved will have no effect on the maximum insurable mortgage listed on line 10 of this form.

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**Assistant Secretary for Housing / FHA Commissioner**

Name of Authorizing Agent

Signature of Authorizing Agent

Date

MEMORANDUM OF AGREEMENTSECTION 242, NATIONAL HOUSING ACT(MORTGAGE INSURANCE FOR NONPROFIT HOSPITALS)I - INTRODUCTION

For the purpose of administering Section 242 of the National Housing Act, as amended, to provide mortgage insurance assistance in the construction and modernization (rehabilitation) of nonprofit hospitals, the Department of Housing and Urban Development and the Department of Health, Education, and Welfare, hereby agree to the allocation of functions, as well as the policies, procedures, and joint working arrangements, as set forth in this memorandum.

II - RESPONSIBILITIES AND PROCEDURES

- A. The Department of Housing and Urban Development hereby delegates to the Department of Health, Education, and Welfare, the authority to review proposals for mortgage insurance for nonprofit hospitals under Section 242 of the National Housing Act, as amended. The Department of Health, Education, and Welfare in turn, through the health Facilities Planning and Construction Service of the Health Services and Mental Health Administration, will process such proposals and make determinations of approvability in accordance with the following criteria:

1. The appropriate provisions of Title VI of the Public Health Service Act; consistency with the applicable State plan; the quality of the proposed program of services; the feasibility of the staffing pattern within the proposals; the nonprofit status of the prospective mortgagor; the ability of the facility to provide a community service; mortgage credit and architectural review; the reasonableness of construction and equipment costs; the appropriateness of the size, type, location and need for the hospital; the ability of the mortgagor to amortize the mortgage from the projected income and expense; to make inspections during construction; and when found necessary, review and approve construction change orders.

FIGURE 24

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2. The criteria used by the Department of Health, Education, and Welfare in the administration of Title VI of the Public Health Service Act in respect to standards for construction and equipment, construction contract bidding, lump sum contracts and contractors bond requirements will be employed in the administration of this program.
- B. In all cases of group practice sponsors, the Health Services and Mental Health Administration, Department of Health, Education, and Welfare, will also insure that initial review of the proposal will be directed to the determination of the viability of the group practice organization seeking mortgage insurance assistance. This will include an examination and evaluation of the proposed program to be provided, the proposed medical and supportive staffing patterns, and a determination that there is a defined population to be served by the group practice program.
  - C. In the case of modernization (rehabilitation) projects, or projects for the addition to an existing structure, the Department of Health, Education, and Welfare will provide a determination of the value of the existing structure and equipment, and in the case of a project for the construction of a new facility, provide a determination of the value of the land.
  - D. The Department of Health, Education, and Welfare will take appropriate steps to assure compliance with the applicable provisions of Sec. 212(a) of the National Housing Act, as amended (12 USC 1714c(a)).
  - E. The determinations by the Department of Health, Education, and Welfare in accordance with the criteria set forth in this Agreement shall be the basis on which mortgage insurance will be provided by the Federal Housing Administration of the Department of Housing and Urban Development, and no such insurance shall be provided unless the project has been approved by the Department of Health, Education, and Welfare in accordance with such criteria.
  - F. After a full review and approval of a project proposal by the Health Services and Mental Health Administration, Department of Health, Education and Welfare in accordance with this Agreement, the Federal Housing Administration of the Department of Housing and Urban Development will process the application from the mortgagee; issue the insurance commitment; endorse the mortgage note initially and finally; and approve mortgage advances.

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- G. The Federal Housing Administration will pay the Department of Health, Education, and Welfare for the costs of the services rendered by the Department under this Agreement. Such payments will be made in accordance with an annual budget to be agreed upon in advance by the two Departments. Such payments will be made promptly upon receipt of billings to be submitted at such times as may be agreed upon by the two Departments. Such budgets and payment plans may be revised from time to time, at the initiative of either party, to reflect changes in workload or volume in fees collected by the Federal Housing Administration.
- H. This Agreement is subject to the Department of Health, Education, and Welfare obtaining sufficient employment ceiling authority from the Bureau of the Budget.

IV - RENEGOTIATION

This agreement may be renegotiated from time to time as either party deems appropriate.

\_\_\_\_\_  
 Secretary  
 Department of Health, Education, and Welfare

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Secretary  
 Department of Housing and Urban Development

\_\_\_\_\_  
 Date

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FIGURE 24

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AMENDMENT TO THE MEMORANDUM OF AGREEMENT

SECTION 242, NATIONAL HOUSING ACT

The Memorandum of Agreement signed by the Secretary of the Department of Health, Education, and Welfare on January 17, 1969, and by the Secretary of the Department of Housing and Urban Development on January 18, 1969, for administering Section 242 of the National Housing Act is hereby amended to include proprietary hospitals.

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Secretary  
Department of Health, Education, and Welfare

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Date

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Secretary  
Department of Housing and Urban Development

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Date