

**REMS ID: 800020793**

# **HAP Housing Assistance Payment Original Contract**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM  
DISPOSITION OF PREVIOUSLY HUD-OWNED PROJECTS

PART I OF THE

HOUSING ASSISTANCE PAYMENTS CONTRACT

Type of Project: Private-Owner X or PHA-Owner \_\_\_\_\_  
Partly Assisted Project X or Totally Assisted Project \_\_\_\_\_  
Substantial Rehabilitation \_\_\_\_\_ or Moderate Rehabilitation \_\_\_\_\_ or Neither \_\_\_\_\_

Type of Financing: NA

[For example: HUD-insured; GNMIA tandem; purchase money mortgage;  
not HUD-insured.]

ACC/HAP CONTRACT LIST NUMBER AND DATE: FW-90-442, September 29, 1990

SECTION 8 PROJECT NUMBER: TX24-E000-008

FHA PROJECT NUMBER (if applicable): NA

This Housing Assistance Payments Contract (Contract) is entered into between the United States of America acting through the Department of Housing and Urban Development (HUD) and TEXAS-COPPERTREE VILLAGE LIMITED PARTNERSHIP

(Owner) pursuant to the U.S. Housing Act of 1937 (Act), 42 U.S.C. 1437, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq. The purpose of this Contract is to provide housing assistance payments on behalf of Eligible Families leasing decent, safe and sanitary units from the Owner.

1.1 SIGNIFICANT DATES AND OTHER ITEMS; CONTENTS AND SCOPE OF CONTRACT.

(a) Effective Date of Contract: STAGE 1 ✓ November 3 ✓ 1990  
STAGE 2 ✓ December 3 ✓ 1990

(b) Fiscal Year. The ending date of each Fiscal Year shall be Dec. 31

\_\_\_\_\_. [Insert March 31, June 30, September 30, or December 31, as approved by HUD.] The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year which is not less than 12 months after the effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in section 1.1(c) will be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

(c) Maximum Annual Contract Commitment. The maximum annual amount of the commitment for housing assistance payments under this Contract (see section 2.3) is the amount of contract authority identified in Exhibit 3.

(d) Project Description.

Project consists of 19 two-story buildings with 324 1-, 2-, and 3-bedroom units of which 263 will be assisted.

(a) Statement of Services, Maintenance and Utilities Provided by the Owner.

(1) Services and Maintenance:

All ordinary and extraordinary maintenance on structures and grounds, as well as trash pickup.

(2) Equipment:

Ranges, refrigerators, air conditioning, kitchen exhaust fans, carpet, drapes, disposal dishwasher.

(3) Utilities:

Water, sewer, and hot water

(4) Other:

Laundry facilities and swimming pool

(f) Contents of Contract. This Contract consists of Part I, Part II (except as indicated in section 1.4), and the following exhibits:

- Exhibit 1: The schedule showing the number of units by size (Contract Units) and their applicable rents (Contract Rents).
- Exhibit 2: Daily Debt Service (for substantial rehabilitation projects only). (If the project is not permanently financed when the Contract is executed, this exhibit should be added when the necessary information becomes available.)
- Exhibit 3: The schedule showing contract and budget authority.
- Exhibit 4: The Affirmative Fair Housing Marketing Plan, if applicable.
- Exhibit 5: The approved Purchase and Use Plan including a project description and the tenant selection factors. Exhibit 5 may incorporate these items by reference, specify the location of the items, and list them, including any amendments.
- Exhibit 6: HUD standards for decent, safe and sanitary housing.

Additional exhibits: [Specify additional exhibits, if any, such as Special Conditions for Acceptance. If none, insert "None."]

- (g) Scope of Contract. This Contract, including the exhibits, whether attached or incorporated by reference, comprises the entire agreement between the Owner and HUD with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Contract, any applicable regulations, and agreements entered into in writing by the parties which are not inconsistent with this Contract.

1.2 TERM OF CONTRACT; OBLIGATION TO OPERATE PROJECT FOR FULL TERM.

- (a) Term of Contract. The term of this Contract for any unit shall be 15 years, beginning with the effective date of this Contract for such unit. [Insert number approved by HUD in accordance with the HUD regulations.] If the project is completed in stages, the term shall be separately related to the units in each stage. However, the

total Contract term for all the stages, beginning with the effective date of the Contract for the first stage, shall not exceed the Contract term for any unit, plus two years.

- (b) Obligation to Operate Project for Full Term. The Owner agrees to continue operation of the project in accordance with this Contract for the full term specified in paragraph (a).

### 1.3 HUD ASSURANCE.

The execution of this Contract by HUD is an assurance by HUD to the Owner that:

- (a) The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to this Contract, and

- (b) HUD has obligated funds for these payments.

### 1.4 APPLICABILITY OF CERTAIN PROVISIONS OF THIS CONTRACT.      Applic.      Not Applic.

- (a) 2.4(i). Payments to Trustee by PHA as Lender.  
Applicability: Not applicable.

X

- (b) (1) 2.7(f). Adjustment of Contract Rents Based on Cost Certification. Applicability: Applicable. If the Contract Rents are adjusted under section 2.4 of the Agreement, section 2.7(f) should be changed to "not applicable" when the Contract is executed.

X

- (2) 2.7(g). Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Financing Not Subject to Part 811 or Paragraph (f). Applicability: Not applicable.

X

- (3) 2.7(h). Adjustment of Contract Rents: Part 811. Applicability: Not applicable.

X

- (c) 2.13. Training, Employment and Contracting Opportunities. Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$500,000.

X

- (d) 2.14. Flood Insurance. Applicability: All projects in special flood hazard areas.

- (e) 2.15. Clean Air and Federal Water Pollution Control Acts. Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$100,000.

X

1.5 OWNER'S FAILURE TO COMPLY WITH CONTRACT.

In addition to other remedies available to HUD under this Contract, the Agreement to Enter into Housing Assistance Payments Contract, or the Regulatory Agreement for a default by the Owner, the Owner and HUD agree that if the Owner fails to comply with the requirements of this Contract, HUD may rescind the sale of the project or take other appropriate action in accordance with section 2.21.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

OWNER ~~TEXAS~~ COPPERTREE VILLAGE LIMITED  
PARTNERSHIP

By

\*

(Official Title)

Date November 3, 19 90

United States of America  
Secretary of Housing and  
Urban Development

By

\*

ACTING MANAGER - HOUSTON OFFICE, TX  
(Official Title)

Date November 3, 19 90

\* Type name of signatory under signature line.

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 1

This Contract is hereby executed with respect to the units described in Exhibit 1a.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1a is November 3, 1990.

United States of America  
Secretary of Housing and  
Urban Development

By William Robert Taylor  
ACTING MANAGER, HOUSTON OFFICE, TEXAS  
(Official Title)

Date November 3, 1990

OWNER TEXAS-COPPERTREE VILLAGE LIMITED

PARTNERSHIP  
By NEPSA PROPERTY INVESTORS, INC.  
Its General Partner

(Official Title)  
Harold Grinspoon, Its President  
Date November 3, 1990

SEE ATTACHED LIST

~~EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES~~

~~Stage 2~~

~~This Contract is hereby executed with respect to the units described in Exhibit 1b.~~

~~EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1b is \_\_\_\_\_, 19\_\_\_\_.~~

~~United States of America  
Secretary of Housing and  
Urban Development~~

~~By \_\_\_\_\_  
(Official Title)~~

~~Date \_\_\_\_\_, 19\_\_\_\_~~

~~OWNER \_\_\_\_\_~~

~~By \_\_\_\_\_~~

~~(Official Title)~~

~~Date \_\_\_\_\_, 19\_\_\_\_~~

~~EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES~~

~~Stage 3~~

~~This Contract is hereby executed with respect to the units described in Exhibit 1a.~~

~~EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1a is \_\_\_\_\_, 19\_\_\_\_.~~

~~United States of America  
Secretary of Housing and  
Urban Development~~

~~By \_\_\_\_\_  
(Official Title)~~

~~Date \_\_\_\_\_, 19\_\_\_\_~~

~~OWNER \_\_\_\_\_~~

~~By \_\_\_\_\_~~

~~(Official Title)~~

~~Date \_\_\_\_\_, 19\_\_\_\_~~

STAGE  
1

(1) Bedrooms

607 ✓  
604 ✓  
613 ✓  
1208 ✓  
1705 ✓  
1911 ✓  
1905 ✓  
1006 ✓  
1012 ✓  
1013 ✓  
1014 ✓  
1015 ✓  
1701 ✓  
1703 ✓  
1704 ✓  
1706 ✓  
1708 ✓  
1904 ✓  
811 ✓  
911 ✓  
914 ✓  
727 ✓  
713 ✓  
712 ✓  
711 ✓  
708 ✓  
707 ✓  
706 ✓  
703 ✓  
125 ✓  
131 ✓  
133 ✓  
141 ✓  
204 ✓  
206 ✓  
207 ✓  
211 ✓  
212 ✓  
213 ✓  
304 ✓  
403 ✓  
404 ✓  
407 ✓  
501 ✓  
503 ✓  
504 ✓  
506 ✓

519 ✓  
1202 ✓  
1205 ✓  
1206 ✓  
1301 ✓  
1305 ✓  
1306 ✓  
1502 ✓  
1505 ✓  
1506 ✓  
1511 ✓  
1801 ✓  
1802 ✓  
1803 ✓  
1804 ✓  
1805 ✓  
1807 ✓

(64)

(2) Bedrooms

1605 ✓  
1916 ✓  
1007 ✓  
1008 ✓  
1009 ✓  
1010 ✓  
1901 ✓  
1907 ✓  
1908 ✓  
1910 ✓  
1909 ✓  
601 ✓  
602 ✓  
610 ✓  
807 ✓  
808 ✓  
809 ✓  
801 ✓  
1108 ✓  
1109 ✓  
1105 ✓  
1101 ✓  
1104 ✓  
731 ✓  
717 ✓  
715 ✓  
714 ✓  
702 ✓  
701 ✓  
107 ✓  
115 ✓  
121 ✓  
124 ✓  
202 ✓  
302 ✓  
312 ✓  
515 ✓  
516 ✓  
536 ✓  
537 ✓  
538 ✓  
543 ✓  
1403 ✓  
1404 ✓  
1406 ✓  
1411 ✓  
1413 ✓

(49)

(3) Bedrooms

1408 ✓

(1)

## EXHIBIT 1/STAGE 1

## SCHEDULE OF CONTRACT UNITS AND CONTRACT RENTS

Number of Bedrooms      Number of Units

1                      64 ✓  
2                      49 ✓  
3                      1 ✓

114 Total

Household Type      Contract      Utilities      Gross  
(elderly, non-      Rent           Rent  
elderly family,  
large nonelderly  
family)

Family      ~~\$250~~ <sup>\* 260</sup>      \$35      \$295  
Family      350      45      395  
Family      395      53      448

\* See Contract Amendment  
dated 3/18/91 from  
PD, Richard Mays.  
correcting to \$260  
Byrd

2-12-91

Per Fred Fuentes, HD,  
Richard Mays has been  
notified of this error.  
PD Branch needs to  
provide correction.

NOTE: The Sec. 8  
HAP ACC/HAP Contract List  
(List Number FW90-442)

had gross rent \$295.

for 1BR; however,  
250 + 35 does not  
equal 295.

1/

This Exhibit must be completed and attached to the Contract at the time the Agreement is executed. It may, however, be amended in accordance with program rules before the Contract is executed. When Contract Rents are amended (e.g. at the time of an annual adjustment) this format should be used.

2/

If less than 100 percent of the units in the project are covered by this Contract, identify specific units to be leased at initial rent-up to eligible families. See section 2.8(c)(6).



This Contract is hereby executed with respect to the units described in Exhibit 1a.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1a is November 3, 1990.

United States of America  
Secretary of Housing and  
Urban Development

OWNER TEXAS-COPPERTREE VILLAGE LIMITED  
PARTNERSHIP  
By NEPSA PROPERTY INVESTORS, INC.  
Its General Partner.

By \_\_\_\_\_  
ACTING MANAGER, HOUSTON OFFICE, TEXAS  
(Official Title)

(Official Title)  
Harold Grinspoon, Its President  
Date November 3, 1990

Date November 3, 1990

SEE ATTACHED LIST

EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 2

This Contract is hereby executed with respect to the units described in Exhibit 1b.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1b is December 3, 1990.

United States of America  
Secretary of Housing and  
Urban Development

OWNER TEXAS-COPPERTREE VILLAGE LIMITED  
PARTNERSHIP  
By NEPSA PROPERTY INVESTORS, INC.  
(Its General Partner)

By [Signature]  
ACTING MANAGER, HOUSTON, TEXAS  
(Official Title)

(Official Title)  
Harold Grinspoon, President  
Date December 3, 1990

Date December 3, 1990

EXECUTION OF CONTRACT WITH RESPECT TO  
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 3

This Contract is hereby executed with respect to the units described in Exhibit 1a.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1a is \_\_\_\_\_, 19\_\_\_\_.

United States of America  
Secretary of Housing and  
Urban Development

OWNER \_\_\_\_\_  
By \_\_\_\_\_

By \_\_\_\_\_  
(Official Title)

(Official Title)  
Date \_\_\_\_\_, 19\_\_\_\_

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

# HUNTINGTON FOREST

STAGE  
2

## (1) BEDROOMS

105 533  
106 540  
110 606  
118 608  
120 614  
126 705  
132 709  
140 720  
203 804  
211 813  
214 814  
303 903  
304 904  
309 1005  
405 1111  
410 1113  
505 1114  
517 1115  
518 1116  
520 1201  
525 1203  
526 1207  
527 1302  
531 1304  
532

49

## (2) BEDROOMS

113 529  
116 534  
122 544  
129 716  
130 718  
134 724  
135 806  
137 815  
138 816  
201 901  
216 906  
401 907  
411 908  
502 910  
507 916  
512 1102  
513 1103  
514 1403  
522  
523  
524

39

## (3) BEDROOMS

1401  
1409

2

## EXHIBIT 1/STAGE 2

## SCHEDULE OF CONTRACT UNITS AND CONTRACT RENTS

Number of Bedrooms	Number of Units	Household Type (elderly, non- elderly family, large nonelderly family)	Contract Rent	Utilities	Gross Rent
1	49 ✓	Family	\$250	\$35	\$295
2	39 ✓	Family	350	45	395
3	2 ✓	Family	395	53	448

90 total

Per Fred Fuentes, HD,  
Richard Mays was  
told 2 this error  
PD Branch needs  
to process correction.  
Note - The Sec. 8  
HAP ACC/HAP Contract List  
(List Number FA290-442)  
has gross rent \$295  
for 1 BR; However,  
 $250 + 35$  does not  
equal 295.

Byed  
2-11-91

1/

This Exhibit must be completed and attached to the Contract at the time the Agreement is executed. It may, however, be amended in accordance with program rules before the Contract is executed. When Contract Rents are amended (e.g. at the time of an annual adjustment) this format should be used.

2/

If less than 100 percent of the units in the project are covered by this Contract, identify specific units to be leased at initial rent-up to eligible families. See section 2.8(c)(6).

EXHIBIT 2  
DAILY DEBT SERVICE

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Daily Debt Service</u>
0	_____	\$_____
1	_____	\$_____
2	_____	\$_____
3	_____	\$_____
4	_____	\$_____
5	_____	\$_____

NOT APPLICABLE

This information is used for computing assistance payments for vacant units under section 2.4(e).

This Exhibit shows the initial and subsequent amount of contract and budget authority obligated in project number: TX24-E000-008. (The Housing Division shall furnish the Legal Division with the information necessary to complete this Exhibit, with appropriate supporting documentation including an ACC/HAP Contract List.)

	<u>Contract Authority</u>	<u>Budget Authority</u>
As of the Effective Date of Agreement:	<u>\$1,062,600</u>	<u>\$15,939,000</u>
Effective Date of Agreement Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____
Effective Date of Agreement Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____

	<u>Contract Authority</u>	<u>Budget Authority</u>
As of the Effective Date of Contract		
Effective Date of Contract Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____
Effective Date of Contract Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

PART II OF THE  
HOUSING ASSISTANCE PAYMENTS CONTRACT

By and between DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (CA) and  
TEXAS-COPPERTREE VILLAGE LIMITED PARTNERSHIP (Owner).

Check Type of Project: Private-Owner/HUD X or PHA-Owner/HUD \_\_\_\_\_  
(HUD is the Contract Administrator or "CA.")  
or Private-Owner/PHA \_\_\_\_\_  
(The PHA is the CA)

NEW CONSTRUCTION or SUBSTANTIAL REHABILITATION or PREVIOUSLY HUD-OWNED X  
Part 880 \_\_\_\_\_ Part 881 \_\_\_\_\_ Part 886, Subpart C \_\_\_\_\_  
Part 885 \_\_\_\_\_ Part 885 \_\_\_\_\_

SECTION 8 PROJECT NUMBER: TX24-E000-008

FHA PROJECT NUMBER (if applicable): NA

2.1 OWNER'S WARRANTIES; AMENDMENTS.

- (a) Legal Capacity. The Owner warrants that it has the legal right to execute this Contract and to lease dwelling units covered by this Contract.
- (b) Completion of Work. The Owner warrants that the project as described in section 1.1 is in good and tenantable condition and that the project has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract (Agreement) or will be completed in accordance with the Special Conditions for Acceptance (see attached exhibit, where applicable). The Owner further warrants that it will remedy any defects or omissions covered by this warranty if called to its attention within 12 months of the effective date of this Contract. The Owner and the CA agree that the continuation of this Contract shall be subject to the Owner meeting any Special Conditions for Acceptance.

2.2 FAMILIES TO BE HOUSED; CONTRACT ADMINISTRATOR (CA) ASSISTANCE.

- (a) Families To Be Housed. The Contract Units are to be leased by the Owner to eligible Lower-Income Families (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. (See also section 2.10.)

(b) CA Assistance.

- (1) The CA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable the Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act.
- (2) If there is a Utility Allowance and if the Allowance exceeds the total Family contribution, the Owner shall pay the Family the amount of the excess. The CA will pay funds to the Owner in trust solely for the purpose of making this payment. Any pledge by the Owner of payments properly payable under this Contract shall not be construed to include payments covered by this paragraph (b)(2). (See 24 CFR section 880.501(e), 881.501(e), or 886.309(a).)

2.3 MAXIMUM HOUSING ASSISTANCE COMMITMENT; PROJECT ACCOUNT.

- (a) Maximum Annual Contract Commitment. Notwithstanding any other provisions of this Contract (other than paragraph (b)(2) of this section) or any provisions of any other contract between the CA and the Owner, the CA shall not be obligated to make and shall not make any housing

assistance payments (or pay any fees where a PHA is a party to this Contract for the purpose of authorizing terminations in the case of previously HUD-owned projects) under this Contract in excess of the amount identified in section 1.1(c). However, this amount may be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents or pursuant to any other provisions of this Contract.

(b) Project Account.

- (1) A project account will be established and maintained by HUD, consistent with its responsibilities under section 8(c)(6) of the Act, as a specifically identified and segregated account for the project. The account will be established and maintained, in an amount determined by HUD, out of the amounts by which the Maximum Annual Contract Commitment under section 1.1(c) (for Private-Owner/ HUD or PHA-Owner/ HUD Projects) or Maximum ACC Commitment (for Private-Owner/ PHA Projects) exceeds the amount actually paid out under the Contract or ACC each fiscal year. Payments will be made from the account for housing assistance payments (and fees for PHA administration) when needed to cover increases in Contract Rents or decreases in tenant rents and for other costs specifically approved by the Secretary.
- (2) If funds are available in the project account, the maximum annual contribution payable for any fiscal year will be increased by the amount, if any, as may be required for housing assistance payments (and fees where the CA is a PHA) to cover increases in Contract Rents or decreases in rents payable by Families and other costs approved by HUD.
- (3) Whenever a HUD-approved estimate of the required annual contribution for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum annual commitment, HUD will, within a reasonable period of time, take such additional steps authorized by section 8(c)(6) of the U.S. Housing Act of 1937 as may be necessary to assure that payments under the Contract and ACC (if applicable) will be adequate to cover increases in Contract Rents and decreases in rents payable by Families, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."
- (4) Any amount remaining in the account after payment of the last annual contribution with respect to the project shall be applied by HUD in accordance with law.

2.4 HOUSING ASSISTANCE PAYMENTS TO OWNERS.

(a) Housing Assistance Payments on Behalf of Families.

- (1) Housing assistance payments shall be paid to the Owner for units under lease for occupancy by Families in accordance with the Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of the rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.
- (2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by the Family shall be subject to change by reason of changes in Family Income, Family composition, extent of exceptional medical or other unusual expenses or program rules in accordance with the HUD-established schedules and criteria; or by reason of a change in any applicable Utility Allowance approved or required by the CA. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease term.

- (b) Vacancies During Rent-up. If a Contract Unit is not leased as of the effective date of the Contract (or within 15 days of the effective date of this Contract in the case of previously HUD-owned projects), the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period

not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with section 2.2(d) of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on its waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit in a manner specifically designed to reach eligible families, (3) has not rejected any eligible applicant, except for good cause acceptable to the CA and (4) has with prior CA approval solicited for rental of one or more units to ineligible families if temporarily unable to lease all units for which assistance is committed under the Contract.

- (c) Vacancies after Rent-Up. If an eligible family vacates a unit, the Owner is entitled to housing assistance payments in the amount (except as provided in paragraph (d) of this section) of 80 percent of the Contract Rent for the first 60 days of vacancy if the Owner:
- (1) Certifies that it did not cause the vacancy by violating the lease, the Contract or any applicable law or by moving a Family to another unit;
  - (2) Notified the CA of the vacancy or prospective vacancy and the reasons for it immediately upon learning of the vacancy or prospective vacancy;
  - (3) Has fulfilled and continues to fulfill the requirements specified in paragraphs (b)(1), (2), and (3) and (4) of this section; and
  - (4) Certifies that any eviction resulting in a vacancy was carried out in compliance with section 2.9.
- (d) Payments for Vacancies after Initial Occupancy in Previously HUD-Owned Projects. In the case of previously HUD-owned projects, the Owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the Family's share of the rent for this period, the payment for the vacancy period must be reduced to an amount which, when added to the Family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. Paragraphs (c)(1) through (4) apply.
- (e) Vacancies for Longer than 60 Days. Except for previously HUD-owned projects not requiring substantial rehabilitation, if an assisted unit continues to be vacant after the period specified in paragraph (b), (c) or (d) of this section, the Owner may apply to receive additional payments for the vacancy period in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (see Exhibit 2) for up to 12 additional months for the unit if:
- (1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;
  - (2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b), (c) or (d) of this section, as appropriate; and
  - (c) The owner has demonstrated to the satisfaction of HUD that:
    - (i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and
    - (ii) The project can achieve financial soundness within a reasonable time.



(f) Prohibition of Double Compensation for Vacancy. The owner is not entitled to payments for vacant units to the extent it can collect for the vacancy from other sources (such as security deposits, other amounts collected from the Family, payments from the CA under section 2.8(b), and governmental payments under other programs). If the Owner collects any of the Family's share of the rent for a vacancy period in an amount which, when added to the vacancy payment, results in more than the Contract Rent, the excess must be reimbursed as HUD directs.

(g) CA Not Obligated for Family Rent. The CA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with section 2.8(b) of this Contract.

The financial obligation of the CA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

(h) Owner's Monthly Requests for Payments.

- (1) The Owner shall submit monthly requests to the CA or as directed by the CA for housing assistance payments. Each request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of each unit, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit 1 for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with section 2.2(b)(2)); and (v) the total amount of housing assistance payments requested by the Owner.
- (2) Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief (i) the dwelling units are in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, (iv) none of the amount claimed has been previously claimed or paid under this Contract, and (v) the Owner has not received and will not receive any payments or other consideration from the Family, the PHA, HUD, or any other public or private source for the unit beyond that authorized in this Contract and the lease.
- (3) If the Owner has received an excessive payment, the CA (or HUD where the CA is a PHA), in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.
- (4) The Owner's monthly requests for housing assistance payments are subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(i) Payments to Trustee by PHA Where It Is the Lender. (See section 1.4 for applicability of this paragraph.) The amount of the housing assistance payment determined in accordance with the provisions of this Contract, up to the amount of the mortgage repayments due the PHA from the Owner pursuant to the mortgage loan made by the PHA for the project, shall be credited to the Owner and transferred monthly by the PHA from the account maintained under the General Depositary Agreement pursuant to the ACC to the trustee under the note or bond resolution of the PHA under which the notes or bonds to provide the mortgage loan were issued. Any amount of the housing assistance payment in excess of such credit shall be paid by the PHA directly to the Owner.

## 2.5 MAINTENANCE, OPERATION AND INSPECTION.

- (a) Maintenance and Operation. The Owner agrees to maintain and operate the Contract Units, unassisted units, if any, and related facilities to provide Decent, Safe, and Sanitary housing including the provision of all the services, maintenance and utilities set forth in section 1.1(e). The Owner also agrees to comply with the lead-based paint regulations at 24 CFR Part 35. If the CA determines that the Owner is not meeting one or more of these obligations, the CA shall have the right to take action under section 2.21(b).
- (b) Inspection.
- (1) Prior to occupancy of any Contract Unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed or approved by the CA, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the forms. The Owner shall keep copies of these reports on file for at least three years.
- (2) The CA shall inspect or cause to be inspected the Contract Units and related facilities at least annually and at such other times (including prior to initial occupancy and re-renting of any unit) as may be necessary to assure that the Owner is meeting its obligation to maintain the units in Decent, Safe, and Sanitary condition including the provision of the agreed-upon utilities and other services. The CA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.
- (c) Units Not Decent, Safe, and Sanitary. If the CA notifies the Owner that it has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the CA may exercise any of its rights or remedies under the Contract, including reduction or suspension of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the CA does not have other section 8 funds for such purposes, the CA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of rent payable by the Family.
- (d) Notification of Abatement. Any reduction or suspension of housing assistance payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Family of any such abatement.
- (e) Overcrowded and Underoccupied Units. Where the CA determines a unit is larger or smaller than appropriate for an eligible family, the Owner agrees to correct the situation in accordance with HUD regulations and requirements in effect at the time of the determination.

## 2.6 FINANCIAL REQUIREMENTS.

- (a) Submission of Financial and Operating Statements.

The Owner must submit to the CA:

- (1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and
- (2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

- (b) Use of Project Funds.

- (1) Project funds must be used for the benefit of the project, to make mortgage payments, to pay operating expenses, to make required deposits to the replacement reserve in accordance with paragraph (c) of this section and to provide distributions

to the Owner as provided in paragraph (d). To the extent HUD determines that project funds are more than needed for these purposes, the surplus project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only with the approval of HUD and for project purposes, including the reduction of housing assistance payments. Upon termination of the Contract, any excess funds must be remitted to HUD.

- (2) In the case of HUD-insured projects, the provisions of this paragraph (b) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.

(c) Replacement Reserve.

- (1) The Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations.
- (i) The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of the Contract. For staged projects, the obligation shall commence on a pro rata basis for units in each stage on the effective date of the Contract for that stage. The amount of the deposit to the replacement reserve will be adjusted each year by the amount of the automatic annual adjustment factor. See 24 CFR Part 885.
- (ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.
- (iii) All earnings including interest on the reserve must be added to the reserve.
- (iv) Funds will be held by the Owner, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.
- (2) In the case of HUD-insured projects, the provisions of this paragraph (c) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially-assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.

(d) Limitation on Distributions.

- (1) Nonprofit owners are not entitled to distributions of project funds.
- (2) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:
- (i) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.
- (ii) For projects for nonelderly families, the first year's distribution will be limited to 10 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.

(3) For the purpose of determining the allowable distribution, an Owner's equity investment shall be computed in accordance with HUD regulations and requirements.

(4) Any short-fall in return may be made up from surplus project funds (see paragraph (b)(1)) in future years.

(5) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program regulations, except in the case of small, partially assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance regulations.

## 2.7 RENT ADJUSTMENTS.

(a) Funding of Adjustments. Housing assistance payments will be made in amounts commensurate with Contract Rent adjustments under this section up to the maximum amount authorized under section 2.3(a) of this Contract.

(b) Annual Adjustments.

(1) Upon request from the Owner to the CA, Contract Rents will be adjusted on the anniversary date of the Contract in accordance with 24 CFR 888 and this Contract. See, however, paragraph (d).

(2) In the case of previously HUD-owned projects, the Contract Rents shall be adjusted in accordance with 24 CFR 886, Subpart C and this Contract.

(3) Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the annual adjustment result in Contract Rents less than the Contract Rents on the effective date of the Contract.

(c) Special Additional Adjustments. Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, assessments, and utilities not covered by regulated rates. The Owner must demonstrate that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by annual adjustments. The Owner shall submit to HUD supporting data, financial statements and certifications which clearly support the increase. See, however, paragraph (d).

(d) Overall Limitation. Notwithstanding any other provision of this Contract, adjustments after Contract execution or cost certification, where applicable, shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD; except to the extent that the differences existed with respect to the Contract Rents set at Contract execution or cost certification, where applicable.

(e) Incorporation of Rent Adjustment. Any adjustment in Contract Rents shall be incorporated into Exhibit 1 by a dated addendum to the exhibit establishing the effective date of the adjustment.

(f) Adjustment of Contract Rents based on Cost Certification.  
(See section 1.4 for applicability of this paragraph.)

(1) Submission by Owner. Within 60 days after HUD accepts the project (or accepts the last stage, where applicable), or any extensions approved by HUD for good cause, the Owner will certify the actual costs estimated in the Final Proposal or Purchase and Use Plan of the replacement cost, operating expenses, income, and debt service, and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

- (1) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;
- (11) For projects not insured by HUD, a simplified form of cost certification as prescribed by HUD will be completed and submitted.
- (2) HUD Review. Cost certifications will be subject to review by HUD. As part of this review, the Owner and/or contractor may be required to submit additional documentation.
- (3) Reduction of Contract Rents. If the Owner's certified costs provided in accordance with paragraph (f)(1) of this section, as approved by HUD, are less than the cost estimates provided in the Final Proposal or Purchase and Use Plan, the Contract Rents will be reduced accordingly.
- (4) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (f)(3) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
- (g) Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Obligations Issued by a Participating State Agency Not Subject to Part 811 (See section 1.4 for applicability of this paragraph.) After the project is permanently financed, the financing agency shall submit a certification to HUD specifying the actual financing terms. If the actual debt service to the Owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents or the Contract Rents then in effect shall be reduced commensurately and the amount of savings credited to the project account. The maximum annual Contract commitment (and the maximum annual ACC commitment, in the case of Private-Owner/PHA projects) will not be reduced.
- (h) Adjustment of Contract Rents to Reflect Actual Cost for Projects Subject to Part 811. (See section 1.4 for applicability of this paragraph.)
  - (1) Submission by Owner and Financing Agency. The Owner and the financing agency shall submit certified statements as to the financing and other costs as required by Part 811 prior to final endorsement. Based on the certified statements, HUD will determine whether any reduction in initial Contract Rents is required under Part 811. Promptly after HUD notification, the Owner and the financing agency agree to amend the Contract to reduce the initial Contract Rents to the extent required by HUD. See sections 2.3(b)(5) and (6) of the Agreement, as appropriate.
  - (2) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (h)(1) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
  - (i) Adjustment of Contract Rents Due to Property Tax Exemption or Similar Savings. The Contract Rents may be reduced to reflect real property tax exemption or similar savings where the initial Contract Rents were approved on the assumption that the project would not receive the benefit of tax abatement or similar savings. The Owner agrees to notify the CA in the event such a project begins to receive such an exemption or similar savings so that the initial Contract Rents or the Contract Rents then in effect may be reduced.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM  
ADDITIONAL ASSISTANCE PROGRAM FOR PROJECTS WITH HUD-INSURED  
AND HUD-HELD MORTGAGES,  
24 C.F.R. PART 886, SUBPART A

HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

Term No. 1 Fiscal Year End 12/31

This Contract is between the United States of America, acting through the Department of Housing and Urban Development (called "HUD"), and Shannon Place, Ltd. (called "Owner"). This Contract is executed pursuant to the United States Housing Act of 1937 (called the "Act"), 42 U.S.C. 1437, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq. The housing project covered by this Contract is identified as follows:

Project Name: Huntington Forest City: Houston  
Street Address: 1415 W. Gulf Bank Road  
Section 8 No.: TX24-M000-078 County: Harris  
FHA Project No.: 114-11045 State: Texas

Section 1. Definitions

- a. Family — one or more persons eligible for and receiving Section 8 housing assistance payments in accordance with HUD regulations and administrative procedures.
- b. Contract Rent — the rent HUD authorizes the Owner to collect for the contract unit.
- c. Utility Allowance — an amount determined or approved by HUD as an allowance for the cost of utilities (except telephone).
- d. Gross Rent — the sum of the contract rent and any utility allowance. If there is no utility allowance, gross rent equals contract rent.
- e. Gross Family Contribution — the amount HUD regulations require the family to pay monthly towards the gross rent.
- f. Net Family Contribution — the Gross Family Contribution less any utility allowance. If this amount is positive, it represents the amount HUD regulations require the family to pay monthly to the Owner. If this amount is negative, the family makes no payment to the Owner. Instead, the Owner pays this amount monthly to the family.

Section 2. Content of Contract. This Contract includes the exhibits listed below and the Affirmative Fair Housing Marketing Plan approved by HUD on \_\_\_\_\_ which is incorporated by reference.

- o Exhibit A: Equal Opportunity Requirements
- o Exhibit B: Schedule of Units, Rents, Equipment, Utilities and Services
- o Additional Exhibits

Section 3. Scope of Contract. This Contract and its exhibits comprise the entire agreement between the parties to this Contract with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Contract, in any applicable regulations, in HUD's administrative procedures, or in agreements entered into in writing (e.g., the project Regulatory Agreement).

Section 4. Housing Owner's Certification of Authority. The Owner certifies that the Owner has the legal authority to enter into this Contract and to lease the dwelling units covered by this Contract.

Section 5. Term of Contract. This Contract shall run for a period of five years, beginning July 15, 1986, and continuing through July 14, 1991. This Contract may be renewed for None additional five-year periods at the option of the Owner and HUD.

Section 6. Maximum Amount of Housing Assistance Payments.

- a. Maximum Annual Contract Commitment. Notwithstanding any other provision of this Contract (other than paragraph b) or any other contract between HUD and the Owner, HUD shall not be obligated to make assistance payments and pay PHA fees, if any, in excess of \$ 135,900 under this Contract during any contract year. In addition, HUD shall not be obligated to pay assistance for more than the total number of contract units shown in Exhibit B.
- b. HAP Reserve (Formerly Project Account). In order to ensure that housing assistance payments will be increased on a timely basis to cover increases in contract rents or decreases in family incomes, HUD shall establish and maintain a HAP Reserve out of amounts by which the maximum annual contract commitment exceeds amounts paid under the Contract for any contract year. This Reserve shall be maintained in the name of the project. The amount of housing assistance paid for any contract year may exceed the maximum annual contract commitment specified in paragraph 6a to the extent unused contract authority is available in the HAP Reserve.

- (1) The HAP Reserve may be used only for payment of housing assistance payments or other costs specifically authorized by HUD.
- (2) If HUD at any time determines that the HAP Reserve has accumulated unused contract authority in excess of the amount the project will need through the current contract year, HUD may reduce the HAP Reserve by the amount that HUD determines to be excessive.
- (3) Any amount remaining in the HAP Reserve at the end of the term of this Contract shall be applied as directed by HUD in accordance with applicable law.

**Section 7. Housing Assistance Payments and PHA Fees.** HUD shall make payments for the purposes identified in this section. Eligibility for, and the amount of, any housing assistance payments will be determined in accordance with HUD's regulations and administrative procedures.

- a. **Monthly Rental Assistance.** For each contract unit occupied by an eligible family in accordance with this Contract, HUD will pay the Owner the difference between the HUD-approved gross rent and the Gross Family Contribution required by HUD regulations and administrative procedures. From this amount, the Owner will pay families any amounts due them pursuant to HUD regulations and administrative procedures and Section 15c of this Contract.
- b. **Compensation for Vacancy Loss.** If an occupied contract unit becomes vacant, HUD will pay the Owner 80 percent of the contract rent for up to the lesser of 60 calendar days following the date the unit became vacant or the actual number of days the unit remained vacant. Such payments will be made only in accordance with the following conditions and limitations.
  - (1) The Owner shall be entitled to vacancy payments under this paragraph b only if the Owner:
    - (a) immediately upon learning of the vacancy or prospective vacancy: (1) notified HUD of the vacancy and the reasons for the vacancy; and (2) took and continued to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on the waiting list and advising them of the availability of the unit;
    - (b) has not rejected any eligible applicant except for good cause acceptable to HUD;
    - (c) when the vacancy was created by the Owner's action, administered the termination of tenancy, eviction and all related notices in accordance with State and local law, the lease and HUD regulations and administrative procedures.
  - (2) HUD will pay vacancy payments only for those days on which the unit was in decent, safe and sanitary condition and available for occupancy.
  - (3) If the Owner collects other payments toward the rent due for the period HUD pays vacancy payments, the Owner shall pay to HUD, or pay as HUD directs, any amount by which the sum of the HUD vacancy payments and these other payments exceeds the contract rent. "Other payments" will include rent collected from or on behalf of the former tenant, security deposits applied toward the rent, and payments from any other source.
- c. **Compensation for Damages, Unpaid Rent and Other Amounts Due Under the Lease.** If a family vacates a contract unit and owes rent, other amounts due under the lease, or has left damages in excess of normal wear and tear, the Owner may request reimbursement from HUD for such items so long as the Owner: (1) has collected a security deposit in an amount permitted by HUD; and (2) has completed the move-in and move-out unit inspections required by HUD. The amount of the reimbursement will be calculated in accordance with HUD regulations and administrative procedures.
- d. **PHA Fee.** Where appropriate, HUD will make payments to the Owner to be used solely to compensate PHAs for services provided in accordance with Exhibit C. The PHA fee, if any, will be the amount specified in Exhibit C.

**Section 8. HUD Not Obligated for Family's Rent.** HUD does not assume any obligation for the amount of rent payable by any family or for the satisfaction of any claim by the Owner against any family other than in accordance with Section 7.

**Section 9. Owner's Request for Housing Assistance Payments.** The Owner must prepare and submit requests for housing assistance payments in accordance with the administrative procedures established by HUD. All requests for assistance payments must be submitted on the forms prescribed by HUD and be properly executed by the Owner or the Owner's authorized agent. The Owner agrees not to request assistance payments under this Contract for families who are assisted under the Section 8 Existing Housing Program ("Finders Keepers," 24 CFR 882, Subparts A and B), the Rent Supplement Program, the Rental Assistance Program or any other similar program. The Owner understands that submission of such duplicate bills is a default under the Contract and HUD may pursue any remedies available including those outlined in Section 26 of this Contract.

**Section 10. Adjustment for Incorrect Payments.** If HUD at any time determines that the Owner has received improper or excessive housing assistance payments, HUD shall have the right to deduct the amount of such overpayments from any payments otherwise due the Owner under this Contract. The Owner agrees to promptly correct monthly requisitions for assistance payments and to promptly submit revised requisitions as directed by HUD. If HUD determines that the Owner has not received the full amount of assistance to which the project is entitled, HUD shall promptly make a corresponding adjustment in the amount of housing assistance payments.

**Section 11. Marketing of Contract Units.** In conducting marketing activities, the Owner shall comply with the project's Affirmative Fair Housing Marketing Plan and the regulations relating to fair housing advertising. The Owner shall make a good faith effort to ensure that all contract units are promptly leased to eligible lower income families to be used only as private dwellings and as the family's sole place of residence.

- accordance with HUD regulations and administrative procedures.
- a. require each applicant to complete application in a form developed by the Owner and containing the information needed to effectively screen applicants and carry out HUD's requirements.
  - b. verify all information on which the determination of the applicant's eligibility, gross family contribution, and housing assistance payment will be based;
  - c. determine eligibility for assistance;
  - d. notify applicants of decisions taken on their applications;
  - e. execute a certification of tenant eligibility before billing HUD for assistance payments on behalf of the family; and
  - f. process complaints received from applicants at any stage of the application procedure.

**Section 13. Selection and Admission of Applicants.** The Owner agrees to:

- a. establish only preferences and priorities approved by HUD;
- b. select families so that the Owner achieves the economic mix required by HUD's regulations and administrative procedures;
- c. offer any available contract units to eligible applicants who meet the Owner's tenant selection standards provided that sufficient contract authority is available pursuant to Section 6a of this Contract;
- d. offer any available contract unit to over-income applicants only when no eligible and otherwise qualified applicant is on the project's waiting list and only after complying with HUD's administrative procedures related to admission of over-income applicants;
- e. execute leases in the form prescribed or approved by HUD and do so before billing HUD for assistance payments;
- f. assign bedroom size in accordance with HUD's administrative requirements;
- g. inspect the unit with the family before the family moves in, document the condition of the unit on a written inspection report signed by both the Owner and the family, and certify that the unit is decent, safe and sanitary;
- h. collect and maintain security deposits only in accordance with HUD regulations and administrative procedures; and
- i. not collect any other amounts as a condition for admission to the project, unless HUD gives the Owner specific written authorization to do so.

**Section 14. Maintenance.** The Owner agrees to:

- a. maintain and operate the contract units and related facilities so as to provide decent, safe and sanitary housing as defined by HUD;
- b. regularly clean and maintain all common areas, equipment and grounds, and make repairs with reasonable promptness; and
- c. respond promptly to HUD's Physical Inspection Reports and to implement corrective actions within a reasonable time.

**Section 15. General Management.** The Owner agrees to:

- ~~a. provide the utilities, services, and equipment specified in Exhibit B;~~
- b. not charge any family an amount in excess of the Net Family Contribution unless HUD gives the Owner specific written authorization to do so;
- c. pay monthly to the family the amount of the Net Family Contribution when the Net Family Contribution is negative;
- d. evaluate the accuracy of any utility allowance at least annually and submit to HUD documentation of the analysis and, if needed, recommendation for changes in the amount of any utility allowance;
- e. complete recertifications of each family's income and allowances in accordance with HUD regulations and administrative procedures;
- f. promptly follow-up with any family which does not provide the required recertification data within the established time schedules and initiate HUD-prescribed enforcement actions;
- g. adjust families' gross contributions in accordance with HUD regulations and administrative procedures;
- h. request a family to move to an appropriately-sized unit when the size or composition of the family has changed and HUD procedures require the Owner to request such unit transfers;
- i. change, suspend or terminate a family's housing assistance payments only in accordance with HUD regulations and administrative procedures. The Owner agrees that suspension or termination of a family's housing assistance payments shall not affect the family's rights otherwise available under the lease, including the right to remain in the contract unit;



j. terminate tenancies of families in accordance with applicable State and law, the lease and HUD regulations and administrative procedures; and

k. inspect a unit with the family when the family moves out and document the condition of the unit on a written inspection report signed by both the Owner and the family.

**Section 16. Discriminatory Practices Prohibited.** The Owner agrees not to discriminate based upon race, color, creed, religion, sex, age, national origin or handicap. The Owner also agrees not to discriminate against families with children unless the project is specifically designed for elderly families. The Owner agrees to comply with the Equal Opportunity Requirements attached as Exhibit A to this Contract.

**Section 17. Reduction in Number of Contract Units.**

- a. If the Owner fails, for a continuous period of six months, to have at least 80 percent of the contract units leased or available for leasing to income-eligible families, HUD may, on 30 days notice to the Owner, reduce the number of contract units to not less than the number of units under lease or available for leasing by eligible families, plus 10 percent of such number.
- b. At the end of the term of this Contract, HUD may, upon notice to the Owner, reduce the number of contract units to the greater of: (1) the number of units under lease or available for leasing by eligible families at that time; or (2) the average number of units so leased or available for leasing during the prior 12-month period; plus 10 percent of such number.
- c. HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph a or b if contract and budget authority and units are available and HUD determines that the restoration is justified as a result of changes in demand and in light of the Owner's record of compliance with his/her obligations under the Contract.

**Section 18. Rent Adjustments.** Contract rents and utility allowances shall be adjusted by HUD in accordance with HUD regulations and administrative procedures. The new contract rents, utility allowances and gross rents will be incorporated into this Contract as a revision to Exhibit B. HUD will make housing assistance payments commensurately with the HUD-approved changes in rents and utility allowances, up to the maximum amount of assistance authorized by Section 6 of this Contract. The Owner agrees that rents charged for other comparable units in the project will not be less than the contract rents, except when authorized in writing by HUD.

**Section 19. Changes in Contract Amount.**

- a. HUD will increase the maximum annual contract commitment as necessary to provide assistance payments for: (1) any additional contract units authorized by HUD; (2) HUD-approved rent increases; (3) decreases in family contribution for units currently authorized to receive assistance under this Contract; and (4) PHA fees.
- b. HUD may reduce the maximum annual contract commitment commensurately with any reduction in the number of contract units made pursuant to this Contract.

**Section 20. Recordkeeping Requirements.** The Owner agrees to retain, for at least three years, all correspondence, materials, and documentation related to processing of: applications for admissions and notices of decisions made on those applications; certifications and recertifications of tenant eligibility; HUD-required move-in and move-out unit inspections; special claims and regular monthly vouchers; evictions; suspension and termination of assistance; and other actions which the Owner is required to perform in carrying out this Contract. The Owner shall maintain as confidential all information which, if disclosed, would constitute an unwarranted invasion of a family's privacy.

**Section 21. Reports and Access to Premises and Records.** The Owner shall supply HUD with any information and reports pertinent to the Contract as reasonably may be required from time to time by HUD. The Owner shall permit HUD or any of its duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner and his/her Management Agent that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

**Section 22. Flood Insurance.** If the project is in a special flood hazard area, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

**Section 23. Clean Air Act and Federal Water Pollution Control Act.** This Section does not apply if five times the dollar amount in Section 6a of this Contract, as of the first day of this term, is \$100,000 or less. In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees to:

- a. not utilize any facility in the performance of this Contract or any nonexempt subcontract which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- b. promptly notify HUD of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- c. comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 308 of the Water Act, and all regulations and guidelines issued thereunder; and

d. Include or cause to be included provisions of this Section in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

**Section 24. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body or Other Public Officials.** No member, officer, or employee of the PHA, if any, which is a party to the Contract, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising from it. However, a member or officer of the PHA may be a tenant in the project.

**Section 25. Interest of Member of or Delegate to Congress.** No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise from it.

**Section 26. Owner Default Under Contract.**

a. **Events of Default.** HUD may consider the Owner to be in default under this Contract when the Owner has:

- (1) violated or failed to comply with any provision or obligation of this Contract, including correction of any deficiency identified by HUD in its reviews of the Owner's administration of this Contract;
- (2) asserted or demonstrated an intention not to perform some or all of his/her obligations under this Contract or any lease;
- (3) violated or failed to comply with any applicable HUD regulation or with any term of the HUD-held or insured mortgage or regulatory agreement or any lease; or
- (4) furnished any false statements or misrepresentations to HUD in connection with HUD mortgage insurance, loan processing, or administration of this Contract.

b. **Corrective Actions.** Upon determining that a default has occurred, HUD will notify the Owner, by certified mail, of the nature of the default, the actions the Owner must take to cure the default, and the time within which the Owner must complete the corrective actions. If the Owner does not implement the requested actions, or other corrective action acceptable to HUD, within the prescribed time or does not do so to the satisfaction of HUD, HUD may terminate this Contract in whole or in part or may initiate any of the following actions.

(1) **Actions by Court Order.**

- (a) Take possession of the project, bring any action necessary to enforce any rights of the Owner related to operation of the project, and operate the project in accordance with the terms of this Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with the terms of this Contract and in compliance with the requirements of any note, mortgage, or regulatory agreement.
- (b) Collect all rents and other receipts of the project and use such receipts to pay the Owner's obligations under this Contract and under the note and mortgage and the necessary expenses of maintaining and operating the project.
- (c) Apply to any court, State or Federal, for specific performance of this Contract, for an injunction against any violations of this Contract, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to HUD arising from a default under any of the terms of this Contract could be irreparable and the amount of damage would be difficult to ascertain.
- (d) Initiate action to recover any overpayments.

(2) **HUD Administrative Actions.**

- (a) Pay housing assistance payments directly to the mortgagee in the event of default under the mortgage.
- (b) Reduce or suspend housing assistance payments until the default under this Contract has been cured to the satisfaction of HUD.
- (c) Withhold housing assistance payments until the default under this Contract has been cured to the satisfaction of HUD.
- (d) Reduce the number of contract units when the Owner has failed to make a good faith effort to lease all contract units to eligible families.
- (e) Suspend, debar or otherwise restrict participation in any HUD program.
- (f) Initiate action to recover any overpayments.

c. **Remedies Not Exclusive and Non-Waiver of Remedies.** The availability of any remedy under this Contract shall not preclude the exercise of any other remedy under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

Section 27. Impact of Other Servicing Actions on this Contract.

- a. Assignment of Contract or Change of Ownership. HUD will approve a change of ownership during the term of this Contract only if the purchaser demonstrates, to HUD's satisfaction, an ability to administer this Contract and agrees to carry out all terms of this Contract.
- b. Assignment of Mortgage. In the event the mortgage is assigned to HUD, HUD may terminate this Contract, temporarily, reduce or suspend payment of amounts due under this Contract, or take any other action available under Section 26 of this Contract.
- c. Prepayment of Mortgage. Prepayment of the mortgage shall not, by itself, affect any rights of the Owner or HUD under this Contract.

Section 28. Effect on Other Agreements. To the extent that this Contract conflicts with any agreement(s) between the Owner and HUD, the provisions of this Contract shall be controlling. The provision(s) of the other agreement(s) shall be considered to be amended by the terms of this Contract. Such amendments shall be valid as if such amendment had been made directly to such agreement(s). These amendments shall be effective only during the term of this Contract.

**WARNING:** 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

Section 29. Signatures.

Owner Shannon Place, Ltd.

By 

Russell E. Lomax

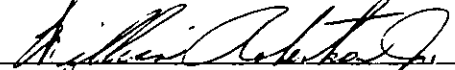
(Name)

Owner

(Official Title)

Date July 15, 19 86

HUD Samuel R. Pierce, Jr.

By 

James M. Wilson

(Name)

Manager

(Official Title)

Date JUL 15 1986, 19 86

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

PART II OF THE

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

By and between DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (CA) and  
TEXAS-COPPERTREE VILLAGE LIMITED PARTNERSHIP (Owner).

Type of Project: PRIVATE-OWNER/HUD X or PHA-OWNER/HUD \_\_\_\_\_  
(HUD is the Contract Administrator or "CA.")

or PRIVATE-OWNER/PHA \_\_\_\_\_  
(The PHA is the CA.)

NEW  
CONSTRUCTION  
Part 880 \_\_\_\_\_  
Part 885 \_\_\_\_\_

or  
SUBSTANTIAL  
REHABILITATION  
Part 881 \_\_\_\_\_  
Part 885 \_\_\_\_\_

or  
PREVIOUSLY  
HUD-OWNED  
Part 886, Subpart C X

SECTION 8 PROJECT NUMBER: TX24-E000-008

FHA PROJECT NUMBER (if applicable): NA

2.1 SCHEDULE OF COMPLETION.

- (a) Timely Performance of Work. The Owner agrees to begin work no later than by the time indicated in section 1.1. The Owner shall report to the CA the date work has commenced and shall thereafter furnish the CA with periodic progress reports (quarterly unless more frequent reporting is required by the CA). In the event the work is not commenced, diligently continued, or completed as required under this Agreement, the CA, subject to HUD approval or direction where the CA is the PHA, reserves the right to rescind this Agreement or take other appropriate action in accordance with section 2.16.
- (b) Time for Completion. The project shall be completed in accordance with section 2.3 no later than the end of the period indicated in section 1.1, or in stages as provided for in Exhibit C. Where the Agreement provides for completion in stages, all references to project completion shall be considered to refer to project completion or completion of any stage, as appropriate.
- (c) Delays. In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the CA, the time for completion shall be extended to the extent that the CA determines that completion is delayed due to one or more of these causes. No increase in the rents set forth in the Contract attached as Exhibit B ("Contract Rents") may be granted except in accordance with section 2.2(c).

2.2 CONSTRUCTION OR REHABILITATION PERIOD.

- (a) Inspections. HUD will inspect project records periodically to determine compliance with Davis-Bacon Act requirements, if applicable. Projects which involve HUD mortgage insurance, or other financing requiring HUD inspection during construction or rehabilitation, are subject to the applicable inspection requirements. HUD may conduct a review to determine contractor compliance with equal opportunity requirements at any time.
- (b) Changes. The Owner shall submit for approval, and for PHA approval where the CA is a PHA, any changes from Exhibit A and Exhibit C which would materially reduce or alter its obligations, or any changes which would alter the design of the project or materially reduce the quality or amenities of the project. Approval of changes may be conditioned on a reduction of Contract Rents. If the Owner makes any changes without the prior approval of HUD, and the PHA, if appropriate, the Owner may be required to reduce Contract Rents or to remedy the defects or deficiencies as a condition for acceptance of the project.

Replaces HUD-52581B(11-75), 52584B(11-75),  
52621B(11-75), & 52624B(11-75), which  
are obsolete.

(c) Increases in Contract Rents or Utility Allowances. Increases in contract rents or utility allowances during the construction or rehabilitation period are permitted only with HUD approval consistent with HUD regulations.

(d) Marketing.

- (1) The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days prior to the anticipated date of availability for occupancy of the first unit in the project, or 60 days prior to the estimated completion date for previously HUD-owned projects. The Owner must notify the CA of the date of commencement of marketing. Marketing and leasing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan (if required), all Fair Housing and Equal Opportunity requirements, Exhibit A and the applicable provisions of Exhibit B, the proposed Contract.
- (2) Except in the case of previously HUD-owned projects, the Owner must undertake marketing activities for nonelderly family units in advance of marketing to other prospective tenants to provide opportunities to reside in the project to:
  - (i) Nonelderly families who are least likely to apply as determined in the Affirmative Fair Housing Marketing Plan, and
  - (ii) Nonelderly families expected to reside in the community by reason of current or planned employment.
- (3) At the time of Contract execution, the Owner must submit a list of leased and unleased units, with justification for the unleased units, to qualify for vacancy payments for the unleased units in accordance with the Contract.
- (4) In the case of previously HUD-owned projects requiring substantial or moderate rehabilitation after purchase, in order to be eligible for payments for units vacant at the time the Contract is executed, the Owner also shall notify the PHA(s) in the area of any units which the Owner anticipates will be vacant on the anticipated effective date of the Contract. The Owner shall provide this notification to PHA(s) 60 days prior to completion of the rehabilitation or the effective date of this Agreement, whichever is later. The Owner shall also have taken all feasible actions to fill the vacancies, including but not limited to: contacting applicants on the Owner's waiting list, if any, requesting the PHA, and other appropriate sources to refer eligible applicants, and advertising the availability of units in a manner specifically designed to reach low income families. The Owner also shall not have rejected any eligible applicant except for good cause acceptable to HUD.

2.3 PROJECT COMPLETION. (If the project is completed in stages, the procedures of this section apply to each stage.)

- (a) Conformance to Final Proposal. The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.
- (b) Notification and Evidence of Completion. The Owner shall notify HUD and the PHA, where the CA is the PHA, when the work is completed and provide HUD with:
  - (1) A set of as-built drawings (except where not required for certain substantial rehabilitation projects, for previously HUD-owned projects, and for projects with HUD-insured mortgages).
  - (2) A certificate of occupancy and/or other official approvals necessary for occupancy.
  - (3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

HUD-insured projects, prior to final endorsement, the Owner agrees to submit the certified statements required by Part 811 as to amounts actually expended or to be expended for the financing of the project. Records documenting this cost data shall be available to HUD for inspection upon request.

- (6) (This paragraph applies only to PHA-Owner/HUD Projects subject to Part 811.)

(1) Prior to execution of the Contract or, for HUD-insured projects, prior to final endorsement, the PHA-Owner agrees to submit or to require the Agency or Instrumentality PHA to submit to HUD the certified statements required by Part 811 as to amounts actually expended or to be expended for the financing and other costs of the project, including use of any excess funds and the other terms of the financing. Records of this cost data shall be available to HUD for inspection upon request.

(ii) The PHA-Owner agrees:

- (A) That disbursements from the escrow of the proceeds of the permanent obligations shall be for the purpose and in the amounts approved by HUD in accordance with Part 811;
- (B) That if the PHA or the Agency or Instrumentality PHA receives any compensation in connection with the financing in excess of its expenses as approved by HUD, the excess shall be applied in accordance with the trust indenture; and
- (C) That if the obligations are resold within 60 days of the issuance, the PHA shall report to HUD the terms and conditions of such resale. This requirement is applicable only to the initial resale.

- (7) In the case of previously HUD-owned projects to be substantially or moderately rehabilitated by the Owner, the Owner shall submit certified statements of the actual costs, including interest rate incurred for the rehabilitation loan, Contract Rent shortfalls and HUD-approved relocation. HUD shall review and approve the costs subject to post audit.

(c) Review and Inspection.

- (1) Within 10 working days of the receipt of the notification and the evidence of completion, HUD shall review the evidence of completion for adequacy. For previously HUD-owned projects, HUD shall have 15 working days.
- (2) Within the same time period, a HUD representative shall inspect the project in a manner sufficient to enable the inspector to report that he or she has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection, (i) the project has been completed in accordance with the Agreement and that (ii) there are no observable conditions inconsistent with the evidence of completion, including the certifications of the Owner and the design or inspecting architects, where appropriate. If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs (e) and (f) of this section. In the case of projects with HUD-insured mortgages, a prior HUD inspection establishing substantial completion shall be acceptable.
- (3) At the time of the HUD inspection, the Owner shall furnish evidence satisfactory to HUD of correction of all deficiencies included in any HUD notifications to the Owner during the course of construction. The Owner and lender (in the case of Part 811 financing) shall not be relieved of their obligation to complete the project in accordance with the Agreement because of failure by HUD or any other party to inspect during the course of construction or rehabilitation.
- (d) Unconditional Acceptance. If HUD determines from the review and inspection that the project has been completed in accordance with the Agreement, the project shall be accepted and the Contract executed.

- (e) Acceptance Where Defects or Deficiencies Are Items of Delayed Completion. (See sections 2.3(b)(3)(iii) and (4)(iii)). If the only defects or deficiencies with regard to the physical completion of the project are items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or unacceptably affect occupancy, and if the Owner has met all other requirements of the Agreement, the Project will be accepted and the Contract executed, subject to the following:

- (1) The Owner will establish an escrow fund in an amount approved by HUD to be sufficient to assure completion of any items of delayed completion.
- (2) The Owner and the CA will enter into a written agreement, to be included as an exhibit to the Contract, specifying the schedule for completion. If the Owner does not complete the items specified in the agreement within the agreed time period, the CA may use the escrow fund to complete the project, or the CA may terminate the Contract or exercise other rights under the Contract.

- (f) Acceptance Where Other Defects or Deficiencies Reported. If the defects or deficiencies with regard to the physical completion of the project are other than items of delayed completion under paragraph (e), HUD will determine whether and to what extent the defects and deficiencies are correctable and whether the Contract Rents should be reduced. HUD will notify the Owner of its decision, with a copy to the PHA where it is the CA. If the Parties agree, HUD, the Owner, and the PHA, where it is the CA, will enter into a written agreement for the correction of the deficiencies specifying the schedule for completion. If the deficiencies are corrected within the agreed time period, HUD will accept the project and the Contract will be executed.

- (g) Acceptance with Regard to Physical Completion of the Project and Execution of Contract.

- (1) If HUD finds that the evidence of completion under section 2.3 is acceptable (including acceptance under section 2.3(e)) with respect to the physical completion of the project, including the certificate of occupancy and other official approvals required for occupancy, but the evidence of completion in other respects is not acceptable, HUD will, upon request by the Owner, execute or approve the execution of the Contract.
- (2) Until the remaining evidence of completion is submitted to and found acceptable by the HUD Field Office:
  - (i) The Contract Rents for the purpose of computing housing assistance payments with respect to any unit will be the monthly amount of the debt service on the amount of permanent obligations attributable to the unit; and
  - (ii) Rent-up and occupancy of the project will be subject to such conditions as HUD may require in an exhibit to the Contract setting forth the rents and the conditions.

- (h) Notification of Nonacceptance. If HUD determines that, based on the review of the evidence of completion and inspection, the project cannot be accepted, the Owner (and the PHA where it is the CA) shall be promptly notified of this decision with a statement of the reasons.

- (i) Arbitration. In the event the Owner disputes the HUD determinations, it may submit the controversy to a mutually acceptable third-party arbitrator at its expense, provided that the arbitration is advisory only.

#### 2.4 EXECUTION OF HOUSING ASSISTANCE PAYMENTS CONTRACT.

- (a) Time of Execution. Upon acceptance of the project by HUD pursuant to sections 2.2 and 2.3 the Contract shall be executed first by the Owner and then by the CA (and then be approved by HUD, where the CA is the PHA).
- (b) Completion in Stages. If completion is in stages, the Contract and the signature block for the first stage shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit 1 of the Contract. Thereafter, upon completion of each successive stage, the signature

block provided in the Contract for that stage shall be executed, and additional Exhibits, 1b, etc., covering the additional units, shall become part of the Contract.

- (c) Unleased Units at Time of Execution. At the time of execution of the Contract, the CA shall examine the lists of dwelling units leased and not leased, referred to in section 2.2(d), and shall determine whether or not the Owner has met its obligations under that section with respect to any unleased units. The CA shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing concurrence or nonconcurrence with this determination, reserving its right to claim housing assistance payments for the unleased units under the Contract, without prejudice by reason of signing the Contract.
- (d) Contract Rents. The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except as provided in section 2.2(c) and in paragraphs (f) - (i) of this section (where applicable).
- (e) No Changes in Contract. Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than as provided in this Agreement.
- (f) Adjustment of Contract Rents Based on Cost Certification for Projects Not Subject to Part 811. (See section 1.4 for applicability of this paragraph.)
- (1) Submission by Owner. Within 60 days after HUD accepts the project (or accepts the last stage, where applicable), or any extension approved by HUD for good cause, the owner will certify the actual costs of the replacement cost, operating expenses, income, and debt service, and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:
- (i) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program.
  - (ii) For projects not insured by HUD, a simplified form of cost certification prescribed by HUD will be completed and submitted.
  - (iii) For previously HUD-owned projects, in accordance with HUD requirements.
- (2) HUD Review. Cost certifications will be subject to review by HUD. As part of this review, the Owner and/or contractor may be required to submit additional documentation.
- (3) Reduction of Contract Rents. If the Owner's certified costs provided in accordance with paragraph (f)(1) of this section, as approved by HUD, are less than the HUD-approved cost estimates in the Final Proposal, the Contract Rents will be reduced commensurately.
- (4) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (f)(3) of this section, the maximum Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/FHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.



(g) Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Obligations Issued by a Participating State Agency Not Subject to Part 811.

After the project is permanently financed, the financing agency shall submit a HUD-prescribed certification to HUD specifying the actual financing terms. If the actual debt service to the Owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents or the Contract Rents then in effect shall be reduced commensurately, and the amount of the savings credited to the project account. The maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will not be reduced.

(h) Adjustment to Reflect Actual Cost for Projects Subject to Part 811.  
(See section 1.4 for applicability.)

(1) The Owner and the financing agency shall submit certified statements as to the financing and other costs. Based on the certified statements, HUD will determine whether any reduction in initial Contract Rents is required under 24 CFR Part 811. Promptly after HUD notification, the Owner and the financing agency agree to amend the Contract to reduce the initial Contract Rents to the extent required by HUD. See sections 2.3(b)(5) and (6), as appropriate.

(2) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (h)(1) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.

(i) Adjustment of Contract Rents in Previously HUD-Owned Projects.

- (1) For previously HUD-owned projects requiring substantial or moderate rehabilitation, the Contract Rents will be the amount established by HUD at sales closing except:
- (i) When, during rehabilitation, work items are discovered which
    - (a) could not reasonably have been anticipated or are necessitated by a change in local codes or ordinances,
    - (b) were not listed in the work write-up prepared by HUD and
    - (c) will require additional expenditures which would make the rehabilitation infeasible at the Contract Rents established in this Agreement.
  - (ii) When the actual cost of the rehabilitation performed is less than that specified in the Purchase and Use Plan.
  - (iii) When the actual certified relocation payments made by the Owner to temporarily displaced Families varies from the cost estimated by HUD.
- (2) If the change is due to circumstances set out in paragraph (1)(1) of this section, HUD will:
- (i) Approve a change order to the rehabilitation contract, or amend the work write-up if there is no rehabilitation contract, specifying the additional work to be accomplished and the additional cost for this work.

- (ii) Recalculate the Contract Rents within the limits set out in (i)(4) of this section based upon the revised cost estimate.
- (iii) Execute an amendment to this Agreement and the appropriate exhibits stating the additional work required and the revised Contract Rents and maximum annual Contract commitment.
- (3) If the change is due to circumstances set out in paragraph (i)(1)(ii) or (i)(1)(iii) (either an increase or decrease), HUD may recalculate the Contract Rents and amend this Agreement as appropriate to reflect the revised rents. The Contract Rents shall not be recalculated based on increased costs to maintain rents to tenants at the level required under section 8 of the Act during the rehabilitation period.
- (4) In establishing the revised Contract Rents, HUD shall determine that the Contract Rents shall not exceed rents which are reasonable for the location, quality, amenities, facilities and management and maintenance services in relation to the rents paid for comparable units, nor shall the Contract Rents exceed the rents charged by the Owner to unassisted families for comparable units. Also, the sum of the Contract Rent plus an Allowance for Utilities and Other Services (where utilities and other services are not included in the Contract Rent) shall not exceed the published section 8 Fair Market Rents or the exception rents in effect at the time of the execution of the Agreement.

## 2.5 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS: NONDISCRIMINATION.

- (a) The Owner and the PHA, where it is the CA, agree to cooperate with HUD in the conducting of the compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations.
- (b) (1) In carrying out of the obligations under this Agreement, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. The Owner will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, handicap or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The Owner will incorporate the foregoing requirements of this paragraph in all of its contracts for project work except contracts for standard commercial supplies or raw materials and contracts for construction work or modification of it covered under section 2.7, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.
- (c) The Owner shall comply with any rules and regulations issued or adopted by HUD under the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq., which prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

## 2.6 TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS. (See section 1.4 for applicability of this section.)

- (a) The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in,

or owned in substantial part by persons residing in, the area of the project.

- (b) Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement. The requirements of the regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph (d) of this section in all contracts for work in connection with the project. The Owner certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.
- (c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders issued by HUD thereunder prior to execution of this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to the sanctions specified by this Agreement, and to such sanctions as are specified by 24 CFR, section 135.135.
- (d) The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

#### EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

- "A The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- "B The parties to this Agreement will comply with the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- "C The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- "D The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by HUD, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- "E Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement to Enter

into Housing Assistance Payments Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors, and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the Agreement to Enter into Housing Assistance Payments Contract, and to such sanctions as are specified by 24 CFR, section 135.135."

- (e) The Owner agrees that it will be bound by the above section 3 clause with respect to its own employment practices when it participates in federally assisted work.

## 2.7 EQUAL EMPLOYMENT OPPORTUNITY.

- (a) The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

### "EQUAL EMPLOYMENT OPPORTUNITY

"During the performance of this contract, the contractor agrees as follows:

- "(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity clause.
- "(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- "(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- "(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- "(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- "(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, the contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

- (i) The project has been completed in accordance with the requirements of this Agreement, including all management and equal opportunity requirements;
  - (ii) The project is in good and tenantable condition;
  - (iii) There are no defects or deficiencies in the project, except for items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case do not preclude or unacceptably affect occupancy; any excepted items shall be specified (see section 2.3(e));
  - (iv) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in Exhibit A other than changes approved in writing by HUD and the PHA, if the CA is the PHA, in accordance with section 2.2(b);
  - (v) (See section 1.4 for applicability of this paragraph.) It has complied with the provisions of sections 2.10 through 2.15 of this Agreement, and that to the best of its knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or HUD or the PHA, if the CA is the PHA, the Owner shall be required to place a sufficient amount in escrow, as directed by HUD (in accordance with section 2.14(c)), to assure payments of such claims;
  - (vi) In the case of substantial rehabilitation and previously HUD-owned projects, the project has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials; and
  - (vii) In the case of substantial rehabilitation and previously HUD-owned projects, the project was treated and is in compliance with applicable HUD Lead Based Paint regulations (24 CFR, Part 35) and that if the property was constructed prior to 1950, each Family prior to rental will receive the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning and that records showing receipt of such notice by each tenant will be maintained.
- (4) (See section 1.4(a) for applicability of this paragraph (b)(4).) A certification by the registered architect responsible for inspection of the work that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment;
- (i) The project has been completed in conformance with the certified working drawings and specifications for the project or approved changes (such changes to be listed) and with the HUD Minimum Property Standards (4910.1) or Minimum Design Standards for Rehabilitation for Residential Properties (4940.4);
  - (ii) The project is in good and tenantable condition;
  - (iii) There are no defects or deficiencies in the project, except for items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case do not preclude or unacceptably affect occupancy. Any excepted items shall be specified. See section 2.3(e).
  - (iv) The project has been constructed or rehabilitated in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.
- (5) (This paragraph applies to projects subject to Part 811 which are not PHA-Owner/HUD projects.) Prior to execution of the Contract or, for

"(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interest of the United States."

- (b) The Owner agrees that it will be bound by the above Equal Opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.
- (c) The Owner agrees that it will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.
- (d) The Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Owner agrees that if it fails or refuses to comply with these undertakings, HUD may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Agreement; refrain from extending any further assistance to the Owner under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2.8 FLOOD INSURANCE. (See section 1.4 for applicability.)

The Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.9 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT. (See section 1.4 for applicability of this section.)

In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees:

- (a) Not to utilize any facility in the performance of this Agreement or any nonexempt subcontractor which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- (b) Promptly to notify the CA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;
- (c) To comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 308 of the Water Act, and all regulations and guidelines issued thereunder; and

- (d) To include or cause to be included the provisions of this section in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

2.10 PREVAILING WAGE RATES. (Sections 2.10-2.15 apply to projects with 9 or more assisted units. See section 1.4. Other programs require coverage for projects with fewer than 9 units.)

(a) Wage Rates.

All mechanics and laborers employed or working in the development of the units under this Agreement (provided the Agreement covers nine or more assisted units), will be paid unconditionally, and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof as an Exhibit, regardless of any contractual relationship which may be alleged to exist between the Owner or other contractor and such laborers and mechanics. The wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (b) of this section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

(b) Benefits Considered as Part of Wages.

If the Owner or other contractor does not make payments to a trustee or other third person, it may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly stated in the wage determination decision of the Secretary of Labor which is a part of this contract: Provided, however, the Secretary of Labor has found, upon a written request of the Owner or other contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Owner or other contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(c) Copeland Act.

The Owner or other contractor shall comply with the Copeland Act Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

(d) Classification of Laborers and Mechanics.

Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination and a report of the action taken shall be sent by HUD to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question shall be resolved in accordance with section 2.12(a).

(e) Cash Equivalents of Fringe Benefits.

Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner or other contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event, the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question shall be resolved in accordance with section 2.12(a).

(f) Apprentices.

- (1) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually

registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner or other contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph (f)(2) or is not registered or otherwise employed as stated in this paragraph (f)(1), shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner or other contractor will be required to furnish to the CA or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of the program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

- (2) Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid not less than the rate specified in the approved program for the trainee's level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work the trainee actually performed. The Owner or other contractor will be required to furnish to the CA or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the Owner or other contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (3) The utilization of apprentices, trainees and journeymen subject to 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

## 2.11 SUBMITTAL OF PAYROLLS AND RELATED REPORTS.

### (a) Records.

Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the development of the project. Such records will contain the name and address of each such employee, the correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under section 2.10(b) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Owner or other contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been



communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(b) Submission of Payrolls to Owner and to CA.

Each contractor shall submit weekly to the Owner a copy of all payrolls, and the Owner shall submit weekly to HUD or, where the CA is the PHA, to the PHA for transmission to HUD, all the Owner's payrolls and those submitted by each of the contractors. The Owner may, at its option, in writing permit a contractor to submit the contractor's payrolls directly to HUD or the PHA, as appropriate. The copy shall be accompanied by a statement signed by the employer or its agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conformed with the work performed. A submission of a "Weekly Statement of Compliance" which is required under this Agreement and the Copeland Act regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under section 2.10(b) shall satisfy this requirement. The Owner shall be responsible for the submission of copies of payrolls of all contractors regardless of whether the Owner permits contractors to submit such payrolls directly to HUD or the PHA. The Owner will make the records required under this section available for inspection by authorized representatives of the PHA (where it is the CA), HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. The Owner or other contractor employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payroll submitted to the CA that their employment is pursuant to an approved program and shall identify the program.

(c) Other Submission Requirements.

The Owner or other contractor shall also furnish to the CA any other information or certifications relating to employees in such form as the CA may request.

2.12 DISPUTES CONCERNING WAGE RATES AND CLASSIFICATION OF LABOR.

- (a) All disputes concerning prevailing wage rates or classifications arising under this Agreement or any contract shall be promptly reported to HUD for decision or, at the option of HUD, referred to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.
- (b) All questions arising under this Agreement or any contract relating to the application or interpretation of the Copeland (Anti-Kickback) Act, the Contract Work Hours and Safety Standards Act or section 12 of the United States Housing Act of 1937 shall be referred to HUD for ruling or interpretation, or at the option of HUD, referred to the Secretary of Labor. The ruling or interpretation by HUD or the Secretary of Labor, as the case may be, shall be final.

2.13 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION.

- (a) Neither the Owner nor any other contractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.
- (b) In the event of any violation of the clause set forth in paragraph (a), the Owner and other contractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and other contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of

eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a).

#### 2.14 WAGE CLAIMS AND ADJUSTMENTS.

- (a) The Owner shall be responsible for the correction of all violations under sections 2.10, 2.11, 2.12, 2.13 and 2.15, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner or other contractor or a failure by the Owner or other contractor to submit payrolls and related reports, the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Agreement, as well as an amount determined by HUD to be sufficient to satisfy any liability of the Owner or other contractor for liquidated damages pursuant to section 2.13. The amounts withheld may be disbursed by HUD for and on account of the Owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 2.13.
- (b) In the event of failure of a contractor at any tier to comply with the requirements of sections 2.10, 2.11, 2.12, 2.13, and 2.15, the Owner may withhold from the appropriate prime contractor any payment or advances payable to the prime contractor until the prime contractor establishes, to the satisfaction of HUD, that the violations of the aforesaid sections no longer exist or that the violating contractor has made appropriate wage payments, and/or payments of liquidated damages under section 2.13.
- (c) The escrow required by paragraph (a) shall be paid to HUD, as escrowee, or to an escrowee designed by HUD, and the conditions and manner of releasing such escrows shall be designated and approved by HUD.

#### 2.15 TERMINATION; DEBARMENT; SUBCONTRACTORS.

- (a) A breach of the provisions of the sections 2.10, 2.11, 2.12, 2.13, 2.14 or 2.15(b) may be grounds for termination of this Agreement and for debarment as provided in 29 CFR, section 5.6, or 24 CFR, Part 24.
- (b) The Owner shall insert in any contracts the clauses set forth in sections 2.10, 2.11, 2.12, 2.13, 2.14(b), and 2.15 and also a clause requiring the contractors to include these clauses in any lower tier contracts which they may enter into, together with a clause requiring this insertion in any further contracts that may in turn be made.

#### 2.16 DEFAULTS BY PHA AND/OR OWNER.

- (a) Rights of Owner if PHA Defaults under Agreement (for Private-Owner/PHA Projects).

- (1) Events of Default. The occurrence of any of the following events, if the Owner is not in default, is defined as default under the ACC:
  - (i) If the PHA fails to perform or observe any term or condition of this Agreement;
  - (ii) If the Agreement is held to be void, voidable, or ultra vires;
  - (iii) If the power or right of the PHA to enter into the Agreement is drawn into question in any legal proceeding; or
  - (iv) If the PHA asserts or claims that the Agreement is not binding upon the PHA for any such reason.
- (2) Owner Request for HUD Determination of Default.

If the Owner believes that an event as specified in paragraph (a) (1) has occurred, and the Owner is not in default, the Owner may, within 30 days of the initial occurrence of the event:

(ii) Provide supporting evidence of the default and of the fact that the Owner is not in default; and

(iii) Request HUD to determine whether there has been a default.

(3) HUD Determination of Default and Curing of Default.

HUD, after notice to the PHA giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the PHA is in default and whether the Owner is not in default. If HUD determines that the PHA is in default and that the Owner is not, HUD shall take appropriate action to cure the default. If necessary for the prompt continuation of the project, HUD shall assume the PHA's rights and obligations under the Agreement, including any funds and including the obligation to enter into the Contract and to pay annual contributions with respect to the units covered by the Contract in accordance with the ACC and the Contract until reassigned to the PHA. All rights and obligations of the PHA assumed by HUD will be returned as constituted at the time of the return:

(i) When HUD is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements, or

(ii) When the Contract is at an end, whichever occurs sooner.

(4) Enforcement by Owner. The provisions of this paragraph (a) are made for the benefit of the Owner, the lender, the PHA

where it is the lender and then only in its capacity as lender, and the Owner's other assignees, if any, who have been specifically approved by HUD prior to the assignment. These provisions shall be enforceable by these parties against HUD by suit at law or in equity.

(b) Rights of PHA and HUD if Owner Defaults under Agreement.

(1) Events of Default. A default by the Owner under this Agreement shall result if:

(i) The Owner has violated or failed to comply with any provision of, or obligation under, this Agreement; or

(ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Agreement; or

(iii) For projects with mortgages insured by HUD or loans made by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance or loan program, with the insured mortgage, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the mortgage insurance or loan.

(2) CA Determination of Default. Upon a determination by the CA that a default has occurred, the CA shall notify the Owner and the lender, with a copy to HUD where the CA is a PHA, of

(i) The nature of the default,

(ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner and/or the lender to cure the default),

(iii) The time within which the Owner and/or the lender shall respond with a showing that all the required actions have been taken.

If the Owner and/or the lender fail to respond or take action to the satisfaction of the CA (and HUD where the CA is a PHA), the CA shall have the right to take corrective action to achieve compliance, in accordance with paragraph (b)(3), or to terminate this Agreement with HUD approval, in whole or in part, or to take other corrective action to achieve compliance, in its discretion, or as directed

by HUD (where CA is a PHA).

- (3) Corrective Actions. Pursuant to paragraph (b)(1) of this section the CA, in its discretion or as directed by HUD (where the CA is a PHA), may take the following corrective actions either directly or in conjunction with or acting through a PHA:

(i) Take possession of the project, bring any action necessary to enforce any rights of the Owner, complete the project in accordance with the terms of this Agreement, execute the Contract on behalf of the Owner, and operate the project in accordance with the terms of the Contract until such time as HUD determines that the Owner is again in a position to complete or operate the project, as appropriate, in accordance with the Agreement or Contract.

(ii) 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 complete the project in accordance with this Agreement and to execute the Contract and operate the project in accordance with the Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to the PHA and/or HUD arising from a default under any of the terms of this Agreement could be irreparable and the amount of damage would be difficult to ascertain.

- (4) HUD Rights. (For Private-Owner/PHA projects where the PHA is the lender.)

(i) Notwithstanding any other provisions of this Contract, in the event HUD determines that the Owner is in default of its obligations under the Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the PHA giving them a reasonable opportunity to take corrective action, to proceed in accordance with paragraph (b)(3).

(ii) In the event HUD takes any action under this section, the Owner and the PHA hereby expressly agree to recognize the rights of HUD to the same extent as if the action were taken by the PHA. HUD shall not have the right to terminate the Contract except by proceeding in accordance with paragraphs (b)(1), (2), and (3) of this section and with the ACC.

- (c) Remedies not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Agreement or the ACC, where applicable, shall not preclude the exercise of any other remedy under this Agreement or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## 2.17 DISPUTES.

- (a) For Private-Owner/PHA Projects:

- (1) Any dispute concerning a question of fact arising under this Agreement which cannot be resolved by the PHA and the Owner may be submitted by either party to the HUD Field Office which will promptly make a decision and furnish a written copy to the Owner and the PHA.
- (2) The decision of the Field Office will not be reviewable unless, within 30 calendar days from the date of receipt of the Field Office's determination, either party mails or otherwise furnishes to HUD a written appeal with written justification addressed to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the Field Office, pending resolution of the appeal.

- (b) For Private-Owner/HUD or PHA-Owner/HUD Projects:

Any dispute concerning a question of fact arising under this Agreement which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the Secretary of Housing

and Urban Development. Both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the Field Office, pending resolution of the appeal.

2.18 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF PHA, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS.

- (a) No person or entity in the following classes shall have an interest, direct or indirect, in this Agreement or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter.
- (1) any member or officer of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;
  - (2) (i) any employee of the PHA (where it is the CA or the Owner), who formulates policy or influences decisions with respect to the section 8 project;  
(ii) any other employee of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;
  - (3) any member of the governing body or the executive officer of the locality (city or county) in which the project is situated;
  - (4) any member of the governing body or executive officer of the locality (city or county) in which the PHA (where it is the CA or the Owner) was activated;
  - (5) any other State or local public official (including State legislators), who exercises any functions or responsibilities with respect to the section 8 project;
  - (6) any PHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the project, including an interest by reason of membership on the board of the PHA which is the CA (except an employee who does not formulate policy or influence decisions with respect to the section 8 project may have an interest as a tenant).
- b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the section 8 program or in a section 8 project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the PHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the PHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to the HUD Headquarters, with appropriate recommendations from the Field Office, for a determination of whether a waiver will be granted.
- (c) No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to an Agreement or a Contract executed, or to be executed, on his or her behalf, or with respect to an Agreement or a Contract to which this person is a party.
- (d) The Owner shall insert in all contracts, subcontracts, and arrangements entered into in connection with the project or any property included or planned to be included in the project, and shall require its contractors and subcontractors to insert in each of the subcontracts, the provisions of paragraphs (a) through (d).
- (e) The provisions of paragraphs (a) through (d) of this section shall not apply to a utility service if the rates are fixed or controlled by a governmental agency or applicable to the Depositary Agreement.

2.19 INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise from it.

(a) The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Agreement, the Contract, the ACC (if applicable), or the project or any part of them or any of its interest in them, without the prior written consent of HUD (and the PHA where it is the CA). However, in the case of an assignment as security for the purpose of obtaining financing of the project, HUD (and the PHA where it is the CA) shall consent in writing if HUD has approved the terms of the financing.

(b) The Owner agrees that it will not change to a different contractor from the one named in the Final Proposal or Purchase and Use Plan in the case of previously HUD-owned projects, except with the prior written consent of HUD (and the PHA where it is the CA).

(c) The Owner agrees that the approved contractor has not made and will not make, except with the prior written consent of HUD (and the PHA where it is the CA), any assignment or transfer in any form of the contractor's contract to construct or rehabilitate the project, or of any part of it, or any of the contractor's interests in it.

(d) The Owner agrees to notify HUD (and the PHA where it is the CA) promptly of any proposed action covered by paragraph (a), (b), or (c) of this section. The Owner further agrees to request the prior written consent of HUD (and the PHA where it is the CA).

(e) (1) For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:

(i) A transfer by the Owner, in whole or in part,

(ii) A transfer by a party having a substantial interest in the Owner,

(iii) Transfers by more than one party of interests aggregating a substantial interest in the Owner,

(iv) Any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution of interests, by any other method or means, and

(v) Any refinancing by the Owner of the project.

(2) An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer. An assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.

(3) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.

(f) The Owner, and the party signing this Agreement on behalf of the Owner, represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect to it.

(g) The provisions of this section shall also apply to transfers of interest by the contractor and by persons having interests in the contractor.

(h) Except where otherwise approved by HUD, this Agreement, the Contract, and the ACC (if applicable) shall continue in effect in the event:

- (1) Of assignment, sale, or other disposition of the project or this Agreement, the Contract, or the ACC,
- (2) Of foreclosure, including foreclosure by HUD,
- (3) Of assignment of the mortgage or deed in lieu of foreclosure,
- (4) The FHA or HUD takes over possession, operation or ownership, or
- (5) The Owner prepays the mortgage.