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IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated,	
PLAINTIFFS	
v.	CIVIL ACTION
PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development,	No. B 78-256
HIGH RIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	FIRST AMENDED COMPLAINT
TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	September 1, 1978
BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates,	
DEFENDANTS	

PRELIMINARY STATEMENT

1. Plaintiffs are low-income families who bring this civil action in behalf of themselves and others similarly situated. They seek injunctive, declaratory and mandatory relief to secure their rights under the Constitution, Federal Statutes, and the

Regulations of the United States Department of Housing and Urban Development ("HUD").

2. Plaintiff [illegible] tenants in High Ridge Apartments, a federally subsidized housing project situated in Fairfield, Connecticut. This project was constructed in 1966-1967 as housing for low- to moderate-income people. Financing for the project was provided by a loan secured by a mortgage insured and subsidized by HUD under Section 221(d)(3) of the National Housing Act, 12 U.S.C. §1715l(d)(3). Under the terms of the Section 221(d)(3) program, HUD, in order to assure that the project is operated for the benefit of low- and moderate-income families, controls certain aspects of the project's operation, including, inter alia, rent levels. That control is exercised through a Regulatory Agreement between HUD and the owner of the project, as well as through HUD Regulations and other documents.

3. [illegible] of High Ridge Apartments tendered, and HUD, through its mortgage financing arm, the Government National Mortgage Association ("GNMA"), accepted prepayment in full of the mortgage. This prepayment transaction was effected by the Federal National Mortgage Association ("FNMA") which, pursuant to a contract between GNMA and FNMA, services the FHA project mortgage [illegible] FNMA portfolio. At the same time as it accepted prepayment of the mortgage, HUD cancelled the Regulatory Agreement, under which it regulated rent levels at High Ridge Apartments.

4. On or about May 11, 1976, defendants HIGH RIDGE ASSOCIATES, [illegible] ASSOCIATION, INC. and BERNARD A. GILLULY

(hereinafter collectively referred to as "Private Defendants"), who own, manage, and control High Rise Apartments, notified the residents of high rise apartments of their intention to convert 56 out of the 123 units in the project to condominium ownership and to offer said units for sale at prices of $39,900 for two-bedroom units and $43,500 for three-bedroom units. At the same time, the private defendants notified all tenants that effective July 1, 1978, there would be a $40 per month per unit rent increase for all two-bedroom units and a $45 per month per unit rent increase for all three-bedroom units.

5. Plaintiff tenants will never be able financially to pay the noticed rent increases effective July 1, 1978, nor will they be able to purchase their units as condominiums. Since they are thus faced with dispossession by summary process and/or sale of their units and since they will be unable to rent comparable alternative housing on the private market, they are threatened with immediate and irreparable injury in the absence of injunctive relief ordered by this Court. Therefore, Plaintiff tenants of High Rise Apartments seek a temporary restraining order and preliminary and permanent injunctive relief restraining and enjoining private defendants from imposing any rent increase, from selling or offering for sale any condominium units in High Rise Apartments, and from undertaking any effort to evict or otherwise dispossess any tenant who fails or refuses to pay the noticed rent increase or who fails or refuses to agree to purchase the unit in which he resides. Plaintiffs also seek relief declaring null and void HUD's acceptance of any mortgage prepayment and its cancella-

tion of the Regulatory Agreement covering High Ridge Apartments. Finally, Plaintiffs seek an order in the nature of mandatory relief requiring the Defendants to reinstitute the Section 221(d)(3 mortgage and Regulatory Agreement and to compel HUD to order the private Defendants to rescind the aforementioned rent increase and to abandon their plan to convert any units in High Ridge Apartments to condominium ownership.

6. The foregoing relief is sought on the grounds that:

(a) by accepting prepayment of the mortgage and cancelling the Regulatory Agreement covering High Ridge Apartments, HUD has violated its statutory obligations under the national housing acts, particularly 42 U.S.C. §1441, 12 U.S.C. §1701t, and 42 U.S.C. §1441a, to preserve existing housing for low- and moderate-income people;

(b) by accepting the mortgage prepayment and cancelling the Regulatory Agreement, without reference to published standards or rules governing when to accept tendered mortgage prepayments, and without affording Plaintiffs notice and an opportunity to be heard, HUD has deprived Plaintiffs of the benefits of a federal program, to wit, the right to continued occupancy of a government-subsidized housing unit at below-market rent in violation of the Fifth Amendment to the United States Constitution;

(c) by accepting the mortgage prepayment and cancelling the Regulatory Agreement, HUD acted arbitrarily, capriciously, and abused its discretion in violation of the Administrative Procedure Act, 5 U.S.C. § §701 et seq.;

(d) by accepting prepayment of the mortgage and cancelling the Regulatory Agreement without preparing an environmental impact statement, HUD violated the National Environmental Policy Act of 1969, 42 U.S.C. §§4321 et seq.;

(e) by tendering prepayment of the mortgage on High Ridge Apartments without first obtaining approval of the Federal Housing Commissioner, private Defendants violated the provisions of 24 C.F.R. Section 221.524(a)(2); and

(f) by tendering prepayment of the note without having first obtained the express approval of the Federal Housing Commissioner, private Defendants violated the express provisions of the note evidencing the loan which was secured by the Section 221(d)(3) mortgage.

JURISDICTION

7. Jurisdiction over the matters alleged in Plaintiffs' Complaint is conferred on this Court by

(a) 28 U.S.C. §1331, which gives district courts jurisdiction over civil actions arising under the Constitution and laws of the United States with no requirement as to the amount in controversy where the action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity;

(b) 28 U.S.C. §1337, which gives district courts original jurisdiction of any action arising under any statute regulating commerce, including actions brought under the National Housing Act, 12 U.S.C. §1701, et seq., as amended;

(c) 28 U.S.C. §1361, which gives district courts original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff; and

(d) 5 U.S.C. §§ 701-706, Section 10 of The Administrative Procedure Act, which gives district courts jurisdiction to review certain agency actions.

8. With respect to claims against the private Defendants, the amount in controversy exceeds the sum of $10,000, exclusive of interest and costs.

9. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§2201 and 2202, 5 U.S.C. §703, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

10. This action arises under the National Housing Act, 12 U.S.C. §§1701 et seq., as amended, and the HUD regulations and handbooks promulgated thereunder.

PLAINTIFFS

11. All of the Plaintiffs are citizens of the United States, residents of the State of Connecticut, and live at High Ridge Apartments.

12. Plaintiff Kathleen Korsko resides in a three-bedroom apartment with her four minor dependent children and has lived there for approximately nine years. Plaintiff Korsko is separated from her husband. Her total monthly net income is approximately $313. The sources of her income are child support payments from her estranged spouse and part-time employment.

Until July 1, 1978, Plaintiff Korsko had paid a monthly rental of $232. As a result of the actions of Defendants described herein, effective July 1, 1978, her monthly rental obligation will be $300.

13. Plaintiff Dorothy Carfo lives in a two-bedroom apartment at High Ridge Apartments. Plaintiff Carfo is disabled. Her total monthly net income is approximately $339. Of this total, $180 is received from the Social Security Administration in disability benefit payments; the remaining $150 is derived from a disability benefit program administered by the Department of Social Services of the State of Connecticut. Until July 1, 1978, Plaintiff Carfo was paying a monthly rental of $200 for her apartment at High Ridge. As a result of the actions of Defendants described herein, effective July 1, 1978, Plaintiff Carfo's monthly rent will be increased to $260.

14. Plaintiff Idella Tapley, together with her son, has lived at High Ridge Apartments for approximately four years. She is employed and earns a monthly net wage of approximately $482. Until July 1, 1978, Plaintiff Tapley was paying a monthly rental of $200. As a result of Defendants' actions described herein, effective July 1, 1978, her monthly rent will be increased to $260.

CLASS ACTION

15. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure the above-named Plaintiffs bring this action on behalf of themselves and on behalf of the class of persons similarly situated. The Plaintiff class consists of all present and future tenants of the 124 units of High Ridge Apart-

ments. The class of persons of whom the named Plaintiffs are the representatives is so numerous that joinder of all members is impractical; there are questions of law or fact common to the class; the claims of the representative Plaintiffs are typical of the claims of the class; and the representative Plaintiffs will fairly and adequately protect the interests of the class. The prosecution of separate actions by individual members of the class of plaintiffs would (a) create a risk of inconsistent or varying adjudication with respect to individual members of the class which will establish incompatible standards of conduct for the parties opposing the class, or (b) create a risk of adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. The parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief corresponding to the declaratory relief with respect to the class as a whole. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available means for the fair and efficient adjudication of this controversy.

DEFENDANTS

16. Defendant Patricia Harris is the Secretary of the United States Department of Housing and Urban Development and is

charged with the administration of the provisions of the National Housing Act, in particular Section 221(d)(3) of the Act, 12 U.S.C. §17151(d)(3), and HUD Regulations and Handbooks promulgated thereunder. She is sued here in her official capacity. The Secretary of HUD, pursuant to 12 U.S.C. §1702, is authorized in her official capacity to sue and to be sued in any court of competent jurisdiction.

17. Defendant Highridge Associates is a limited partnership whose principal place of business is 144 Island Brook Avenue, Bridgeport, Connecticut. High Ridge Associates is the owner of High Ridge Apartments and as such is sued as a principal Defendant as well as a necessary party under Federal Rule 19(a).

18. Defendant TARINELLI CONSTRUCTION COMPANY is a partnership whose principal place of business is 144 Island Brook Avenue, Bridgeport, Connecticut. TARINELLI CONSTRUCTION COMPANY is the managing agent of High Ridge Apartments and as such is sued as a principal defendant as well as a necessary party under Federal Rule 19(a).

19. Defendant BERNARD A. GILHULY, of 144 Island Brook Avenue, Bridgeport, Connecticut, is a general partner in both HIGHRIDGE ASSOCIATES and TARINELLI CONSTRUCTION CO. He is sued as a principal defendant as well as a necessary party under Federal Rule 19(a).

FACTUAL ALLEGATIONS

20. High Ridge Apartments is a complex containing 124 two- and three-bedroom apartments. It is located on Sunny Ridge Avenue in the town of Fairfield, Connecticut.

21. High Ridge Apartments was constructed on or about 1966-1967 as a low- and moderate-income multifamily housing project under Section 221(d)(3) of the National Housing Act, 12 U.S.C. §17151(d)(3). The Section 221(d)(3) housing program was created as part of the National Housing Act of 1954, amending the National Housing Act, 12 U.S.C. §1701, et seq. The stated objective of this Act is the realization of the national goal of "a decent home and suitable living environment for every American family." To achieve this goal, Congress designed the Section 221(d)(3) program "to assist private industry in providing housing for low- and moderate-income families and displaced families." 12 U.S.C. §17151(a). Under the provisions of Section 221(d)(3), HUD insured and subsidized the mortgage on High Ridge Apartments at a below-market interest rate of 3% for a term of 40 years. The purpose of this arrangement was to provide rental housing for low- and moderate-income families, and the owner was required to offer units for rent at below-market rates, and through a Regulatory Agreement was further subject to HUD regulation of permissible rent increases in order to ensure continuation of the low- to moderate-income nature of the project.

22. Prior to construction of High Ridge Apartments, HUD entered into a contract with Defendant HIGHRIDGE ASSOCIATES, substantially under the terms stated in the immediately preceding paragraph, for the purpose of constructing and operating High Ridge Apartments. At final closing on the mortgage FNMA, a federally chartered corporation, purchased the note from a private mortgage lender. At this time, 12 U.S.C. 1720(h) authorized FNMA to

purchase mortgages insured under Section 221(d)(3). In 1968 FNMA was partitioned by statute into two separate corporate bodies, FNMA and GNMA. [See Section 802(d)(3) of the Housing and Urban Development Act of 1968, (12 U.S.C. 1717(a)(2))]. As a consequence of this partition, GNMA, a government corporation within HUD (24 C.F.R. §300.5), became the owner of the mortgage. As holders of the note, FNMA, then GNMA,have charged HIGHRIDGE ASSOCIATES only 3% annual interest. In addition, the Federal Housing Administration (FHA), an organizational unit within the Department of Housing and Urban Development (24 C.F.R. §200.4), has insured the mortgage against default.

23. In order to assure that High Ridge Apartments is to continue to be available for occupancy by low- and moderate-income families, the private Defendants were required to, and did, execute a note evidencing the loan to them which contained, among other terms the following provision requiring written approval of the Federal Housing Commissioner, an official of HUD, as a precondition to prepayment of the mortgage:

> The debt evidenced by this note may not be prepaid either in whole or in part prior to the final maturity date hereof without the prior written approval of the Federal Housing Commissioner except a maker which is a limited dividend partnership may prepay without such approval after twenty years from the date of final endorsement of this note by the Federal Housing Commissioner.

24. To further assure that multifamily housing constructed under Section 221(d)(3) will remain available to low- and moderate-income families, 24 C.F.R. §221.524 similarly requires

approval of the Federal Housing Commissioner for prepayment of a note which is less than 20 years old.

25. At the same time the mortgage financing arrangements described above were entered into, the private Defendants agreed to become bound by a Regulatory Agreement. 24 C.F.R. §221.529. Among other things, the Regulatory Agreement requires prior HUD approval for all rent levels. 24 C.F.R. §221.531(c). In addition, before HUD may approve rent increases under the terms of the Regulatory Agreement, tenants are required to be provided notice, all materials upon which the application for rent increase is based, and an opportunity to be heard in opposition to any such increase. 24 C.F.R. § §401 et seq.

26. In or about May, 1978, the private Defendants tendered and HUD, through GNMA, accepted prepayment in full of the mortgage covering High Ridge Apartments. This prepayment transaction was effected by FNMA which, pursuant to a contract between FNMA and GNMA, services the FHA project mortgages in the GNMA portfolio. Such tender and acceptance took place notwithstanding the fact that (a) the mortgage had been outstanding for less than 20 years, (b) the prior written approval of the Federal Housing Commissioner had not been given, and (c) the tenants of High Ridge Apartments had not been notified of action the effect of which would be to make it impossible for them to continue to reside in High Ridge Apartments.

27. Shortly after HUD's acceptance of the prepayment of the mortgage covering High Ridge Apartments, the private Defendants notified the Plaintiffs and all other High Ridge

tenants of rent increases ranging from $60 a month for two-bedroom apartments to $68 per month for three-bedroom apartments. Effective July 1, 1978, rental rates in two-bedroom apartments have been increased from $200 to $260 per month, a 30 percent increase, and rates in three-bedroom units are being raised from $232 to $300 per month. In addition, tenants occupying 56 of the 124 units were notified that their units would be converted to condominiums and offered for sale and that if they were unwilling or unable to purchase those units, they would have to vacate to make way for the purchasers.

IRREPARABLE INJURY

28. Plaintiffs and the members of the class will suffer severe and irreparable injury as a result of Defendants' actions unless said actions are enjoined by this Court:

(a) If the mortgage prepayment and cancellation of the Regulatory Agreement are permitted to stand, any and all control by HUD over tenants' rent levels will terminate. The sale by the private Defendants of almost half the units as condominiums, as well as the substantial rent increases, will destroy the low- and moderate-income nature of the project. Plaintiffs will be forced to move or to severely curtail their expenditures for other necessities of life, including food. In addition, Plaintiffs will be forced to move to substandard housing. Plaintiffs' rents are presently below market level; but decent, safe, and sanitary housing--housing which will rent at market level--will be beyond their financial means, and they will be forced to seek substandard rental housing. In sum, as a consequence of the sale of 56 units

of condominiums and of increased rents on the remaining units, Plaintiffs will be permanently deprived of the low-cost and decent housing which the National Housing Act seeks to furnish them;

(b) Upon information and belief, tenants who fail or refuse to pay the substantial rent increases imposed upon them by the private Defendants will be dispossessed; and

(c) Prepayment of the mortgage and cancellation of the Regulatory Agreement, together with the conversion to condominiums and the rent increases, will exacerbate the already critical shortage of low-income housing in the Fairfield, Connecticut, area

29. The Plaintiffs have no adequate administrative remedy to enjoin the rent increases, to prevent the sale of units as condominium units, and to assure that High Ridge Apartments will continue to be available as rental housing for low- and moderate-income families, and Plaintiffs have no other adequate remedy at law.

30. There is an actual and present dispute between the parties, and as a result of the rent increases and the completion of the sale of apartment units as condominiums, Plaintiffs will suffer irreparable and immediate injury.

DENIAL OF RIGHTS
First Cause of Action -
HUD's Violation of the National Housing Acts

31. Plaintiffs incorporate paragraphs 1 through 30 of this complaint as if fully set forth.

32. HUD has a statutory obligation under the Housing Act of 1949, the Housing and Urban Development Act of 1968, and

the National Housing Act, to place its highest priority on preserving subsidized multifamily projects as low- to moderate-income housing.

33. In 1949, Congress in Section 2 of the Housing Act of 1949, 42 U.S.C. §1441, set a national goal of "a decent home and a suitable living environment for every American family." Congress placed a mandatory obligation upon HUD to follow this goal in the administration of its housing programs. Congress required that HUD exercise its powers, functions, and duties under this and other laws consistent with the national housing policy declared by the Act, and in such manner as will facilitate sustained progress in attaining the national housing objective. Id. This obligation applies to all of HUD's activities, including its obligation to supervise the operation of multifamily housing projects built under the Section 221(d)(3) program.

34. Frustrated with HUD's failure to follow this goal, Congress in 1968 restated it in even more explicit terms, and required HUD to place its highest priority and emphasis on achievin this goal for low-income people. In Section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. §1701t, Congress declared:

> . . . [I]n the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; . . . (emphasis added.)

35. In 1974, Congress still found HUD lagging in its pursuit of the national goal and was particularly concerned about HUD's failure to preserve the existing stock of low-income housing and to assure that it would continue to be available to low-income families. Congress therefore amended Section 1301 of the Housing and Urban Development Act of 1968, 42 U.S.C. §1441a, to direct HUD to place a "greater effort" on the preservation of existing housing for low- and moderate-income families. The Act states:

> (b) The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing. . . .
>
> . . . . .
>
> (c) The Congress declares that if the national housing goals are to be achieved, a greater effort must be made to encourage the preservation of existing housing. . . .
>
> (emphasis added.)

36. HUD's acceptance of the private Defendants' prepayment tender and cancellation of the Regulatory Agreement violated HUD's obligation under national housing goals and HUD's Congressional mandate, as set forth in 42 U.S.C.§§1441, 1441a and U.S.C. §1701t. HUD's acceptance of the prepayment is also in violation of the Section 221(d)(3) program, 12 U.S.C. 1715l(d)(3), the purpose of which is to provide housing for lower-income families.

Second Cause of Action -
HUD's Violation of the Due Process Clause
of the United States Constitution
and the National Housing Act

37. Plaintiffs incorporate paragraphs 1 through 36 of this Complaint as if fully set forth.

38. Plaintiffs are the beneficiaries of HUD's obligation under the national housing acts to ensure that High Ridge Apartments will remain as low- and moderate-income housing. As such, Plaintiffs have a property interest in their continued tenancies in the project. Accordingly, Plaintiffs have the right, prior to HUD's acceptance of the private Defendants' tender of the mortgage prepayment, to: (a) publication of standards or rules which govern HUD's treatment of requests by Section 221(d)(3) BMIR mortgagors to prepay their mortgage notes; (b) notice of HUD's intention to accept the tender of prepayment; (c) access to information relied upon by HUD in determining to accept the tender; (d) a reasonable opportunity to object to HUD's intended actions; (e) a reasonable opportunity to make an oral presentation of any objection to HUD's intended action, and (f) a concise statement of the action taken by HUD and the reasons therefor. HUD's failure to grant Plaintiffs these rights violated the Due Process clause of the Fifth Amendment of the United States Constitution, and the National Housing Act, 12 U.S.C. §1715l(d)(3).

Third Cause of Action - HUD's
Violation of the Administrative Procedure Act

39. Plaintiffs incorporate paragraphs 1 through 38 of this Complaint as if fully set forth.

40. HUD's actions in accepting the private Defendants' tender of prepayment of the mortgage on High Ridge Apartments and HUD's cancellation of the Regulatory Agreement, the effect of which was to permit the private Defendants to increase rents and

to offer for sale almost half the units as condominiums, were arbitrary, capricious, and an abuse of discretion, all in violation of the Administrative Procedure Act, 5 U.S.C. § §701, et seq.

Fourth Cause of Action -
HUD's Violation of the National
Environmental Policy Act of 1969

41. Plaintiffs incorporate paragraphs 1 through 40 of this Complaint as if fully set forth.

42. The National Environmental Policy Act of 1969, 42 U.S.C. § §4321, et seq. (hereafter NEPA) requires a Government agency, prior to undertaking a major federal action significantly affecting the quality of the human environment, to prepare a detailed statement on the environmental effects which cannot be avoided should the proposal be implemented, and alternatives to the proposed action. 42 U.S.C. § §4332(2)(C)(i)(ii)(iii).

43. HUD's failure to prepare an Environmental Impact Statement prior to accepting the private Defendants' mortgage prepayment and cancelling the Regulatory Agreement violated NEPA, because termination of the Regulatory Agreement and of HUD supervisory responsibility over, inter alia, rent levels in the High Ridge project, is a major federal action significantly affecting the quality of the human environment in Fairfield, Connecticut, and the surrounding area. As a result of its actions, HUD has allowed 124 housing units and related facilities to be removed from the supply of low- and moderate-income housing in a geographic area that has a scarcity of housing for its low- and moderate-income population. HUD's removal of this project from the low-

and moderate-income market without consideration of its environmental impact is in violation of NEPA.

Fifth Cause of Action -
Private Defendants' Violation
of the Terms of the Note

44. Plaintiffs incorporate paragraphs 1 through 43 of this Complaint as if fully set forth.

45. The note executed by the private Defendants, which evidences the loan secured by the Section 221(d)(3) mortgage on High Ridge Apartments, by its terms expressly requires written approval of the Federal Housing Commissioner prior to prepayment, unless the mortgage is more than 20 years old. Since the purpose of the provision is to assure that High Ridge Apartments will continue to be available as housing for low- to moderate-income families for a minimum of 20 years, private tenants are third-party beneficiaries of that provision of the note.

46. Upon information and belief, neither the Federal Housing Commissioner nor anyone to whom such authority was lawfully delegated by him authorized the private Defendants in writing to prepay the mortgage covering High Ridge Apartments. Accordingly, the private Defendants' tender of prepayment was in violation of the above-described term of the note.

Sixth Cause of Action -
Private Defendants' Violation of HUD Regulations

47. Plaintiffs incorporate paragraphs 1 through 46 of this Complaint as if fully set forth.

48. Section 221.524(a)(2) of Title 24 of the Code of Federal Regulations requires prior approval of the Federal Housing

Commissioner for mortgage prepayment and cancellation of the Regulatory Agreement:

> . . . [A] mortgage indebtedness shall not be prepaid in full and the Commissioner's controls will not be terminated unless the Commissioner gives his prior consent to such prepayment.

49. The purpose of the aforesaid provision is to assure that housing constructed under the Section 221(d)(3) program will remain available for occupancy by low- and moderate-income families. As low-income persons, Plaintiffs herein are the intended beneficiaries of that Regulatory provision.

50. Upon information and belief, the private Defendants tendered prepayment of the mortgage covering High Ridge Apartments without the consent of the Federal Housing Commissioner. Accordingly, such tender was a violation of 24 C.F.R. §221.524(a)(2)

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and all others similarly situated, pray that this Court:

1. Assume jurisdiction of this cause;

2. Order that this action may be maintained as a class action pursuant to Rule 23(a) and (b)(2), Federal Rules of Civil Procedure;

3. Pending a decision on the merits of Plaintiffs' claims, enter a temporary restraining order and/or preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the private Defendants, their successors, agents, employees, and all those acting in concert with them from

(a) implementing the rent increases challenged herein, (b) seeking to collect any amount from the tenants greater than previously prevailing rents, (c) seeking to evict or in any way dispossess Plaintiffs or any tenant of High Ridge Apartments for any failure to pay the increased rent, and (d) from selling or offering to sell, or taking any steps incident thereto, any units in High Ridge Apartments as condominium units;

4. Enter a declaratory judgment that HUD's acceptance of the mortgage prepayment and cancellation of the Regulatory Agreement covering High Ridge Apartments violated rights secured to the Plaintiffs by the Fifth Amendment to the Constitution of the United States, and by the national housing acts;

5. Enter a declaratory judgment that HUD's acceptance of prepayment of the mortgage and cancellation of the Regulatory Agreement covering High Ridge Apartments was arbitrary, capricious, and an abuse of discretion, in violation of the Administrative Procedure Act;

6. Enter a declaratory judgment that the private Defendants' tender of prepayment of the mortgage covering High Ridge Apartments without first obtaining the written consent of the Federal Housing Commissioner was a violation of the terms of the note executed by the private Defendants and endorsed by the Federal Housing Commissioner and a violation of 24 C.F.R. §221.524(a)(2);

7. Enter an order rescinding HUD's acceptance of the prepayment of the mortgage covering High Ridge Apartments and further order HUD and the private Defendants to reinstitute the

Section 221(d)(3) mortgage and the Regulatory Agreement covering High Ridge Apartments.

8. Enter an order permanently enjoining the private Defendants, their successors, agents, employees, and all those acting in concert with them from implementing the rent increases challenged herein, seeking to collect more than the previously prevailing rents, seeking to evict or in any way dispossess Plaintiffs or any tenant of High Ridge Apartments for failure to pay any increased rent, and offering or selling, or taking any action incident thereto, any units in High Ridge Apartments for sale as condominium units.

9. Award Plaintiffs their costs in this action as well as reasonable attorneys' fees; and

10. Grant Plaintiffs such other and further relief as this Court may deem just and appropriate.

PLAINTIFFS

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated, Plaintiffs, v. PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development, HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates, Defendants.	JUL 27 1978 Civil Action No. B78-256

FEDERAL DEFENDANT'S RESPONSE TO
PRIVATE DEFENDANTS' MOTION TO DISMISS

On July 21, 1978 this Court preliminarily enjoined the private defendants from proceeding with any noticed rent increases or sale of units as condominiums in the High Ridge Apartment Project. On that date, it was further ordered that plaintiffs and the federal defendant would respond to the private defendants' Motion to Dismiss on July 25, 1978 and that said motion would be heard on July 27, 1978. 1/

1/ Although private defendants filed a Motion to Dismiss on July 13, 1978, a supporting memorandum was not served upon the federal defendant until the July 21, 1978 hearing on plaintiffs' Motion for Preliminary Injunction.

The private defendants' Motion to Dismiss maintains essentially that plaintiffs have failed to state a claim upon which relief can be granted and that the Court lacks subject matter jurisdiction over this action. The federal defendant will not comment herein on the issue of jurisdiction. At the hearing on plaintiffs' Motion for Preliminary Injunction, however, the federal defendant indicated that she was in agreement with plaintiffs that the prepayment of the note and resultant discharge of the mortgage were unlawful in that the Federal Housing Commissioner did not grant the necessary approval, nor was his approval requested by the private defendants as required by 24 C.F.R. 524(a)(ii). The federal defendant, however, does not agree with plaintiffs' claim that the prepayment deprived them of procedural due process rights. Because of the rather unusual posture in which federal defendant finds herself as a result of the manner in which this lawsuit has been brought, she will confine her statement of position to the above-mentioned two issues raised by plaintiff. Hence, the federal defendant supports the private defendants' Motion to Dismiss only to the extent it seeks to dismiss plaintiffs' First Cause of action and otherwise urges that it be denied.

As stated, the federal defendant supports plaintiffs in their contention that the prepayment involved herein was unlawful for failure to seek and obtain approval of the Federal Housing Commissioner. This issue has been briefed with supporting affidavits and submitted to the Court in federal defendant's Statement in Support of Plaintiffs' Motion for Preliminary Injunction, and the Court is respectfully referred to the Memorandum submitted therein for a detailed discussion of this issue.

The federal defendant does not believe, however, that plaintiffs have been deprived of due process of law because of HUD's failure to provide the tenants of High Ridge Apartments with the opportunity for notice and comment regarding the prepayment.[2/] As private defendants quite correctly point out, it is settled law in the Second Circuit that

> "These tenants, although beneficiaries of §221(d)(3) financed housing, do not have a statutorily created property interest sufficient to sustain such a [due process] claim." Grace Towers Ass'n. v. Grace Hous. Dev. Fund Co., 538 F.2d 491, (2nd Cir. 1976)

Thus, plaintiffs in Grace Towers were held to have no right to notice, hearing or other procedural requirements under the National Housing Act, the Fifth Amendment or the Administrative Procedure Act when HUD exercised its discretion in allowing a landlord to make a proposed rent increase in such a project. See Langevin v. Chenango Court, Inc., 447 F.2d 296 (2d Cir. 1971); See also, Harlib v. Lynn, 511 F.2d 51 (7th Cir. 1975); Paulsen v. Coachlight Apartments Co., 507 F.2d 401 (6th Cir. 1974); Peoples Rights Organization v. Bethlehem Associates, 487 F.2d 1395 (3rd Cir. 1973); Hahn v. Gottlieb, 430 F.2d 1243 (1st Cir. 1970) The discretion granted to HUD to determine the propriety of prepayment is indistinguishable from the similar discretion granted it to determine the propriety of a proposed rent increase. The fact that HUD, of its own initiative, has expanded the tenants' role in similar situations, does not erase the sound reasoning

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2/ Attached hereto, however, is an affidavit indicating the intent of HUD to promulgate a prospective notice and comment procedure in prepayment situations involving the 221(d)(3) program. This is not meant to serve as agreement on the part of HUD to plaintiffs' allegations of due process violation, but merely to bring these prepayment procedures in line with other similar proceedings in which HUD, by regulation, allows notice and opportunity for comment. See, e.g., 24 C.F.R. Parts 290 and 410.

of the opinions issued by the Second Circuit. Grace Towers, supra, Langevin, supra. 3/

CONCLUSION

The federal defendant supports the private defendants' Motion to Dismiss only in so far as it seeks to dismiss plaintiffs' First Cause of Action and would otherwise urge this Court to deny said motion for the reasons stated herein and in the Federal defendant's Memorandum In Support of Plaintiffs' Motion for Preliminary Injunction. 4/

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General
Civil Division

RICHARD BLUMENTHAL
United States Attorney

HUGH W. CUTHBERTSON
Assistant U.S. Attorney

3/ It should be added that a decision as to the constitutionality of the prepayment regulations would be rendered unnecessary were the Court to determine that the prepayment was unlawful for failure to seek and obtain the Federal Housing Commissioner's approval. It is a well known principle that constitutional decisions are to be avoided if there are other grounds upon which a decision may rest. Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-48 (1936) Thus, even if the Court should determine that there is a colorable claim under the Fifth Amendment, the motion should be taken under advisement until trial on the issue of the failure to notice the Federal Housing Commissioner.

4/ At the hearing on plaintiffs' Motion for Preliminary Injunction the Court indicated that it would consider whether the federal defendant should be required to post bond in connection with the preliminary injunction issued at private defendants' request. The Court is respectfully referred to Rule 65(c) which specifically provides that "No such security shall be required of the United States or of an office or agency thereof."

DENNIS G. LINDER

DAVID EPSTEIN

STEPHANIE LACHMAN GOLDEN

Attorneys, Department of Justice
Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKI, et al.	*	
Plaintiffs,	*	
v.	*	Civil Action No. B-78-256
PATRICIA R. HARRIS, et al.	*	
Defendants.	*	

AFFIDAVIT OF MARILYN MELKONIAN

Marilyn Melkonian declares and states:

1. I am the Deputy Assistant Secretary for Insured and Direct Loan Programs of the Department of Housing and Urban Development. In that capacity, I am responsible to the Assistant Secretary for Housing-Federal Housing Commissioner (Federal Housing Commissioner) for the nationwide operation of all of the Department's programs of mortgage insurance authorized under the National Housing Act (12 U.S.C. 1701 et seq.).

2. Regulations and other policy directives governing the mortgage insurance programs are issued by the Federal Housing Commissioner. Before such regulations and other policy directives are issued, a Departmental clearance procedure is followed. Under this clearance procedure, the initial decision to issue a proposed regulation or other policy directive governing the mortgage insurance programs is taken by the Federal Housing Commissioner or by me, and is then submitted to the General Counsel and Assistant Secretaries for their review and comment.

3. I intend to take action promptly to initiate the issuance of a new policy by the Federal Housing Commissioner whereby, in the case of any subsidized, insured project where the consent of the Federal Housing Commissioner is required for the approval of the prepayment of a mortgage, the comments of the tenants residing in the project will be solicited and considered before any determination is made by the Federal Housing

Commissioner to approve the proposed prepayment. The initiation of action toward the issuance of the proposed policy on prepayment of a mortgage will follow the Departmental clearance procedure described above. The proposed policy governing the prepayment of a mortgage will be modeled on two regulations currently in effect: (a) 24 CFR Part 290 providing for notice to tenants and opportunity to comment in connection with the proposed disposition of formerly subsidized projects owned by the Department, and (b) 24 CFR Part 401 providing for notice to tenants and opportunity to comment in connection with proposed rent increases in subsidized projects.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 25, 1978

MARILYN MELKONIAN
Deputy Assistant Secretary
Office of Insured and Direct Loan Programs
U.S. Department of Housing and Urban Development
Washington, D. C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Federal Defendant's Response to Private Defendants' Motion to Dismiss and attached Affidavit of Marilyn Melkonia was mailed this 25th day of July, 1978 to counsel listed below:

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Connecticut Legal Services
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P. O. 1107
Bridgeport, Connecticut 06602

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STEPHANIE LACHMAN GOLDEN

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated, PLAINTIFFS	
v.	CIVIL ACTION
PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development,	NO. B78-256
HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	JULY 25, 1978
TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	
BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates, DEFENDANTS	

PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO
PRIVATE DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

This action was filed on July 7, 1978.[1/] On or about

1/ On July 21, 1978, just prior to trial before the Court on plaintiffs' motion for a preliminary injunction, plaintiffs filed their memorandum of law in support of their motion for preliminary injunction. To the extent that said previously filed memorandum addresses issues raised by private defendants' motion to dismiss, it is hereby incorporated by reference herein and is specifically referred to where required throughout the body of this memorandum of law. Also, for a summary of plaintiffs'

July 13, 1978, defendants Highridge Associates, Tarinelli Construction Co. and Bernard A. Gilhuly (hereinafter, the private defendants) filed with the Court a motion to dismiss for lack of "jurisdiction over the subject matter" and for "failure to state a claim upon which relief can be claimed." Next, on July 21, 1978, private defendants filed what appears to be their memorandum of law in support of their motion to dismiss alleging "Plaintiffs' failure to state a claim on which relief can be granted, the court's lack of jurisdiction over the subject matter, and the Plaintiffs' lack of standing..."[2/] In submitting this memorandum, it is plaintiffs' sole purpose to contravert all three of private defendants' aforementioned claims offered in support of their motion to dismiss in an effort to convince this Court to deny defendants' motion and eventually proceed to a decision on the merits.[3/]

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1 cont./ rendition of the factual background of this matter, reference should be made to Section I, pp. 1-5 of plaintiffs' aforementioned memorandum filed July 21st, as, for the most part, repetition thereof has been omitted herein for the sake of convenience.

2/ Private defendants' memorandum of law in support of their motion to dismiss, at p. 4.

3/ On July 21, 1978, after a fairly lengthy trial, this Court granted plaintiffs' motion for preliminary injunction on the basis of a finding that plaintiffs had satisfied their burden of demonstrating that they had raised serious questions going to the merits and that the balance of hardships tipped decidedly toward them. Generally speaking, this court's injunctive order restrained the private defendants from further implementation of the substantial rent increases they had sought to impose effective July 1, 1978, and from selling any units at High Ridge Apartments as condominiums, pending a decision on the merits or further order of the court.

II. PRIVATE DEFENDANTS' MOTION TO DISMISS IS TOTALLY LACKING OF MERIT AND OUGHT TO BE DENIED.

A. This Court has Subject Matter Jurisdiction over this Case.

In paragraph 2 of their verified complaint dated July 6, 1978, plaintiffs allege that jurisdiction is conferred on this Court by 28 U.S. Code §§1331, 1337, and 1361.[4/] Private defendants, at pages 7-9 of their memorandum in support of their motion to dismiss (hereinafter private defendants' memorandum) take issue with each of these three jurisdictional claims advanced by plaintiffs.

In their memorandum, private defendants concede that "there is authority that actions alleged to arise under the National Housing Act fall within the Federal Courts (sic) commerce jurisdiction," citing "Dubose v. Hills, 405 F.Supp. 1277 (D. Conn. 1975) and cases cited therein." In support of his finding of jurisdiction under §1337, in Dubose, Judge Blumenfeld cites Davis v. Romney, 490 F.2d 1360, 1365-66 (3d Cir. 1974); Bloodworth v. Oxford Village Townhouses, Inc., 377 F.Supp. 709, 714-15 (N.D. Ga., 1974); Mandina v. Lynn, 357 F.Supp. 269, 276 (W.D. Mo. 1973); and Winningham v. U.S. Department of Housing and Urban Development, 512 F.2d 617, 621-23 (5th Cir. 1975). Dubose v. Hills, supra, at 1279, n. 11. Plaintiffs, of course, are in full agreement with Judge Blumenfeld and all of the courts in other areas whose rulings he cites in support of his holding that

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4/ Due in part to their confidence in their ability to convince this Court that subject matter jurisdiction does in fact lie under 28 U.S.C. §§1331 and 1337, but principally due to their potential inability to meet the impending deadline imposed by this Court on July 21st on the submission of this memorandum, at this time plaintiffs feel constrained to forego briefing their claim that this Court has jurisdiction to determine this matter under 28 U.S.C. §1361. Plaintiffs wish to inform the Court in no uncertain terms that their failure to brief this particular claim to jurisdiction should not be interpreted as an abandonment thereof and that they fully intend to file a supplemental brief in support of their claim to §1361 jurisdiction, should time and the Court permit it.

actions arising under the National Housing Act, such as this one, fall within the ambit of §1337, thereby conferring jurisdiction over their subject matter on the federal courts, and thereby urge this Court to make a similar finding.

Private defendants, however, point to Potrero Hill Community Action Committee v. Housing Authority of the City and County of San Francisco, 410 F.2d 974, 978-79 (9th Cir. 1969) as contrary authority in support of their position that §1337 jurisdiction does not lie. Plaintiffs concede that the Potrero Hill case does stand for the proposition that the National Housing Act is not an Act of Congress regulating commerce within the meaning of §1337.

The Potrero Hill case is, of course, not authoritative in this jurisdiction. Plaintiffs vigorously contend that it is not terribly persuasive either. The Rotrero Hill opinion, as reported, is approximately five and a fraction pages long. The Court devotes five of these pages to its refutation of the plaintiffs' reliance on 28 U.S. Code §1331 for jurisdiction which is based on an effort to aggregate their several claims to attain the required jurisdictional amount in controversy. The Court uses the fraction of a page referred to above to dismiss the plaintiffs' claim that jurisdiction existed under 28 U.S. Code §1337, in the following terms:

> Nor does it appear that the rights which they assert arise under "any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." 28 U.S.C. §1337. The Housing Acts constitute welfare legislation for purposes of Section 1337, despite the fact that they probably do have some incidental effect on commerce.

This is all that the Potrero Hill Court had to say about 28 U.S. Code §1337. Not having had the opportunity to read plaintiffs' brief in opposition to defendants' motion to dismiss in Potrero Hill, one might reasonably assume that the plaintiffs may have virtually abandoned their claim of jurisdiction under Section 1337 in favor of making an all out effort to convince the court that jurisdiction existed under Section 1331. At any rate, the Potrero Court's summary, far less than analytical disposal of plaintiffs' claim for jurisdiction under Section 1337 combined with the fact that the Potrero decision is not authoritative precedent in this jurisdiction should prompt this Court to pay it very little heed, and instead, follow the example set by Judge Blumenfeld in Dubose, supra, and make a finding that plaintiffs have in fact correctly and properly asserted §1337 jurisdiction in this case.[5/]

Next, in response to plaintiffs' claim of jurisdiction under 28 U.S.C. §1331, private defendants, while admitting that "the plaintiffs' suit presents the court with a federal question... submit that Plaintiffs fail to meet the $10,000 jurisdictional amount requirement."[6/] Plaintiffs, of course, agree that their

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5/ Indeed, Judge Blumenfeld himself accorded little or no weight, precedential or otherwise, to the Potrero result. After citing Davis, Bloodworth, Mandina, and Winningham, supra, in support of his finding of §1337 jurisdiction in DuBose, he adds, at p. 1279, n. 11:

> But c.f. the perfunctory rejection of a similar claim that the United States Housing Act of 1937, 42 U.S.C. §1401 et seq., could be construed under the commerce jurisdiction in Potrero Hill Community Action Committee v. Housing Authority of the City and County of San Francisco, 410 F.2d 974, 978-79 (9th Cir. 1969)(emphasis added).

6/ See, private defendants' memorandum, at p. 8.

complaint does present this Court with federal questions. They vigorously disagree, however, with private defendants' assumption that they are required to meet the $10,000 jurisdictional amount requirement.[7/]

Until the enactment by Congress of Public Law 94-574, 90 Stat. 2721, on October 21, 1976, the $10,000 jurisdictional amount requirement contained in 28 U.S.C. §1331 was universally applied to all cases in which this statute was alleged to provide a basis for federal court jurisdiction. Since then, however, and at all times material hereto, §1331(a) has provided that:

> The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any action brought against the United States, any agency thereof, or any officer or employee thereof in her official capacity. (Emphasis added).

As this is clearly an action brought against an officer (Secretary Harris) of an agency (HUD) of the United States, there is no doubt whatsoever that plaintiffs are under no obligation to demonstrate satisfaction of the $10,000 jurisdictional amount requirement in order to successfully invoke the jurisdiction of

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7/ Plaintiffs maintain, arguendo, that they in fact could meet the $10,000 jurisdictional amount requirement, were it necessary for them to do so. See, e.g., Joy v. Daniels, 479 F.2d 1236, 1239 n. 6 (4th Cir. 1973); Bloodworth v. Oxford Village Townhouses, Inc., supra, at 714; Anderson v. Denny, 365 F. Supp. 1254, 1259 (W.D. Va. 1973); Mandina v. Lynn, supra, at 273.

this Court over the subject matter of this litigation under the authority of 28 U.S.C. §1331.[8/]

In conclusion, plaintiffs respectfully urge this Court to find that it does in fact possess jurisdiction over the subject matter of this case, and deny private defendants' motion to dismiss to the extent that it is predicated on their contention that jurisdiction over the subject matter of this action does not lie.

8/ Private defendants' memorandum contains an assertion, at pp. 8-9, that since HUD has chosen to take the plaintiffs' position on their motion for preliminary injunction, they, the private defendants, are the only real defendants in this case. "In other words," they state, "if HUD were not aligned with the private defendants as a Party Defendant, Plaintiffs would not be able to invoke the jurisdiction of a Federal Court to hear their claim..." To the extent that it is relevant, plaintiffs remind this Court that it was the private defendants who originally aligned themselves with HUD when they elected to construct and operate High Ridge Apartments with substantial federal assistance under the §221(d)(3) program way back in 1966. Also, despite the fact that HUD supported plaintiffs' position in their efforts to obtain a preliminary injunction, it is highly unlikely that they will ultimately support the contentions raised in the two causes of action alleged thus far in plaintiffs' verified complaint as these claims are clearly directed against HUD more so than against private defendants. Plaintiffs also wish to remind this Court, as is stated on p. 4, n. 7 of their previously filed memorandum, that "it is their intention to file an amended complaint in the very near future, adding as many as five new causes of action therein." Unfortunately, due to the fact that plaintiffs have been kept quite busy advancing their motion for preliminary injunction and opposing private defendants' motion to dismiss they have not yet had an opportunity to file their amended complaint. This Court should be made aware, however, that among the "new" causes of action plaintiffs plan to incorporate into their amended complaint, at least three are to be directed against the private defendants. In brief, plaintiffs will claim, inter alia, that (1) the private defendants' tender of prepayment of their mortgage was in violation of the note they executed, evidencing the loan secured by the §221(d)(3) mortgage on High Ridge; (2) that such tender of prepayment violated 24 C.F.R. 221.524(a)(2); and (3) that private defendants have violated the Connecticut Condominium Act, C.G.S. §47-67, et seq.

B. Plaintiffs have Stated a Claim Upon Which Relief May be Granted by this Court.

It is now beyond dispute that in resolving a motion to dismiss for failure to state a claim filed pursuant to F.R. Civ. P. 12(b)(6) "the complaint should not be dismissed 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' Conley v. Gibson, 355 U.S. 41, 45-46 (1957)." George C. Frey Ready-Mixed Co. v. Pine Hill C.M., 554 F.2d 551, 553 (2d Cir. 1977). Also, for purposes of motions of this sort, the factual allegations of the complaint must be taken as true, together with reasonable inferences that may be drawn therefrom in plaintiffs' favor. See, e.g., Drachman v. Harvey, 453 F.2d 722, 724 (2d Cir. 1972); Murray v. City of Milford, 380 F.2d 468, 470 (2d Cir. 1967). Plaintiffs maintain that their claims under the National Housing Act, as amended, and the Fifth Amendment to the United States Constitution are stated with sufficient specificity in their verified complaint to survive a motion to dismiss.

In essence, what private defendants are maintaining in support of their Rule 12(b)(6) motion is that HUD's purported acceptance of their tender of prepayment and subsequent release of supervisory control over them is not appropriate for judicial review. The principal authorities private defendants cite in support of this position are Langevin v. Chenango Court, Inc.,447 F2d. 296 (2d Cir. 1971); and Grace Towers Tenants Association v. Grace Housing Development Fund Co., Inc.,538 F.2d 491 (2d Cir. 1976).

Generally, private defendants contend that "there is no distinction between HUD's discretionary decision-making with respect to landlord's proposed rent increases and HUD's discretionary decision-making with respect to landlord's proposed prepayment of the mortgage.[9/]

The analogy between proposed rent increases and prepayment of their mortgage having been made to private defendants' satisfaction, they cite the aforementioned Langevin and Grace Towers cases for the proposition that "tenants have no right to notice, hearing or any other procedural safeguard under the National Housing Act or the 5th Amendment to the Constitution when HUD exercises its statutory discretion to allow a landlord to make a proposed rent increase in a §221(d)(3) project," obviously claiming that no such rights inure to tenants in the instant situation either.

Thus far, plaintiffs have alleged two causes of action. In general, they claim that: (1) by accepting prepayment of the mortgage and thereby surrendering its supervisory control over the private defendants in their operation of High Ridge Apartments, the defendant Secretary has deprived the plaintiffs of the benefits of a governmental aid program, i.e., the right to continued occupancy of a government subsidized housing unit at below market rate rents, in the absence of ascertainable standards and without affording the plaintiff-tenants notice and an opportunity to be heard, all in violation of the Due Process Clause of the

9/ Plaintiffs vigorously dispute the validity of private defendants' premise. As they argued in their memorandum in support of their motion for preliminary injunction, for them and for the vast majority of their low to moderate income fellow tenants, release by HUD of all supervisory control over High Ridge would necessarily lead to their dispossession. This Court in granting plaintiffs' motion for temporary injunctive relief almost necessarily indicated that it agreed with plaintiffs that this is so.

Fifth Amendment to the United States Constitution and (2) HUD's actions have also violated its statutory obligations under various federal housing acts, particularly 12 U.S. Code §1701t, 42 U.S. Code §1441 and 42 U.S.C. §1441a to preserve existing housing for low and moderate income people.[10/]

Thus, plaintiffs' two causes of action are based on the Due Process Clause of the Fifth Amendment as well as on various housing legislation, especially the National Housing Act, as amended, enacted by the Congress of the United States, i.e., a constitutional and a federal statutory claim. They vigorously maintain that private defendants' reliance on Langevin and Grace Towers, supra, is misplaced.

In their memorandum, private defendants neglect to mention that the Langevin court was very careful to note that:

> ...our decision leaves room for court review of questions as to agency... compliance with constitutional and statutory demands.
> Langevin, supra, at 304.

Moreover, in Grace Towers, the court concluded by reiterating that:

> As in Langevin, our finding of nonreviewability herein does not preclude review of questions pertaining to the agency's jurisdiction or compliance with constitutional and statutory demands. Langevin, supra, at 303-04.
> Grace Towers, supra, at 496.[11/]

Plaintiffs submit that it would be analytically absurd for Congress to intend either, for example, that HUD have unfettere

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10/ Plaintiffs' claims are fully briefed at pp. 11-21 of their memorandum in support of their motion for preliminary injunction. Plaintiffs thus hereby incorporate the aforementioned pages of their previously filed memorandum by reference herein.

11/ Plaintiffs' position on this issue was very recently fully adopted by District Judge Blumenfeld in his Ruling on Motions to Dismiss or For Summary Judgment in Tatro, Palmer, Peacock, Testa, et al. v. Harris, et al. (Civil Nos. H-77-69, H-77-73, H-77-97, H-77-232, Slip op., D. Conn., July 7, 1978). See, Ruling, at pp.16-19, attached hereto.

discretion to violate the statutes Congress has charged it with administering, or the unlimited, unchecked power to violate the United States Constitution.

On July 21, 1978, after a lengthy trial, this Court granted plaintiffs' motion for preliminary injunction on the basis of a finding, inter alia, that plaintiffs had succeeded in making a showing of serious questions going to the merits. Thus, this Court has already made a finding that plaintiffs' two alleged causes of action are of some substance. Plaintiffs respectfully submit that they are clearly of sufficient substance to state a claim upon which relief may be granted and cause this Court to deny that portion of private defendants' motion to dismiss which is grounded upon Federal Rule 12(b)(6).[12/]

12/ At various points throughout the body of their memorandum of law, private defendants appear to complain implicitly, if not explicitly that they are the only real defendants in this case, that they are a totally innocent private party, and that the Court should therefore dismiss the case, as least insofar as it pertains to them. Though they do not deem it essential to offer a response to these vague assertions, plaintiffs, nevertheless, in the interests of candor and verity, will do so anyway.

Plaintiffs have already taken issue with private defendants' assertion that they are the only true defendants in this case, at p. 7, n.8, supra. It is plaintiffs' position that by accepting the aid of the government or its agent HUD in constructing and operating High Ridge, private defendants are inextricably linked with HUD for the purposes of all that is material to this action. The Court's attention is directed to Fenner v. Bruce Manor, Inc., 409 F. Supp. 1332, 1343, n. 12, wherein it is stated:

> The statutory provisions relating to these §221(d)(3) and §236 projects and the undisputed facts as to the management of the projects show quite clearly that the federal government is significantly involved in the process whereby rents are increased or lease terms are changed by landlords. It is thus not necessary to determine whether the due process clause of the Fifth Amendment would likewise apply to the acts of the

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private defendants. A finding by this Court that acts taken by the federal defendants in approving the rent increases violated the due process clause of the Fifth Amendment would necessarily invalidate acts taken by the private defendants in implementing the approvals.

12. By analogy, Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973), a case in which the Court found the acts of a private landlord to constitute state action in a suit brought under 28 U.S.C. §1343, suggests that the stricture of the Fifth Amendment would indeed be applicable to the acts of the private defendants in these cases.

In as much as the private defendants' implicitly contend that this Court should release them from this case and let the plaintiffs and the federal defendant rectify this situation, plaintiffs contend that, having established that jurisdiction does in fact lie over the subject matter of this case (possibly due to the presence of HUD in the action as a defendant as private defendants seem to suggest) private defendants' presence is required in this case at very least, because they are clearly necessary parties under Federal Rule 19(a), parties in whose absence complete relief cannot be accorded among those who are also parties. See, e.g., Shields v. Barrows, 17 How. 130 (U.S. Sup. Ct. 1855); Mandina v. Lynn, 357 F. Supp 269, 277 (W.D. Mo. 1973); Marquez v. Hardin, 339 F. Supp. 1364, 1371 (N.D. Cal 1969); Johnson v. Colt's, Inc. 306 F. Supp. 1076 (D. Conn. 1969); CAB v. Aeromatic Travel Corp., 15 F.R. Serv. 2d 820, 821 (E.D.N.Y. 1977).

C. PLAINTIFFS HAVE STANDING TO PROTECT THE INTERESTS OF THE CLASS THEY SEEK TO REPRESENT.

At p. 4 of private defendants' memorandum of law, they refer to what they call "Plaintiffs' lack of standing." This reference to "lack of standing" is somewhat clarified at p. 7 of private defendants' memorandum wherein they appear to assert that the three named plaintiffs lack standing to represent the interests of the class they seek to represent, i.e., all present and future tenants at High Ridge Apartments. On this basis, they reach their conclusion that "this action is not a proper class action within the scope of Rule 23," and urge that "the class action claim should be denied." Plaintiffs, of course, take issue with these claims.[13/]

In support of their position, private defendants maintain that "There are a great many tenants who support the actions of the mortgageein releasing the mortgage and the mortgagor's plans to declare the units as condominiums." At the hearing on plaintiffs' motion for preliminary injunction, held before this Court on July 21, 1978, private defendants presented evidence that did serve to indicate that some tenants do in fact intend to purchase their units as condominiums in the event private defendants prevail on the merits of this case. Plaintiffs, upon information and belief, suggest that

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13/Plaintiffs' motion for class certification, filed on July 21, 1978, is fully briefed at pp. 8-10 of Plaintiffs' memorandum of law in support of their motion for preliminary injunction, filed that very same day. Plaintiffs continue to adhere to the positions they have taken regarding the class action question in the aforementioned memorandum and thereby incorporate by reference pp. 8-10 thereof herein.

such persons constitute a small minority of the low and moderate income tenants presently residing at High Ridge.[14/]

At the close of the hearing on plaintiffs' motion for preliminary injunction held on July 21, 1978, the Court referred the plaintiffs to the case of Martin v. Mittendorf, 420 F. Supp. 779 (D.D.C. 1976). This case stands for the proposition that one necessary element of adequate class representation requires that "the plaintiff must not have interests antagonistic to those of the class." Plaintiffs, of course, have no desire to represent the interests of those relatively few High Ridge tenants who do not support their position in this litigation and, instead, wish to purchase their apartment units as condominiums.

Cases in which some members of a purported class arguably or actually would not support the relief requested include Dawes v. Philadelphia Gas Commision, 421 F. Supp. 806, 813 (E.D.Pa. 1976); and Peterson v. Oklahoma City Housing Authority, 545 F. 2d. 1270, 1273 (10th Cir. 1976). In Dawes, a case involving an effort by utility company customers to establish the right to a hearing prior to termination of their gas service, the court stated at p. 813, that:

> If there is a constitutional right to a pre-termination hearing, individual plaintiffs surely cannot be pre-

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14/ When they initially filed this action on July 7, 1978, plaintiffs were well aware of the fact that some High Ridge tenants would probably wish to purchase their units as condominiums in accordance with the plans of the private defendants. Attorneys for the plaintiffs as well as the plaintiffs themselves, however, have recently attended tenant meetings at which a great many High Ridge tenants voiced their support for the positions plaintiffs are taking in this litigation.

> cluded from asserting such a right merely because a majority of their fellow customers might prefer not to have the right asserted. In determining whether the litigation asserting the existence of such a right may properly be maintained as a class action, the issue is merely whether the representative plaintiffs have demonstrated the probability of the existence of a sufficient number of persons similarly inclined and similarly situated to render the class action device the appropriate mechanism for obtaining a judicial determination of the rights alleged.

In Peterson, supra, an attack by tenants of low rent housing units against a city housing authority challenging a resolution providing for new leases containing the requirement that all tenants be required to pay a security deposit, the court refused to certify a class where 811 tenants out of a possible 830 had indicated their lack of support for the plaintiffs' position by executing the new lease requiring deposits without objection. In the instant case, plaintiffs maintain that at some point in time the Court will become convinced that their contention that the vast majority of High Ridge tenants support their effort in prosecuting this action is absolutely true.

Plaintiffs are willing to concede that due to the presence in the purported class of some members who may not support the relief requested, it may be too early for this Court to make a decision on their motion for class certification. It is clear, however, that this fact should not cause this court to deny plaintiffs' motion in toto, as private defendants' contend. Instead, some means should probably be employed to accurately assess how many High Ridge tenants wish to align

themselves with the plaintiffs and how many wish to purchase their units as condominiums and thereby support the efforts of the private defendants. In addition to the suggestions for a practical resolution to this problem proferred by plaintiffs at pp. 8-10 of their memorandum of law in support of their motion for preliminary injunction, plaintiffs, in the alternative, propose that this Court utilize the provisions of Federal Rule 23 (d)(2) before ruling on plaintiffs' class certification motion. Rule 23(d)(2) provides:

> d. Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders....(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any steps in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;...

In conclusion, plaintiffs are certain that some sort of practical solution to this problem can easily be arrived at by the parties and the Court. They are also certain that private defendants' efforts to induce this court to deny, in toto, their efforts to represent the interests of their fellow tenants at this early stage of this complex litigation should surely be thwarted by this Court.

III. CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully urge this Court to deny private defendants' motion to dismiss and eventually proceed to a decision on the merits of this case.

Respectfully Submitted,

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CERTIFICATION

This is to certify that on this 25th day of July, 1978, copies of the foregoing memorandum of law were mailed, postage prepaid, to the following counsel of record in this matter:

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Dennis J. O'Brien

Dennis J. O'Brien
Commissioner of the Superior Court

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EMMA TATRO, et al. :

v. : CIVIL NO. H-77-69

PATRICIA HARRIS, Individually and in her capacity as Secretary of the United States Department of Housing and Urban Development, et al. :

COBURN PALMER, SR., et al. :

v. : CIVIL NO. H-77-73

PATRICIA HARRIS, Individually and in her capacity as Secretary of the United States Department of Housing and Urban Development, et al. :

THELMA PEACOCK, et al. :

v. : CIVIL NO. H-77-97

PATRICIA ROBERTS HARRIS, Individually and in her capacity as Secretary of the United States Department of Housing and Urban Development, et al. :

DARLENE TESTA, Individually and on behalf of all others similarly situated :

v. : CIVIL NO. H-77-232

PATRICIA ROBERTS HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development, et al. :

RULING ON MOTIONS TO DISMISS
OR FOR SUMMARY JUDGMENT

These consolidated cases, brought as class actions on behalf of low-income tenants of 16 federally subsidized housing projects, are now before the court on motions to dismiss or for summary judgment, filed by both the private and federal defendants. The plaintiffs seek an order invalidating rent increases which were approved by HUD officials in 1977, as well as other relief. Several causes of action have been pleaded in each case, grounded in a variety of acts and omissions by the landlord and by HUD which are claimed to invalidate the rent increases. I will consider in turn each of the factual assertions which underlie the causes of action.[1]

I. Notice and Comment Procedures

The first two claims concern the procedures followed by HUD and the project owner in allowing tenant comment and landlord response regarding the proposed rent increases. Both the private and federal defendants are said to have violated the regulations governing these procedures, 24 C.F.R. §§ 401.1-401.5, in various specific ways.

Plaintiffs have pleaded two different causes of action based on these instances where the parties did not do exactly

1/ In ruling on these motions, I consider the complaints as they have been amended on June 29, 1978.

what the regulations require. They claim that the rent increases approved in the course of these procedures were invalid for two distinct reasons: first, because the regulations must be construed to invalidate the rent increase when the regulations are not complied with (or substantially complied with); and second, because violation of the regulations also constituted a denial of due process under the fifth amendment.

A. Denial of Due Process

Taking the constitutional argument first, I cannot accept the contention that any violation of these procedural regulations constitutes a denial of due process. Plaintiffs argue essentially that whatever procedural protections HUD has afforded in the regulations must be the minimal protections required by the due process clause. Because the regulations require this pattern of procedures with full notice and comment, plaintiffs say the regulations have created a legitimate expectation that their rents will remain affordable. This expectation is called a property interest, so that the rights of due process can attach to it. But the regulations do not require that rents remain at a certain level; they only require that certain procedures be followed before HUD can consider an application for a rent increase, and before it can be approved. This is a procedural form of protection, not a requirement of substance. And it has been held in

several cases that a procedural protection does not establish a property interest. Lake Michigan College Federation of Teachers v. Lake Michigan Community College, 518 F.2d 1091, 1095-96 (6th Cir. 1975), cert. denied, 427 U.S. 904 (1976); Suckle v. Madison General Hospital, 499 F.2d 1364, 1366 (7th Cir. 1974); Shirck v. Thomas, 486 F.2d 691, 692 (7th Cir. 1973 Weathers v. West Yuma County School District R-J-1, 387 F. Supp. 552, 558 (D. Colo. 1974), aff'd, 530 F.2d 1335 (10th Cir 1976).[2/]

Before these regulations were promulgated, the Second Circuit held that tenants in these projects did not have a "property" interest involved in the rent increases, and that therefore the protections of due process did not apply. Grace Towers Tenants Association v. Grace Housing Development Fund, Inc., 538 F.2d 491 (2d Cir. 1976); Langevin v. Chenango Court, Inc., 447 F.2d 296 (2d Cir. 1971). The only question in these cases is whether the promulgation of the regulations has chang that. The regulations have given the tenants a form of protection, in an effort to assure that HUD will have heard all sides of the story when it decides whether to approve a rent increase--but they still do not give the tenants a substantive

---

2/ Argo v. Hills, 425 F. Supp. 151 (E.D.N.Y. 1977), does not support a contrary conclusion. In addition to requiring certain procedures before rents could be raised, the New York City law under consideration in that case limited the amount by which rents could be increased. See 425 F. Supp. at 155.

right to keep rents low in any given type of situation. So the due process clause cannot form the basis for this type of claim under the court's § 1983 jurisdiction.

B. Violation of Regulations

Now I will turn to the first claim, that the regulations themselves require invalidation of the rent increases.

I ruled as a preliminary matter that the particular violations presented to the court on the motion for a preliminary injunction did not appear to have been substantial, and particularly that they could not have prejudiced the tenants' interests or the purposes of the regulations in any substantial way. Since that time the plaintiffs have made additional allegations, and they have briefed the issues more extensively. However, I must still conclude that the plaintiffs have not alleged any substantial kind of violation that can possibly serve as a basis for rescinding these rent increases.

Some of these have already been discussed in connection with the motion for a preliminary injunction. First, the landlord's notices to the tenants stating its intention to apply for a rent increase did not include certain materials, some of which did not even exist at that time. Then there is a claim that the inspection period should have been extended for five days at certain projects because certain materials had not been available for inspection during the 30-day period. Then the landlord omitted to say in its certification to HUD

that a proper tenant inspection had been permitted. 24 C.F.R. § 401.4(b)(3). I have already identified these as mere technicalities. These violations could not have possibly affected either the tenants' overall opportunity to review the rent increase application and express themselves, or HUD's opportunity to receive and consider tenant comments and landlord response before approving or disapproving a rent increase. Similarly, if after the rent increase was approved, the landlord failed to include reasons for approval in its notice to tenants, id. § 401.5, this cannot have had any impact on the decision process before the approval was completed. The private defendants apparently did fail to convey in some of their notices the reasons that were stated by HUD for approving the increases--though this was corrected, they say, before the increases actually went into effect. This is unfortunate, and it does not conform in full to the intention underlying these regulations, that tenants will not only be heard but also be informed of HUD's decision and reasoning. But it is not a violation that affects the decision-making process itself.

Plaintiffs have concentrated their attack on other violations of the regulations. The original notices to tenants at some projects did not include the new "market rents" that the landlords were proposing. Id. § 401.2. Plaintiffs say that a listing of these figures would have enabled the tenants to compare the proposed market rents with other rents in the

vicinity, and thus to assess their reasonableness. But the notices did show the amounts by which everyone's rent would go up. The tenants could have found out that the market rents would go up by the same amount as the basic rents, if they did not know that already. Their primary concern was with the rents that they themselves would have to pay. Since a tenant could find out everything on the basis of the information actually provided, and since almost everyone in the projects was paying either the basic rental charge or a fixed percentage of their income, this omission does not seem to be substantial.

Next plaintiffs complain that HUD did not adequately state its reasons for approving the rent increases. 24 C.F.R. § 401.5. In each situation HUD seems to have made a "bare-bones" statement that the increases were justified by increased project expenses. That is the criterion that basically governs whether an increase should be approved or not. The tenants may prefer some elaboration and a detailed review of the figures, but the regulations do not specifically require that. HUD identified the reasons in simple form, but they were the real reasons, and they were reasons that justified the increases. HUD certainly might undertake to communicate a little better in these matters, but I cannot see any substantial prejudice to the tenants' interests here.

Lastly plaintiffs claim that HUD did not consider tenants' comments adequately. They infer this from the bare-bones statement of reasons given by HUD. HUD is expected to

read the tenant comments and consider them, and this is an important part of the process. But the situation here is unlike that in Lefort v. Hills, Civ. No. 76-0286 (D.R.I. Nov. 19, 1976), where HUD had decided to approve the rent increase before receiving the tenant comments. The only reason plaintiffs can even allege a failure to consider the comments here is that HUD did not respond to them specifically when the increases were approved. HUD is not specifically required to make this kind of response, and so I cannot see any reason to inquire into the number of minutes they spent reading the comments or to allow depositions to discover whether HUD officials talked among themselves about them. Again, HUD's practice may not be the best way to handle the matter, but I do not think any substantial prejudice can follow from any of these violations. Therefore the causes of action that seek to enjoin the rent increases on these grounds will be dismissed.

II. Security Deposits

Plaintiffs' next area of concern is with the landlord's action in raising its security deposits after the rent increases were approved. They say that this increment was collected in violation of lease provisions, and also in violation of the regulatory agreement between the landlord and HUD. In addition, they claim that under the HUD regulations the landlord had to apply for HUD's approval before collecting the additional deposits.

The leases refer to the security deposit as a blank amount, followed by the expression "one month's rent" in parentheses. When the lease is filled in, the current monthly rent is inserted in the blank. Plaintiffs say that the amount of the deposit must remain fixed once it has been filled in. However, the language of the leases appears to imply that the security deposit will be equal to one month's rent, implying in turn that when the rent goes up, the security deposit will go up with it. The sample lease form that HUD provides is more explicit on the same point. It says, "Tenant hereby makes a deposit of one month's rental against any damage . . . The deposit equals a month's rent; it is not a fixed amount. Plaintiffs have not cited any particular provision in the regulatory agreement that says otherwise.

The regulations considered above pertain only to increases in maximum permissible rents. 24 C.F.R. § 401.1. However, another provision requires the landlord to obtain HUD's approval when it wishes to modify the terms and conditions of the rental agreement. Id. § 450.4(d). The lease terms allow the security deposit to go up when the rent goes up, so that no actual modification of the leases is required in order to increase the security deposits. Thus an application under § 450.4(d) is unnecessary. The portions of these complaints that refer to the collection of increased security deposits will be dismissed.

III. Operating Subsidies

The next complaint is that HUD is not paying operating subsidies under § 236(f)(3) of the Housing Act, 12 U.S.C. § 1715z-1(f)(3), to benefit those tenants who qualify for these subsidies. Plaintiffs seek to compel payment of these subsidies, and to rescind the rent increases either because HUD did not take the availability of operating subsidies into account, or because HUD did not require the landlord to apply for operating subsidies as an alternative to raising the rents.

I must note initially that the approval of a rent increase is based on factors entirely independent from the operating subsidy program--it is based on whether the landlord is experiencing increased costs that are reasonable and that justify increased rents to maintain the proper flow of income to the projects. A rent increase is not made illegal because a subsidy is not being paid. I have dealt with this issue in a recent decision in Taylor v. Harris, ___ F. Supp. ___, Civ. No. H-78-86 (D. Conn. June 6, 1978).

There are two different kinds of projects involved here. Some are § 236 projects, and the tenants in those projects who would be eligible for operating subsidies are members of a statewide class that this court certified in Dubose v. Hills, 420 F. Supp. 399 (D. Conn. 1976), applic'n to vacate stay denied, 429 U.S. 1085 (1977). The injunction ordering implementation of the subsidy program for that statewide class has been stayed pending appeal, so there is nothing

this court can do now as far as those § 236 projects are concerned.

The other projects were financed under section 221(d)(3) of the Housing Act, 12 U.S.C. § 17151(d)(3). They are not the subject of another pending action, but neither are they the subject of § 236(f)(3). The plaintiffs have argued that when Congress enacted the operating subsidy program in 1974, it must have meant to benefit tenants in the 221(d)(3) projects as well as in the 236 projects. But there is really no basis for this argument.

First of all, the operating subsidy program appears in section 236, and the language appears to refer to the subject of that section, the projects that were financed under § 236. Section 236(f)(3) was added to § 236 several years after § 236 was first passed, when there were already both kinds of projects in existence. Pub. L. 93-383, § 212, 88 Stat. 672 (1974). But Congress inserted the operating subsidy program into § 236, making no reference to any other section, and it used language that seems obviously to refer only to the other parts of the same section.

Plaintiffs cannot cite any legislative history to support their argument. Congress had only § 236 in its collective mind, and the legislative history bears this out. In the conference report, the amendment is described as "authorizing increased subsidies to existing and new section 236 projects to meet higher operating costs . . . ." Conf.

Report No. 93-1279, 93d Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Ad. News 4449, 4475.

The main point advanced by plaintiffs is that tenants of § 221(d)(3) projects had the same need for operating subsidies as those in 236 projects. This may show what Congress should have done, but it does not explain what Congress did. Congress did not intend to make the operating subsidy available to 221(d)(3) projects. So the claims relating to this subsidy program must also be dismissed.

IV. Rent Supplements

The next set of claims revolves around the rent supplement program, which is in § 101 of the Housing Act, 12 U.S.C. § 1701s. Plaintiffs attack the rent increase because prior to approving it, the landlord did not apply to HUD for rent supplements, and because HUD did not require the landlord to apply for them as an alternative to raising rents. In addition they seek to compel the Secretary to make the supplement payments.

The Secretary argues that her predecessors suspended the supplement program and that no funds are available for it. She says the D.C. Circuit approved this suspension in Commonwealth of Pennsylvania v. Lynn, 501 F.2d 848 (D.C. Cir. 1974). But that case decided a different issue. In 1973 HUD had completely suspended the § 235 and § 236 programs, and no new units were being built. The rent supplements were relevant only insofar as they could be applied to the new projects.

So the D.C. Circuit did not deal with the suspension of § 101 as a separate issue.

The Secretary also relies on a statement in the legislative history to a 1976 appropriations act, where it is said "None of this contract authority is available for any new rent supplement units . . . ." H. R. Rep. No. 94-313, 94th Cong., 1st Sess. 7 (1975). In Sicuro v. Hills, 415 F. Supp. 553 (C.D. Cal. 1976), this was interpreted to mean that the funds in that act were not to be used for newly constructed units. Congress did not mean to preclude HUD from entering new rent supplement contracts with existing projects. I find that interpretation persuasive.

If we look at § 101, we find that the main definition of an eligible housing owner refers only to § 221(d)(3) projects that are not getting the benefit of the below-market interest rate in § 221(d)(5). 12 U.S.C. § 1701s(b). It does not appear in the complaints that any of the § 221(d)(3) projects in these cases fit that definition.

In subsection (h) of § 101, the Secretary is also authorized to enter rent supplement contracts with other type of projects on an experimental basis. This includes some § 221(d)(3) projects that are getting the § 221(d)(5) BMIR rate, but only those that were approved for the mortgage insurance program after the date when § 101 was enacted in 1965. 12 U.S.C. § 1701s(h)(1)(A). The Secretary has interpreted this latter limitation in her regulation at 24 C.F.R.

§ 215.10, by limiting this part of the program to new or rehabilitated 221(d)(3) projects, and I find that this is a correct interpretation. That is the only meaning Congress could have had when it referred to projects approved after August 10, 1965.

Subsection (h) also includes § 236 projects on an experimental basis. 12 U.S.C. § 1701s(h)(1)(D). And the regulation at § 215.10 also includes existing 236 projects within the eligible group. There are some 236 projects in this case, where some tenants may be eligible for the rent supplements. But the statute only requires the implementation of this program on behalf of those projects on an experimental basis. This necessarily implies that some of the tenants who would otherwise be qualified for these supplements will not receive them. So I cannot infer from the statute that the Secretary has any mandatory duty to pay these supplements on behalf of any particular § 236 projects.

In addition, even if such a duty existed, it would not form the basis for holding that these rent increases were illegal. Only certain tenants could qualify for the supplements. If the supplements were paid, the rents would still go up, but those certain tenants would not pay as much because HUD would be paying part of their rent to the landlord for them.

So these causes of action based on the § 101 rent supplement program must be dismissed.

V. Section 8 Assistance Payments

In their brief and at oral argument, plaintiffs have also stated a claim that the landlord has violated a statutor duty to tenants by refusing to enter contracts under the § 8 housing assistance program, 42 U.S.C. § 1437f. They rely on no particular statute or regulation in making this claim, but assert that the purposes of the 221(d)(3) and 236 programs require project owners to participate in any program that wi reduce hou ing costs for low-income tenants.

Like rent supplements, payments under § 8 can only benefit certain elegible tenants. If the landlord did partic ipate under § 8, this would not affect the propriety of rent increases. The landlord would simply receive a portion of some tenants' rent from the local agency administering the § 8 program.

In addition, I find no basis in the statute for holdi that a landlord must participate under § 8. The § 8 program is entirely independent of §§ 221(d)(3) and 236. Section 8 assistance is available to tenants in all forms of housing, and the program is not intended particularly for tenants of subsidized housing projects. Without some specific evidence of legislative intent, a court cannot hold that housing owne involved in one program must participate in an entirely separate program. Therefore no relief can be awarded on the basis of this claim.

VI. Accounting Methods

The last subject of these actions is the accounting methods used by HUD to determine maximum permissible rents. The principal practice involved is the use of fixed percentage to calculate the amount of expenses that the landlord is expected to incur. The plaintiffs claim that the methods used yield budget figures for expected expenses that consistently exceed the landlord's actual current expenses. The limited discovery that the plaintiffs have conducted has produced evidence of this effect, and it has also shown that the difference between actual and budgeted expenses has a significant effect on rents.

This practice is said to conform to certain blank forms issued by HUD for this specific purpose, but the percentage formulas embodied in the forms is said to conflict with the instructions in HUD's Insured Project Servicing Handbook. Plaintiffs' first ground for attacking the bookkeeping practic is the handbook itself. They argue that it constitutes a regulation, which has the force of law, and that the forms issued by HUD are in conflict with that regulation.

Apart from the handbook, plaintiffs argue that the bookkeeping practices are unreasonable, and consequently that the approval of the rent increases, based on this method of calculation, was arbitrary and capricious--an abuse of the Secretary's discretion in this area.

Still a third argument is that the spirit and purpose of the legislation have created a mandatory duty for the Secretary and her agents, to keep rents in federally subsidiz housing projects as low as possible. The legislation was passed to help fulfill the national goal of better housing fo all by providing lower-income families with decent housing th could afford. The plaintiffs infer that HUD has an obligatio to take any possible and reasonable step that would keep low-income tenants from having to pay higher rents in these projects. For example, plaintiffs urge that HUD should not allow project owners the maximum equity dividend of six per c in their calculations, because the landlords' actual profit includes substantial tax savings as a result of their investments. They would also require HUD to consider suspending payments into reserve-for-replacement funds to prevent rents from going up, placing the tenants' interest in lower rents above the need for a fund to maintain the condition of housin projects. Obviously this kind of argument can go too far; an the courts are not about to hold that HUD has to decide every question presented in the management of these projects in the way that will produce the lowest rents. The only claim in this group that truly charges HUD with an unreasonable or arbitrary practice is the one directed at its accounting methods.

The Secretary argues that HUD's actions in approving or disapproving rent increases are not judicially reviewable.

The Second Circuit held in Grace Towers and in Langevin, supra that this is an area of activity that is committed to agency discretion; and particularly that the question whether a rent increase application submitted to HUD was supported by sufficient evidence could not be judicially reviewed.

But Grace Towers also indicated that HUD would not be immune to judicial review of actions where HUD was claimed to have violated a statutory or constitutional standard. See 538 F.2d at 496. In addition, the Second Circuit did not hold that the discretion given to the Secretary over rent increases is so broad that it cannot be abused.

We have an allegation here that an agency is operating under two simultaneous sets of rules, one written out in a handbook for its agents and one embodied without explanation in a blank form provided for use in computations. The form, and the way it is used, are said to violate the agency's own rules.

It is also alleged that the percentage figures used by HUD to calculate expected losses from vacancy and bad debts, and from anticipated management fees, are unreasonable. I would, of course, be obligated to give great weight to the policies and practices developed by HUD in its execution of its duties, but this normal presumption of reasonableness is weakened where the agency is in effect accused of violating its own standards and written rules. It is therefore impossi to hold as a matter of law that plaintiffs cannot prove that

HUD has been arbitrary and capricious, or has exceeded the limits of the discretion afforded under the statute. I do not wish to pass judgment on these accounting practices; but there exists an issue of fact here as to whether they are arbitrary or capricious. This is an issue which can be developed through further discovery.

Therefore the motions to dismiss or for summary judgment are denied with respect to the causes of action that concern the accounting methods. This also applies to the motion of the private defendants, because if plaintiffs prevail on this claim, some relief from these rent increases may be required, and for that purpose the private defendants would be necessary parties. The paragraphs in each complaint which involve these questions are identified in the margin.[3/] As to all other causes of action, the motions are treated as for summary judgment, and they are hereby granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 7th day of July, 1978.

M. Joseph Blumenfeld
United States District Judge

3/ Tatro complaint, ¶¶ 42-43; Palmer complaint, ¶ 46; Peacock complaint, ¶¶ 57-59; Testa complaint, ¶¶ 41-43. These paragraphs do not specifically refer to accounting methods, but they generally set forth plaintiffs' argument based on the statutory purposes of the 221(d)(3) and 236 programs. Further amendment of the complaints would clarify the nature of plaintiffs' claims, but they have been extensively briefed.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action No. B78-256
PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development,	)	
HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	)	
TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	)	
BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates,	)	
Defendants.	)	

FEDERAL DEFENDANT'S STATEMENT IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The defendant, Patricia Harris, Secretary of the United States Department of Housing and Urban Development, (HUD) through her undersigned attorneys, hereby submits this Statement in support of plaintiffs' Motion for Preliminary Injunction with accompany memorandum and the affidavits of Robert Kalish,

Deputy Director, Office of Loan Management, (HUD) and Edward Szymanoski, Area Economist, HUD, with attached exhibits.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated,	)	
Plaintiffs,	)	
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PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development,	)	
HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	)	
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BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates,	)	
Defendants.	)	

FEDERAL DEFENDANT'S MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

PRELIMINARY STATEMENT

This action was filed on July 7, 1978 by certain low income persons who are tenants in High Ridge Apartments, a federally subsidized Section 221(d)(3) housing project for low and moderate income families which is located in Fairfield, Connecticut. Plaintiffs seek declaratory and injunctive relief, inter alia, to compel recission of the May 8, 1978 prepayment in full of the private defendants mortgage indebtedness, so that

the Department of Housing and Urban Development (HUD) may reassert regulatory supervisory control over the High Ridge Apartments and vitiate any rent increase imposed on the tenants by private defendants after the prepayment occurred.

On July 11, 1978 this Court issued a Temporary Restraining Order, by stipulation, enjoining the private defendants from:

> a) Further implementing the substantial rent increases they have sought to impose on all tenants at High Ridge apartments effective July 1, 1978, taking any affirmative action to collect any amount in excess of the rental rates which prevailed immediately prior to July 1, 1978, from any tenant at High Ridge Apartments, and from seeking to evict or in any way dispossess any tenant at High Ridge Apartments for any failure to pay said substantial rent increases;
>
> and
>
> b) Taking any action whatsoever in the way of selling, attempting to seel or otherwise transferring ownership of High Ridge Apartments or any apartment units whatsoever within High Ridge Apartments to any individual, group or business entity.

Shortly thereafter, a hearing on the plaintiffs' Motion for Preliminary Injunction was set for July 21, 1978. Although the Secretary is a defendant in this action, she concurs in plaintiffs' contentions that the prepayment herein at issue was accomplished in violation of 24 C.F.R. 221.524 which provides that before a prepayment such as the type that occured herein can take place, the Commissioner of the Federal Housing Administration (FHA) must give his consent. This memorandum is submitted in support of the plaintiffs' Motion for Preliminary Injunction. 1/ The federal defendant will, in the near future, submit the necessary pleadings to the Court to enable it to seek similar relief against the owner/mortgagor to rescind the prepayment transaction. Because of the

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1/ To the extent plaintiff raises other legal issues at the hearing on their motion, it is respectfully requested that the federal defendant be given the opportunity to respond.

irreparable injury to the plaintiffs that will result if the character of this project is altered and the strong public interest in maintaining this project for the low and moderate income, as well as the federal defendant's belief that the prepayment will be held void, the Secretary urges that the injunction be granted. In further support of this position the federal defendant submits the affidavits of Robert Kalish, Deputy Director, Office of Loan Management, HUD and Edward Szymanoski, Area Economist, HUD, with exhibits, are attached.

STATUTORY AND FACTUAL BACKGROUND

The High Ridge Apartments Project at issue herein, was initially endorsed for mortgage insurance by the Federal Housing Commissioner under the so-called "221(d)(3) Below Market Interest Rate Program (BMIR Program) on May 31, 1966, with final endorsement on May 17, 1967. [Kalish Affidavit ¶] This program was authorized under Section 221(d)(3) and (5) of the National Housing Act. (12 U.S.C. 1715 l(d)(3) and (5)). Section 221(d)(3) provides that the Secretary of Housing and Urban Development may insure a mortgage executed by several types of entities as enumerated in the section, including "a limited dividend corporation (as defined by the Secretary) . . . or other mortgagor approved by the Secretary, and regulated or supervised . . . by the Secretary under a regulatory agreement or otherwise, as to rents, charges, and methods of operation, in such form and in such manner as in the opinion of the Secretary will effectuate the purpose of this section."

The proviso to section 221(d)(5) sets forth the mechanism for a subsidy. It provides that a mortgage insured under Section 221(d)(3) shall bear interest at not less than the lower 3 per cent, or the estimated average yield on marketable obligations of the United States. Since a mortgage at a below market interest rate would not be retained by a private lending institution, the statutory plan is completed by section 305(h) of the National Housing Act (12 U.S.C. 1720(h)) which provided, at the time this project was insured, that the Federal National Mortgage Association (FNMA) is authorized to make commitments to purchase, and to purchase mortgages insured under section 221(d)(3).

Section 802(d)(3) of the Housing and Urban Development Act of 1968 amended section 302 of the National Housing Act (12 U.S.C. 1717(a)(2)) by providing for a partition of FNMA into two separate corporate bodies, Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA). This section also provides that all assets acquired by pre-1968 FNMA under section 305 (which includes the mortgage on this project) shall become the property of GNMA. GNMA is described as a corporate body in the Department of Housing and Urban Development. Section 802(y) of the Housing and Urban Development Act of 1968 amended section 308(a) of the National Housing Act (12 U.S.C. 1723(a)) by vesting in the Secretary all the powers and duties of GNMA. This provision also states that:

"Within the limitations of law, the Secretary shall determine the general policies which shall govern the operations of the Association, and shall have power to adopt, amend and repeal by-laws governing the performance of the powers and duties granted to or imposed upon it by law."

The Housing and Urban Development Act of 1968 recharted FNMA as a private corporation, one-third of the board of directors of which are appointed annually by the President of the United States. (308(b) of the National Housing Act, 12 U.S.C. 1723(b)).

The regulations governing GNMA are set forth at 24 C.F.R. Chapter III. The status of GNMA as a Government corporation is described in 24 C.F.R. §300.5. Particularly significant to this case is 24 C.F.R. §300.11 wherein GNMA designates FNMA and enumerated FNMA employees as attorneys-in-fact to take the following actions in the name of GNMA:

"(3) To satisfy, discharge, release, amend, assign, modify, extend, renew, subordinate, foreclose, or liquidate in any legal manner, in whole or in part, any chattel mortgage, real estate mortgage, deed of trust, security deed, or collateral or security of whatsoever kind or nature, securing any note, bond, check, or other evidence of indebtedness now or hereafter held by the Association, and to exercise any right or authority which the Association has or may have pursuant to the terms of any such security instrument or evidence of indebtedness, including any power of appointment contained therein."

The regulations governing BMIR projects are set forth in 24 C.F.R. Part 221, Subparts C and D. The owner of this project is a limited distribution mortgagor. As defined in "limited distribution mortgagor," 24 C.F.R. 221.510(c). 24 C.F.R. §221.524 governs prepayment of mortgages and provides,

in pertinent part, as follows:

> "§221.524 Prepayment privileges.
>
> (a) Prepayment in full--(1) Without prior Commissioner consent. A mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated without the prior consent of the Commissioner in the following cases:
>
> (i) Where the mortgage is insured under section 221(d)(4) of the Act.
>
> (ii) Where the mortgagor is a limited distribution type, which is not receiving payments from the Commissioner under a rent supplement contract executed pursuant to the provisions of §§5.1 et seq. of this title and where the prepayment occurs after the expiration of 20 years from the date of final endorsement of the mortgage."
>
> * * *
>
> "(2) With prior Commissioner consent. In all other cases except those outlined in subparagraph (1), a mortgage indebtedness shall not be terminated unless the Commissioner gives his prior consent to such prepayment, . . ."

24 C.F.R. §221.529 is addressed to the form of regulation by the FHA Commissioner and provides as follows:

> "§221.529 Form of regulation by Commissioner.
>
> The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or reinsurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves."

24 C.F.R. §§221.530 and 221.532 also relate to FHA supervision of limited distribution mortgagors. Section 221.530(a) provides that no charge shall be made by the mortgagor for accommodations, facilities or services offered by the project except those approved in writing by the FHA Commissioner and the mortgagor, which contains the following provisions governing residential rents:

"(b) Owners shall make dwelling accommodations and services of the project available to occupants at charges not exceeding those established in accordance with a schedule approved in writing by the Commissioner."

(d) The Commissioner will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

(1) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance expenses over which owners have no effective control, or

(2) Deny the increase stating the reasons therefor."

This provision was contained within the regulatory agreement as well. [Kalish Affidavit ¶ 6] In addition, it should be noted that BMIR projects are covered by 24 C.F.R. Part 401 which sets forth a procedure for the consideration of tenant comments in connection with rent increases.

The owner/mortgagor of the High Ridge Apartment project is High Ridge Associates, a partnership with three partners: Bernard Gilhuly, Donald Tarinelli and Palmer Tarinelli. The former two are designated as managing partners. The construction lender was the State National Bank of Connecticut and it assigned the note and mortgage at final endorsement to FNMA. [Kalish Affidavit ¶ 4] At the time of the partition of FNMA into two corporations in 1968 (as described earlier), this mortgage was transferred to GNMA and has been held by it since that date. [Kalish Affidavit ¶ 5]

Pursuant to the HUD regulations governing prepayment in subsidized projects, the Note contains the following prepayment clause limiting the right of prepayment:

[See Kalish Affidavit ¶7, Exhibit A]

> "The debt evidenced by this note may not be prepaid either in whole or in part prior to the final maturity date hereof without the prior written approval of the Federal Housing Commissioner except a maker which is a limited dividend partnership may repay without such approval after 20 years from the date of final endorsement of this note by the Federal Housing Commissioner. Prepayments may only be made in an amount equal to one or more monthly payments on principal next due on the first day of any month prior to maturity upon at least thirty (30) days' prior written notice to the holder of the note."

The mortgage does not contain an express clause on prepayment, but recites that the note is incorporated by reference and that a copy of the note is attached. [See Kalish Affidavit ¶ 7, Exhibit B.] In accordance with the regulations, a Regulatory Agreement was executed between HUD and the owner/mortgagor at the time of initial endorsement. [Kalish Affidavit ¶ 6, Exhibit C]

Pursuant to an agreement between GNMA and FNMA, known as the "Combined Services Agreement," all of the project mortgages owned by GNMA are serviced by FNMA. The current agreement is dated October 1, 1977. Item 6 of that agreement describes the duties of FNMA with respect to the servicing of project mortgages. [Kalish Affidavit ¶ 8, Exihibit D] As described earlier, GNMA has delegated its mortgage servicing powers to FNMA, as attorney-in-fact, as set forth in the regulations.

In June of 1978, the Office of Loan Management, HUD, first learned that Mr. Gilhuly had purportedly prepayed the relevant mortgage to FNMA on May 8, 1978. [Kalish Affidavit ¶ 9] No attempt to obtain the approval of the Federal Housing Commissioner was ever made nor was approval

obtained. [Kalish Affidavit ¶ 9].

As soon as the purported prepayment was discovered by officials in the Washington Offices of the Federal Housing Commissioner, GNMA, and FNMA, the owner/mortgagor was advised of this failure to obtain FHA approval. At the request of Mr. Kalish, a telegram dated June 28, 1978, from FNMA was sent to Mr. Gilhuly requesting that the transaction be rescinded and the rent increase proposed for July 1, 1978, be withdrawn. A telegram to the Owner from the Federal Housing Commissioner dated June 30, 1978, stated essentially the same demand. [Kalish Affidavit ¶ 9, Exhibits E and F]

ARGUMENT

I. The Federal Defendant Supports Plaintiff's Motion for Preliminary Injunction

The federal defendant concurs with the plaintiffs that the status quo prior to prepayment of the mortgage should be maintained pending final disposition of this action by the Court. Since federal defendant agrees with plaintiff that the prepayment at issue herein was unlawfully made without the necessary consent of the Commissioner, it is believed that there is a substantial likelihood that they will prevail on the merits of this claim. In addition, the federal defendant concurs that the tenants herein involved will be irreparably harmed and that it would be against the public interest to effectively remove from the housing market these low rent housing units. Thus the standards for the issuance of a preliminary injunction have been met. See Virginia Petroleum Jobbers Ass'n. v. F.P.C., 259 F.2d 921,925 (D.C. Cir. 1958); Norwalk CORE v. Norwalk Board of Education, 298 F.Supp. 203, 206 (D. Conn. 1968).

A. There is Substantial Likelihood That Plaintiffs Will Prevail On the Merits of Their Claim That Prepayment Was Unlawful Without Consent Of The Federal Housing Commissioner

It is clear from GNMA regulations at 24 C.F.R. Part 300 and the Combined Servicing Agreement that FNMA, and its designated agents, had authority to act for GNMA in carrying out the servicing of GNMA mortgages. However, GNMA was clearly limited in the extent to which it could legally accept a prepayment in the case of subsidized projects, and thus satisfy the mortgage. Consequently, its agents were similarly limited.

The HUD regulation issued by the FHA Commissioner at 24 C.F.R. 221.524 leaves no room for ambiguity. The defendant High Ridge Associates qualified under 221(d)(3) as a limited distribution mortgagor. A limited distribution mortgagor (under 24 C.F.R. 221.524) may prepay without the Commissioner's approval at any time after 20 years after the date of final endorsement. Within this 20 year period, however, the Federal Commissioner's consent is necessary. The articulation of this policy is not merely limited to the Federal Register and the Code of Federal Regulations. Indeed, it is clearly set forth in the Note executed by the mortgagor. The prepayment policy is also legally included in the mortgage; that document recites that the note is incorporated by reference and was physically attached to it [Kalish Affidavit ¶7] Thus, the mortgagor had full knowledge of the Federal Housing Commissioner's policy requirement.

Since the mortgagee, GNMA, was legally limited in its ability to accept prepayment, its agent could have no greater authority. The law is clear that "anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority." Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384 (1947). In Merrill, plaintiff brought an action against a Government corporation on a policy of crop insurance purportedly issued by an agent for the corporation. The agent had purported to issue a policy of crop insurance to the insured covering a type of wheat (spring wheat reseeded on winter wheat) which was beyond the agent's authority under the Wheat Crop Insurance Regulations published by the corporation in the Federal Register. The insured accepted the policy and paid premiums

in good faith. In holding for the corporation, the Supreme Court admitted that the case represented a hardship to the insured. Nonetheless, the Court held that a Government corporation was not to be treated like a private corporation. The Court emphasized that the scope of an agent could be limited either directly by Congress in the legislation or through rule-making power exercised by the corporation. The court further noted:

> "Indeed, not only do the Wheat Regulations limit the liability of the Government as if they had been enacted by Congress directly, but they were in fact incorporated by reference in the application, as specifically required by the Regulations." Merrill, supra at 385.

In Merrill, the insured apparently had no knowledge of the limitation of the agent's authority. The regulation was only incorporated by reference in the application for insurance. In the present action, the prepayment rule applicable in this case was clearly and expressly set forth in the Note. The restriction on prepayment, as set forth in the regulations, the Note and the Mortgage, applied equally to the mortgagor and the mortgagee. FNMA's action in purportedly accepting prepayment on May 8 has no greater legal effect than the action of the agent in Merrill in purportedly issuing an insurance policy.

Similarly, the mortgagor cannot suggest that the mere physical acceptance of the prepayment check and resultant cancellation of the note can work as an estoppel. As discussed, the mortgagor had clear notice of the need to seek the consent of the Commissioner before prepayment. He cannot

claim detrimental reliance since he bears as much responsibility for seeking the consent of the Commissioner as would the mortgagee.

Even if the Court would find that this consent should have been sought exclusively by FNMA, Section 221.524 of the applicable regulations makes it absolutely clear that there must be this consent before prepayment. Any action by the servicing agent in contravention of this regulation indicates that the agent would clearly be acting outside the scope of his employment.

In Wilbur National Bank v. United States, 294 U.S. 120, 123 (1935), an action involving a government life insurance policy, the Court held that the policy had expired unless there was a waiver by the United States and that this could not have been the case since "[t]he law does not permit waiving statutory requirements by the acts of employees of the government." Similarly, an employee of FNMA cannot, as agent for GNMA, waive the requirement of consent by the Commissioner. See also, West Va. Housing Development Fund v. Sroka, 415 F. Supp. 1107 (W.D. Pa. 1976).

B. The Public Interest Mandates the Granting of a Preliminary Injunction

The High Ridge Apartments was, at least until prepayment, retained as a low and moderate rent complex by virtue of the existence of a below market interest rate mortgage that was made available through GNMA. The statute provided for a large subsidy in the form of FNMA purchase of a 3% mortgage at par. The purpose of the subsidy is to provide safe and sanitary housing to persons of low and moderate income at rentals which they can afford. In order to make certain that this subsidy

inured to the benefit of this class, and did not merely produce a windfall profit to the owner, the regulation at 24 C.F.R. §221.524 provided that for a 20 year period the project should be operated under FHA controls for the benefit of persons of low and moderate income except under special circumstances. Thus, the regulatory provision calling for the consent of the Commissioner is in keeping with the policy of providing low-rent housing. [Kalish Affidavit ¶7]

As Mr. Kalish's affidavit indicates, consent for prepayment before twenty years is not casually given. The following conditions must be met:

1. The project owner must certify and the HUD field office must verify that there is suitable subsidized housing available in the area at similar rental rates.

2. The owner must agree to pay all relocation costs for tenants required or desiring to vacate the project.

3. The HUD field office must make a determination that the area has an overabundance of subsidized housing and that no additional subsidized housing will be insured until market conditions improve.

4. A determination must be made by the Commissioner that the approval of the prepayment is in the best interests of the Secretary.

[Kalish Affidavit 10, Exhibit G]

An Analysis of local housing market conditions would be made by the HUD area office with jurisdiction and the Office of Loan Management would consider that as well as how best to carry out the intention of Congress under the National Housing Act [Kalish Affidavit ¶10]. Clearly a detailed review procedure takes place before the consent determination is made. Yet this consent procedure was virtually ignored.

As the affidavit of Mr. Szymanoski indicates, it is unlikely that the applicable conditions could have been

met in this case. Fairfield simply has no other housing of this type available for families with the income level covered by the 221(d)(3) program. [See Syzmanoski Affidavit]

These factors, of course, also indicate the irreparable harm that plaintiffs will experience if this unlawful pre-payment is not enjoined.

CONCLUSION

For the above reasons, the federal defendant concurs with the plaintiffs that a preliminary injunction should be granted.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General
Civil Division

RICHARD BLUMENTHAL
United States Attorney

HUGH W. CUTHBERTSON
Assistant United States Attorney

DENNIS G. LINDER

DAVID EPSTEIN

STEPHANIE LACHMAN GOLDEN

Attorneys, Department of Justice
Attorneys for Federal Defendant.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKI, et al.	
Plaintiffs,	
v.	Civil Action No. B-78-256
PATRICIA R. HARRIS, et al.	
Defendants.	

AFFIDAVIT OF ROBERT P. KALISH

Robert P. Kalish declares and states:

1. I am the Deputy Director of the Office of Loan Management under the Assistant Secretary for Housing-Federal Housing Commissioner, U. S. Department of Housing and Urban Development (hereafter referred to as "HUD"). The powers of the Secretary of Housing and Urban Development (hereafter referred to as the "Secretary") under the National Housing Act (12 U.S.C. 1701 et seq.) have been delegated to the Assistant Secretary for Housing-Federal Housing Commissioner (hereafter referred to as the "Commissioner"). As Deputy Director of the Office of Loan Management, I have supervisory responsibility for the management of all mortgages insured or held by the Commissioner pursuant to the National Housing Act from the time of final endorsement of the mortgage until it is fully paid or it is assigned or foreclosed and the title acquired by the Secretary. Any request by a mortgagor or a mortgagee for the consent of the Commissioner to a prepayment of a mortgage, where such consent is required, would in the normal course of business be forwarded to my Office for consideration and decision. The Director of my office, Fred W. Pfaender, and I have the delegated authority from the Commissioner to approve or disapprove such request for prepayment.

2. I have read the complaint of the plaintiffs in the case captioned Kathleen Korski, et al. v. Patricia R. Harris, et al., which has been filed in this Court and am generally familiar with its contents.

3. The purpose of this affidavit is to state the history and current status of the housing project in Fairfield, Connecticut, known as High Ridge Apartments (No. 017-55028) (hereafter referred to as the "Project") and to describe the policies of the Commissioner with respect to the prepayment of mortgages insured by the Commissioner.

4. On May 26, 1966, the owner of the Project, High Ridge Associates, executed a Note in the amount of $1,584,000 to The State National Bank of Connecticut (Exhibit A). High Ridge Associates is a partnership with three partners: Bernard Gilhuly, Donald Tarinelli and Palmer Tarinelli. The former two are designated as managing partners. On the same date, High Ridge Associates executed a Mortgage to said bank on the Project securing the Note (Exhibit B). This Note was initially endorsed for mortgage insurance by the Commissioner, acting through a duly authorized agent, on May 31, 1966, pursuant to section 221(d)(3) and (5) of the National Housing Act (12 U.S.C. 1715 l(d)(3) and (5)). On May 17, 1967, said Note was finally endorsed for mortgage insurance by the authorized agent of the Commissioner pursuant to the above statute. On the same date, the Note and Mortgage were assigned from The State National Bank of Connecticut to the Federal National Mortgage Association, a Federally chartered corporation.

5. The Housing and Urban Development Act of 1968 provided for the partition of the Federal National Mortgage Association into two separate corporate bodies, Government National Mortgage Association (hereafter referred to as "GNMA") and Federal National Mortgage Association (hereafter referred to as "FNMA") (12 U.S.C. 1717(2)). Pursuant to this Act, the Note and Mortgage on the Project became the property of GNMA.

This Agreement was executed pursuant to section 221(d)(3) of the National Housing Act, which provides that the mortgagor shall be regulated or supervised by the Secretary as to rents, charges and methods of operation. This Regulatory Agreement contains the following provisions regulating residential rents:

"4. * * * *

(b) Owners shall make dwelling accommodations and services of the project available to occupants at charges not exceeding those established in accordance with a schedule approved in writing by the Commissioner."

* * * *

"(d) The Commissioner will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

(1) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance expenses over which owners have no effective control, or

(2) Deny the increase stating the reasons therefor."

7. Section 221(d)(3) and (5) of the National Housing Act, under which the Project was approved by the Commissioner, provides for a subsidy in the form of a below-market interest rate in order to assist families of low and moderate income to obtain decent, safe and sanitary housing within rent ranges which they can afford. Pursuant to this provision, the interest rate in the Note for the Project is 3%. In order to insure that this interest rate subsidy is used so as to assure that the housing is made available to low and moderate income persons at rents which they can afford, the Regulatory Agreement, as already described, provides for the supervision of rents by the Commissioner. In addition, the

hence the termination of the Commissioner's controls, in less than 20 years from the date of final endorsement for mortgage insurance without his consent. The Commissioner has issued a regulation set forth at 24 Code of Federal Regulations 221.524 which requires his consent to any proposed prepayment of a note and mortgage during the initial 20 years after final endorsement of the mortgage for insurance. This prohibition on prepayment is expressly set forth in the Note. The Mortgage recites that the Note is incorporated by reference and is physically attached.

8. The servicing of project mortgages held by GNMA is performed by FNMA pursuant to the Combined Services Agreement dated October 1, 1977 (Exhibit D). Item 6 of that Agreement describes the duties of FNMA with respect to the servicing of project mortgages held by GNMA.

9. On June 23, 1978, I first learned about the prepayment of the Note and Mortgage that had occurred on May 8, 1978. I investigated the matter immediately and discovered that no approval of the Commissioner had ever been sought or obtained. At my request, FNMA telegraphed Mr. Gilhuly, a partner in High Ridge Associates, on June 28, 1978, requesting that the prepayment be rescinded and the rent increase proposed for July 1, 1978, be withdrawn (Exhibit E). On June 30, 1978, the Commissioner telegraphed Mr. Gilhuly stating essentially the same demand (Exhibit F).

10. In determinig whether the approval of the Commissioner should be given for a proposed prepayment of the note and mortgage on any subsidized project, including one insured under section 221(d)(3) and (5) of the National Housing Act, the Commissioner has required that owners satisfy the following four conditions:

(a) The project owner must certify and the HUD field office must verify that there is suitable subsidized housing available in the area at similar rental rates.

(d) A determination must be made by the Commissioner that the approval of the prepayment is in the best interests of the Secretary.

These conditions have been set forth in a number of internal memorandums in the Department, including one dated April 4, 1977, from Fred W. Pfaender, Director of the Office of Loan Management, to John McDowell, Director of the Dallas Area Office (Exhibit G). In determining whether these conditions have been satisfied, my Office requests an analysis of local housing market conditions from the HUD field office with jurisdiction and then makes a decision based on that report, as well as the judgment of this Office on how best to carry out the intention of Congress under the National Housing Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 28, 1978

ROBERT P. KALISH
Deputy Director
Office of Loan Management
U.S. Department of Housing and
Urban Development
Washington, D. C.

May 26, 1966
(Date)

$ 1,584,000.00

Fairfield County, Connecticut
(County and State)

FOR VALUE RECEIVED, the undersigned, HIGH RIDGE ASSOCIATES, a partnership ~~a corporation~~ organized and existing under the laws of the State of Connecticut, with its principal office and place of business at 144 Island Brook Avenue, Bridgeport, Connecticut, acting by and through its duly authorized ~~officer~~, promises to pay to The State National Bank of Connecticut, a national banking ~~a~~ corporation organized and existing under the laws of the United States of America, or order, the principal sum of One Million Five Hundred Eighty-four Thousand Dollars ($1,584,000.00), with interest from the date hereof at the rate of five and one-half per centum (5½%) per annum on the unpaid balance up to and including the date of final endorsement hereof by the Federal Housing Commissioner; thereafter interest shall be payable at the rate of three per centum (3%) per annum on the unpaid balance until paid.

The principal and interest under this note shall be payable in the following manner:

Interest payable monthly on the first day of June, 1966 and on the first day of each month thereafter as hereinabove set forth. Commencing on the first day of August, 1967 installments of interest and principal shall be paid in the sum of Five Thousand Six Hundred Seventy and 47/100 Dollars ($5,670.47), each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal, if any, remaining unpaid, plus accrued interest, shall be due and payable on July 1, 2007. ~~1992~~. The installments of interest and principal shall be applied first to interest at the rate of three per centum (3%) per annum upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.

Both principal and interest under this note, together with additional payments set forth in the mortgage ~~(deed of trust)(security deed)~~, shall be payable at the office of The State National Bank of Connecticut, ~~in~~ 1 Atlantic Street, Stamford, Conn., or such other place as the holder may designate in writing.

In the event that any installment due hereunder becomes delinquent for more than 15 days, there shall be due, in addition to any other sums due hereunder, a sum equal to two cents on each dollar so delinquent.

The debt evidenced by this note may not be prepaid either in whole or in part prior to the final maturity date hereof without the prior written approval of the Federal Housing Commissioner except a maker which is a limited dividend ~~corporation~~ may prepay without such approval after 20 years from the date of final endorsement of this note by the Federal Housing Commissioner. Prepayments may only be made in an amount equal to one or more monthly payments on principal next due on the first day of any month prior to maturity upon at least thirty (30) days' prior written notice to the holder of the note.

If default be made in the payment of any installment due under this note or the mortgage ~~(deed of trust)(security deed)~~ securing this note, and if such default is not remedied prior to the due date of the next maturing installment, or upon the breach of any covenant under the terms of the mortgage ~~(deed of trust)(security deed)~~, the holder of this note, at its option, and without notice may declare the whole of the principal sum or any balance thereof, and other sums of money secured by said mortgage ~~(deed of trust)(security deed)~~ immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

No default shall exist by reason of nonpayment of any required installment of principal so long as the

and its corporate seal to be hereunto affixed, attested by its Secretary, both thereunto duly authorized the day and year first above written.

(CORPORATE SEAL)

ATTEST:

Secretary.

HIGH RIDGE ASSOCIATES

By _____

By _____ Partner

Partner

I HEREBY CERTIFY that this is the note described in, and secured by a mortgage of even date herewith and in the same principal amount as herein stated, on real estate in the County of Fairfield, State of Connecticut.
Dated this 26th day of May, 1966.

Notary Public.
Notary Public for Connecticut
Commission Expires April 1, 1970

RIDER: The makers assume no personal liability for the payment hereof except as set out in the mortgage of even date given to secure this indebtedness.

STATE OF CONNECTICUT

LOAN NO. 017-55028 LDP

NOTE

HIGH RIDGE ASSOCIATES

TO

THE STATE NATIONAL BANK
OF CONNECTICUT

No. 017-55028-LDP

Insured under Section 221(d)(3) of the National Housing Act and Regulations thereunder of the Federal Housing Commissioner

In effect on FEBRUARY 7, 1966

To the extent of advances approved by the Commissioner

FEDERAL HOUSING COMMISSIONER

By _____
(Authorized Agent)

Date _____

A total sum of $ _____ has been approved for insurance hereunder by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By _____
(Authorized Agent)

Date May 17, 1967

Reference is made to the Act and to the Regulations thereunder covering assignments of the insurance protection on this note.

176495-P Rev. 9/63

FHA-Wash., D. C.

THIS MORTGAGE, Made this 26th day of May , 19 66 ,

between HIGH RIDGE ASSOCIATES, a partnership organized , a corporation organized and existing under the laws of the State of Connecticut, having its principal place of business at 144 Island Brook Avenue, Bridgeport, Conn., hereinafter referred to as the Grantor or Mortgagor and THE STATE NATIONAL BANK OF CONNECTICUT, a national banking association organized and existing under the laws of the United States of America, having its principal place of business at in said City of Bridgeport with an office at 1 Atlantic Street, Stamford, Conn., hereinafter referred to as the Grantee or Mortgagee.

WITNESSETH: That the Grantor, for and in consideration of the sum of One Million Five Hundred Eighty Four Thousand Dollars ($1,584,000), the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell, and confirm unto the Grantee, its successors and assigns, the lands, premises, and property situated in the Town of Fairfield , County of Fairfield and State of Connecticut, known as No. High Ridge Apartments described as follows, to wit:

See rider marked "Exhibit A - Description" annexed hereto and made a part hereof.

[illegible] all fixtures, including, but not limited to, gas and electric fixtures, engines and machinery, boilers, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, laundry equipment, elevators and motors, bath tubs, cabinets, sinks, water closets, basins, pipes, faucets and all plumbing and heating equipment, mantels, refrigerating plant and refrigerators, and air conditioning equipment, mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, blinds, and other furnishings; and

Together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and

All articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands herein described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all goods and chattels and personal property as are ever used or furnished in operating a building or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner. It is hereby agreed that to the extent permitted by law all of the foregoing property and fixtures are to be deemed and held to be a part of and affixed to the realty.

TO HAVE AND TO HOLD the above granted and bargained premises, together with all the appurtenances thereto, unto said Grantee, its successors and assigns, forever, to its and their proper use and behoof.

AND FURTHERMORE, the said Grantor covenants that it is the owner in fee simple of said premises; that it is in peaceable possession of same and has full power to convey the same and the title so conveyed is free, clear and unencumbered except for taxes not due and payable; and does by these presents bind itself and its successors and assigns forever to warrant and defend the above granted and bargained premises to it, the said Grantee, its successors and assigns, against all claims and demands whatsoever.

The condition of this deed is such that, WHEREAS the Grantor is justly indebted to the Grantee in the principal sum of One Million Five Hundred and Eighty Four Thousand Dollars ($ 1,584,000.00), evidenced by its Note of even date herewith, bearing interest from date on outstanding balances at 5 1/2% per cent per annum, payable in monthly installments beginning on the first day of the month following the date hereof with a final maturity of July 1, 2007, which Note is identified as being secured hereby by a certificate thereon. Said Note and all of its terms are incorporated hereby by reference and this conveyance shall secure any and all extensions thereof, however evidenced, a copy of said Note is attached hereto.

And WHEREAS the said Grantor for itself and its successors and assigns, in order more fully to protect the security of this Mortgage, does hereby covenant and agree as follows:

1. That Grantor will pay the Note at the times and in the manner provided therein;

2. That Grantor will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Mortgage was executed;

3. That the Regulatory Agreement, if any, executed by the Grantor and the Federal Housing Commissioner, which is being recorded simultaneously herewith, is incorporated in and made a part of the Mortgage. Upon default under the Regulatory Agreement and upon the request of the Federal Housing Commissioner, the Grantee, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;

4. That all rents, profits and income from the property covered by this Mortgage are hereby assigned to the Grantee for the purpose of discharging the debt hereby secured. Permission is hereby given to Grantor so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Regulatory Agreement;

5. That upon default hereunder Grantee shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That at the option of the Grantor the principal balance secured hereby may be reamortized on terms acceptable to the Federal Housing Commissioner if a partial prepayment results from an award in condemnation in accordance with provisions of Paragraph 8 herein, or from an insurance payment made in accordance with provisions of Paragraph 7 herein, where there is a resulting loss of project income;

7. That the Grantor will keep the improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Federal Housing Commissioner upon the insurance of the Mortgage and other hazards as may be required from time to time by the Grantee, and all such insurance shall be evidenced by standard Fire and Extended Coverage Insurance Policy or Policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80% of the Insurable Values or not less than the unpaid balance of the insured Mortgage, whichever is the lesser, and in default thereof the Grantee shall have the right to effect insurance. Such policies shall be endorsed with standard Mortgagee clause with loss payable to the Grantee and the Federal Housing Commissioner as interest may appear, and shall be deposited with the Grantee;

That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinabove provided, the amounts paid by any insurance company in pursuance of the contract of insurance to the extent of the indebtedness then remaining unpaid, shall be paid to the Grantee, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises;

8. That all awards of damages in connection with any condemnation for public use of or injury to any of said property are hereby assigned and shall be paid to Grantee who may apply the same to payment of the installments last due under said Note, and Grantee is hereby authorized, in the name of Grantor, to execute and deliver valid acquit-

R I D E R

19. The mortgage insurance premium referred to herein has no application to this mortgage as payment of the same has been waived by the Federal Housing Commissioner.

20. The covenant of the mortgagor to pay said principal sum, with interest, is included in the note incorporated herein for the payment of which this mortgage is given for the purpose of further establishing and continuing the existence of said indebtedness, and the holder of said note secured hereby, its successor or assigns, in consideration of the premises and the mutual covenants herein contained, does hereby covenant and agree as follows:

(a) that it will not exercise its right to institute any action at law against the mortgagor for the payment of any sum of money, which is, or may be, payable under said note, other than the right to foreclose, which right is specifically reserved;

(b) that it will not seek against the mortgagor any judgment for a deficiency in any action to foreclose this mortgage.

provided, however, that nothing contained in this covenant and agreement shall be, or be deemed to be, a release or impairment of the said indebtedness, or of the lien thereof upon the premises, or shall preclude the holder of said note secured hereby from foreclosing this mortgage in the case of any default, or from enforcing any and all rights under and by virtue of this mortgage and the Regulatory Agreement herein referred to and made a part hereof.

[illegible] Housing Commissioner, to the Grantee named herein, on the first day of [illegible] following assignment, if the Note and this instrument are assigned to the Federal Housing Commissioner, without taking into account delinquencies or prepayment;

(b) A sum equal to the ground rents, if any next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes and assessments next due on the premises covered hereby (all as estimated by the Grantee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by Grantee in trust to pay said ground rents, premiums, water rates, taxes and special assessments;

(c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid each month in a single payment to be applied by Grantee to the following items in the order set forth:

(I) premium charges under the Contract of Insurance with the Federal Housing Commissioner or service charge;
(II) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums;
(III) interest on the Note secured hereby;
(IV) amortization of the principal of said Note;

10. In the event of Grantor's failure to pay any sums provided for in this Mortgage, the Grantee, at its option, may pay the same. Any excess funds accumulated under *(b)* of the preceding paragraph remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefor, or if the Grantor shall fail to pay any other governmental or municipal charge, the Grantor shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof the Grantee may pay the same. All sums paid by the Grantee and any sums which the Grantee may be required to advance to pay mortgage insurance premiums shall be added to the principal of the debt secured hereby and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Mortgage Insurance by prepayment of the Mortgage in full, or otherwise (except as hereinafter provided), accumulations under *(a)* of the preceding paragraph hereof not required to meet payments due under the Contract of Mortgage Insurance, shall be credited to the Grantor. If the property is sold under foreclosure or is otherwise acquired by the Grantee after default, any remaining balance of the accumulations under *(b)* of the preceding paragraph shall be credited to the principal of the Mortgage as of the date of the commencement of foreclosure proceedings or as of the date the property is otherwise acquired; and accumulations under *(a)* thereof shall be likewise credited unless required to pay sums due the Federal Housing Commissioner under the Contract of Mortgage Insurance;

11. That Grantor will not commit, permit, or suffer waste, impairment, or deterioration of said property or any part thereof, and in the event of the failure of the Grantor to keep the buildings on said premises and those to be erected on said premises, or improvements thereon, in good repair, the Grantee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof, and any sums paid for such repairs shall bear interest from the date of payment at the rate specified in the Note, shall be due and payable on demand and shall be fully secured by this Mortgage;

12. That it will not voluntarily create or permit to be created against the property subject to this Mortgage any lien or liens inferior or superior to the lien of this Mortgage and further that it will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises;

13. That the improvements about to be made upon the premises above described and all plans and specifications comply with all municipal ordinances and regulations made or promulgated by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association, or office having jurisdiction, which are now or may hereafter become applicable;

14. That so long as this Mortgage and the said Note secured hereby are insured or held by the Federal Housing Commissioner under the provisions of the National Housing Act, it will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed;

15. That the funds to be advanced herein are to be used in the construction of certain improvements on the lands herein described, in accordance with a building loan agreement between the Grantor and Grantee dated May 26, 19 66, which building loan agreement (except such part or parts thereof as may be inconsistent herewith) is incorporated herein by reference to the same extent and effect as if fully set forth and made a part of this mortgage; and if the construction of the improvements to be made pursuant to said building loan agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lock-outs, the Grantee, after due notice to the Grantor or any subsequent owner, is hereby invested with full and complete authority to enter upon the said premises, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Grantor, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by the Grantee (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this mortgage and shall be due and payable on demand with interest at the rate specified in the Note, but no such advances shall be insured unless same are specifically approved by the Federal Housing Commissioner prior to the making thereof. The principal sum and other charges provided for herein shall, at the option of the Grantee or holder of this mortgage and the note secured hereby, be [illegible] on the failure of the Grantor [illegible]

law, appraisement being hereby waived; and out of all the moneys arising from a sale to return the amount then due or to become due according to the conditions of this instrument together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party or parties making such sale to the Grantor, its successors and assigns.

Notice of the exercise of any option granted herein to the Grantee is not required to be given. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto and to the extent permitted by law shall bind any subsequent owner of the mortgaged premises. The word "Grantee" wherever used herein shall include any holder of the note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

NOW, THEREFORE, if all the covenants, stipulations and agreements of the Grantor herein contained shall be fully and faithfully performed and said Note paid in all respects according to its tenor, then this deed shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, The said Grantor has caused these presents to be signed and sealed in its name by its partners ~~President~~ ~~and its corporate seal to be hereunto affixed~~, the day and year first above written.

HIGH RIDGE ASSOCIATES

Thomas A Kiesling [WITNESS]

Robert F Gilhuly [WITNESS]

By Donald Tarinelli (L.S.)
Partner

By Bernard A Gilhuly (L.S.)
~~President~~
Partner

~~[CORPORATE SEAL]~~ ATTEST:

~~Secretary~~

STATE OF CONNECTICUT)
) ss: Stamford
COUNTY OF FAIRFIELD)

On the 26th day of May, 1966, in the City of Stamford, Fairfield County, State of Conn., then and there personally appeared High Ridge Associates ~~President of the~~ by its Partners, Donald Tarinelli and Bernard A. Gilhuly, their, signers and sealers of the foregoing instrument, and acknowledged the same to be ~~his~~ free act and deed and the free act and deed of the said High Ridge Associates, before me, the undersigned, a notary public in and for the State of Connecticut.

Witness my hand and seal of office.
[OFFICIAL SEAL]

Thomas A Kiesling Jr
NOTARY PUBLIC

My commission expires March 31, 1968

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28 LDP
ATES
BANK
JT
RD , 19 M.
Land Records
Page
Town Clerk
Harwood, D.C.

All those certain pieces, parcels or tracts of land situated in the Town of Fairfield, County of Fairfield and State of Connecticut, bounded and described as follows:

PARCEL A:

Beginning at a point formed by the intersection of the division line between the premises herein described and land now or formerly of Pziewalski with the westerly line of Sunny Ridge Avenue and running thence along said Sunny Ridge Avenue N. 25° 15' 10" W., 25.0 ft. and thence along a proposed extension of Sunny Ridge Avenue, N. 25° 15' 10" W. 26.33 ft.; thence 416.81 ft. on a curve to the left with a radius of 468.67 ft.; thence N. 76° 12' 30" W., 25.0 ft.; thence 17.99 ft. on a curve to the right with a radius of 173.98 ft. and a chord distance of 17.97 ft. on a bearing of N. 73° 14' 45" W., thence along land now or formerly of Reynolds Bros., Incorporated the following courses and distances: S. 19° 43' 00" W. 105.72 ft., S. 40° 07' 00" E., 119.23 ft., S. 52° 59' 10" W. 80.46 ft., S. 30° 41' 10" W., 104.24 ft.; thence along "Fenyes" Subdivision S. 60° 05' 10" W., 85.53 ft., thence continuing along "Fenyes" Subdivision in part and the end of Raymond Drive in part S. 25° 14' 05" E., 128.87 feet; thence along land now or formerly of A. Tamburrino the following courses and distances: S. 24° 26' 10" E., 174.55 ft. and S. 29° 42' 40" E., 54.17 ft.; thence along land now or formerly of Helen Gray the following courses and distances: N. 41° 48' 30" E., 75.68 ft., N. 46° 34' 00" E., 80.23 feet; thence along land now or formerly of John Dawe the following courses and distances: N. 48° 17' 50" E., 120.83 ft., N. 41° 22' 00" E. 43.30 ft., N. 53° 21' 40" E., 33.65 ft., and N. 44° 47' 20" E., 44.34 ft., and thence along land now or formerly of John Dawe in part and land now or formerly of Pziewalski, N. 54° 55' 50" E., 23.13 ft.; thence along land of Pziewalski the following courses and distances: N. 25° 15' 10" W., 54.39 ft., N. 64° 44' 50" E., 100.00 ft. to the point or place of beginning.

Said tract is shown and delineated as Parcel "A" on a map entitled "High Ridge Apartments, Sunny Ridge Avenue Fairfield, Conn.", prepared by Thomas J. Hardiman, Registered Land Surveyor, Bridgeport, Connecticut, dated April 15, 1966, and contains 4.284 acres, more or less.

PARCEL B:

Beginning at a point formed by the intersection of the division line between the premises herein described and land now or formerly of Julie Farkas with the easterly side of Sunny Ridge Avenue and running thence along land of said Julie Farkas N. 64° 44' 50" E., 95.11 ft., thence along land now or formerly of Anna

a distance of 228.81 ft. on a curve to the right having a radius of 50 ft.; thence 50.52 ft. along a curve to the left with a radius of 234.17 ft. and a chord distance of 50.42 ft. on a bearing of S. 50° 23' 20" W. along land now or formerly of Laganna, thence N. 45° 48' 00" W. for a distance of 112.37 ft. along land now or formerly of Laganna; thence along land now or formerly of Reynolds Bros., Incorporated the following courses and distances: S. 58° 39' 10" W., 95.80 ft., S. 42° 31' 20" W., 47.74 ft., S. 03° 34' 40" W., 68.27 ft., S. 00° 31' 40" E., 172.22 ft., S. 19° 46' 30" W., 47.73 ft., and S. 6° 12' 30" E., 91.33 ft.: thence 441.00 ft. on a curve to the right having a radius of 518.67 ft. along the easterly side of the proposed extension of Sunny Ridge Avenue, thence 26.33 ft. on a bearing of S. 25° 15' 10" E., along the easterly side of the proposed extension of Sunny Ridge Avenue to the point or place of beginning.

Said tract is shown and delineated as Parcel "B" on a map entitled "High Ridge Apartments - Sunny Ridge Avenue, Fairfield, Conn." prepared by Thomas J. Hardiman, Registered Land Surveyor, dated April 15, 1966, and contains 4.559 acres, more or less.

Together with a right and easement of way for all lawful purposes in, over and upon said proposed extension of Sunny Ridge Avenue.

Said Parcel A and Parcel B are subject to a 20 ft. wide easement to the Town of Fairfield dated May 25, 1966, for the purpose of installing, maintaining, repairing and replacing sanitary sewer pipes and storm drainage pipes, which easements are more particularly described as follows:

OVER PARCEL A:

Beginning at a point, which point is 18.43 ft. on a course of N. 24° 26' 10" W. from the southerly street line of Raymond Drive where it intersects the westerly boundary of said Parcel A and thence running through Parcel A S. 79° 41' 10" E. 12.85 ft.; thence on a curve to the left having a radius of 140.76 ft. a distance of 111.94 ft.; thence N. 54° 44' 50" E. 236.84 ft., and N. 64° 44' 50" E. 150.06 feet to the southerly street line of Sunny Ridge Avenue as shown on said survey; thence northwesterly along said street line a distance of 20.06 ft.; thence through Parcel A again S. 64° 44' 50" W. 150.13 feet; and S. 54° 44' 50" W. 238.58 feet; thence on a curve to the right having a radius of 120.76 ft. a distance of 96.04 ft.; thence N. 79° 41' 10" W. 27.15 ft. to the end of Raymond Drive and thence along Raymond Drive S. 24° 26' 10" E. 24.58 ft. to the point or place of beginning.

OVER PARCEL B:

Beginning at a point on the cul-de-sac formed by the ex-

said [illegible], thence westerly along said northerly street line a distance of 20.57 ft., thence through Parcel B again N. 20° 57' 10" E. 255.44 ft., and N. 8° 22' 20" E. 152.91 feet to the cul-de-sac of Laganna Drive and thence easterly a distance of 20.13 feet along said street line to the point or place of beginning.

FHA Form
Revised Sept. 1965
(Corporate, Sec. 221(d)(3)
(Below Market Interest Rate)

SECURED NOTE

May 26, 1966
(Date)

$ 1,584,000.00

Fairfield County, Connecticut
(County and State)

FOR VALUE RECEIVED, the undersigned, HIGH RIDGE ASSOCIATES, a partnership a corporation organized and existing under the laws of the State of Connecticut, with its principal office and place of business at 144 Island Brook Avenue, Bridgeport, Connecticut, acting by and through its duly authorized officers, promises to pay to The State National Bank of Connecticut, a national banking, a corporation organized and existing under the laws of the United States of America, or order, the principal sum of One Million Five Hundred Eighty-four Thousand Dollars ($1,584,000.00), with interest from the date hereof at the rate of five and one-half per centum (5½ %) per annum on the unpaid balance up to and including the date of final endorsement hereof by the Federal Housing Commissioner; thereafter interest shall be payable at the rate of three per centum (3 %) per annum on the unpaid balance until paid.

The principal and interest under this note shall be payable in the following manner:
Interest payable monthly on the first day of June, 1966, and on the first day of each month thereafter as hereinabove set forth. Commencing on the first day of August, 1966, installments of interest and principal shall be paid in the sum of Five Thousand Six Hundred Seventy and 47/100 Dollars ($5,670.47), each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal, if any, remaining unpaid, plus accrued interest, shall be due and payable on July 1, 2007, ~~19XX~~. The installments of interest and principal shall be applied first to interest at the rate of three per centum (3 %) per annum upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.

Both principal and interest under this note, together with additional payments set forth in the mortgage ~~(deed of trust)(security deed)~~, shall be payable at the office of The State National Bank of Connecticut, 941 Atlantic Street, Stamford, Conn., or such other place as the holder may designate in writing.

In the event that any installment due hereunder becomes delinquent for more than 15 days, there shall be due, in addition to any other sums due hereunder, a sum equal to two cents on each dollar so delinquent.

The debt evidenced by this note may not be prepaid either in whole or in part prior to the final maturity date hereof without the prior written approval of the Federal Housing Commissioner except a maker which is a limited dividend ~~corporation~~ may prepay without such approval after 20 years from the date of final endorsement of this note by the Federal Housing Commissioner. Prepayments may only be made in an amount equal to one or more monthly payments on principal next due on the first day of any month prior to maturity upon at least thirty (30) days' prior written notice to the holder of the note.

If default be made in the payment of any installment due under this note or the mortgage ~~(deed of trust)(security deed)~~ securing this note, and if such default is not remedied prior to the due date of the next maturing installment, or upon the breach of any covenant under the terms of the mortgage ~~(deed of trust)(security deed)~~, the holder of this note, at its option, and without notice may declare the whole of the principal sum or any balance thereof, and other sums of money secured by said mortgage ~~(deed of trust)(security deed)~~ immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

No [illegible] shall arise by reason of nonpayment of any required installment of principal so long as the

Presentment, protest, and notice of protest are hereby waived by the maker.

IN WITNESS WHEREOF, the undersigned HIGH RIDGE ASSOCIATES, has caused this note to be executed in its name and behalf by its President Partners, and its corporate seal to be hereunto affixed attested by its Secretary, both thereunto duly authorized the day and year first above written.

(CORPORATE SEAL)

HIGH RIDGE ASSOCIATES

ATTEST:

By _____ Partner

By _____ Partner

Secretary.

I HEREBY CERTIFY that this is the note described in, and secured by a mortgage (deed of trust) (security deed) of even date herewith and in the same principal amount as herein stated, on real estate in the County of Fairfield, State of Connecticut.
Dated this 26th day of May, 1966.

_____
Notary Public.
Notary Public for Connecticut
Commission Expires April 1, 1970

RIDER: The makers assume no personal liability for the payment hereof except as set out in the mortgage of even date given to secure this indebtedness.

STATE OF CONNECTICUT

LOAN NO. 017-55028 LDP

NOTE

HIGH RIDGE ASSOCIATES

TO

THE STATE NATIONAL BANK
OF CONNECTICUT
No. 017-55028-LDP

Insured under Section 221(d)(3) of the National Housing Act and Regulations thereunder of the Federal Housing Commissioner

In effect on FEBRUARY 7, 1966

To the extent of advances approved by the Commissioner

FEDERAL HOUSING COMMISSIONER

By _____ (Authorized Agent)

Date _____, 1966

A total sum of $ _____ has been approved for insurance hereunder by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By _____ (Authorized Agent)

Date May 17, 1967

Reference is made to the Act and to the Regulations thereunder covering assignments of the insurance protection on this note.

176495 - P Rev. 9/61

FHA-Wash., D. C.

REGULATORY AGREEMENT FOR LIMITED DISTRIBUTION MORTGAGOR PROJECTS
UNDER SECTION 221(d)(3) OF THE NATIONAL HOUSING ACT, AS AMENDED

Project No. 017-55023-LDP

Mortgagee STATE NATIONAL BANK OF CONNECTICUT

Amount of Mortgage Note $ 1,584,000 Date May 26, 1966

Mortgage: Recorded: State Connecticut County Fairfield Date May 26, 1966
Town of Fairfield
Book Page

This Agreement entered into this 26th day of May, 19 66,

between HIGH RIDGE ASSOCIATES, a partnership

whose address is 144 Island Brook Avenue, Bridgeport, Connecticut,

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Federal Housing Commissioner and his successors, (hereinafter called Commissioner).

In consideration of the endorsement for insurance by the Commissioner of the above described note or in consideration of the consent of the Commissioner to the transfer of the mortgaged property, and in order to comply with the requirements of Section 221(d)(3) of the National Housing Act, as amended, and the Regulations adopted by the Commissioner pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

1. Owners, except as limited by paragraph 17 hereof, shall promptly make all payments due under the note and mortgage.

2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Commissioner of an amount equal to $ 506.09 per month unless a different date or amount is approved in writing by the Commissioner. Such fund, whether in the form of a cash deposit or invested in obligations of or fully guaranteed as to principal by the United States of America, shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements, and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Commissioner.

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

must contain clauses, among others, wherein the Lessee:

(1) certifies the accuracy of the statements made in the application and income survey,

(2) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his tenancy; that he will comply promptly with all requests for information with respect thereto from the Owners or the Commissioner, and that his failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his tenancy,

(3) agrees that, if family income limitations for continuing occupancy which may be established from time to time by the Commissioner are exceeded the lease may be terminated upon receiving a thirty day notice in writing from the Owners, which may be given at the discretion of the Owners or at the direction of the Commissioner, he will quit and deliver up possession of the premises,

(4) agrees that at such time as the Owners or Commissioner may direct he will furnish to the Owners certification of the then current family income.

(b) Owners shall make dwelling accommodations and services of the project available to occupants at charges not exceeding those established in accordance with a schedule approved in writing by the Commissioner. Such accommodations shall not be rented for a period of less than thirty days or for more than one year. Commercial facilities, if any, shall be rented at not less than the rate approved by the Commissioner. Subleasing of accommodations shall be prohibited without prior written approval of Owners and any lease shall so provide. Upon discovery of any unapproved sublease, Owners shall immediately demand cancellation and notify the Commissioner thereof.

(c) The Owner shall have the right to charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owner and approved in writing by the Commissioner for any facilities and/or services which may be furnished by the Owner or others to such tenant upon his request, in addition to the facilities and services included in the approved "Rental Schedule".

(d) The Commissioner will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

(1) Approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance expenses over which owners have no effective control, or

(2) Deny the increase stating the reasons therefor.

5. (a) Owners shall not execute or file for record any instrument which imposes a restriction upon the sale, leasing, or occupancy of the property subject to the insured mortgage on the basis of race, color, or creed.

(b) Owners shall not in selecting tenants discriminate against any person or persons by reason of the fact that there are children in the family.

(c) Owners agree that admission to the project shall be limited solely to families of low or moderate income, as defined by the Commissioner, and any such family whose income exceeds the limits established from time to time by the Commissioner, shall not be eligible for admission to the project.

(d) Owners agree that, if during the term of any lease the family income exceeds the maximum

such preferred applicants shall be given priority in original admission to the project and in their placement on a waiting list to be maintained by the Owners.

6. Owners shall not without the prior written approval of the Commissioner:

(a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property;

(b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds except from "surplus cash", except for reasonable operating expenses and necessary repairs;

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the property, or any right to manage or receive the rents and profits thereof, unless the transferees or assignees assume the obligations of this Agreement by an instrument in writing satisfactory to the Commissioner;

(d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;

(e) Make, or receive and retain, any distribution of assets or any income of any kind of the project except from "surplus cash" and except on the following conditions:

(1) All distributions shall be made only as of and after the end of an annual fiscal period, and only as permitted by the law of the applicable jurisdiction; all such distributions in any one fiscal year shall be limited to six per centum on the equity investment, and the right to such distributions shall be cumulative;

(2) No distribution shall be made from borrowed funds, prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;

(3) Any distribution or any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds;

(4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.

(f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project;

(g) Require, as a condition of the occupancy or leasing of any unit in the project any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any fund collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account;

(h) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Commissioner;

(i) Incur any liability, direct or contingent, other than for current operating expenses, exclusive of the indebtedness secured by the mortgage and necessarily incident to the execution and delivery thereof;

(j) Pay any compensation or make any distribution of income or other assets to any of its officers, directors, or stockholders;

8. Owners shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five days.

9. (a) Owners shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by Owners, or any of them, involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Commissioner addressed to the Owners/Upon receipt of such request Owners shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project. *and the management agent.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his duly authorized agents.

(d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Commissioner.

(e) Within sixty days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner, certified to by an officer or responsible "Owner" and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.

(f) At the request of the Commissioner, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.

(g) All rents and other receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project or for distributions of surplus cash. Any owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any owner receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.

10. Upon a violation of any of the above provisions of this Agreement by Owners, the Commissioner may give written notice, thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Commissioner, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Commissioner within thirty days after the date such notice is mailed or within such further time as the Commissioner reasonably determines is necessary to correct the violation, without further notice the

(b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the mortgagor's obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project;

(c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Commissioner in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage;

(d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

11. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Commissioner because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Commissioner their rights to the rents, profits, income and charges of whatever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

12. Owners agree that there shall be full compliance with the provisions of (1) any state or local laws prohibiting discrimination in housing on the basis of race, color, creed, or national origin; and (2) with the Regulations of the Federal Housing Administration providing for nondiscrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for the Commissioner to take any corrective action he may deem necessary including, but not limited to, the rejection of future applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the Owners are identified; and further, if the Owners are a corporation or any other type of business association or organization which may fail or refuse to comply with the aforementioned provisions, the Commissioner shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, trustees, managers, partners, associates or principal stockholders of the Owners; and (2) with respect to any corporation or any other type of business association, or organization with which the officers, directors, trustees, managers, partners, associates or principal stockholders of the Owners may be identified.

13. As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the note identified herein, and endorsed for insurance or held by the Commissioner;

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Mortgagor" means the original borrower under the mortgage and its successors and assigns;

(d) "Owners" refers to the persons named in the first paragraph hereof and designated as "Owners", their successors and assigns;

(e) "Mortgaged Property" includes all property, real, personal, or mixed covered by the mortgage

(iii) All obligations of the project other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Commissioner; and

(2) the segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held;

(h) "Residual Receipts" means any cash remaining after payment from "surplus cash" of all dividends or distributions declared by the corporation as provided in paragraph 6 (e) (1) hereof.

(i) "Family" means (a) two or more persons related by blood, marriage, or operation of law, who occupy the same unit; (b) a handicapped person who has a physical impairment which is expected to be of long-continued and indefinite duration, substantially impedes his ability to live independently, and is of such a nature that his ability to live independently could be improved by more suitable housing conditions; or (c) a single person, 62 years of age or older.

(j) "Distribution" means any withdrawal or taking of cash or other assets of the project other than payment for reasonable expenses incident to its operation and maintenance;

(k) "Income" means all gross income, before taxes and other deductions, received by all members of the family, except a dependent child or children, as the latter is defined by the Internal Revenue Service.

(l) "Rental" for the purpose of determining occupancy eligibility includes shelter and all utilities (except telephone), such as heat, water, electricity and cooking fuel which may be included in the approved "Rental Schedule".

(m) "Equity Investment" shall be considered the product of the amount of the final endorsement of the insured mortgage and 11.11 per centum.

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

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

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

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

17. The following Owners: Donald Tarinelli, Palmer Tarinelli and Bernard A. Gilhuly.
do not assume personal liability for payments due under the note and mortgage, to the reserve for replacements, or for matters not under their control, except:

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

IN WITNESS WHEREOF the parties hereto have duly executed this agreement the day and year first above written.

HIGH RIDGE ASSOCIATES

By _____
Palmer Tarinelli - Partner

By _____
Donald Tarinelli - Partner

By _____
Bernard A. Gilhuly - Partner

(Owner)

FEDERAL HOUSING COMMISSIONER

By _____
(Authorized Agent)

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss: Stamford May 26, 1966.

Personally appeared HIGH RIDGE ASSOCIATES by Palmer Tarinelli, Donald Tarinelli and Bernard A. Gilhuly, its Partners, signers and sealers of the foregoing instrument who acknowledged the same to be their free act and deed and the free act and deed of said HIGH RIDGE ASSOCIATES, before me.

_____
Notary Public

Notary Public for Connecticut
Commission Expires April 1, 1970

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STATE OF CONNECTICUT)
) ss: Stamford May 26, 1966
COUNTY OF FAIRFIELD)

On this 26th day of May, 1966, before me, a Notary Public in and for said county and state, appeared M. M. Garvey to me personally known and known to me to be the duly appointed CHIEF OF OPERATIONS and the person who executed the within instrument by virtue of the authority vested in her by 24 C.F.R. 200.95 (~~or 200.96~~), and acknowledged to me that she executed the within instrument for and on behalf of the Federal Housing Commissioner, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Robert F. Gelinsky
Notary Public

Notary Public for Connecticut
Commission Expires April 1, 1970

All those certain pieces, parcels or tracts of land situated in the Town of Fairfield, County of Fairfield and State of Connecticut, bounded and described as follows:

PARCEL A:

Beginning at a point formed by the intersection of the division line between the premises herein described and land now or formerly of Pziewalski with the westerly line of Sunny Ridge Avenue and running thence along said Sunny Ridge Avenue N. 25° 15' 10" W., 25.0 ft. and thence along a proposed extension of Sunny Ridge Avenue, N. 25° 15' 10" W. 26.33 ft.; thence 416.81 ft. on a curve to the left with a radius of 468.67 ft.; thence N. 76° 12' 30" W., 25.0 ft.; thence 17.99 ft. on a curve to the right with a radius of 173.98 ft. and a chord distance of 17.97 ft. on a bearing of N. 73° 14' 45" W., thence along land now or formerly of Reynolds Bros., Incorporated the following courses and distances: S. 19° 43' 00" W. 105.72 ft., S. 40° 07' 00" E., 119.23 ft., S. 52° 59' 10" W. 80.46 ft., S. 30° 41' 10" W., 104.24 ft.; thence along "Fenyes" Subdivision S. 60° 05' 10" W., 85.53 ft., thence continuing along "Fenyes" Subdivision in part and the end of Raymond Drive in part S. 25° 14' 05" E., 128.87 feet; thence along land now or formerly of A. Tamburrino the following courses and distances: S. 24° 26' 10" E., 174.55 ft. and S. 29° 42' 40" E., 54.17 ft.; thence along land now or formerly of Helen Gray the following courses and distances: N. 41° 48' 30" E., 75.68 ft., N. 46° 34' 00" E., 80.23 feet; thence along land now or formerly of John Dawe the following courses and distances: N. 48° 17' 50" E., 120.83 ft., N. 41° 22' 00" E. 43.30 ft., N. 53° 21' 40" E., 33.65 ft., and N. 44° 47' 20" E., 44.34 ft., and thence along land now or formerly of John Dawe in part and land now or formerly of Pziewalski, N. 54° 55' 50" E., 23.13 ft.; thence along land of Pziewalski the following courses and distances: N. 25° 15' 10" W., 54.39 ft., N. 64° 44' 50" E., 100.00 ft. to the point or place of beginning.

Said tract is shown and delineated as Parcel "A" on a map entitled "High Ridge Apartments, Sunny Ridge Avenue Fairfield, Conn.", prepared by Thomas J. Hardiman, Registered Land Surveyor, Bridgeport, Connecticut, dated April 15, 1966, and contains 4.284 acres, more or less.

PARCEL B:

Beginning at a point formed by the intersection of the division line between the premises herein described and land now or formerly of Julie Farkas with the easterly side of Sunny Ridge Avenue and running thence along land of said Julie Farkas N. 64° 44' 50" E., 95.11 ft., thence along land now or formerly of Anna

a distance of 228.81 ft. on a curve to the right having a radius of 50 ft.; thence 50.52 ft. along a curve to the left with a radius of 234.17 ft. and a chord distance of 50.42 ft. on a bearing of S. 50° 23' 20" W. along land now or formerly of Laganna, thence N. 45° 48' 00" W. for a distance of 112.37 ft. along land now or formerly of Laganna; thence along land now or formerly of Reynolds Bros., Incorporated the following courses and distances: S. 58° 39' 10" W., 95.80 ft., S. 42° 31' 20" W., 47.74 ft., S. 03° 34' 40" W., 68.27 ft., S. 00° 31' 40" E., 172.22 ft., S. 19° 46' 30" W., 47.73 ft., and S. 6° 12' 30" E., 91.33 ft.: thence 441.00 ft. on a curve to the right having a radius of 518.67 ft. along the easterly side of the proposed extension of Sunny Ridge Avenue, thence 26.33 ft. on a bearing of S. 25° 15' 10" E., along the easterly side of the proposed extension of Sunny Ridge Avenue to the point or place of beginning.

Said tract is shown and delineated as Parcel "B" on a map entitled "High Ridge Apartments - Sunny Ridge Avenue, Fairfield, Conn." prepared by Thomas J. Hardiman, Registered Land Surveyor, dated April 15, 1966, and contains 4.559 acres, more or less.

Together with a right and easement of way for all lawful purposes in, over and upon said proposed extension of Sunny Ridge Avenue.

Said Parcel A and Parcel B are subject to a 20 ft. wide easement to the Town of Fairfield dated May 25, 1966, for the purpose of installing, maintaining, repairing and replacing sanitary sewer pipes and storm drainage pipes, which easements are more particularly described as follows:

OVER PARCEL A:

Beginning at a point, which point is 18.43 ft. on a course of N. 24° 26' 10" W. from the southerly street line of Raymond Drive where it intersects the westerly boundary of said Parcel A and thence running through Parcel A S. 79° 41' 10" E. 12.85 ft.; thence on a curve to the left having a radius of 140.76 ft. a distance of 111.94 ft.; thence N. 54° 44' 50" E. 236.84 ft., and N. 64° 44' 50" E. 150.06 feet to the southerly street line of Sunny Ridge Avenue as shown on said survey; thence northwesterly along said street line a distance of 20.06 ft.; thence through Parcel A again S. 64° 44' 50" W. 150.13 feet; and S. 54° 44' 50" W. 238.58 feet; thence on a curve to the right having a radius of 120.76 ft. a distance of 96.04 ft.; thence N. 79° 41' 10" W. 27.15 ft. to the end of Raymond Drive and thence along Raymond Drive S. 24° 26' 10" E. 24.58 ft. to the point or place of beginning.

OVER PARCEL B:

Beginning at a point on the cul-de-sac formed by the ex-

survey; thence westerly along said northerly street line a distance of 20.57 ft., thence through Parcel B again N. 20° 57' 10" E. 255.44 ft., and N. 8° 22' 20" E. 152.91 feet to the cul-de-sac of Laganna Drive and thence easterly a distance of 20.13 feet along said street line to the point or place of beginning.

RECEIVED FOR RECORD

ON THE 31 DAY OF May

1966 AT A.M. 2:14 P.M. AND

RECORDED IN VOL. 500 PAGE 172-131

OF FAIRFIELD LAND RECORDS.

ATTEST:

Edna D. Bowers

ASST. TOWN CLERK

Thomas Keating,
Cummings & Lockwood

COMBINED SERVICES AGREEMENT

This Agreement, made and entered into as of the 1st day of October 1977, by and between the Government National Mortgage Association (hereinafter sometimes referred to as "GNMA") and the Federal National Mortgage Association (hereinafter sometimes referred to as "FNMA"), bodies corporate created pursuant to Section 302(a)(2)(A) and Section 302(a)(2)(B), respectively, of the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1717(a)(2)(A) and (B)).

Article 1: Purpose and Incorporation By Reference

A. Purpose

The purpose of this Agreement is to provide the terms and conditions under which FNMA will perform certain operational activity in behalf of GNMA, as provided for in Section 310 (d) of the Housing and Urban Development Act of 1968. Such operational activity shall be in the form of specific services as set forth in this Agreement, rendered by FNMA to GNMA. In so doing, certain FNMA employees, as designated in 24 CFR 300.11(c) as such may exist from time to time, shall function as GNMA's attorneys-in-fact as authorized by 24 CFR 300.11.

Exhibit D

E. Incorporation By Reference

The following GNMA documents are hereby incorporated by reference into this Agreement, as such exist on the date hereof: the GNMA Selling Contract, GNMA Form 301, the GNMA Servicing Contract, GNMA Form 302, the GNMA Sellers Guide, the GNMA/FNMA Conventional Home Mortgage Program, and the GNMA Auction Sales Manual. The following FNMA documents are hereby incorporated by reference into this Agreement, as such exist on the date hereof: the FNMA Homes Mortgage Servicing Contract Supplement (Servicing Supplement), or its successor document, for the reason that such documents provide for the servicing requirements of GNMA owned single family mortgages, and the FNMA Conventional Selling Contract Supplement, for the reason that such document is incorporated by reference into the GNMA/FNMA Conventional Home Mortgage Program.

Changes in the documents referred to in this Article shall constitute amendments to this Agreement and shall bind both FNMA and GNMA, provided that FNMA be notified of any changes in GNMA documents prior to adoption of such changes and that GNMA be notified of changes in FNMA documents prior to adoption of any changes that significantly affect GNMA programs in operation at

the time such changes are made. Changes that do not significantly affect GNMA programs in operation will be furnished to GNMA within five business days after such changes are adopted.

Article II. Services

A. Mortgage Portfolio Services

FNMA shall provide to GNMA the services set forth below relating to the mortgage purchasing, servicing and selling activities of GNMA authorized pursuant to Sections 305, 306 and 313 of the FNMA Charter Act. The services described below relate to those activities which, in general, FNMA undertakes for its own account in the management of the FNMA mortgage portfolio. In rendering these services for GNMA, FNMA shall act with diligence and due care, subject to any special requirements of GNMA programs or special written instructions issued by GNMA. Further, in rendering these services, FNMA shall conform to the requirements and procedures set forth in the GNMA Selling Contract, the GNMA Seller's Guide, the GNMA/FNMA Conventional Home Mortgage Program, including such portions of the FNMA Conventional Selling Contract Supplement as may be incorporated into such Program, the GNMA Servicing Contract, the provisions of the FNMA Servicing Supplement which relate to the servicing of

GNMA mortgages, and the GNMA Auction Sales Manual.

The services are as follows:

Item 1. Approval of Sellers and Servicers

FNMA shall administer the procedures by which Sellers and Servicers are approved for participation in GNMA mortgage programs, including the administration of annual review procedures to assure compliance by Sellers and Servicers with the financial requirements for GNMA approval. In approving Sellers and Servicers of mortgages which are guaranteed by the Administrator of Veterans Affairs or insured by the Secretary of Housing and Urban Development, FNMA shall adhere to the eligibility requirements of the GNMA Seller's Guide. In approving Sellers and Servicers of mortgages described in the GNMA/FNMA Conventional Home Mortgage Program (Conventional Program), FNMA shall adhere to the eligibility requirements of such Program.

Item 2. Administration of Commitments

FNMA shall administer and implement GNMA's commitment procedures by which Sellers seek and GNMA issues Commitment Contracts for GNMA's purchases of multifamily housing mortgages

(FHA Project Mortgages), home mortgages that are guaranteed by the Administrator of Veterans Affairs or insured by the Secretary of Housing and Urban Development (FHA/VA Home Mortgages), and home mortgages described in the GNMA/FNMA Conventional Home Mortgage Program (Conventional Mortgages). FNMA's administration of GNMA's commitment procedures shall conform to the GNMA Seller's Guide, and the Conventional Program, and shall consist of the following:

(a) receiving all tendered offers from Sellers to enter into Commitment Contracts and assuring that all offers contain the required information;

(b) issuing Commitment Contracts to Sellers;

(c) receiving and accounting to GNMA for commitment fees from Sellers;

(d) assigning, amending, and extending Commitment Contracts as permitted by GNMA;

(e) as permitted by GNMA programs and following the procedures prescribed by GNMA, processing requests for "Assumption Options" from Sellers which have elected to release GNMA from its obligation to purchase, enter into agreements for "Assumption Options", and

compute and pay commitment fee refunds in behalf of GNMA.

(f) as permitted by GNMA programs and following the procedures prescribed by GNMA, review claims for price differential payments received from Sellers which have entered into agreements for "Assumption Options", to verify that all requirements for such payments have been met, and forward checks to such Sellers.

Item 3. Loan Review

For the Conventional Program only, FNMA shall review the mortgages submitted pursuant to Commitment Contracts issued by GNMA to assure that each mortgage submission conforms with the property, credit and other standards adopted by GNMA in connection with the Conventional Program. FNMA shall provide or perform such review in the same manner as it performs the same with respect to conventional mortgages submitted for purchase for its own account, except as provided otherwise herein or in the Conventional Program and, consistent therewith, GNMA authorizes FNMA to take such action as it deems necessary or advisable with respect to such review of mortgages tendered for sale to GNMA.

Any material change in these loan review requirements or the purchase requirements requested by GNMA or required by regulation or court ruling which requires additional or altered services on the part of FNMA will be considered an amendment to this Agreement, provided, however that if any such changes are applicable only to the GNMA Conventional Program and not to the FNMA Conventional Program, such altered or additional services will be performed as Additional Services under Part C of this Article.

In performing the prior approval services provided for in the Conventional Program, FNMA may assess against the Sellers the usual fees and charges for performing and providing such services as it does in the FNMA Conventional Home Mortgage Program, and FNMA shall retain such fees and charges for its own account as partial compensation for this service. Such fees collected by FNMA from Sellers shall be applied to reduce FNMA costs in computing the Adjustment of Interim Payments under Article III, Item 3 of this Agreement.

Item 4. Purchasing Mortgages

FNMA shall purchase mortgages for GNMA's account. In processing the purchase of FHA Project Mortgages and FHA/VA Home

Mortgages, FNMA shall examine such to determine that such mortgages conform to the eligibility and documentation requirements of the GNMA Seller's Guide, and that the documentation is in proper form. In processing the purchase of Conventional Home Mortgages, FNMA shall examine such to determine that such mortgages conform to the eligibility and documentation requirements of the Conventional Program.

Item 5. Supervision of Sellers and Home Mortgage Servicers

FNMA shall monitor the activities of GNMA Sellers to determine conformance with their contractual responsibilities to GNMA and with GNMA's eligibility requirements for Sellers provided by the GNMA Sellers Guide and the Conventional Program, to the same degree and to the same extent as such activity is conducted with respect to FNMA Sellers. FNMA shall monitor and supervise the servicing of GNMA's Home Mortgages, FHA/VA and Conventional, to determine conformance with the GNMA Servicing Contract and the provisions of the FNMA Servicing Supplement as applicable to each such type of Home Mortgage owned by GNMA, to the same degree and to the same extent as such activity is conducted with respect to FNMA Servicers. With respect to GNMA Sellers and Servicers, which fail to perform in accordance

with GNMA's requirements, FNMA shall administer its Seller/Servicer Performance Review procedures in the same manner that it does with respect to its Sellers and Servicers, provided, however, that no Seller or Servicer shall be terminated without GNMA's prior consent.

Item 6. Servicing of FHA Project Mortgages

FNMA shall service FHA Project Mortgages in the GNMA portfolio in accordance with FNMA's servicing procedures for FHA Project Mortgages in its own portfolio. FNMA's servicing of such Mortgages shall include, but not be limited to, performance of the following:

(a) billing and collecting of mortgage payments;

(b) preparation of escrow analyses, and payment of taxes;

(c) billing for and payment of hazard insurance premiums;

(d) renewing chattel mortgages;

(e) processing property insurance loss settlements;

(f) processing transfers of physical assets and mergers;

(g) collection of reserves for replacements and such

other escrow accounts and reserves as may be required by FHA and approval of investments and disbursements thereof;

(h) monitoring delinquent loans;

(i) conducting interviews with mortgagors;

(j) modifying loan terms;

(k) filing reports with FHA; and

(l) processing claims for FHA insurance benefits.

Item 7. Spot Check of Purchased Conventional Home Mortgages

FNMA shall "spot check" Conventional Home Mortgages purchased or offered for purchase, in that it will by individual selection and random sampling determine the adequacy of the property and credit documentation submitted in connection with the mortgages, such sampling to be not less than the sampling used by FNMA for its own Conventional Home Mortgage Program.

Item 8. Recordkeeping--Reporting

(a) FNMA shall provide accounting and auditing services and other related services incident to:

(1) issuing Commitment Contracts pursuant to this Agreement;

(2) purchasing, servicing, and liquidating

mortgages pursuant to this Agreement; and

(3) selling mortgages pursuant to the GNMA Auction Sales Manual, exclusive of special records related to the sale or other liquidation of mortgages acquired by GNMA and the GNMA Conventional Home Mortgage Program or the pooling of mortgages for the issuance of securities.

(b) FNMA shall maintain and keep in accessible form records, accounts, and reports documenting:

(1) the number of transactions by FNMA for each of the service transactions set forth in Appendix I of this Agreement other than Mortgage-Backed Security Review Program Administration and Additional Services.

(2) the amount and type of costs incurred by FNMA and the FNMA office that incurred such costs for each service provided by FNMA pursuant to Article II of this Agreement.

(3) travel, lodging, subsistence and other expenses related to the services provided by FNMA pursuant to this Agreement, as such are consistent with FNMA corporate policy and procedures relative to such costs

incurred by FNMA employees travelling for FNMA's account, such policy and procedure to provide for reasonable reimbursement only.

Item 9. Home Mortgage Liquidation and Property Disposition

As an incident to the servicing function, FNMA will supervise and direct the liquidation by Servicers of Home Mortgages purchased by GNMA. This will include a review of the Servicer's recommendation, on which FNMA will act in behalf of GNMA in accordance with procedures and standards applicable for such recommendations made in connection with FNMA mortgages. FNMA will also monitor and supervise the disposition of properties acquired by GNMA as a result of such liquidations, in the event the properties are not conveyed to FHA-HUD, VA or other mortgage insurer.

Item 10. Selling Mortgages

(a) Upon the written request of GNMA, FNMA shall perform services related to the sale of GNMA mortgages following the procedures in the GNMA Auction Sale Manual, GNMA notices of such sales and other instructions issued by GNMA to FNMA regarding

such sales. As in the sale of FHA/VA Home Mortgages, FNMA shall be under no obligation to disclose or provide the underwriting or property characteristics of the Conventional Home Mortgages offered for sale by GNMA.

(b) FNMA agrees that the services it shall perform related to the sale of FHA/VA Home Mortgages and Conventional Home Mortgages other than for a Securities Auction shall include, but not be limited to:

(1) preparing lists of whole mortgage packages;

(2) recording of bids submitted for purchase of whole mortgage packages;

(3) execution of whole mortgage purchase contracts; and

(4) overseeing the closing of the whole mortgage sale.

(c) FNMA agrees that the services it shall perform related to the sale of FHA/VA Home Mortgages sold by GNMA for a

Securities Auction shall include:

(1) preparing lists of potential security issuers;

(2) preparing schedules of pool mortgages and closing instructions to be forwarded to potential security issuers;

(3) overseeing the transfer of appropriate pool mortgage documentation from GNMA to designated Custodian; and

(4) overseeing the closing between GNMA and the selected securities issuers.

(d) FNMA agrees that the services it shall perform related to the sale of FHA Project Mortgages shall include, but not be limited to:

(1) preparing lists of project mortgages;

(2) inspecting instruments and data pertaining to each project mortgage in the offering;

(3) recording of bids submitted for purchase of the project mortgage offering;

(4) recording of project mortgage purchase option applications;

(5) receiving and assuring propriety of project

mortgage options that are exercised.

(6) assuring the proper execution and delivery of Insurance Proceeds Participation Certificates; and

(7) overseeing the closing of the sale of the project mortgages.

Item 11. Program Administration

FNMA shall provide the day-to-day and routine administrative services for all programs. This responsibility includes modifying and effecting changes in the GNMA Selling Agreements, GNMA Seller's Guide, GNMA Servicing Agreements, GNMA/FNMA Conventional Home Mortgage Program, the provisions in the FNMA Servicer's Guide relating to the servicing of GNMA mortgages and the GNMA Auction Sales Manual. FNMA services required by such changes, developments or modification shall be limited to a total cost to FNMA of $6,000 for each instance in which programs are changed, developed or modified, such cost to be determined in the same manner as determined for Additional Services under Part C of this Article. FNMA services which exceed this limitation shall constitute "Additional Services" and shall be fully reimbursable as such. Further, FNMA shall assist GNMA in the development of new programs, which assistance shall also constitute "Additional

Services" and shall be fully reimbursable as such.

B. Non-Portfolio Services

FNMA shall provide to GNMA the services set forth below which require activities arising solely out of this Agreement and are not activites of a type which FNMA conducts in its own behalf. In the rendering of these services, FNMA shall follow the specific instructions and directions given by GNMA to FNMA.

The services are as follows:

Item 1. Mortgage-Backed Security Review

(a) FNMA, in accordance with instructions provided by GNMA, shall conduct financial and administrative reviews of MBS Issuers to assure compliance with the GNMA Mortgage-Backed Securities Guide. Relevant instructions shall be identified in "Functions of FNMA Mortgage-Backed Securities Administration Unit", and such further changes or additions as may be mutually agreed to by FNMA and GNMA.

Item 2. Freedom of Information Act Requests

FNMA shall forward to GNMA all requests pursuant to the Freedom of Information Act, 5 U.S.C. 522, for GNMA documents and

regulations. If the documents so requested are in the custody of FNMA, FNMA will honor the instruction of GNMA to make such available to the requester. FNMA may impose such fee on the requester of information as prescribed by GNMA, such fees being credited to GNMA's account to offset costs reimbursable by GNMA under Article III, Item 1(1).

Item 3. Privacy Act

Pursuant to 5 U.S.C. 552a(m), FNMA will comply with such directives and procedures as promulgated by GNMA with respect to those records pertaining to the services provided by FNMA to GNMA under this Agreement.

C. Additional Services

The services to be provided by FNMA to GNMA are limited to those specified in this Agreement, predicated on the programs as in existence on June 30, 1977. FNMA, however, agrees to comply with reasonable requests by GNMA for Additional Services. For the purposes of this Agreement, the term "Additional Services" means services:

(1) that materially differ in nature from those services to be provided pursuant to Parts A and B of this

Article; or

(2) that are specifically designated as such elsewhere in this Agreement.

E. Facilities

The services provided pursuant to this Agreement will be through the utilization of FNMA employees and equipment, located in FNMA's Washington office or in FNMA's Regional Offices. Such services, or any part of such services, may be obtained by FNMA through a subcontract, provided, however, that no such subcontract shall be entered into without GNMA's prior consent if the consideration which GNMA will assume through the method of reimbursement provided in Article III is in excess of $25,000 for any one year.

Article III: Reimbursement and Payment

Item 1. Reimbursement

(a) Except as provided in the other paragraphs of this Item, GNMA shall reimburse FNMA for services rendered pursuant to Article II of this Agreement in accordance with the full unit product cost thereof, computed as follows: average cost to FNMA of each type of transaction for each quarter that this Agreement is in

effect (i.e., total cost of each type of transaction divided by the total number of each type of transaction) multiplied by the number of each type of transaction performed by FNMA exclusively for the benefit of GNMA pursuant to this Agreement. For the purposes of this Agreement, "each type of transaction" refers to the service transactions set forth in Appendix I of this Agreement.

(b) GNMA shall not be obligated to reimburse FNMA for any costs incurred by the FNMA New York Fiscal Office and such costs shall not be included in the computation of the full unit product cost under paragraph (a) of this Item for any transaction.

(c) GNMA shall not be obligated to reimburse FNMA for any contributions or entertainment expenses incurred by any FNMA office or employee and such expenses shall not be included in the computation of the full unit product cost under paragraph (a) of this Item for any transaction.

(d) GNMA shall not be obligated to reimburse FNMA for any research and development costs incurred by FNMA

and such costs shall not be included in the computation of the full unit product cost under paragraph (a) of this Item for any transaction, unless such costs are expressly authorized in writing by GNMA prior to FNMA's incurrence of the cost or unless FNMA establishes that such costs are reasonably related to the services provided GNMA under Article II of this Agreement.

(e) GNMA shall not be obligated to reimburse FNMA for any costs incurred by FNMA's Office of Corporate Relations in the performance of its investor relations and legislative affairs functions and such costs shall not be included in the computation of the full unit product cost under paragraph (a) of this Item for any transaction.

(f) GNMA shall not be obligated to reimburse FNMA for any costs incurred by FNMA through independent contractors or consultants and such costs shall not be included in the computation of the full unit product costs under paragraph (a) of this Item, unless such costs are expressly authorized in writing by GNMA prior to FNMA's incurrence of the cost or unless FNMA establishes that such costs are reasonably related to the services provided GNMA under Article II of this Agreement.

(g) GNMA shall not be obligated to reimburse FNMA for any costs incurred by FNMA's Office of the Corporate Secretary in the performance of its stockholder relations functions including, but not limited to, costs of shareholders' meetings, proxy solicitations and publication and distribution of information to shareholders, and such costs shall not be included in the computation of the full unit product cost under paragraph (a) of this Item for any transaction.

(h) GNMA shall not be obligated to reimburse FNMA for any costs incurred by FNMA's Office of Corporate Planning, and such costs shall not be included in the computation of the full unit product cost under paragraph (a) of this Item for any transaction, except specific items of cost may be included in the computation of the full unit product cost under paragraph (a) to the extent FNMA establishes that such specific items are reasonably related to services provided GNMA under Article II of this Agreement.

(i) GNMA shall not be obligated to reimburse FNMA for any costs incurred by FNMA's Office of the Treasurer in the performance of its debt management

function, and such costs shall not be included in the computation of the full unit product cost under paragraph (a) of this Item for any transaction.

(j) FNMA shall be paid a fee for processing Sellers' applications for Commitment Contracts as provided by Item 2 of Part A of Article II. The fees to be paid to FNMA shall be a percentage of the dollar amount of applications for commitments of GNMA funds and shall be paid by Sellers to FNMA. These fees, together with similar fees earned by FNMA for commitments of FNMA funds, will be used to offset (reduce) the actual costs of processing home commitments to the extent of such actual costs and not in excess thereof.

(k) For purposes of paragraph (a) of this Item, services rendered pursuant to Items 1 and 5 of Part A of Article II shall not be considered transactions performed by FNMA exclusively for the benefit of GNMA. The costs incurred by FNMA in performing services pursuant to Items 1 and 5 of Part A of Article II, however, shall be included in computing the average cost to FNMA of all other transactions of the type referred to in Appendix I.

(l) GNMA shall reimburse FNMA for reasonable, actual costs of services rendered pursuant to Parts B and

C of Article II of this Agreement, including direct costs and overhead allocable to the rendering of such services. Reimbursement pursuant to this paragraph shall constitute full reimbursement for services rendered pursuant to Parts B and C of Article II and the cost of services for which such reimbursement is paid shall not be included in the computation of the full unit product costs under paragraph (a) of this Item for any transaction.

Item 2. Interim Payments

In recognition of the costs to FNMA of advancing funds for the rendering of services pursuant to this Agreement, commencing in October, 1977, GNMA shall pay FNMA the stipulated amount of $500,000 per month during the term of this Agreement, the payment to be received by FNMA on the 15th day of the month or the following business day of each month. FNMA shall submit an interim bill (computed by multiplying the actual number of transactions by the interim unit prices in effect) to GNMA by the twentieth of each month for services rendered during the previous month, showing the stipulated amount as a credit thereon. If the amount of the bill is less than the stipulated amount, FNMA shall

repay to GNMA the excess of the stipulated amount over the billed amount. If the amount of the bill is more than the stipulated amount, GNMA shall pay to FHMA the amount by which the billed amount exceeds the stipulated amount.

For purposes of this contract, the interim unit prices will be in effect for, and based upon, the following periods:

Period Interim Prices will be in Effect	Reference or Base Period for Computing Interim Prices
10/1/77 - 12/31/77	Appendix I
1/1/78 - 9/30/78	7/1/76 - 6/30/77
10/1/78 - 9/30/79	7/1/77 - 6/30/78
10/1/79 - 9/30/80	7/1/78 - 6/30/79

Revised interim unit prices will be adopted on the dates indicated (1/1/78, 10/1/78 and 10/1/79) upon receipt of written notice to GNMA from FHMA, to which is attached (1) a statement of actual unit prices for the respective twelve month periods ending 6/30/77, 6/30/78 and 6/30/79, and (2) a variance analysis, both examined by auditors as provided in Item 3 of this Article. If for any reason the audit provided for in Item 3 is not completed by January 1, 1978, or October 1 of any subsequent year, the previous interim unit prices will remain in effect until such time that the audit report is available.

Item 3. Adjustment of Interim Payments

No later than ninety (90) days following the end of a quarter, FNMA shall deliver to GNMA a report of actual unit costs (as determined under the provisions of this contract) together with a statement showing the balance owing by or to GNMA arising from differences between interim and actual unit prices for the quarter. If the balance indicates payment is due GNMA, a check for the amount of excess payments will be enclosed with the statement. If the balance indicates payment is due FNMA, GNMA shall remit the stipulated amount within ten (10) days of receipt of the statement.

On an annual basis, no later than forty-five (45) days following June 30, FNMA shall submit to GNMA (1) a report of actual unit costs for the preceding twelve-(12) month period, (2) a statement showing the balance owing by or to GNMA, and (3) a variance analysis showing the amount of variance attributable to cost changes and volume changes. The Department of Housing and Urban Developent shall complete by October 1 of each year after 1977 an audit of all costs of FNMA and an examination of documents related to the annual adjustment of interim payments, provided, however, that in the event GNMA advises FNMA within

five business days from receiving FNMA's report, statement, and variance analysis of its intent not to complete an audit by October 1 of that year, or in the event that an audit by the Department of Housing and Urban Development has not commenced by September 1 of any year, then the audit for that year shall be performed by independent public accountants. The balance owing by or to GNMA will be settled in accordance with the instructions in the preceding paragraph. Additionally, the report of actual unit costs will be used for the interim unit prices applicable to the subsequent twelve-(12) month period, pursuant to Item 2.

Article IV. Monitoring

GNMA, through any authorized representative, has the right at all reasonable times, to inspect, monitor, or otherwise evaluate the work performed or being performed under this Agreement and the premises at which the work is being performed. FNMA agrees to provide all reasonable facilities and assistance for the safety and convenience of GNMA representatives in the performance of their duties and to provide personnel, records, and accounts that may be necessary for GNMA to monitor FNMA's performance under this Agreement.

FNMA shall make available at any time to GNMA and authorized

GNMA representatives those records and accounts of FNMA that relate to the charges or payments made pursuant to this Agreement.

Article V. Equal Opportunity

During the performance of this Agreement, FNMA agrees as follows:

Item 1.

FNMA will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. FNMA 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. FNMA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by GNMA setting forth the provisions of this Equal Opportunity clause.

Item 2.

FHMA will, in all solicitations or advertisements for employees placed by or on behalf of GNMA, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin

Item 3.

FHMA will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by GNMA, advising the labor union or workers' representative of FHMA's commitments under this Equal Opportunity clause, and sh post copies of the notice in conspicuous places available to employees and applicants for employment.

Item 4.

FHMA will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, a relevant orders of the Secretary of Labor.

Item 5.

FHMA will furnish all information and reports required Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, o pursuant thereto; and will permit access to its books, reco

and accounts by GNMA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

Item 6.

In the event of FNMA's noncompliance with the Equal Opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, and FNMA may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions 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.

Item 7.

FNMA will include the provisions of Items 1 through 7 in every subcontract or purchase order on behalf of GNMA unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. FNMA will take such action with

respect to any subcontract or purchase order as GNMA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event FNMA becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by GNMA, FNMA may request the United States to enter into such litigation to protect the interest of the United States.

Article VI. Term and Renewal

Item 1. Term

This Agreement is effective beginning October 1, 1977, and shall be effective through September 30, 1980.

Item 2. Renewal of Agreement

By mutual agreement between FNMA and GNMA, this Agreement may be renewed for such terms as may be agreed upon. In the event that FNMA is willing to renew the Agreement and GNMA desires the renewal, notice of such will be provided by each party to the other by December 31, 1979. Thereafter, but no later than April 1, 1980, FNMA shall submit to GNMA a proposal for the renewal.

Article VII. Termination

Item 1.

Either party hereto may terminate this Agreement by giving to the other party at least one year's notice in writing of such termination.

Item 2.

If before October 1, 1980, this Agreement has not been renewed pursuant to Article VI and if GNMA or FNMA have not entered into another contract in lieu of renewing this Agreement, this Agreement shall terminate on April 1, 1982, unless otherwise agreed by GNMA and FNMA.

Item 3.

Under circumstances referred to in Item 1 of this Article, FNMA shall continue to perform services described in Article II through March 31, 1982, and GNMA shall reimburse FNMA for said services in accordance with Article III hereof.

Item 4.

At least three months prior to termination of this Agreement under either Item 1 or Item 2 of this Article, FNMA shall notify by certified or registered mail all parties with whom FNMA maintains a contractual relationship on behalf of GNMA and all

parties with whom GNMA maintains a contractual relationship which are affected by the services rendered by FNMA to GNMA pursuant to this Agreement that as of termination of this Agreement FNMA will no longer be GNMA's attorney-in-fact.

Item 5.

Within one week after notifying parties pursuant to Item 4 of this Article, FNMA shall forward to GNMA a copy of each such notification.

Item 6.

FNMA shall provide reasonable assistance to GNMA in transferring the services provided pursuant to this Agreement to a party other than FNMA. The assistance provided by FNMA shall include, but not be limited to, transferring relevant documents and providing necessary instruction to such other party.

Item 7.

FNMA shall provide GNMA with the following complete billings for services:

(a) On or before termination of this Agreement, a billing for FNMA assistance given by FNMA to GNMA in transferring services as provided in Item 6 of this Article, and

(b) Within thirty days after completion of FNMA's

assistance in transferring services as provided in Item 6 of this Article, a final billing, including charges for such transference assistance.

Item 8.

Within thirty days after receipt of the final billing from FNMA under Item 7 of this Article, GNMA shall pay the amount it agrees it owes FNMA. In the event GNMA disagrees with FNMA's billings pursuant to Item 7 of this Article, GNMA shall pay to FNMA that amount it considers as the correct amount. Within an additional 90 days, GNMA will provide to FNMA a report of the auditors from the Department of Housing and Urban Development (HUD) on the final payment due from GNMA to FNMA, provided, however, if GNMA informs FNMA within fifteen days after receiving final billing that HUD auditors will not make a report, FNMA will provide to GNMA a report of independent public accountants, in lieu of the report by HUD auditors, on the final payment due. In the event that such report calls for an additional payment from GNMA, GNMA shall immediately make such payment, with interest at the rate of 6% per annum, commencing thirty days after the receipt by GNMA of the final billing. In the event that such report states that GNMA has overpaid, FNMA shall immediately refund such overpayment within thirty days with interest at the

rate of 6% per annum, commencing thirty days after the receipt by GNMA of the final billing.

Article VIII - Counsel Opinions

As a condition to the performance of the obligations of FNMA and GNMA under this Agreement, GNMA will submit to FNMA an opinion of the General Counsel of the Department of Housing and Urban Development in form and substance acceptable to FNMA, and FNMA will submit to GNMA an opinion of its General Counsel in form and substance acceptable to GNMA, each to the effect that the respective party has full power and authority under statute and regulations to enter into this Agreement and that this Agreement is a valid and binding agreement enforceable in accordance with its terms. Such opinions will be submitted concurrent with the execution of this Agreement.

Article IX. Warranties

Item 1.

GNMA warrants (a) that it has full power and authority under provisions of statute and regulations, including the Federal National Mortgage Association Charter Act (the "Charter Act") and Chapter III of the Regulations of the Department of Housing and

Urban Development, to enter into this Agreement, (b) that funds are available to it to pay for the services which it calls upon FNMA to perform hereunder, and (c) that this Agreement is a valid and binding agreement upon GNMA and is enforceable in accordance with the terms hereof.

Item 2.

FNMA warrants (a) that it has full power and authority under provisions of the Charter Act and its corporate Bylaws to enter into this Agreement, and (b) that this Agreement is a valid and binding agreement upon FNMA and is enforceable in accordance with the terms hereof.

Item 3.

Each party warrants that this Agreement is the full and complete agreement between the other party and itself with respect to the subject matter of the Agreement.

Article X. Agreement to Indemnify and Not to Make a Claim

Item 1.

GNMA agrees to indemnify and hold harmless FNMA against any and all loss, liability, claim, damage and expense, including legal fees, on account of action by a third party against FNMA

occasioned by or arising from any service specified in Article II which was performed in full or in part or not performed at all by FNMA as GNMA's attorney-in-fact or otherwise, provided that such loss, liability, claim, damage, expense, and legal fees are excluded from the computation of reimbursement set forth in Item 1(a) of Article III, and provided further, however, that FNMA performs the services specified in Article II with diligence and due care, and, provided further, that with respect to those services for which FNMA has no counterpart activity, that FNMA performs such services in accordance with specific instructions or procedures issued by GNMA.

Item 2.

GNMA agrees not to make any claim against FNMA for any loss, liability, claim, damage and expense, including legal fees, on account of any third party's claim or judgment for damages against GNMA occasioned by or arising from any service specified in Article II which was performed in whole or in part or not performed at all by FNMA as GNMA's attorney-in-fact or otherwise, provided that such loss, liability, claim, damage, expense, and legal fees are excluded from the computation of reimbursement set forth in Item 1(a) of Article III and provided further, however,

that FNMA performs the services specified in Article II with diligence and due care, and, provided further, that with respect to those services for which FNMA has no counterpart activity, that FNMA performs such services in accordance with specific instructions or procedures issued by GNMA.

Article XI. Prior Agreements

This Agreement supersedes and renders null and void as of October 1, 1977, the Combined Services Agreement entered into as of July 1, 1975, as extended, except that the rates at which GNMA shall reimburse FNMA for services rendered for periods subsequent to June 30, 1976, shall be based on the methodology set forth in this Agreement and shall be examined by independent public accountants.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

Attest:

Secretary

FEDERAL NATIONAL MORTGAGE ASSOCIATION

By:

Chairman of the Board and President

Attest:

Secretary

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

By

President

Mortgage Type	FHA Project Mortgages	FHA/VA Home Mortgages	Conventional Home Mortgages
Services	Rates		
Approval of Conventional Sellers	No Charge	No Charge	No Charge
Administration of Commitments			
(a) Processing Applications	N/A	.01%*	.01%*
(b) Issuing Commitments	$167.00	$33.00	$33.00
(c) Assigning or Extension	$167.00	$33.00	$33.00
(d) Assumption Options	$ 5.55	$ 5.55	N/A
(e) Payment of Price Differentials	$ 11.00	$11.00	N/A
Loan Review	N/A	N/A	$50.00
Purchasing Mortgages	$775.00	$9.10	$11.70
Supervision of Servicing	N/A	$.61 per month per loan **	$.67 per month per loan **
Mortgage Servicing	$93.25 per month per loan**	N/A	N/A
Spot Check	N/A	N/A	$4.75 for each purchase
Loan Liquidation and Property Disposition	N/A	N/A	$500, plus out-of-pocket expenses

	FHA Project Mortgages	FHA/VA Home Mortgages	Conventional Home Mortgages
Selling Mortgages	$266.00	$8.45	$8.45
Mortgage-Backed Security Review	Reimbursement for charges incurred for all expenses of the GNMA Mortgage-Backed Security Review Unit and allocable overhead.		
Program Administration	No charge up to $6,000 in attributable costs, as determined below. Services costing in excess of this amount shall be Additional Services. This charge shall relate to specific projects. If the total amount of the charge for a specific project exceeds $6,000, reimbursement will be made for the full amount.		
Additional Services	Reimbursement shall be for attributable costs, consisting of salaries at the average salary rate in the cost centers directly performing the Additional Services plus applicable overhead.		

* Paid by Seller

** Based on the average of the number of mortgages being serviced on behalf of GNMA at the beginning of each month and the number of mortgages being serviced at the end of such month.

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2155748592 MGM TDMT PHILADELPHIA PA 100 06-28 0322P EST

JOHN DALTON PRESIDENT
GOVERNMENT NATIONAL MORTGAGE ASSN
451 7 ST SOUTHWEST
WASHINGTON DC 20410

THIS IS COPY OF THE MAILGRAM SENT TO BERNARD GILHULY 144 ISLAND BROOK AVE BRIDGEPORT CT 06606.

REFERENCE HIGH RIDGE APARTMENTS FILE NO. 606607334 FHA NO. 01755028 THIS WILL CONFIRM OUR TELEPHONE CONVERSATION OF JUNE 28 1978 AT WHICH TIME WE ADVISED YOU THAT THE PAYMENT IN FULL OF HIGH RIDGE APARTMENTS WAS AN IMPROPER PREPAYMENT AND THAT GNMA HAS REQUESTED THAT THE TRANSACTION BE RESCINDED 221D3BMIR MORTGAGE BE REINSTATED. THE PREPAYMENT TRANSACTION DID NOT HAVE THE PRIOR WRITTEN APPROVAL OF THE FHA COMMISSIONER AS REQUIRED. WE ALSO REQUESTED THAT THE S60 RENT INCREASE TO BE EFFECTIVE 7-1-78 BE WITHDRAWN OR AT LEAST DELAYED PENDING FURTHER DISCUSSION. YOUR REACTION TO BOTH OF THESE REQUESTS WAS NEGATIVE PENDING CONSULATION WITH YOUR ATTORNEY.

JOHN J HAGERTY SENIOR LOAN REPRESENTATIVE
FEDERAL NATIONAL MORTGAGE ASSN

15:23 EST

MGMCOMP MGM

Exhibit E

Housing Federal Housing xx
Commissioner, H

6/30/78

xx

Robert Kalish 202 755-5677

HIGHRIDGE ASSOCIATES
c/o MR. BERNARD A. GILHULY
144 ISLAND BROOK AVENUE
BRIDGEPORT, CONNECTICUT 06606

IT HAS BEEN BROUGHT TO MY ATTENTION THAT YOU PREPAID THE MORTGAGE ON HIGH RIDGE APARTMENTS, FAIRFIELD, CONNECTICUT, PROJECT NO. 017-55028, ON MAY 3, 1978, WITHOUT OBTAINING PRIOR WRITTEN APPROVAL FROM MY OFFICE. THE PRECONDITION TO PREPAYMENT IS CONTAINED IN BOTH THE CODE OF FEDERAL REGULATIONS CFR 24 UNDER SECTION 221.524 AND THE MORTGAGE NOTE.

THE DEPARTMENT DEEMS THE MORTGAGE STILL IN EFFECT AND THAT YOU ARE STILL BOUND BY THE REGULATORY AGREEMENT WHICH REQUIRES THAT YOU RECEIVE DEPARTMENTAL APPROVAL FOR RENT INCREASES.

YOU SHOULD IMMEDIATELY POSTPONE YOUR PROPOSED RENT INCREASE EFFECTIVE JULY 1, 1978 UNTIL THE SITUATION IS RECTIFIED. IF YOU NEED FURTHER CLARIFICATION OR

Exhibit F

Commissioner, F

6/30/78

Robert P. Kalish 202 755-5677

ASSISTANCE, YOU SHOULD CALL ROBERT P. KALISH, DEPUTY

DIRECTOR, OFFICE OF LOAN MANAGEMENT, AT 202-755-5677.

LAWRENCE E. SIMONS
ASSISTANT SECRETARY

cc:
Docket
Reader-6140
Kalish-6156
Tahash-6148
Pfeender-6156
Melkonian-6140
McClellan-3218
Coleman-6140
ARA-REM Boston RO

HPMP:Tahash:goe 6/30/78 X-55757

John McDowell, Director
Dallas Area Office
6.1S

April 4, 1977

Fred W. Pfaender, Office of Loan Management, HIM

Project No. 112-55031-LD
Easton Terrace II
Dallas, Texas

This is in response to your memorandum of February 28, 1977, concerning the subject.

Prior to our consent to prepayment in full of a Section 221(d)(3) BMIR project, the following conditions must be met:

1. The project owner must certify and your office must verify that there is suitable subsidized housing available in the area at similar rental rates.

2. The owner must agree to pay all relocation costs for tenants required or desiring to vacate the project.

3. Your office must make a determination that the area has an overabundance of subsidized housing and that no additional subsidized housing will be insured until market conditions improve.

4. A determination must be made by this office that the approval of the prepayment is in the best interests of the Secretary.

Although this office has the authority to approve prepayments for subsidized projects, you have the authority to reject proposals not meeting the requirements set forth above.

We hope this information is helpful to you.

Director

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HBP:
oleman:
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Exhibit G

DISTRI[illegible] COURT FOR THE
DISTRICT COURT OF CONNECTICUT

Kathleen Korsko, et al.

v.

Patricia R. Harris, et al.

AFFIDAVIT OF EDWARD J. SZYMANOSKI

Edward J. Szymanoski, being duly sworn, deposes and says

1. I am the Area Economist for the Hartford Area Office of U.S. Department of Housing and Urban Development and have held the position since February 1976. I am responsible for reviewing applications for HUD Community Development Grants, applications for assisted and unassisted housing and for allocation of HUD assisted housing funds within the Area Office's jurisdiction.

2. I am familiar with the housing needs of the Town of Fairfield through review of the 1976 and 1977 Housing Assistance Plan (HAPs) submitted by the Town as part of its Community Development Block Grant Applications and through the 1970 census and other data sources that I maintain to carry out my responsibilities.

3. Fairfield's latest HAP dated 1977, shows 1849 low and moderate income households in need of housing assistance. (Table II, (attached) of HAP portion of 1977 CDBG Application). The HAP was based upon a study done by the Greater Bridgeport Regional Planning Agency, entitled "Regional Housing Plan 1977". Table 2 of that study provide the data for assessment of the Town's housing needs. The original source of numbers is primarly the 1970 census. HUD's definition of low and moderate income families, for CDBG purposes, is families whose income does not exceed 80% of the median income for their areas.

   The housing stock in Fairfield is also analyzed in the HAP in Table I (attached). Again, the Greater Bridgeport Regional Housing Assistance Plan is the basis for this table. Table I shows a total of 3036 rental units in Fairfield of which only 88 were estimated to be vacant. We do not know the rents of these units but even if they are assumed, most optimistically, to be within the price range of low and moderate income families, this number of vacancies is insufficient to meet the needs of the 169 households living in substandard housing, 190 households in standard but overcrowded units and 526 families expected to reside in the area from existing or anticipated increases in employment opportunities (Total=885). The remainder of Fairfield's 1849 low and moderate families with housing needs is primarly families living in adequate units but paying in excess of 25% of their income for rent.

4. Tenants in 221d3 projects, such as High Ridge Apartments, are permitted to have higher incomes, up to 95% of median, than allowed for the Sec. 8 or CDBG definition of low and moderate income tenants. I have no more precise information on the actual incomes at High Ridge Apartments, for this data is not required to be submitted.

5. High Ridge is a family project, with rents of $200/month for a 2 bedroom unit and $232 for a 3 bedroom unit. The additional utility allowance, for the rents do not include cooking or electricity, is roughly $20/unit. This compares to Sec. 8 Existing Fair Market Rents (FMRs) of $252 and $292 for non-elevator units of comparable size. The FMRs are those for the Bridgeport SMSA. The 1970 census indicates housing costs for Fairfield exceed those of SMSA average, so it is my belief that in reality housing costs are probably higher than the FMRs. As part of its Sec. 8 existing application, the Fairfield Housing Authority asked for permission to use rents 20% in excess of FMRs, the maximum increase allowed to be granted.

6. There are no other state or federally subsidized family units in the Town of Fairfield, although two Sec. 8 projects for the elderly have been or are in the process of being completed. The Town does not yet have a Sec. 8 existing program in effect, so at present there is no subsidy program for families.

7. Based on the foregoing, it is my belief that there is not presently an adequate supply of housing affordable to low and moderate income families in the Town of Fairfield. If High Ridge Apartments were removed from the Town's stock of housing for such families, the numbers of households in need of assistance would increase. Because of the Town's low vacancy rate and high rent structure, it would be difficult for High Ridge tenants to find housing in the community at rents equivalent to those currently charged at the project.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20, 1978

Edward Szymanoski
Area Economist
Hartford Area Office
U.S. Department of Housing and Urban Development

Attachments Table I
Table II

CONNECTICUT LEGAL SERVICES, Inc.

6 Silver Street
Middletown, Connecticut 06457
Telephone: 203/347-7237

NORMAN K. JANES
Executive Director

ATTORNEYS—AT—LAW

KATHRYN L. BERT
MARVIN R. FARBMAN
WILMA A. BRIER

ADMINISTRATIVE OFFICE

SEBETHE DRIVE
CROMWELL, CT. 06416

LAW OFFICES

285 PARK AVENUE
BRIDGEPORT, CT. 06601

175 TRIANGLE STREET
DANBURY, CT. 06810

112 MAIN STREET
DANIELSON, CT. 06239

114 EAST MAIN STREET
MERIDEN, CT. 06450

6 SILVER STREET
MIDDLETOWN, CT. 06457

69 WALNUT STREET
NEW BRITAIN, CT. 06051

35 HUNTINGTON STREET
NEW LONDON, CT. 06320

33 SOUTH MAIN STREET
SOUTH NORWALK, CT. 06854

87 MAIN STREET
NORWICH, CT. 06360

32 SCHOOL STREET
ROCKVILLE, CT. 06066

20 SUMMER STREET
STAMFORD, CT. 06901

257 MAIN STREET
TORRINGTON, CT. 06790

61 FIELD STREET
WATERBURY, CT. 06702

902 MAIN STREET
WILLIMANTIC, CT. 06226

March 30, 1982

National Housing Law Project
2150 Shattuck Avenue, Suite 300
Berkeley, CA 94704

Attention: David Bryson

Re: HUD's Prepayment Criteria

Dear Dave:

How could I forget Robert Kalish? Enclosed is his 1978 affidavit. The criteria and the intra-departmental memos in which they are set forth are described in the last two pages.

Very truly yours,

Marvin Farbman

MF/mah
Enclosure

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

* * * * * * * * * * * * * * * * * * * *

KATHLEEN KORSKI, et al.

Plaintiffs,

v.

PATRICIA R. HARRIS, et al.

Defendants.

* * * * * * * * * * * * * * * * * * * *

Civil Action No. B-78-256

AFFIDAVIT OF ROBERT P. KALISH

Robert P. Kalish declares and states:

1. I am the Deputy Director of the Office of Loan Management under the Assistant Secretary for Housing-Federal Housing Commissioner, U. S. Department of Housing and Urban Development (hereafter referred to as "HUD"). The powers of the Secretary of Housing and Urban Development (hereafter referred to as the "Secretary") under the National Housing Act (12 U.S.C. 1701 et seq.) have been delegated to the Assistant Secretary for Housing-Federal Housing Commissioner (hereafter referred to as the "Commissioner"). As Deputy Director of the Office of Loan Management, I have supervisory responsibility for the management of all mortgages insured or held by the Commissioner pursuant to the National Housing Act from the time of final endorsement of the mortgage until it is fully paid or it is assigned or foreclosed and the title acquired by the Secretary. Any request by a mortgagor or a mortgagee for the consent of the Commissioner to a prepayment of a mortgage, where such consent is required, would in the normal course of business be forwarded to my Office for consideration and decision. The Director of my office, Fred W. Pfaender, and I have the delegated authority from the Commissioner to approve or disapprove such request for prepayment.

The information set forth in this affidavit is based upon my personal knowledge and information supplied to me by members of my staff.

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated, PLAINTIFFS v. PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development, HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates, DEFENDANTS	CIVIL ACTION NO. B78-256 JULY 21, 1978

PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF
THEIR MOTION FOR A PRELIMINARY INJUNCTION 1/

1/ On or about July 13, 1978, defendants Highridge Associates, Tarinelli Construction Co. and Bernard A. Gilhuly (hereinafter, the private defendants) filed with the Court a motion to dismiss for lack of "jurisdiction over the subject matter" and for failure "to state a claim upon which relief can be claimed." Next, on July 14, 1978, the Clerk of the Court issued "Notice to Counsel" stating, inter alia, that defendants' memorandum in support of their motion should be filed by July 21st and that plaintiffs' memorandum in opposition to defendants' motion is to be filed by July 28th. To the extent that private defendants' motion to dismiss alleges plaintiffs' failure "to state a claim upon which relief can be claimed, Section II.C. infra, in that it discusses

I. INTRODUCTION

The plaintiffs are low income persons who are tenants in High Ridge Apartments, a federally subsidized Section 221(d)(3) housing project designed for low and moderate income families, which is situated in Fairfield, Connecticut. In behalf of themselves and all other tenants residing at High Ridge, the plaintiffs seek declaratory and injunctive relief to secure rights guaranteed them by the United States Constitution, certain federal housing statutes, and regulations of the United States Department of Housing and Urban Development (HUD) promulgated thereunder.

High Ridge Apartments was constructed in 1967 as housing for low and moderate income people. Financing for the project was provided by a loan secured by a mortgage insured and subsidized by HUD under Section 221(d)(3) of the National Housing Act, 12 U.S.C. §17151(d)(3). Under the terms of the Section 221(d)(3) program, HUD, in order to assure that the project is operated for the benefit of low and moderate income families, has controlled certain aspects of the project's operation, including inter alia, rent levels. That control is exercised through a Regulatory Agreement[2/] between HUD and the owners of the project, defendant High Ridge Associates, as well as through HUD regulations and other HUD issuances.

In May of 1978, the owners of High Ridge Apartments tendered, and HUD through its mortgage financing unit, the Government National Mortgage Association (GNMA)[3/], accepted prepayment in

1 continued/ the merits of plaintiffs' causes of action, is in response thereto. Plaintiffs will, however, also submit in timely fashion their memorandum in opposition to private defendants' motion to dismiss which will fully respond to defendants' claim of lack of subject matter jurisdiction and, also supplement this memorandum in as much as defendants' other, aforementioned claim is concerned.

2/ A copy of the Regulatory Agreement is attached hereto as Appendix A.

3/ GNMA is a government corporation within the Department of Housing and Urban Development (HUD). 24 CFR §300.5

full of the mortgage. At the same time it accepted prepayment of the mortgage, HUD cancelled the aforementioned Regulatory Agreement, under which it had regulated rent levels at High Ridge Apartments.

On or about May 31, 1978, defendants High Ridge Associates, Tarinelli Construction Co. and Bernard A. Gilhuly (hereinafter collectively referred to as the private defendants), who own, manage and control High Ridge Apartments, gave the tenants written notice of their intention to convert 56 out of the 124 apartment units in the project to condominiums and to offer these units for sale at a price of $39,900 for two-bedroom units and $43,900 for three-bedroom units.[4/] At the same time, the private defendants notified all tenants that effective July 1, 1978, a $60 per month per unit rent increase for all two-bedroom units and a $68 per month per unit increase for all three-bedroom apartments would be instituted.

Generally, at this juncture,[5/] the plaintiffs in behalf of themselves and their class[6/] seek preliminary injunctive relief enjoining the private defendants from implementing the

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4/ A copy of the notice is attached hereto as Appendix B.

5/ This action was filed on July 7, 1978. On July 11, 1978, in camera, this Court entered a temporary restraining order by stipulation of all parties to extend "until July 31, 1978 or until a hearing and determination on plaintiffs' motion for preliminary injunction is had,..." Generally, the Court's order restrained the private defendants from further implementation of the rent increases and from selling any units at High Ridge as condominiums. For the most part, in pursuing their motion for preliminary injunctive relief, plaintiffs are, in effect, merely seeking an extension of the stipulated temporary restraining order entered on July 11, 1978, until a full and final trial on the merits of their claims can be had and determined.

6/ See, Section II.B., infra.

aforementioned rent increases and from selling or offering for sale any condominium units at High Ridge Apartments. Temporary injunctive relief is sought on the grounds that: (1) by accepting prepayment of the mortgage and thereby surrendering its supervisory control over the private defendants in their operation of High Ridge Apartments, the defendant Secretary has deprived plaintiffs of the benefits of a governmental aid program, i.e., the right to continued occupancy of a government subsidized housing unit at below market rate rents, in the absence of ascertainable standards and without affording the plaintiff-tenants notice and an opportunity to be heard, all in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution, and (2) HUD's actions have also violated its statutory obligations under various federal housing acts, particularly 12 U.S. Code §1701t, 42 U.S. Code §1441 and 42 U.S.C §1441a to preserve existing housing for low and moderate income people.[7/]

Finally, in behalf of themselves and those whose interes they represent, plaintiffs maintain that unless this Court grants them the preliminary injunctive relief they seek, they will be unable to remain current on their rental obligations and will soon be dispossessed from their apartments, e.g., via summary process[8/] and/or the conversion of their units to condominiums and

7/ Due to the imminence of the harm facing them, in their veritable "rush to Court" plaintiffs alleged only these two distinct causes of action in their verified complaint filed on July 7, 1978. Plaintiffs feel this Court should be made aware that it is their intention to file an amended complaint in the very near future, adding as many as five new causes of action therein.

8/ See, Connecticut General Statutes §47a-23, et seq.

their sale to persons far better able than plaintiffs to purchase them. As they will clearly be unable to rent comparable alternative housing on the private market in the Fairfield region, they are thus faced with immediate and irreparable injury in the absence of injunctive relief ordered by this Court.

II. PLAINTIFFS AND MEMBERS OF THEIR CLASS ARE ENTITLED TO THE PRELIMINARY INJUNCTIVE RELIEF THEY SEEK

A. The Standards Governing Determination of an Application For Preliminary Injunction.

The basic purpose of a preliminary injunction is to "maintain the status quo pending a final determination of the merits," Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319, 323 (2d Cir. 1969), cert. denied, 394 U.S. 799 (1969). In this judicial circuit, an application for a preliminary injunction is governed by the following standards:

> To obtain the preliminary relief he seeks the movant must make "a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." Triebwasser & Katz v. American Telephone & Telegraph Co., 535 F.2d 1356, 1368 (2d Cir. 1976) (emphasis in original), quoting Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2d Cir. 1973); see Pride v. Community School Board, 482 F.2d 257, 264 (2d Cir. 1973).

The court of appeals has given this explanation for the difference between the two standards:

> [T]he burden [of showing probable success] is less where the balance of hardships tips decidedly toward the party requesting the temporary relief. Dino De Laurentiis Cinematografica, S. p.A.v. D-150, Inc., supra, [366 F.2d 373, 375 (2d Cir. 1966)]. In such a case, the moving party may obtain a preliminary injunction if he has raised questions going to the merits so serious, substantial, and difficult as to make them a fair ground for litigation and thus for more deliberate investigation. Unicon Management Corp. v. Koppers Co., 366 F.2d 199, 205 (2 Cir., 1966); Dino De Laurentiis Cinematografica, S. p.A. v. D-150, Inc., supra; Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738, 740 (2 Cir. 1953). Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319, 323 (2d Cir.), cert. denied, 394 U.S. 999 (1969).

See, also, Triebwasser & Katz v. American Telephone & Telegraph Co., supra, 535 F.2d at 1359; San Filippo v. United Brotherhood of Carpenters & Joiners, 525 F.2d 508, 511 (2d Cir. 1975).

These standards have been repeatedly applied by this Circuit when weighing the factors necessary for the issuance of preliminary relief. In practice, if the movant makes a particularly strong showing of one requisite for preliminary relief, his burden is lessened for other elements. Where there is a minimal showing of irreparable injury, for example, the movant has the burden of establishing with reasonable certainty that he will succeed at trial on the merits; however, the burden of demonstrating likely success is less where the balance of hardships tips decidedly toward the party requesting preliminary relief. See, Stamicarbon, N.V. v. American Cyanamid Co., 506 F.2d 532, 536 (2d Cir. 1974); Gulf & Western Industries, Inc. v. Great Atlantic and Pacific Tea Co., 476 F.2d 687, 692-99 (2d Cir. 1973).

For reasons which are fully stated in Sections II. C. and II. D. infra, plaintiffs, in behalf of their families and the class they seek to represent, contend that they can satisfy either of the two standards governing the issuance of preliminary injunctive relief and are therefore entitled to the interlocutory order they seek.

B. PLAINTIFFS SHOULD BE PERMITTED TO SEEK RELIEF IN BEHALF OF ALL PRESENT AND FUTURE TENANTS OF HIGH RIDGE APARTMENTS.

In their complaint as well as in their motion for class action certification the three named plaintiffs propose, under Rule 23(c)(1), certification of a plaintiffs' class to be comprised of all persons who presently are tenants at High Ridge Apartments or who may reside there as tenants in the future. Plaintiffs claim this class is certifiable under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

As there are a total of 124 two and three-bedroom units at High Ridge Apartments, all or most of which are presumably occupied, the class of persons whom the named plaintiffs seek to represent in this action is clearly "so numerous that joinder of all of its members is impracticable." F.R. Civ. P. 23(a)(1).

Next, as required by F.R. Civ. P. 23(a)(2), "there are questions of law and fact common to the class." By virtue of their occupancy of apartments in a Section 221(d)(3) housing project all tenants therein are necessarily low and moderate income persons. 12 U.S.C. §17151(a). Thus, for example, the question of whether the occupants of units at High Ridge are faced with irreparable injury as a result of the actions of the defendants and their lower income status is one which appears to be common to the class.

Plaintiffs further maintain that "the claims of the representative parties are typical of the claims of the class." F.R. Civ. P. 23(c)(3). At this very early point in the progress

of this litigation, there is no reason whatsoever to suspect that this is not so. In addition, plaintiffs contend that as representative parties they will fairly and adequately protect the interests of the class. F.R. Civ. P. 23(a)(4). Finally, as required by Federal Rule 23(b)(2), "the part(ies) opposing the class (have) acted on grounds generally applicable to the class as a whole, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole..."

Upon information and belief, it is expected that the private defendants will claim that some of the tenants at High Ridge Apartments wish to purchase the units they now occupy if and when the units are transformed into condominiums and offered for sale. For this reason, private defendants are expected to claim that plaintiffs' motion for class certification should be denied.

At this point in time, the named plaintiffs have no way of knowing whether or not there are in fact tenants at High Ridge who would like to purchase their apartment units. They vigorously maintain that unless this claim can be clearly established by the private defendants at this juncture, the broadly based class certification order they seek ought to be entered as under Federal Rule 23(c)(1) whatever order this Court enters "may be conditional, and may be altered or amended before the decision on the merits," and thus tenants who wish to purchase their units and have the financial means to do so may later be

excluded as a group from the class represented by the named plaintiffs. In the alternative, plaintiffs maintain that in addition to Rule 23(b)(2) they also satisfy the requirements for class certification under Rule 23(b)(3). Since, under Rule 23(c)(2), in any class action maintained under Rule 23(b)(3), the court is required to insure that notice is provided to each member of the class including, inter alia, notice "that (A) the Court will exclude him from the class if he so requests by a specified date," class certification under Rules 23(a) and 23(b)(3) would, either at this point or at some time before the decision on the merits," insure that those High Ridge tenants who may wish to purchase their apartment units are not included in the plaintiff class, thereby protecting their interests to the fullest extent possible.

In summation, plaintiffs' position on their motion for class certification is that, unless the private defendants can at this time make a strong showing to the contrary, their motion should be granted and a Rule 23(b)(2) class certified. If the Court is impressed by the private defendants' anticipated claims that some members of the putative class have interests which are in direct opposition to those of the named plaintiffs, then, at very least, the putative plaintiff class should be certified under Rules 23(a) and (b)(3).

C. Plaintiffs are Likely to Prevail The Merits of Their Claims.

1. Plaintiffs' Rights Under the Due Process Clause of The Fifth Amendment Have Been Violated By The Governmental Action of HUD's Acceptance of Mortgage Prepayment Without Notice to Tenants and Opportunity to Respond and the Private Defendants' Subsequent Implementation of Rent Increases and Plan For Converting Many Apartment Units Into Condominiums.

As stated earlier, plaintiffs are tenants of High Ridge Apartments, a §221(d)(3) project subsidized and regulated by the Department of Housing and Urban Development under the provisions of 12 U.S.C. §17151(d)(3). The statutory purpose of this section is "to assist private industry in providing housing for low and moderate income families and displaced families." 12 U.S.C. §17151(a). To participate in the §221(d)(3) program, the private defendants have/required to conform to a regulatory agreement with the Federal Housing Administration governing, inter alia, the construction, 12 U.S.C. §1715(f), occupancy 12 U.S.C. §17151(d)(3)(iii), income limits for tenant eligibility, 24 C.F.R. §221.537, rent levels, rent increase procedures, 24 C.F.R. §221.531(c) and method of project operation.

The May, 1978 acceptance of prepayment of private defendants' mortgage obligation by HUD, thereby terminating HUD's involvement in this project and necessarily subjecting the lower income tenants to the vicissitudes of the private housing market, was accomplished in the total absence of notice to the tenants or provision to them of any opportunity whatsoever to be heard on the effect of such a development.[9/] The practical and necessary

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9/ Final endorsement of the FHA regulatory agreement occured on May 26, 1966. Under the terms of 24 C.F.R. §221.524(a)(ii), the earliest date by which the private defendants, a limited distribution mortgagor, should be permitted to prepay the mortgage is May 26, 1986.

result of HUD's action and the private defendants' prompt implementation of a 30 percent rent increase and condominium conversion plan will be to displace the present tenants imminently by lease termination for their inability to pay the rent increase and/or to purchase their units as condominiums.[10/]

In Board of Regents v. Roth, 408 U.S. 564, 33 L.Ed. 2d 548, 92 S.Ct. 2701 (1972), and Perry v. Sindermann, 408 U.S. 593 33 L.Ed. 2d 570, 92 S.Ct. 2694 (1972), the United States Supreme Court articulated the test or standards to be applied to a due process claim of the sort that plaintiffs advance herein. First, the party claiming a right to such procedural due process must demonstrate governmental deprivation of some interest in liberty or property protected by the due process clause. In order to be considered a property right to which due process must apply, there must be a reasonable basis for the holder of the alleged right to expect that in normal circumstances s/he will be permitted to continue to enjoy this right indefinitely. Thus, in this matter, in order to be protected by due process, plaintiffs must show that "there is a reasonable basis for tenants to expect that in normal circumstances they will be permitted to remain in the housing indefinitely," and, thus, that the "tenants do have a reasonable expectation deserving of protection." Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973). If this can be shown, and plaintiffs herein maintain that it can, the necessary conclusion is that some sort of process is due.[11/]

10/ See, footnote 4, supra, and Appendix B.

11/ Under Roth and Sindermann, supra, once it is determined that process is due, the question of precisely what degree or kind of process is due arises. Since plaintiffs and their class were not afforded one iota of process, due or otherwise prior to HUD's acceptance of prepayment from the private defendants, plaintiffs maintain that for purposes of their motion for temporary relief it is not necessary to determine the kind or degree of process due them. Instead, resolution of this question can and should be deferred until hearing and determination on the merits can be had.

In the Second Circuit, low income tenants of subsidized housing have been held to have a sufficient property interest in their continued tenancy in such projects to entitle them to the protections of the due process Clause. See, Caramico v. Secretary of the Department of Housing and Urban Development, 509 F.2d 694 (2d Cir. 1974); Lopez v. Henry Phipps Plaza South, Inc., 498 F.2d 937 (2d Cir. 1974); Burr v. New Rochelle Municipal Housing Authority, 479 F.2d 1165 (2d Cir. 1973); Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir. 1970). Moreover, and more significantly, subsequent to the issuance of these decisions, HUD adopted regulations prescribing procedural due process protections for tenants of subsidized housing in regard to rent increases[12/] and evictions.[13/]

Of major interest, in light of HUD's termination of tenants' property interest in their continued tenancy in subsidized housing, is 24 C.F.R. §450.3, "Entitlement of tenants to occupancy." This section clearly contemplates tenants' long term expectancy that, but for good cause, material noncompliance with the lease or material failure to carry out tenant obligations under state law, a tenant is entitled to continued occupancy. These regulations, effective after the line of rent increase cases variously granting or denying tenants' constitutional rights to due process protections before rents can be increased, reinforce the applicability of the due process framework here. Plaintiffs clearly have a right to continued occupancy of their units at

12/ See, 24 C.F.R. §§401.0-401.5, effective July 10, 1975. These regulations recognize implicitly that tenants of subsidized housing are entitled to procedural due process by providing them with notice of proposed rent increases, a 30 day period in which to inspect materials substantiating the proposed rent increase, and opportunity to comment thereon, notice of HUD's action on the rent increase application and the reasons for its determination.

13/ See, 24 C.F.R. §§450.1-450.7; effective Sept. 30, 1976.

High Ridge sufficient to invoke due process protections under the holdings of the Supreme Court in Roth and Sindermann, supra.

In the instant case, the tenants' property interest in the public benefit conferred upon them by HUD in the form of subsidized housing subject to federal rent control was terminated by HUD without notice, opportunity to examine materials supporting early prepayment, opportunity to present countervailing evidence in order to enable FHA to make an informed decision,and notice of the basis for HUD's decision. Also, HUD's unilateral termination of its involvement in the project without due process was made arbitrarily and capriciously, without reference to ascertainable standards. Plaintiffs vigorously contend that HUD's action, which, because of their lower income status and consequent inability to pay the rent increases sought by private defendants, is, in effect, fully tantamount to eviction, has placed High Ridge tenants in the same position of "brutal need" as welfare recipients threatened with termination of benefits without a prior hearing. In Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), the Supreme Court held that due process requires an adequate hearing before termination of welfare benefits.

Just as there is a governmental interest in providing welfare benefits to the indigent, the Nation's housing policy articulates a governmental interest in providing "a decent home and a suitable living environment to every American family."

42 U.S.C. §§1441, 1441a. In describing the intended beneficiaries of this general policy under the §221(d)(3) program, the Senate Committee on Banking and Currency stated:

> 'For families with incomes that do not permit home-ownership at current construction costs and at market interest rates, but who have incomes too high for public low-rent housing, this section of the bill would also establish a new program of FHA-insured, long term, low interest rate mortgage loans for moderate rental housing.' Quoted in Langevin v. Chenango Court, Inc., 447 F.2d 296 (1971), p. 305, fn. 2.

Finally, in summation, plaintiffs contend that they have made a showing that their rights to due process of law have been violated by HUD's acceptance of prepayment of private defendants' mortgage,easily sufficient to satisfy their burden of demonstrating probable success on the merits to whatever degree necessary to fulfill the conditions for issuance of the preliminar injunctive relief they seek under either of the alternative standards described in Section II.A., supra.

2. By Accepting Prepayment of Private Defendants' Mortgage and Thereby Relinquishing Supervisory Control over High Ridge Apartments, the Defendant Secretary of HUD has Violated National Housing Legislation to the Rank Detriment of Plaintiffs and Their Class.

Generally speaking, HUD has a statutory obligation under the Housing Acts of 1949 and 1961, the Housing and Urban Development Act of 1968, and the National Housing Act, to place its highest priority on providing decent housing for lower income families and preserving subsidized multifamily projects as low-to-moderate income housing.

According to 24 CFR §221.524(a)(2) and the secured note[14/] made payable by defendant High Ridge Associates to its original mortgagee and subsequently assigned to GNMA, the private defendants cannot prepay the debt evidenced by this note before 20 years from the date of its final endorsement without first obtaining the approval of the Federal Housing Commissioner.[15/] Assuming, arguendo, though plaintiffs do not feel that it is so, that the actions of GNMA in accepting the prepayment tendered by the private defendants and of the Assistant Commissioner-Comptroller of HUD in terminating HUD mortgage insurance (and thereby HUD supervisory control) after having been notified of GNMA's acceptance of prepayment, constituted a proper and prior approval of prepayment by the Federal Housing Commissioner, plaintiffs contend that this "prior approval" is violative of the National Housing Act, as amended, in general.

14/ See Appendix C , attached hereto.

15/ For all practical purposes, the Federal Housing Commissioner is the defendant Secretary of HUD. 24 CFR §200.4

In 1949, Congress in Section 2 of the Housing Act of 1949, 42 U.S.C. §1441, set a national goal of "a decent home and a suitable living environment for every American family." Congress placed a mandatory obligation upon HUD to follow this goal in the administration of its housing programs. Congress required that HUD exercise its powers, functions and duties under this and other laws consistent with the national housing policy declared by the Act, and in such manner as will facilitate sustained progress in attaining the national housing objective. Id. This obligation applies to all of HUD's activities, including its obligation to supervise the operation of multifamily housing projects built under the Section 221(d)(3) program.

Next, in 1961, Congress amended the National Housing Act by adding Sections 221(d)(3) and (5), the specific authority for the federally subsidized 221(d)(3) program under which plaintiffs and their class now receive the substantial governmental benefit of low cost, decent housing through the conduit that is High Ridge Associates. 12 U.S.C. §§17151(d)(3) and (5). The legislative history of this Act makes it clear that in establishing the Section 221(d)(3) program, the primary purpose of Congress was to provide decent housing for lower income families. For example, in its report of the Housing Act of 1961, the Banking and Currency Committee of the House of Representatives indicated that the §221(d)(3) and (5) program was aimed at helping families in the lowest income brackets:

> "...however successful the regular FHA program has been, it cannot meet the need of many families in the lowest income bracket, without some special form of financial assistance. We believe that the new low rental housing program proposed under the FHA represents a major step forward in coping with this basic problem which hitherto has defied solution." (emphasis added).

H.R.Rep. No. 477, 87th Cong., 1st Session, House Reports, 87th Cong. 1st Session, [Jan. 3-Sep. 27, 1961] Vol. 3, Miscellaneous Reports on Public Bills, III, U.S.G.P.O., Washington, D.C., 1961. This objective is included in the introduction to section 221 of the National Housing Act, a broad section which, in addition to authorizing insurance for below market rate interest (BMIR) mortgages under §221(d)(3) and (5), also authorizes insurance for various other higher interest rate mortgages:

> This section is designed to assist private industry in providing housing for low and moderate income families and displaced families. 12 U.S.C. §1715l(a)

Frustrated with HUD's failure to follow this goal, Congress in 1968 restated it in even more explicit terms, and required HUD to place its highest priority and emphasis on achieving this goal for low-income people. In Section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. §1701t, Congress declared:

> . . .[I]n the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; . . . (emphasis added).

In 1974, Congress still found HUD lagging in its pursuit of the national goal and was particularly concerned about HUD's failure to preserve the existing stock of low-income housing and to assure that it would continue to be available to low-income families. Congress therefore amended Section 1301 of the Housing and Urban Development Act of 1968, 42 U.S.C. §1441a, to direct HUD to place a "greater effort" on the preservation of existing housing for low and moderate-income families. The Act states:

> (b) The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing. . . .
>
> (c) The Congress declares that if the national housing goals are to be achieved, a greater effort must be made to encourage the preservation of existing housing. . . . (emphasis added).

Thus, there is no doubt that it is the intention of Congress to preserve low and moderate income housing projects like High Ridge Apartments for the benefit of low and moderate income persons and families like the present tenants of High Ridge who make up the plaintiff class in this action.

The HUD insurance for BMIR mortgages[16/] authorized by 221(d)(3) and (5) is available only to mortgagors of certain classes[17/] who submit themselves to regulations by HUD "under a regulatory agreement or otherwise, as to rents, charges, and methods of operation, in such form and in such manner as in the

---

16/ In this case, the private defendant High Ridge Associates signed a secured note for $1,584,000 to the State National Bank of Connecticut. Payments on this note were to extend for approximately 40 years and were to include interest at the rate of 3 percent per year after final endorsement by the Federal Housing Commissioner. As is typical with 221(d)(3) BMIR mortgages, the mortgage and the note were subsequently purchased by GNMA.

17/ In this case, the private defendant High Ridge Associates is a qualifying limited dividend mortgagor. See, 12 U.S.C. §1715l (3).

opinion of the Secretary will effectuate the purposes of this section..." 12 U.S.C. 17151 (3). (emphasis added). The Secretary's regulations provide, inter alia, that the BMIR savings to the mortgagor must be passed on to the tenants in the form of lower rents,[18/] rent increases may be had only to cover bona fide increases in uncontrollable expenses,[19/] limited dividend mortgagors can realize only a maximum of 6 percent annual return on their initial equity investment out of project income,[20/] and apartments can be rented only to tenants who meet income eligibility guidelines.[21/] This regulatory scheme is clearly designed to increase decent and affordable housing for families with limited incomes in fulfillment of the purposes of sections 221(d)(3) and (5).

HUD's approval of the prepayment by the private defendant of its BMIR mortgage only eleven years after final endorsement will reduce decent housing accessible to lower income families in the Fairfield region. The large rent increases demanded by the private defendant to compensate for the termination of the BMIR mortgage subsidy, if implemented, will certainly force most lower income tenants to move. Plaintiff Korsko, whose total monthly income is only $313, would have to pay $300 per month to remain;

18/ HUD form entitled Calculation of Maximum Permissible Rents for 221(d)(3) Limited Distribution, Rent Supplement, and BMIR Projects in HUD Insured Project Servicing Handbook, HM 4350.1, Suppl. I, Chapter 4, Section 3, App. 2

19/ HUD Insured Project Servicing Handbook, ibid., Chapter 4, Section 3 pages 1,4, and 9; and Regulatory Agreement For Limited Distribution Mortgagor Projects Under Section 221(d)(3) of the National Housing Act, as mended, Paragraph 4(d), a copy of which is attached hereto as Appendix A.

20/ 24 CFR §221.532.

21/ Regulatory Agreement, op. cit., Paragraph 4(a); and see HUD Insured Project Servicing Handbook, op. cit., Chapter 4, Section 2.

Plaintiff Carfo, whose total monthly income is $288, would have to pay $260 per month. Given the general shortage of decent housing for lower income families, these dispossessed tenants would, no doubt, have difficulty finding comparable affordable housing. Moreover, their search for new housing would not be assisted by any relocation benefits from HUD or the private defendants. Obviously, the approval by HUD of the private defendants' prepayment leads to a result which is totally incompatible with the major objectives of the 221(d)(3) and (5) program. It is also obviously incompatible with Congress' mandate to HUD that in the administration of housing programs designed to assist families with incomes so low that they could not otherwise decently house themselves,

> the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal [a decent and suitable living environment for every American family] has not become a reality." 12 U.S.C. 1701 2.

Plaintiffs maintain that they have made a showing of probable success on the merits of this claim sufficient to warrant the issuance of the temporary relief they seek in behalf of themselves and their class. In reiteration, plaintiffs contend that HUD's acceptance of the private defendants' prepayment tender and cancellation of the Regulatory agreement violated HUD's obligation under the national housing goals and HUD's Congressional mandate, as set forth in 42 U.S.C. §§1441, 1441a and 12 U.S.C. §1701t. HUD's acceptance of the prepayment is also in violation of the Section 221(d)(3) program. 12 U.S.C. 17151(d)(3), the purpose of which is to provide housing for lower income families.

D. Plaintiffs and the Class They Represent Will Suffer Severe and Immediate Irreparable Injury Unless They Obtain the Preliminary Injunction Relief They Seek.

As stated earlier in Section II. A., infra, plaintiffs believe that they can easily meet either of the two alternative standards for issuance of preliminary relief which prevail in this judicial circuit. Thus, in regard to the injury they face, plaintiffs maintain they they can show that as a result of the defendants' actions: (1) they are confronted with irreparable injury, and (2) the balance of hardships tips decidedly toward them.

Ultimately, of course, at trial on the merits, plaintiffs will be seeking rescission of HUD's ill-advised acceptance of prepayment of the private defendants' mortgage. If the mortgage prepayment and cancellation of the Regulatory Agreement are eventually permitted to stand, any and all control by HUD over tenants' rent levels, inter alia, will cease and the rent increase as well as the sale by the private defendants of almost half the units as condominiums, will surely destroy the low and moderate income nature of the projects. This, too, would be the certain result if this Court should deny plaintiffs' instant request for temporary relief. If such relief is granted, in effect continuing the terms of the temporary restraining order entered on July 11th until a trial and decision on the merits, plaintiffs will have temporary relief, the effect of which is the same as they will be seeking at trial, and they will thus be held harmless until then.

Plaintiffs by definition are low and moderate income persons and/or families. 12 U.S.C. §1715 l(a). For example, at the present time, plaintiff Kathleen Korsko has a monthly net income

of only $313 with which to pay her current monthly rental of $232. If her rent were raised to $300, there is no doubt whatsoever that she would soon have to vacate her apartment at High Ridge. Plaintiffs contend that the other named plaintiffs as well as countless other tenants at High Ridge Apartments are in similar financial straits and thus find themselves directly in harm's way.

If this Court neglects to come to their aid with the temporary relief they seek, plaintiffs will no doubt be compelled either to move or severely curtail their expenditures for other basic necessities of life, including food. In addition, they and members of their class will be forced to move to substandard housing. By virtue of their occupancy of federally subsidized apartment units plaintiffs' rents are currently well below market level. Decent, safe and sanitary housing which will rent at market levels in the high cost-of-living Fairfield region, will be well beyond their financial means, and they will be forced to seek sub-standard rental housing. In sum, as a consequence of the sale of 54 units of condominiums and of increased rents on all units, plaintiffs and their class will be permanently deprived of the low cost, decent housing which the National Housing Act seeks to furnish to them.

Upon information and belief, tenants who fail or refuse to pay the substantial rent increases imposed upon them by the private defendants will be dispossessed by way of summary process. In addition, unless this Court acts to prevent the rent increases and the conversion of units to condominiums, the already critical shortage of lower income housing in the Fairfield region will be

exacerbated. Also, as alleged in their complaint, plaintiffs have no adequate administrative or legal remedy to enjoin the rent increases, prevent the sale of units as condominiums, and to assure that High Ridge Apartments will continue to be available as rental housing for low to moderate income families. In order to prevent this severe injury to the plaintiff class, temporary injunctive relief must be obtained from this Court at this time.

In summation, there can be little or no doubt that the plaintiff class of lower income tenants at High Ridge Apartments is presently confronted with immediate and irreparable injury. Also, in the absence of a showing of a similar degree of potential injury faced by the private defendants, plaintiffs further maintain that the balance of hardships tips most decidedly towards them, the parties requesting, and deserving of, temporary relief.

III. CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully urge this Court to issue, in favor of themselves, their families, and their class of all tenants who now reside at High Ridge Apartments or who may reside there in the future, a preliminary injunction restraining the private defendants, their successors, agents, employees, and all those acting in concert with them from:

(a) Implementing the substantial rent increases they have sought to impose on all tenants at High Ridge Apartments effective July 1, 1978, seeking to collect any amount in excess of the rental rates which prevailed immediately prior to July 1, 1978, from any tenant at High Ridge Apartments, and from seeking to evict or in any way dispossess any tenant at High Ridge Apartments for failure to pay said substantial rent increases; and

(b) Taking any action whatsoever in the way of preparing to sell, attempting to sell, selling or otherwise transferring ownership of High Ridge Apartments or any apartment units whatsoever within High Ridge Apartments to any individual, group or business entity.

Plaintiffs further request that such preliminary injunction be permitted to remain in effect until hearing and determination by this Court of the claims stated in their verified complaint on their merits.

Respectfully submitted,

PLAINTIFFS

By Dennis J. O'Brien

DENNIS J. O'BRIEN
Connecticut Legal Services, Inc.
902 Main St., P.O. Box 258
Willimantic, Connecticut 06226

MARY GRACE CONCANNON, ESQ.
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285 Park Ave., P.O. Box 1107
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MARVIN FARBMAN, ESQ.
Connecticut Legal Services, Inc.
6 Silver Street
Middletown, Connecticut 06457

THEIR ATTORNEYS

C E R T I F I C A T I O N

This is to certify that on this 21st day of July, 1978, copies of the foregoing memorandum of law were hand-delivered to the following counsel of record in this matter:

John J. Darcy, Esquire
1305 Post Road, P.O. Box 189
Fairfield, Connecticut 06430

Hugh W. Cuthbertson, Esquire
Assistant United States Attorney
U.S. Attorney's Office
270 Orange Street, P.O. Box 1824
New Haven, Connecticut 06508

DENNIS J. O'BRIEN
Commissioner of the Superior Court

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKI, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated,

PLAINTIFFS

v.

PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development,

HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,

TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,

BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates,

DEFENDANTS

CIVIL ACTION

NO. B-78-256

JULY 11, 1978

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs in the above-entitled action hereby move this court for a preliminary injunction restraining defendants HIGHRIDGE ASSOCIATES, TARINELLI CONSTRUCTION CO., and BERNARD A GILHULY from:

a) Implementing the substantial rent increases they have sought to impose on all tenants at High Ridge Apartments

GRANTED FOR THE REASONS AND TO THE EXTENT STATED IN OPEN COURT.
7/24/78

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKI, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated, PLAINTIFFS v. PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development, HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates, DEFENDANTS	CIVIL ACTION NO. B-78-256 JULY 11, 1978

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs in the above-entitled action hereby move this Court for a preliminary injunction restraining defendants HIGHRIDGE ASSOCIATES, TARINELLI CONSTRUCTION CO., and BERNARD A. GILHULY from:

a) Implementing the substantial rent increases they have sought to impose on all tenants at High Ridge Apartments

effective July 1, 1978, seeking to collect any amount in excess of the rental rates which prevailed immediately prior to July 1, 1978, from any tenant at High Ridge Apartments, and from seeking to evict or in any way dispossess any tenant at High Ridge Apartments for any failure to pay said substantial rent increases and

b) Taking any action whatsoever in the way of selling, attempting to sell or otherwise transferring ownership of High Ridge Apartments or any apartment units whatsoever within High Ridge Apartments to any individual, group or business entity, pending hearing and determination by this Court of the claims stated in plaintiffs' verified complaint on their merits.

Plaintiffs' motion for preliminary injunction is premis on the grounds that:

(a) Immediate and severe irreparable injury, loss and damage will result to them, their families, and the class they represent. if they are required to wait until their claims can b heard on the merits by this Court. Unless they and their famili choose to forego certain basic and vital needs, plaintiffs will be unable to pay their monthly rent and will inevitably be dis- possessed from their apartments and thereby forced to forfeit th substantial governmental benefits which necessarily inure to the benefit of Section 221(d)(3) project residents. Once evicted, plaintiffs will have to take up residence in quarters far less adequate than those they now enjoy as their low incomes will no permit them to rent similarly suitable, safe and decent housing on the private market in the Fairfield County region. Also, unless private defendants are enjoined from selling or otherwis disposing of apartment units at High Ridge Apartments, the plai

tiff class runs a serious risk of literally having their apartment units literally sold out from underneath them.

(b) The issuance of a preliminary injunction will not cause undue inconvenience or loss to the private defendants, especially when one considers the severe and irreparable injury facing the plaintiff class.

(c) The actions of the defendants, acting individually and in concert, have deprived the plaintiff class of rights secured to them by the National Housing Act, as amended, 12 U.S.C. §1701, et seq. and regulations promulgated thereunder, as well as by the Fifth Amendment to the Constitution of the United States.

(d) Plaintiffs have no adequate remedy at law, as set forth more fully in their verified complaint.

PLAINTIFFS

By Dennis J. O'Brien

Dennis J. O'Brien
Connecticut Legal Services, Inc.
902 Main Street, P. O. Box 258
Willimantic, Connecticut 06226

Their Attorney

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated, PLAINTIFFS v. PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development, HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, BERNARD A. GILHULY, Individually, and in his capacity as a partner in Tarinelli Construction Co. and High Ridge Associates, DEFENDANTS	CIVIL ACTION NO. B-78-256 JULY 11, 1978

ORDER TO SHOW CAUSE

Upon the verified complaint of plaintiffs KATHLEEN KORS IDELLA TAPLEY and DOROTHY CARFO, already on file, it is

ORDERED, that defendants HIGHRIDGE ASSOCIATES, TARINEL CONSTRUCTION COMPANY and BERNARD A. GILHULY show cause before this Court at Bridgeport on _____, 1978 at _____ o'clock in the _____ noon, or as soon thereaf as counsel can be heard, why a preliminary injunction should nc

be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the aforenamed private defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action, from:

a) Implementing the substantial rent increases they have sought to impose on all tenants at High Ridge Apartments effective July 1, 1978, seeking to collect any amount in excess of the rental rates which prevailed immediately prior to July 1, 1978, from any tenant at High Ridge Apartments, and from seeking to evict or in any way dispossess any tenant at High Ridge Apartments for any failure to pay said substantial rent increases; and

b) Taking any action whatsoever in the way of selling attempting to sell or otherwise transferring ownership of High Ridge Apartments or any apartment units whatsoever within High Ridge Apartments to any individual, group or business entity; and it is further

ORDERED, that service of this order to show cause, together with a copy of the papers hereto attached, on or befor _____, 1978, be deemed sufficient service.

Dated at Bridgeport, Connecticut this _____ day of _____, 1978.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKI, IDELLA TAPLEY and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated, PLAINTIFFS	
v.	CIVIL ACTION
PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development,	NO. B-78-256
HIGH RIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut	
TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,	JULY 25, 1978
BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates, DEFENDANTS	

SUPPLEMENTARY BRIEF ON PRIVATE DEFENDANTS' MOTION TO DISMISS

Private Defendants filed a brief in support of their motion to dismiss on July 21, 1978, citing therefor the provisions of §12(b)(6) Rules of

Civil Procedure. Testimony elicited at the hearing held July 21, 1978, from Robert R. Kalish established that:

(1) The mortgage insurance issued by HUD on the State National Bank-Stamford mortgage which had been assigned to FNMA had been cancelled by HUD; at the same time the regulatory agreement entered into between Private and Federal Defendants had been terminated. These incidents occurred at the same time that FNMA - GNMA had executed a release of the mortgage. In obtaining the release of mortgage and mortgage insurance cancellation, Private Defendants dealt principally with the representative of FNMA. No where is it prescribed or described how one would "apply for" such a release in any HUD publications. That HUD consented to the release has been admitted; what Mr. Kalish contends is that some one in the HUD office cancelled the mortgage insurance, terminated the regulatory agreement and approved the release of mortgage who apparently had the power to do it, but not the authority to do it. Absolutely no substantiation of this assertion appears from any directive, order, or regulation in effect at the time that the release was consented to; or, for that matter, no such regulation, order, or directive was in effect on July 21, 1978.

Mr. Kalish's affidavit, Exhibit G implies that there was a review procedure whereby mortgage release considerations were weighed against criteria contained therein. In fact, such was not the case as he conceded under cross-examination. He further conceded that in any case the Commissioner's discretion would constitute the final judgment with respect to the cancellation of the mortgage insurance and the release of mortgage.

In line with the cases previously cited Private Defendants respectfully submit that:

(1) The mortgage was properly release in accordance with and

pursuant to the provisions of the 28 U.S.C. 17151.

(2) The action was taken by the Commissioner pursuant to power granted by Congress under 28 U.S.C. 17151.

(3) There is no provision for judicial review of action taken by the Commissioner pursuant to the above U.S.C. section.

(4) There is no provision whereby tenants in housing constructed pursuant to a 221(d)(3) program which has been released may present a claim for relief upon which this Court has authority to act.

In summary, the purpose of Congress in enacting what ultimately became §17151 221(d)(3) was to provide a housing start incentive to builders to meet the needs of moderate income families. It was not designed to constitute a rent subsidization program for marginal or under income families.

Other provisions implementing a federal housing program, including the subsequently enacted §8 program referred to by Mr. Hall constitutes a rent supplement or subsidization plan initiated by the Federal Government.

Given the circumstances of the program under which Private Defendants completed construction, the release of the mortgage by FNMA - GNMA and the new housing program being considered and adopted by Congress, the action taken in releasing the Highridge mortgage was consistent with such policy and not an error in judgment by an underling in the HUD office.

Approximately one and one quarter million dollars previously lent at 3% interest to Private Defendants became available when the mortgage was prepaid to meet public housing needs whether by way of direct subsidation or otherwise.

It is submitted that the release of mortgage was not, as Mr. Kalish claims, a clerical error. It was done because FNMA needed the funds released and the Commissioner, through his agents, cooperated in that effort.

The Plaintiffs have failed to state a claim, limited to a recision of the mortgage release and a reinstatement of the original mortgage, upon which this Court can grant relief.

For the foregoing reasons, Plaintiffs' claim should be dismissed.

THE PRIVATE DEFENDANTS

BY_____
JOHN J. DARCY, Their Attorney #13956
1305 Post Road, Fairfield, Ct. 06430
259-5213

I hereby certify that a copy of the above was delivered on or before July 27, 1978 to all counsel of record.

_____
John J. Darcy
Comm. Sup. Crt.

FILED

JUL 1 2 46 PM '78

CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated,

PLAINTIFFS

vs.

PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development,

HIGHRIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,

TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut,

BERNARD A. GILHULY, Individually and in his capacity as partner in Tarinelli Construction Company and High Ridge Associate,

DEFENDANTS

B78-256

CIVIL ACTION

NO.

MOTION FOR PERMISSION TO PROCEED IN FORMA PAUPERIS

JULY 6, 1978

Plaintiffs KATHLEEN KORSKO, IDELLA TAPLEY, and DOROTHY CARFO hereby move for permission to proceed in forma pauperis and represent that they are unable to pay any of the costs, fees, security or other expenses of this action as shown by the attached affidavits. It is also requested that service by marshal also be made in forma pauperis.

PLAINTIFFS,

By Dennis J. O'Brien
DENNIS J. O'BRIEN
Connecticut Legal Services, Inc.
P.O. Box 258, 902 Main Street
Willimantic, Connecticut 06226
Their Attorney

O R D E R

The foregoing Motion for Permission to Proceed In Forma Pauperis having been considered by this Court, it is hereby ORDERED: that the same be GRANTED/~~DENIED~~, this 7th day of July, 1978.

BY THE COURT,

UNITED STATES DISTRICT JUDGE

A F F I D A V I T

IDELLA TAPLEY, being first duly sworn, deposes and says that:

1. She is a plaintiff in this action.

2. She is a citizen of the United States and State of Connecticut.

3. She brings this action to obtain declaratory and injunctive relief in the matter of the deprivation by the defendants of rights secured to her by the Constitution and laws of the United States.

4. She is unable to pay costs, fees, security or other expenses of this action for the following reasons:

Her monthly income which is totally derived from employment is only approximately $482. In addition, said amount is the sole source of support for herself and her ~~minor dependent child.~~ son, Lee

5. She believes she is entitled to redress by judgment entered in her favor for the reasons stated or to be stated in her complaint, more specifically, that she has been denied rights secured to her by the Constitution and laws of the United States.

Idella Tapley
IDELLA TAPLEY

Subscribed and sworn to before me this 6th day of July, 1978.

Dennis J. O'Brien
Commissioner of the Superior Court

A F F I D A V I T

KATHLEEN KORSKO, being first duly sworn, deposes and says that:

1. She is a plaintiff in this action.

2. She is a citizen of the United States and State of Connecticut.

3. She brings this action to obtain declaratory and injunctive relief in the matter of the deprivation by the defendants of rights secured to her by the Constitution and laws of the United States.

4. She is unable to pay costs, fees, security or other expenses of this action for the following reasons:

Her monthly income which is derived from child support payments and part-time employment totals only approximately $313.00.

5. She believes she is entitled to redress by judgment entered in her favor for the reasons stated or to be stated in her complaint, more specifically, that she has been denied rights secured to her by the Constitution and laws of the United States.

Kathleen Korsko
KATHLEEN KORSKO

Subscribed and sworn to before me this 6th day of July, 1978.

Dennis J. O'Brien
Commissioner of the Superior Court

A F F I D A V I T

DOROTHY CARFO, being first duly sworn, deposes and says that:

1. She is a plaintiff in this action.

2. She is a citizen of the United States and State of Connecticut.

3. She brings this action to obtain declaratory and injunctive relief in the matter of the deprivation by the defendants of rights secured to her by the Constitution and laws of the United States.

4. She is unable to pay costs, fees, security or other expenses of this action for the following reasons:

Her monthly income which is totally derived from disability benefit payments made to her by the U.S. government and State of Connecticut is only approximately $ 339.

5. She believes she is entitled to redress by judgment entered in her favor for the reasons stated or to be stated in her complaint, more specifically, that she has been denied rights secured to her by the Constitution and laws of the United States.

Dorothy Carfo
DOROTHY CARFO

Subscribed and sworn to before me this 6th day of July, 1978.

Donald J. O'Brien
Commissioner of the Superior Court

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

KATHLEEN KORSKI, IDELLA TAPLEY and DOROTHY CARFO, Individually and in behalf of their families and all others similarly situated, PLAINTIFFS v. PATRICIA R. HARRIS, In her official capacity as Secretary of the United States Department of Housing and Urban Development, HIGH RIDGE ASSOCIATES, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut TARINELLI CONSTRUCTION COMPANY, A partnership whose principal place of business is located in the Town of Bridgeport, Connecticut, BERNARD A. GILHULY, Individually, and in his capacity as partner in Tarinelli Construction Co. and High Ridge Associates, DEFENDANTS	CIVIL ACTION NO. B-78-256 JULY 20, 1978

STATEMENT OF FACTS

1. Highridge Associates is a limited partnership the membership of which consists of Bernard A. Gilhuly, Donald Tarinelli, managing partners, and

Palmer Tarinelli (Palmer Tarinelli died in 1977 and his interest is represented by Palmer Tarinelli Trust).

(a) The Partnership Agreement is annexed hereto as part of Private Defendants' brief as Exhibit A.

2. Private Defendants had acquired ownership of a parcel of property located in the Town of Fairfield which property is the situs of the subsidized rental property and is the subject of the claim brought by Plaintiffs; said property shall be referred to hereafter as Highridge.

3. Private Defendants negotiated a mortgage loan with State National Bank at Stamford, Connecticut in the principal amount of $1,584,000 for the purpose of financing the construction of moderate and low income housing on said site. The mortgage was to be assigned to F.N.M.A. and insured by the Federal Housing Administration (FHA) and Housing Urban Development Department (HUD) program.

4. By letter dated February 7, 1966, from FHA to State National Bank, Housing Director George E. Carr processed said application as appears in the letter annexed hereto as Exhibit B.

5. Thereafter, on the 26th of May, 1966, a loan in the principal amount of $1,584,000 was made by State National Bank to Private Defendants secured by a mortgage in that amount on Highridge; a copy of the note and mortgage are annexed hereto as Exhibits C and D.

6. On said date Private Defendants entered into a regulatory agreement under the Federal Housing Act, the consideration for which was that the Commission would insure the loan from the State National Bank to Private Defendant (which loan was thereupon assigned to F.N.M.A.).

7. The assignment of the loan and mortgage to F.N.M.A. were

insured pursuant to the provisions of Title 12 U.S.C. §17151. The effect was that the Department of Housing and Urban Development became insurers of the note and mortgage that were assigned by State National Bank to F.N.M.A.

8. All of the foregoing transactions were undertaken and executed pursuant to the provisions of Title 12 U.S.C.§17151, otherwise known as 221 (d)(3) housing program.

9. Defendant Bernard A. Gilhuly had been advised that the mortgage described above could be prepaid and released. Reference was made to the note, the regulatory agreement and to Title 12 §17151 (3), see Exhibits annexed.

10. Thereafter correspondence between Mr. Gilhuly and representatives of F.N.M.A. (now G.N.M.A.) resulted in Mr. Gilhuly's request to prepay the mortgage as appears. Copies of the correspondence are annexed as Exhibits.

11. In all instances offices of HUD were apprised of Mr. Gilhuly's request and action taken by F.N.M.A. - G.N.M.A. to expedite the request. (See copies of letters annexed hereto as Exhibits).

12. At about the same time, and in preparation for paying off the outstanding mortgage assigned to F.N.M.A. (G.N.M.A.), Private Defendants arranged for and obtained financing from Mechanics and Farmers Savings Bank, a Bridgeport, Connecticut lending institution, a copy of which mortgage and note are annexed hereto.

13. Plaintiffs, three tenants of Highridge, now seek to maintain a class action against all Defendants, the purpose of which is to recind the release of mortgage, reinstate the mortgage originally entered into, and, more immediately enjoin the rent increases established by the Private Defendants.

14. All residents of Highridge are tenants under a month to month oral lease.

ARGUMENT

I

Highridge is the product of a building incentive program enacted by Congress and known formally as Title 12 §17151 221(d)(3). Previously, such housing starts had been designated simply as 221(d)(3)'s under the National Housing Act.

For the purposes of this brief, which is limited to the issues raised by Private Defendants' motion to dismiss under Rule 12, only the matters relating to the Plaintiffs' failure to state a claim on which relief can be granted, the court's lack of jurisdiction over the subject matter, and the Plaintiffs' lack of standing will be argued.

Issues having to do with the merits of the Plaintiffs' complaint will not be briefed and will be referred to only to the extent necessary to adequately address the above issues raised by Private Defendants' motion to dismiss.

(A) The Plaintiffs have failed to state a claim on which relief can be granted.

When Plaintiffs commenced this action, the original mortgage which had been assigned to F.N.M.A. by State National Bank had been released, the HUD insurance on the mortgage had been cancelled by HUD, and the regulatory agreement between HUD and the Private Defendants terminated. These actions were completed as evidenced by the Exhibits to this brief in accordance with the procedures required by Title 12 U.S.C. §17151 and the regulations issued thereunder.

Title 12 U.S.C. § 17151(e)(2) provides that the Secretary of HUD may at anytime under such terms and conditions as he may prescribe, consent

to the release of the mortgagor from his liability and a mortgage insured by HUD. HUD regulations and the secured note, Exhibit C to this brief, in this case provided that the mortgagor obtain the prior written approval of HUD before prepayment of the mortgage. 24 CFR §221.524(a)(2). This is exactly what the mortgagor did. Both the HUD Hartford and Washington D.C. offices were notified of the mortgagor's request and both approved the release, terminated the regulatory agreement and cancelled the insurance on the original mortgage as evidenced by Exhibits E, F, G and H to this brief.

There are no provisions in Title 12 U.S.C. §1715l, regulations promulgated thereunder, or the regulatory agreement, note and mortgage in the original financing transaction requiring a notice to the tenants, a hearing or any other procedure relative to HUD's decision to release a mortgage.

It is well settled in this circuit that tenants have no right to notice, hearing or any other procedural safeguard under the National Housing Act or the 5th Amendment of the Constitution when HUD exercises its statutory discretion to allow a landlord to make a proposed rent increase in a §221(d)(project. Langevin v. Chenango Court Inc., 447 F.2d296 (2d Cir. 1971); Grace Towers Tenants Association v. Grace Housing Development Fund Co., Inc., 538 F.2d 491 (2d Cir. 1976). See also, Hahn v. Gottlieb, 430 F.2d 1243 (1st Cir. 1970); Harlib v. Lynn, 511 F.2d 51 (7th Cir. 1975).

It is also well settled in this Circuit that HUD decisions with regard to rent increases per §221(d)(3) projects are not subject to judicial review under the Administrative Procedures Act. Langevin v. Chenango Court, Inc., supra.; Grace Towers Tenants Association v. Grace Housing Development Fund Co., Inc., supra. See also, Hahn v. Gottlieb, supra, and Harlib v. Lynn, supra.

There is no distinction between HUD's discretionary decision-making with respect to landlord's proposed rent increases and HUD's discretionary decision making with respect to landlord's proposed prepayment of the mortgage. See, Hahn v. Gottlieb, supra, at 1246.

A different case would be presented to the court if the mortgagor had failed to follow statutory requirements or HUD's regulations as in Tenant's for Justice v. Hills, 413 F. Supp. 389 (E.D.Pa 1975). In the instant case the mortgagor satisfied all requirements in obtaining the release of mortgage resulting in the termination of the regulatory agreement and cancellation of insurance.

A different case would also be presented to the court if HUD had acted in direct violation of a congressional mandate to implement a low income housing program as was the case in Dubose v. Hills, 405 F. Supp. 1277 (D. Conn 1975). In the instant case HUD acted in an area within the discretion given it by Congress by virtue of the provisions of §17151, Title 12 U.S.C.

The fact that HUD now wishes for one reason or another to reverse its decision to release the mortgage does not affect Private Defendants' motion to dismiss. HUD made its decision and the mortgagor in good faith relied on it. The mortgagor has now entered into a new mortgage at a substantially higher rate of interest and has made numerous committments based on HUD's action. HUD ought not now be allowed or directed to reverse its decision which resulted in the termination of the mortgage, cancellation of the mortgage insurance, and termination of the regulatory agreement.

HUD's decision to accept prepayment of the mortgage was a well considered one. New programs were being developed by HUD which, along with F.N.M.A., is eager to recover funds loaned at 3 percent interest, well below

market interest rate and make such funds available in new loans to finance new construction with a higher rate of return for the government. The §221(d)(3) program is not a welfare program but a building incentive program which must pay for itself. See, Hahn v. Gottlieb, supra, §17151: "This section is designed to assist private industry in providing housing for low and moderate income families and displaced families.".

The principal purpose of §221(d)(3) will still be served even though the mortgage is released. Low cost housing will still be available to the public. The mortgagor proposes to declare the units as condominiums and sell them at a price well below the market price for such accomodations in the Fairfield County area.

B. The Private Defendants assert that the Plaintiffs in this suit are not representative of a class which is so numerous that joinder of all members is impracticable. Unless evidence is produced that the number of tenants at Highridge who support the relief sought here by Plaintiffs is so numerous as to form a class within Rule 23(a), the class action claim should be denied. There are a great many tenants who support the actions of the mortgagor in releasing the mortgage and the mortgagor's plans to declare the units as condominiums. The Private Defendants assert that this action is not a proper class action within the scope of Rule 23.

C. The Private Defendants assert that the court lacks subject matter jurisdiction over this Action.

Plaintiffs assert jurisdiction under Title 28 U.S.C. §1337 relating to commerce. Although there is authority that actions alleged to arise under the National Housing Act fall within the Federal Courts commerce jurisdiction, Dubose v. Hills, 405 F. Supp. 1277 (D. Conn 1975) and cases

cited therein, there is contrary authority as well. Putrero Hill Community Action Committeev. Housing Authority of the City and County of San Francisco, 410 F.2d 974, 978-79 (9th Cir. 1969).

Plaintiffs claim jurisdiction under Title 28 U.S.C. § 1331. Private Defendants admit that the Plaintiffs' suit presents the court with a federal question but submit that Plaintiffs fail to meet the $10,000 jurisdictional amount requirement. Hahn v. Gottlieb, supra, p. 1245, f.1. Furthermore, Plaintiffs should not be allowed to maintain this action as a class action, but if the court decides that the Plaintiffs satisfy Rule 23, then the Private Defendants submit that the Plaintiff still does not meet the jurisdictional amount referred to above.

Plaintiffs claim jurisdiction under Title 28 U.S.C. §1361 dealing with actions in the nature of a mandamus proceeding to compel a government official to perform an alleged statutory duty. The Public Defendant in this case has aligned itself with the Plaintiffs. This was made clear at the hearing in chambers on July 11, 1978. Plaintiff's assertion of jurisdiction assumes that there is an adversary proceeding in which the Public Defendant is compelled to perform an action it otherwise refuses to do. That is not the situation in the instant case.

In addition, the Private Defendants assert that this court lacks jurisdiction under Title 28 U.S.C. §1331, 1337 and 1361 because it was made clear at the hearing in chambers, July 11, 1978, that counsel for the Public Defendant - HUD "was taking sides" with the Plaintiffs. All of the Plaintiffs allegations as to jurisdiction arise under federal statutes which give a Plaintiff a right to sue based on the adversary nature of the status of the federal government or one of its agents or officers. In the instant case, the

only real Defendants are the Private Defendants who, unless somehow joined with the Public Defendants would not as such provide this court with jurisdiction or, more important, would not satisfy the requirements of §12(b)(6 Fed. Rules of Civil Procedure that Plaintiffs state a claim against Private Defendants upon which relief can be granted in the action brought by Plaintiffs In other words, if HUD were not aligned with Private Defendants as a Party Defendant, Plaintiffs would not be able to invoke the jurisdiction of a Federal Court to hear their claim, nor would they have a claim upon which this court could take actions relative to Plaintiffs' claims.

THE PRIVATE DEFENDANTS

BY_____
JOHN J. DARCY, Their Attorney #13956

I hereby certify that a copy of the above was given (7/21/78) to all counsel of record.

_____
John J. Darcy
Comm. of the Sup. Crt.

AGREEMENT Made December 23, 1964 between DONALD TARINELLI PALMER TARINELLI and BERNARD A. GILHULY, all of the Town of Fairfield, County of Fairfield and State of Connecticut.

1. Name and business. The parties do hereby form a partnership under the name of HIGH RIDGE ASSOCIATES, to carry on the business of owning, building upon, altering, repairing, renting, leasing, and otherwise dealing with real and personal property, whether tangible or intangible, of any kind or description, and particularly the apartment house which is planned for construction on certain real estate located in Fairfield, Connecticut, which real estate is to be acquired by Donald Tarinelli under the provisions of a certain agreement between said Donald Tarinelli and Carolyn Steiner of Fairfield and Steiner, Incorporate

2. Office. The office of the partnership shall be located at 144 Island Brook Avenue, Bridgeport, Connecticut, or at such other location as the partners may determine from time to time.

3. Term. The term of the partnership shall begin on December 23, 1964, and continue until terminated as herein provided

4. Capital. The capital of the partnership shall consist of the sum of $6,000.00. The initial capital account of the partners shall be equivalent to their respective interest in the partnership, which interest is more specifically set forth in paragraph 6 of this agreement. If at any time or times hereafter, the managing partners should unanimously determine that further capital is required in the interest of the partnership and that the capital of the partnership should be increased, the additional capital shall be contributed by the partners in the respective

percentages set forth in paragraph 6. No interest shall be paid on the initial or on any subsequent contributions to the capital of the partnership.

5. Profit and loss. The net profits of the partnership shall be divided among the partners and the net losses of the partnership shall be borne by the partners in the respective percentages set out in paragraph 6.

6. Partners' percentages. The respective percentages referred to in preceding paragraph 4 and 5 are as follows:

Name	Respective Percentages
Donald Tarinelli	33-1/3%
Palmer Tarinelli	33-1/3%
Bernard A. Gilhuly	33-1/3%

7. Management, duties, and restrictions. (a) Donald Tarinelli and Bernard A. Gilhuly shall be the managing partners. The managing partners shall have full charge of the management, conduct, and operation of the partnership business in all respects and in all matters, including, but not limited to, full power to sell and convey the personal and real property owned by the partnership on such terms as they may determine, to lease such property or any parts thereof on such terms and for such period as they may determine, and to mortgage such property, whether such mortgage be a first or second mortgage lien, as well as to make any agreements modifying any such lease or mortgage.

(b) A majority of the managing partners shall be authorized and empowered to determine all questions relating to the conduct andmanagement of the partnership business, and the determination of a majority of the managing partners on any such

question (excepting, and not including, the determination of the interest or share of any partner in the capital, net profits, or net losses of the partnership, or the claims of any partner against the partnership, or its claims against such partner) shall be binding on all partners. None of the managing partners shall be authorized or empowered without the consent of a majority of the managing partners, (but with such consent, shall be authorized and empowered), on behalf of the partnership, to borrow (from any partner or third party) or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, bond, lease, deed, release, or agreement, or purchase or contract to purchase, or sell or contract to sell any property, or compromise or release any of its claims or debts, or hire any person for a period in excess of two weeks or discharge any person who shall have been hired for a period in excess of two weeks, or obligate the partnership in an amount in excess of or withdraw any money of the partnership having a value or being in excess of $1,000.00. No partner shall, except with the consent of all other partners, withdraw his capital contribution, in whole or in part, or assign, mortgage, or sell his share in the partnership or in its capital, assets, or property, or enter into any agreement as a result of which any other person, firm, or corporation shall become interested with him in the partnership, or do any act detrimental to the best interests of the partnership, or which would make it impossible to carry on the ordinary business of the partnership.

(c) Each managing partner may have other business interests and may engage in any other business or trade, profession, or employment whatsoever, on his own account, or in partner-

ship with or as an employee of or as an officer, director, or stockholder of any other person, firm, or corporation, and he shall not be required to devote his entire time to the business of the partnership. No managing partner shall be obligated to devote more time and attention to the conduct of the business of the partnership than shall be deemed, by all of the managing partners including such partner, to be required for the business of the partnership. Without the consent of the other managing partners, no managing partner shall receive any salary or other special compensation for services to be rendered by him.

8. Banking. All funds of the partnership shall be deposited and kept in its name in such partnership bank account or accounts as shall be designated by the managing partners. All withdrawals therefrom shall be made upon checks signed by any one of the managing partners.

9. Books. The partnership shall maintain full and accurate books of account which shall be kept at the principal partnership office. Each managing partner shall cause to be entered in such books all transactions of or relating to the partnership or its business. Each partner shall have access to and the right to inspect and copy such books and all other partnership records.

10. Annual accounting. (a) As of the last day of December of each year during the continuance of the partnership, commencing December 31, 1965, a full, true, and accurate account shall be made in writing of all of the assets and liabilities of the partnership, and of all of its receipts and disbursements, and the assets, liabilities, and income, both gross and net, shall

be ascertained, and the net profits or net losses shall be fixed and determined; and the account of each partner shall thereupon be credited or debited, as the case may be, with his share (as specified in paragraph 6) of such net profits or losses. In preparing such account, there shall be charged all expenses of the business, and also, all losses and other charges incident or necessary to the carrying on of the business.

(b) Any partner may withdraw his share of the net profits, at the end of each or any calendar year. If any partner shall not withdraw the whole, or any part, of his share of the net profits, such partner shall not be entitled to receive any interest upon any such undrawn profits, nor shall any such profits so undrawn be deemed an increase of his capital, or entitle such party to an increase in the share of the profits of the partnership, without the express written consent of all other partners.

11. Death. (a) Upon the death of Bernard A. Gilhuly, the surviving partners shall have the right either to purchase said Bernard A. Gilhuly's entire interest in the partnership or to terminate and liquidate the partnership business. In the event of the death of either Palmer Tarinelli or Donald Tarinelli, the survivor of them shall have the first right to purchase the decedent's entire partnership interest. In the event that the survivor of said Donald Tarinelli or Palmer Tarinelli shall elect not to purchase said interest, then Bernard A. Gilhuly shall have the right either to purchase said decedent's interest or share in the partnership, or to terminate said partnership and liquidate the business.

(b) In the event of the death of any of the partners and of an election to purchase said decedent's interest in

accordance with paragraph 11 (a) above, the purchaser shall give notice in writing of such election to decedent's executor or administrator, within the period of three months after decedent's death, or within the period of two months after the qualification of his executor or administrator, whichever period expires later (hereinafter called "acceptance period"). In such event, the decedent's entire partnership interest shall be purchased at the price and in the manner hereinafter provided, and the partnership business shall be continued by the successor partnership comprising the surviving partners.

(c) In the event of the purchase of a decedent's partnership interest, the purchase price shall be the book value thereof, as it appears upon the books and records of the partnership as of the close of business on the date of death of such decedent, as adjusted by substituting the fair market value of such date, in place of the book value, of any real estate owned by the partnership. Such book value, adjusted as herein provided, shall be computed by the certified public accountant regularly employed by the partnership in accordance with the accounting practices regularly followed by the partnership, and in cases not covered by such practices, in accordance with good accounting practice. No allowance shall be made for good will, trade name, patents, or other intangible assets, except as those assets have been reflected on the partnership books immediately prior to the decedent's death. Such book value shall include and reflect decedent's capital account as at the end of the last accounting year as shown on the partnership books, increased by decedent's share of partnership profits or decreased by his share of partnership losses for the period from the beginning of the accounting

year in which his death occurred until the date of his death, and increased by contributions and decreased by withdrawals during such period. In making the adjustment for the fair market value of real estate, the accountant shall rely on and use the written appraisal of a licensed real estate appraiser, selected by the accountant for that purpose at the expense of the partnership. A statement showing such book value, as thus adjusted, and the supporting items and computations (including, without limitation, a copy of the real estate appraisal relied on), shall be completed by the accountant and copies delivered to the legal representatives of the deceased partner's estate and to the surviving partners, before the expiration of the "acceptance period". Such book value, as adjusted, as set out in the accountant's statement, shall constitute and be deemed to be the purchase price for decedent's entire partnership interest, binding upon all parties hereto.

(d) The purchase price due to any deceased partner's estate shall be paid as follows: 30% thereof in cash on the closing date as hereinafter defined; the balance by the purchaser's execution and delivery of 12 promissory notes, each dated as of the closing date, each in the principal amount of one-twelfth of the balance of such purchase price, each payable with interest at the rate of 3% per annum to the order of the decedent's personal representatives at a Connecticut bank, the first of such notes to be payable on the thirtieth day of January following the calendar year in which the closing date falls, and the remaining eleven notes to be payable successively, one every three months thereafter. Such notes shall provide for the privilege of pre-

advances (other than by way of capital contribution) made by him, which shall be repaid by the partnership as required by the terms of such loans and advances and by law. The percentage of each Purchaser in the profits and losses of the partnership shall be increased by that portion of the decedent's percentage therein equal to the fraction of the decedent's entire partnership interest purchased by such Purchaser.

(f) If the surviving partners do not elect, before the expiration of the "acceptance period" and in the manner herein provided, to purchase the decedent's entire partnership interest, the surviving managing partners shall thereupon proceed with reasonable promptness to liquidate the business of the partnership, the procedure as to liquidation and distribution of the partnership assets to be as provided in paragraph 12.

12. Procedure on liquidation. On the termination of this partnership by the expiration of its terms, and whenever liquidation of the partnership business is otherwise provided for hereunder, the managing partners (or the surviving managing partners) shall proceed with reasonable promptness to liquidate the business of the partnership. The profits and losses of the business during the period of liquidation shall be divided among or be borne by the partners (or the then remaining or surviving partners, as the case may be), including the estate of any deceased partner, in the respective percentages in which they shared in such profits and losses prior to the event which resulted in such liquidation, except that the estate of a deceased partner shall not be liable for losses in excess of the deceased partner's interest in the partnership at the time of his death. After the payment of partnership debts, expenses of liquidation, and any loans by partners to the partnership, the proceeds of liquidation, as realized, shall be distributed, first to discharge of the

undrawn profits of the partners and of the estate of any deceased partner, and then proportionately in discharge of the respective capital accounts. Any excess shall be distributed among the surviving partners and the estate of any deceased partner in the respective percentages in which they shared partnership profits immediately prior to the event which resulted in such liquidation. In connection with such liquidation, the managing partners shall have the sole discretion as to whether to sell any partnership asset, including but not limited to real estate, and if so, whether at public or private sale and for what amount and on what terms, or whether (if sale thereof is not required to enable payment of debts, expenses of liquidation, loans by partners, and undrawn profits of the partners) to distribute and transfer the same to and among the partners and the estate of any deceased partner, in kind, by transferring interests therein in the respective percentages in which profits and losses were shared immediately prior to the event which resulted in such liquidation. In the event that the managing partners determine to sell any real property, they shall not be required to sell the same promptly, but they shall have full right and discretion to determine the time when and manner in which such sale or sales shall be had, having due regard to the activity and condition of the real estate market and general financial and economic conditions.

13. Benefit. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of:

Geo. D. Salata
Geo. D. Salata

Thomas J. Dolan

Donald Tarinelli L.S.

Palmer Tarinelli L.S.

Bernard A. Gilhuly L.S.

STATE OF CONNECTICUT :
: ss. Bridgeport. December 23, 1964.
COUNTY OF FAIRFIELD :

Personally appeared Donald Tarinelli, Palmer Tarinelli and Bernard A. Gilhuly, signers and sealers of the foregoing instrument, and acknowledged the same to be their free acts and deeds, before me,

Commissioner of the Superior Court
for Fairfield County
Thomas J. Dolan

Received for Record December 23,1964 at 3:48 P.M.

Attest E. D. Brown Asst.Town Clerk

EXHIBIT B

FEDERAL HOUSING ADMINISTRATION

450 Main Street - Federal Building
Hartford, Connecticut 06103

Office of
THE DIRECTOR

IN REPLY PLEASE REFER TO:

February 7, 1966 OP-G

The State National Bank of Connecticut
One Atlantic Street
Stamford, Connecticut 06901

Attention of Mr. Frank R. Straub, Vice President

Re: Project No. 017-55028-LD
High Ridge Apartments
Fairfield, Connecticut

Gentlemen:

We have completed our processing of the above numbered application and are enclosing the following:

a. FHA Form No. 2432, Commitment for Insurance of Advances, in the amount of $1,584,000 - original and one copy;

b. FHA Forms No. 2264/A, Project Income Analysis and Appraisal and Supplement - two copies;

c. FHA Form No. 2419, Breakdown of Reserve for Replacements - two copies.

Your attention and that of the sponsors are called to the conditions of your Commitment listed in Section 2 which specifies forms, supplies of which are enclosed, which must be filed at thirty days prior to initial endorsement of the mortgage for insurance. Our pre-closing requirements mimeo, attached to this letter, should also be studied concerning pre-initial closing matters.

The copy of this letter and one copy of each of the forms listed above should be forwarded to the sponsor.

Please advise as soon as possible as to the type the mortgagor will be; that is, corporation, partnership, or individual.

Very truly yours,

General Partnership

GEORGE E. CARR
Director

Enclosures
cc: Mr. C. O. Christenson, Director, Urban Renewal Div., FHA, Washington, D.C.
Mr. Samuel Lent, Supervisory Attorney Advisor, FHA, New York, N. Y.
Mr. R. W. Morhard, Director, N.Y. Multifamily Housing Ins. Office
Federal National Mortgage Association

FHA Form No. 1734
Revised March 1965
(Corporate, Sec. 221(d)(3))
(Below Market Interest Rate)

SECURED NOTE

May 26, 1966
(Date)

$ 1,584,000.00

Fairfield County, Connecticut
(County and State)

FOR VALUE RECEIVED, the undersigned, HIGH RIDGE ASSOCIATES, a partnership ~~a corporation~~ organized and existing under the laws of the State of Connecticut, with its principal office and place of business at 144 Island Brook Avenue, Bridgeport, Connecticut, acting by and through its duly authorized ~~officers~~ partners, promises to pay to The State National Bank of Connecticut, a national banking ~~,~~ a corporation organized and existing under the laws of the United States of America, or order, the principal sum of One Million Five Hundred Eighty-four Thousand Dollars ($1,584,000.00), with interest from the date hereof at the rate of five and one-half, per centum (5½ %) per annum on the unpaid balance up to and including the date of final endorsement hereof by the Federal Housing Commissioner; thereafter interest shall be payable at the rate of three per centum (3 %) per annum on the unpaid balance until paid.

The principal and interest under this note shall be payable in the following manner:

Interest payable monthly on the first day of June, 1966 and on the first day of each month thereafter as hereinabove set forth. Commencing on the first day of August, 1967 installments of interest and principal shall be paid in the sum of Five Thousand Six Hundred Seventy and 47/100 Dollars ($ 5,670.47), each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal, if any, remaining unpaid, plus accrued interest, shall be due and payable on July 1, 2007. ~~19XX~~. The installments of interest and principal shall be applied first to interest at the rate of three per centum (3 %) per annum upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.

Both principal and interest under this note, together with additional payments set forth in the mortgage ~~(deed of trust)(security deed)~~, shall be payable at the office of The State National Bank of Connecticut, ~~in~~ 1 Atlantic Street, Stamford, Conn., or such other place as the holder may designate in writing.

In the event that any installment due hereunder becomes delinquent for more than 15 days, there shall be due, in addition to any other sums due hereunder, a sum equal to two cents on each dollar so delinquent.

The debt evidenced by this note may not be prepaid either in whole or in part prior to the final maturity date hereof without the prior written approval of the Federal Housing Commissioner except a maker which is a limited dividend ~~corporation~~ may prepay without such approval after 20 years from the date of final endorsement of this note by the Federal Housing Commissioner. Prepayments may only be made in an amount equal to one or more monthly payments on principal next due on the first day of any month prior to maturity upon at least thirty (30) days' prior written notice to the holder of the note.

If default be made in the payment of any installment due under this note or the mortgage ~~(deed of trust)(security deed)~~ securing this note, and if such default is not remedied prior to the due date of the next maturing installment, or upon the breach of any covenant under the terms of the mortgage ~~(deed of trust)(security deed)~~, the holder of this note, at its option, and without notice may declare the whole of the principal sum or any balance thereof, and other sums of money secured by said mortgage ~~(deed of trust)(security deed)~~ immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

No default shall exist by reason of nonpayment of any required installment of principal so long as the amount of optional additional prepayments of principal already made equals or exceeds the amount of such required installment.

This note is secured by a mortgage ~~(deed of trust)(security deed)~~ of even date herewith on real and personal property located in Fairfield, Fairfield County, State of Connecticut; and all the provisions of said instrument are incorporated herein and are to be deemed a part hereof as fully as though herein set out.

If this note be placed in the hands of an attorney for collection, or if action be instituted thereon, all parties now or hereafter personally liable for the indebtedness hereby evidenced jointly and severally agree to pay, in addition to the principal and interest due, all such costs, expenses and attorney's fees as may be allowable under the laws of the jurisdiction and found by the court to be reasonable and just.

Presentment, protest, and notice of protest are hereby waived by the maker.

IN WITNESS WHEREOF, the undersigned HIGH RIDGE ASSOCIATES, has caused this note to be executed in its name and behalf by its ~~President~~ Partners, ~~and its corporate seal to be hereunto affixed attested by its Secretary~~, both thereunto duly authorized the day and year first above written.

(CORPORATE SEAL)

ATTEST:

~~Secretary~~.

HIGH RIDGE ASSOCIATES

By _____ Partner

By _____ ~~President~~ Partner

I HEREBY CERTIFY that this is the note described in, and secured by a mortgage ~~deed of trust~~ (~~security deed~~) of even date herewith and in the same principal amount as herein stated, on real estate in the County of Fairfield, State of Connecticut.

Dated this 26th day of May, 1966.

Robert T. Gilluly

Notary Public.

Notary Public for Connecticut

Commission Expires April 1, 1970

RIDER: The makers assume no personal liability for the payment hereof except as set out in the mortgage of even date given to secure this indebtedness.

STATE OF CONNECTICUT

LOAN NO. 017-55028 LDP

NOTE

HIGH RIDGE ASSOCIATES

TO

THE STATE NATIONAL BANK OF CONNECTICUT

No. _____

Insured under Section 221(d)(3) of the National Housing Act and Regulations thereunder of the Federal Housing Commissioner

In effect on _____

To the extent of advances approved by the Commissioner

FEDERAL HOUSING COMMISSIONER

By _____ *(Authorized Agent)*

Date _____

A total sum of $ _____ has been approved for insurance hereunder by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By _____ *(Authorized Agent)*

Date _____

Reference is made to the Act and to the Regulations thereunder covering assignments of the insurance protection on this note.

176495-P Rev. 9/63 FHA-Wash., D. C.

(CONFORMED)
Revised January 1965

MORTGAGE

THIS MORTGAGE, Made this 26th day of May , 19 66 ,

between HIGH RIDGE ASSOCIATES, a partnership organized , ~~a corporation organized~~ and existing under the laws of the State of Connecticut, having its principal place of business at 144 Island Brook Avenue, Bridgeport, Conn., hereinafter referred to as the Grantor, and ~~or Mortgagor~~ THE STATE NATIONAL BANK OF CONNECTICUT, ~~a national banking corporation~~ organized and existing under the laws of the United States of America, having its principal place of business ~~at~~ in said City of Bridgeport with an office at ~~herein after referred to as~~ 1 Atlantic Street, Stamford, Conn., hereinafter referred to as the Grantee or Mortgagee.

WITNESSETH: That the Grantor, for and in consideration of the sum of One Million Five Hundred ~~ghty~~ Four Thousand Dollars ($1,584,000), the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell, and confirm unto the Grantee, its successors and assigns, the lands, premises, and property situated in the Town of Fairfield , County of Fairfield and State of Connecticut, known as ~~No.~~ High Ridge Apartments described as follows, to wit:

See rider marked "Exhibit A - Description" annexed hereto and made a part hereof.

which may arise or be had therefrom; and

Together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, laundry equipment, elevators and motors, bath tubs, cabinets, sinks, water closets, basins, pipes, faucets and all plumbing and heating equipment, mantels, refrigerating plant and refrigerators, and air conditioning equipment, mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, blinds, and other furnishings; and

Together with all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and

All articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands herein described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all goods and chattels and personal property as are ever used or furnished in operating a building or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner. It is hereby agreed that to the extent permitted by law all of the foregoing property and fixtures are to be deemed and held to be a part of and affixed to the realty.

TO HAVE AND TO HOLD the above granted and bargained premises, together with all the appurtenances thereto, unto said Grantee, its successors and assigns, forever, to its and their proper use and behoof.

AND FURTHERMORE, the said Grantor covenants that it is the owner in fee simple of said premises; that it is in peaceable possession of same and has full power to convey the same and the title so conveyed is free, clear and unencumbered except for taxes not due and payable; and does by these presents bind itself and its successors and assigns forever to warrant and defend the above granted and bargained premises to it, the said Grantee, its successors and assigns, against all claims and demands whatsoever.

The condition of this deed is such that, WHEREAS the Grantor is justly indebted to the Grantee in the principal sum of One Million Five Hundred and Eighty Four Thousand Dollars ($ 1,584,000.00), evidenced by its Note of even date herewith, bearing interest from date on outstanding balances at 5 1/2% per cent per annum, payable in monthly installments beginning on the first day of the month following the date hereof with a final maturity of July 1, 2007, which Note is identified as being secured hereby by a certificate thereon. Said Note and all of its terms are incorporated hereby by reference and this conveyance shall secure any and all extensions thereof, however evidenced, a copy of said Note is attached here

And WHEREAS the said Grantor for itself and its successors and assigns, in order more fully to protect the security of this Mortgage, does hereby covenant and agree as follows:

1. That Grantor will pay the Note at the times and in the manner provided therein;

2. That Grantor will not permit or suffer the use of any of the property for any purpose other than the use for which the same was intended at the time this Mortgage was executed;

3. That the Regulatory Agreement, if any, executed by the Grantor and the Federal Housing Commissioner, which is being recorded simultaneously herewith, is incorporated in and made a part of the Mortgage. Upon default under the Regulatory Agreement and upon the request of the Federal Housing Commissioner, the Grantee, at its option, may declare the whole of the indebtedness secured hereby to be due and payable;

4. That all rents, profits and income from the property covered by this Mortgage are hereby assigned to the Grantee for the purpose of discharging the debt hereby secured. Permission is hereby given to Grantor so long as no default exists hereunder, to collect such rents, profits and income for use in accordance with the provisions of the Regulatory Agreement;

5. That upon default hereunder Grantee shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;

6. That at the option of the Grantor the principal balance secured hereby may be reamortized on terms acceptable to the Federal Housing Commissioner if a partial prepayment results from an award in condemnation in accordance with provisions of Paragraph 8 herein, or from an insurance payment made in accordance with provisions of Paragraph 7 herein, where there is a resulting loss of project income;

7. That the Grantor will keep the improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Federal Housing Commissioner upon the insurance of the Mortgage and other hazards as may be required from time to time by the Grantee, and all such insurance shall be evidenced by standard Fire and Extended Coverage Insurance Policy or Policies, in amounts not less than necessary to comply with the applicable Coinsurance Clause percentage, but in no event shall the amounts of coverage be less than 80% of the Insurable Values or not less than the unpaid balance of the insured Mortgage, whichever is the lesser, and in default thereof the Grantee shall have the right to effect insurance. Such policies shall be endorsed with standard Mortgagee clause with loss payable to the Grantee and the Federal Housing Commissioner as interest may appear, and shall be deposited with the Grantee;

That if the premises covered hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinabove provided, the amounts paid by any insurance company in pursuance of the contract of insurance to the extent of the indebtedness then remaining unpaid, shall be paid to the Grantee, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises;

8. That all awards of damages in connection with any condemnation for public use of or injury to any of said property are hereby assigned and shall be paid to Grantee who may apply the same to payment of the installments last due under said Note, and Grantee is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances thereof and to appeal from any such award;

9. That, in order more fully to protect the security of this mortgage, the Grantor, together with and in addition to, the monthly payments of interest or of principal and interest under the terms of the note secured hereby on the first day of each month after date hereof and continuing until the said note is fully paid, will deposit with the Grantee the following sums:

(a) An amount sufficient to provide the Grantee with funds to pay the next mortgage insurance premium if this instrument and the Note secured hereby are insured, or a monthly service charge, if they are held by the Federal Housing Commissioner, as follows;

(I) If and so long as said Note of even date and this instrument are insured or are reinsured under the provisions of the National Housing Act, an amount sufficient to accumulate in the hands of the Grantee one month prior to its due date the annual mortgage insurance premium, in order to provide such Grantee with funds to pay such premium to the Federal Housing Commissioner pursuant to the National Housing Act, as amended, and applicable Regulations thereunder, or

R I D E R

19. The mortgage insurance premium referred to herein has no application to this mortgage as payment of the same has been waived by the Federal Housing Commissioner.

20. The covenant of the mortgagor to pay said principal sum, with interest, is included in the note incorporated herein for the payment of which this mortgage is given for the purpose of further establishing and continuing the existence of said indebtedness, and the holder of said note secured hereby, its successor or assigns, in consideration of the premises and the mutual covenants herein contained, does hereby covenant and agree as follows:

(a) that it will not exercise its right to institute any action at law against the mortgagor for the payment of any sum of money, which is, or may be, payable under said note, other than the right to foreclose, which right is specifically reserved;

(b) that it will not seek against the mortgagor any judgment for a deficiency in any action to foreclose this mortgage.

provided, however, that nothing contained in this covenant and agreement shall be, or be deemed to be, a release or impairment of the said indebtedness, or of the lien thereof upon the premises, or shall preclude the holder of said note secured hereby from foreclosing this mortgage in the case of any default, or from enforcing any and all rights under and by virtue of this mortgage and the Regulatory Agreement herein referred to and made a part hereof.

monthly service charge in an amount equal to 1/ of 1% of the a
Note computed for each successive year beginning with the first day of the month following the
strument, if the Federal Housing Commissioner is the Grantee named herein, or the first day of the month follow-
ing assignment, if the Note and this instrument are assigned to the Federal Housing Commissioner, without tak-
ing into account delinquencies or prepayment;

(b) A sum equal to the ground rents, if any next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, taxes and assessments next due on the premises covered hereby (all as estimated by the Grantee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, water rates, taxes and assessments will become delinquent, such sums to be held by Grantee in trust to pay said ground rents, premiums, water rates, taxes and special assessments;

(c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the Note secured hereby shall be added together and the aggregate amount thereof shall be paid each month in a single payment to be applied by Grantee to the following items in the order set forth:

(I) premium charges under the Contract of Insurance with the Federal Housing Commissioner or service charge;
(II) ground rents, taxes, special assessments, water rates, fire and other property insurance premiums;
(III) interest on the Note secured hereby;
(IV) amortization of the principal of said Note;

10. In the event of Grantor's failure to pay any sums provided for in this Mortgage, the Grantee, at its option, may pay the same. Any excess funds accumulated under *(b)* of the preceding paragraph remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefor, or if the Grantor shall fail to pay any other governmental or municipal charge, the Grantor shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof the Grantee may pay the same. All sums paid by the Grantee and any sums which the Grantee may be required to advance to pay mortgage insurance premiums shall be added to the principal of the debt secured hereby and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Mortgage Insurance by prepayment of the Mortgage in full, or otherwise (except as hereinafter provided), accumulations under *(a)* of the preceding paragraph hereof not required to meet payments due under the Contract of Mortgage Insurance, shall be credited to the Grantor. If the property is sold under foreclosure or is otherwise acquired by the Grantee after default, any remaining balance of the accumulations under *(b)* of the preceding paragraph shall be credited to the principal of the Mortgage as of the date of the commencement of foreclosure proceedings or as of the date the property is otherwise acquired; and accumulations under *(a)* thereof shall be likewise credited unless required to pay sums due the Federal Housing Commissioner under the Contract of Mortgage Insurance;

11. That Grantor will not commit, permit, or suffer waste, impairment, or deterioration of said property or any part thereof, and in the event of the failure of the Grantor to keep the buildings on said premises and those to be erected on said premises, or improvements thereon, in good repair, the Grantee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof, and any sums paid for such repairs shall bear interest from the date of payment at the rate specified in the Note, shall be due and payable on demand and shall be fully secured by this Mortgage;

12. That it will not voluntarily create or permit to be created against the property subject to this Mortgage any lien or liens inferior or superior to the lien of this Mortgage and further that it will keep and maintain the same free from the claim of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises;

13. That the improvements about to be made upon the premises above described and all plans and specifications comply with all municipal ordinances and regulations made or promulgated by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association, or office having jurisdiction, which are now or may hereafter become applicable;

14. That so long as this Mortgage and the said Note secured hereby are insured or held by the Federal Housing Commissioner under the provisions of the National Housing Act, it will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed;

15. That the funds to be advanced herein are to be used in the construction of certain improvements on the lands herein described, in accordance with a building loan agreement between the Grantor and Grantee dated May 26, 19 66, which building loan agreement (except such part or parts thereof as may be inconsistent herewith) is incorporated herein by reference to the same extent and effect as if fully set forth and made a part of this mortgage; and if the construction of the improvements to be made pursuant to said building loan agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lock-outs, the Grantee, after due notice to the Grantor or any subsequent owner, is hereby invested with full and complete authority to enter upon the said premises, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the erection and completion of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Grantor, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by the Grantee (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this mortgage and shall be due and payable on demand with interest at the rate specified in the Note, but no such advances shall be insured unless same are specifically approved by the Federal Housing Commissioner prior to the making thereof. The principal sum and other charges provided for herein shall, at the option of the Grantee or holder of this mortgage and the note secured hereby, become due and payable on the failure of the Grantor to keep and perform any of the covenants, conditions, and agreements of said building loan agreement. This covenant shall be terminated upon the completion of the improvements to the satisfaction of the Grantee and the making of the final advance as provided in said building loan agreement;

16. That in the event of default in making any monthly payment provided for herein or in the Note secured hereby, and if such default is not made good prior to the due date of the next such installment, or in the covenants of this Mortgage; then in either or any such event, the said aggregate sum mentioned in said Note then remaining unpaid, with interest payable forthwith, or thereafter, at the option of said Grantee, as fully and completely as if all of the said sums of money were originally stipulated to be paid on such day, anything in said Note or in this Mortgage to the contrary notwithstanding; and thereupon or thereafter, at the option of said Grantee, without notice or demand, suit at law or in equity, may be prosecuted as if all moneys secured hereby had matured prior to its institution. The Grantee may foreclose this Mortgage, as to the amounts so declared due and payable, and the said premises shall be sold to satisfy and pay the same together with costs, expenses, and allowances;

a waiver of the terms hereof or of the Note secured hereb

18. In the event of any default, as above described, this Mortgage may be foreclosed in a manner prescribed by law, appraisement being hereby waived; and out of all the moneys arising from a sale to retain the amount then due or to become due according to the conditions of this instrument together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party or parties making such sale to the Grantor, its successors and assigns.

Notice of the exercise of any option granted herein to the Grantee is not required to be given. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective successors and assigns of the parties hereto and to the extent permitted by law shall bind any subsequent owner of the mortgaged premises. The word "Grantee" wherever used herein shall include any holder of the note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

NOW, THEREFORE, if all the covenants, stipulations and agreements of the Grantor herein contained shall be fully and faithfully performed and said Note paid in all respects according to its tenor, then this deed shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, The said Grantor has caused these presents to be signed in its name by its partners and its corporate seal to be hereto affixed, the day and year first above written.

HIGH RIDGE ASSOCIATES

Thomas A Keating Jr. [WITNESS]

Robert F Gilhuly [WITNESS]

By Donald Tarinelli
Partner

By Bernard A Gilhuly
President
Partner

ATTEST:

Secretary

STATE OF CONNECTICUT)
) ss: Stamford
COUNTY OF FAIRFIELD)

On the 26th day of May, 1966, in the City of Stamford, Fairfield County, State of Conn., then and there personally appeared High Ridge Associates by its Partners, Donald Tarinelli and Bernard A. Gilhuly, their signers and sealers of the foregoing instrument, and acknowledged the same to be his free act and deed and the free act and deed of the said High Ridge Associates, before me, the undersigned, a notary public in and for the State of Connecticut.

Witness my hand and seal of office.
[OFFICIAL SEAL]

Thomas A Keating Jr.
NOTARY PUBLIC

My commission expires March 31, 1968

STATE OF CONNECTICUT

LOAN NO. 017-55028 LDP

Mortgage

HIGH RIDGE ASSOCIATES

TO

THE STATE NATIONAL BANK OF CONNECTICUT

RECEIVED FOR RECORD , 19 at m.

AND RECORDED IN Land Records Volume , Page

By Town Clerk

FHA-Wash., D.C.

139935-P Rev. 1/65

DESCRIPTION

EXHIBIT A

All those certain pieces, parcels or tracts of land situated in the Town of Fairfield, County of Fairfield and State of Connecticut, bounded and described as follows:

PARCEL A:

Beginning at a point formed by the intersection of the division line between the premises herein described and land now or formerly of Pziewalski with the westerly line of Sunny Ridge Avenue and running thence along said Sunny Ridge Avenue N. 25° 15' 10" W., 25.0 ft. and thence along a proposed extension of Sunny Ridge Avenue, N. 25° 15' 10" W. 26.33 ft.; thence 416.81 ft. on a curve to the left with a radius of 468.67 ft.; thence N. 76° 12' 30" W., 25.0 ft.; thence 17.99 ft. on a curve to the right with a radius of 173.98 ft. and a chord distance of 17.97 ft. on a bearing of N. 73° 14' 45" W., thence along land now or formerly of Reynolds Bros., Incorporated the following courses and distances: S. 19° 43' 00" W. 105.72 ft., S. 40° 07' 00" E., 119.23 ft., S. 52° 59' 10" W. 80.46 ft., S. 30° 41' 10" W., 104.24 ft.; thence along "Fenyes" Subdivision S. 60° 05' 10" W., 85.53 ft., thence continuing along "Fenyes" Subdivision in part and the end of Raymond Drive in part S. 25° 14' 05" E., 128.87 feet; thence along land now or formerly of A. Tamburrino the following courses and distances: S. 24° 26' 10" E., 174.55 ft. and S. 29° 42' 40" E., 54.17 ft.; thence along land now or formerly of Helen Gray the following courses and distances: N. 41° 48' 30" E., 75.68 ft., N. 46° 34' 00" E., 80.23 feet; thence along land now or formerly of John Dawe the following courses and distances: N. 48° 17' 50" E., 120.83 ft., N. 41° 22' 00" E. 43.30 ft., N. 53° 21' 40" E., 33.65 ft., and N. 44° 47' 20" E., 44.34 ft., and thence along land now or formerly of John Dawe in part and land now or formerly of Pziewalski, N. 54° 55' 50" E., 23.13 ft.; thence along land of Pziewalski the following courses and distances: N. 25° 15' 10" W., 54.39 ft., N. 64° 44' 50" E., 100.00 ft. to the point or place of beginning.

Said tract is shown and delineated as Parcel "A" on a map entitled "High Ridge Apartments, Sunny Ridge Avenue Fairfield, Conn.", prepared by Thomas J. Hardiman, Registered Land Surveyor, Bridgeport, Connecticut, dated April 15, 1966, and contains 4.284 acres, more or less.

PARCEL B:

Beginning at a point formed by the intersection of the division line between the premises herein described and land now or formerly of Julie Farkas with the easterly side of Sunny Ridge Avenue and running thence along land of said Julie Farkas N. 64° 44' 50" E., 95.11 ft., thence along land now or formerly of Anna B. Forsell in part and land now or formerly of Edward Lutinski in part, N. 14° 11' 10" W., 175.31 ft., thence along land now or formerly of Frank and Apolonia Franczyk Est. the following courses and distances: N. 15° 58' 10" W., 64.62 ft., N. 12° 11' 20" W., 38.22 ft., and N. 70° 20' 30" E., 90.84 ft.; thence along land now or formerly of Reynolds Bros., Incorporated the following courses and distances: N. 19° 10' 30" W., 376.52 ft., S. 72° 10' 30" W.,

1.17 ft., thence along the turnaround at the end of Laganna Drive a distance of 228.81 ft. on a curve to the right having a radius of 50 ft.; thence 50.52 ft. along a curve to the left with a radius of 234.17 ft. and a chord distance of 50.42 ft. on a bearing of S. 50° 23' 20" W. along land now or formerly of Laganna, thence N. 45° 48' 00" W. for a distance of 112.37 ft. along land now or formerly of Laganna; thence along land now or formerly of Reynolds Bros., Incorporated the following courses and distances: S. 58° 39' 10" W., 95.80 ft., S. 42° 31' 20" W., 47.74 ft., S. 03° 34' 40" W., 68.27 ft., S. 00° 31' 40" E., 172.22 ft., S. 19° 46' 30" W., 47.73 ft., and S. 6° 12' 30" E., 91.33 ft.: thence 441.00 ft. on a curve to the right having a radius of 518.67 ft. along the easterly side of the proposed extension of Sunny Ridge Avenue, thence 26.33 ft. on a bearing of S. 25° 15' 10" E., along the easterly side of the proposed extension of Sunny Ridge Avenue to the point or place of beginning.

Said tract is shown and delineated as Parcel "B" on a map entitled "High Ridge Apartments - Sunny Ridge Avenue, Fairfield, Conn." prepared by Thomas J. Hardiman, Registered Land Surveyor, dated April 15, 1966, and contains 4.559 acres, more or less.

Together with a right and easement of way for all lawful purposes in, over and upon said proposed extension of Sunny Ridge Avenue.

Said Parcel A and Parcel B are subject to a 20 ft. wide easement to the Town of Fairfield dated May 25, 1966, for the purpose of installing, maintaining, repairing and replacing sanitary sewer pipes and storm drainage pipes, which easements are more particularly described as follows:

OVER PARCEL A:

Beginning at a point, which point is 18.43 ft. on a course of N. 24° 26' 10" W. from the southerly street line of Raymond Drive where it intersects the westerly boundary of said Parcel A and thence running through Parcel A S. 79° 41' 10" E. 12.85 ft.; thence on a curve to the left having a radius of 140.76 ft. a distance of 111.94 ft.; thence N. 54° 44' 50" E. 236.84 ft., and N. 64° 44' 50" E. 150.06 feet to the southerly street line of Sunny Ridge Avenue as shown on said survey; thence northwesterly along said street line a distance of 20.06 ft.; thence through Parcel A again S. 64° 44' 50" W. 150.13 feet; and S. 54° 44' 50" W. 238.58 feet; thence on a curve to the right having a radius of 120.76 ft. a distance of 96.04 ft.; thence N. 79° 41' 10" W. 27.15 ft. to the end of Raymond Drive and thence along Raymond Drive S. 24° 26' 10" E. 24.58 ft. to the point or place of beginning.

OVER PARCEL B:

Beginning at a point on the cul-de-sac formed by the extension of Laganna Drive as shown on said survey which point is 98.14 ft. on a curve to the right having a radius of 50 ft. from the southerly side of Laganna Drive and thence running through Parcel B S. 8° 22' 20" W. 155.11 ft., and S. 20° 57' 10" W. 262.35 ft. to the northerly street line of Sunny Ridge Avenue as shown on said

survey; thence westerly along said northerly street line a distance of 20.57 ft., thence through Parcel B again N. 20° 57' 10" E. 255.44 ft., and N. 8° 22' 20" E. 152.91 feet to the cul-de-sac of Laganna Drive and thence easterly a distance of 20.13 feet along said street line to the point or place of beginning.

FHA FORM NO. 1734
Revised Sept. 1963
(Corporate, Sec. 221(d)(3))
(Below Market Interest Rate)

SECURED NOTE

May 26, 1966
(Date)

$ 1,584,000.00

Fairfield County, Connecticut
(County and State)

FOR VALUE RECEIVED, the undersigned, HIGH RIDGE ASSOCIATES, a partnership ~~a corporation~~ organized and existing under the laws of the State of Connecticut, with its principal office and place of business at 144 Island Brook Avenue, Bridgeport, Connecticut, acting by and through its duly authorized ~~officers~~ partners, promises to pay to The State National Bank of Connecticut, a national banking ~~a~~ corporation organized and existing under the laws of the United States of America, or order, the principal sum of One Million Five Hundred Eighty-four Thousand Dollars ($1,584,000.00), with interest from the date hereof at the rate of five and one-half per centum (5½%) per annum on the unpaid balance up to and including the date of final endorsement hereof by the Federal Housing Commissioner; thereafter interest shall be payable at the rate of three per centum (3 %) per annum on the unpaid balance until paid.

The principal and interest under this note shall be payable in the following manner:
Interest payable monthly on the first day of June, 1966, and on the first day of each month thereafter as hereinabove set forth. Commencing on the first day of August, 1967 installments of interest and principal shall be paid in the sum of Five Thousand Six Hundred Seventy and 47/100 Dollars ($ 5,670.47), each, such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of principal, if any, remaining unpaid, plus accrued interest, shall be due and payable on July 1, 2007. ~~19XX~~. The installments of interest and principal shall be applied first to interest at the rate of three per centum (3 %) per annum upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.

Both principal and interest under this note, together with additional payments set forth in the mortgage ~~(deed of trust)(security deed)~~, shall be payable at the office of The State National Bank of Connecticut, ~~in~~ 1 Atlantic Street, Stamford, Conn., or such other place as the holder may designate in writing.

In the event that any installment due hereunder becomes delinquent for more than 15 days, there shall be due, in addition to any other sums due hereunder, a sum equal to two cents on each dollar so delinquent.

The debt evidenced by this note may not be prepaid either in whole or in part prior to the final maturity date hereof without the prior written approval of the Federal Housing Commissioner except a maker which is a limited dividend corporation may prepay without such approval after 20 years from the date of final endorsement of this note by the Federal Housing Commissioner. Prepayments may only be made in an amount equal to one or more monthly payments on principal next due on the first day of any month prior to maturity upon at least thirty (30) days' prior written notice to the holder of the note.

If default be made in the payment of any installment due under this note or the mortgage ~~(deed of trust)(security deed)~~ securing this note, and if such default is not remedied prior to the due date of the next maturing installment, or upon the breach of any covenant under the terms of the mortgage ~~(deed of trust)~~ ~~(security deed)~~, the holder of this note, at its option, and without notice may declare the whole of the principal sum or any balance thereof, and other sums of money secured by said mortgage ~~(deed of trust)(security deed)~~ immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

No default shall exist by reason of nonpayment of any required installment of principal so long as the amount of optional additional prepayments of principal already made equals or exceeds the amount of such required installment.

This note is secured by a mortgage ~~(deed of trust)(security deed)~~ of even date herewith on real and personal property located in Fairfield, Fairfield County, State of Connecticut; and all the provisions of said instrument are incorporated herein and are to be deemed a part hereof as fully as though herein set out.

If this note be placed in the hands of an attorney for collection, or if action be instituted thereon, all parties now or hereafter personally liable for the indebtedness hereby evidenced jointly and severally agree to pay, in addition to the principal and interest due, all such costs, expenses and attorney's fees as may be allowable under the laws of the jurisdiction and found by the court to be reasonable and just.

Presentment, protest, and notice of protest are hereby waived by the maker.

IN WITNESS WHEREOF, the undersigned HIGH RIDGE ASSOCIATES, has caused this note to be executed in its name and behalf by its ~~President~~ Partners, ~~and its corporate seal to be hereunto affixed attested by its Secretary~~, both thereunto duly authorized the day and year first above written.

(CORPORATE SEAL)

HIGH RIDGE ASSOCIATES

ATTEST:

By _____ Partner

By _____ ~~President~~ Partner

~~Secretary~~.

I HEREBY CERTIFY that this is the note described in, and secured by a mortgage ~~deed of trust~~ ~~conditional deed~~ of even date herewith and in the same principal amount as herein stated, on real estate in the County of Fairfield, State of Connecticut.
Dated this 26th day of May, 1966.

_____
Notary Public.
Notary Public for Connecticut
Commission Expires April 1, 1970

RIDER: The makers assume no personal liability for the payment hereof except as set out in the mortgage of even date given to secure this indebtedness.

STATE OF CONNECTICUT

LOAN NO. 017-55028 LDP

NOTE

HIGH RIDGE ASSOCIATES

TO

THE STATE NATIONAL BANK
OF CONNECTICUT

No. _____

Insured under Section 221(d)(3) of the National Housing Act and Regulations thereunder of the Federal Housing Commissioner

In effect on _____

To the extent of advances approved by the Commissioner

FEDERAL HOUSING COMMISSIONER

By _____
(Authorized Agent)

Date _____

A total sum of $ _____ has been approved for insurance hereunder by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By _____
(Authorized Agent)

Date _____

Reference is made to the Act and to the Regulations thereunder covering assignments of the insurance protection on this note.

FHA-Wash., D. C.
176495-D Rev. 9/63

FEDERAL NATIONAL MORTGAGE ASSOCIATION

FNMA

April 12, 1978

Mr. Bernard Gilhuly
c/o High Ridge Associates
144 Island Brook Avenue
Bridgeport, Connecticut 06606

Re: High Ridge Apartments
GNMA #06 607334-2
FHA #017 55028

Dear Mr. Gilhuly:

You recently advised our office of your intention to pay off the above mortgage, on May 1, 1978. Accordingly, we have incorporated in this letter, a statement for that purpose. Please note that a daily interest accrual is reflected in the event the payoff can not be consummated on schedule. Also listed are the balances in the escrow and reserve accounts. With regard to the reserve account, we must ask that you provide us with instructions as to how you wish the bonds to be handled. If they are to be sold, we would like your written authorization. If they are to be transferred, please advise. In either event, we should know well in advance, so that the necessary arrangements can be made.

Insofar as the payoff is concerned, we would also like to request that you provide us with a certified or cashiers check, for the amount required.

Please note the following information:

Unpaid Principal Balance 4/78	$1,323,995.31
Accrued Interest	-0-
Current Interest 4-1-78 to 5-1-78 (30 days)	3,309.99
Amount Due	$1,327,305.30
Daily Interest Accrual	$ 110.33
Prepayment Penalty	-0-
Tax and Insurance Escrows	15,421.26 ✓
Replacement Reserve (Cash)	7,227.79
(Bonds)	58,057.82

Sincerely,

A. D. Winkler
Loan Representative

cc: HUD, Hartford

510 WALNUT STREET • PHILADELPHIA, PENNSYLVANIA 19106 • (215) 574-1400

EXHIBIT F

FEDERAL NATIONAL MORTGAGE ASSOCIATION

FNMA

May 8, 1978

Mr. Bernard Gilhuly
c/o High Ridge Apartments
144 Island Brook Road
Bridgeport, Connecticut 06605

Re: High Ridge Apartments
GNMA #06 607334-2
FHA #017 44028

Dear Mr. Gilhuly:

We wish to acknowledge receipt of your check in the amount of $1,327,187.94, which is sufficient to pay in full the mortgage on the above referenced project. Accordingly, we are delivering herewith, in hand, the canceled Note which has been marked, "Paid in Full", on behalf of the Government National Mortgage Association, as well as the insurance policy issued by the Shelby Mutual Insurance Company. As you know, GNMA's interest, along with HUD's should be terminated, effective today's date. The Satisfaction of Mortgage along with the cancellation of the financing statements will be prepared and returned under separate cover. Additionally, as you requested, the bonds presently being held in the reserve account, will be returned to you also under separate cover. The cash balance in the reserve account in the amount of $7,227.79, will be forwarded the latter part of this week. The funds remaining in the escrow account, amounting to $2,873.56, will be returned immediately after we receive notification from HUD that all of their requirements have been met and insurance terminated. In the meantime, if there is anything additional that you would like returned to you from our file, please do not hesitate to call.

Sincerely,

John J. Hagerty
Senior Loan Representative

JJH:kg

EXHIBIT G

FEDERAL NATIONAL MORTGAGE ASSOCIATION

FNMA

May 11, 1978

John J. Darcy, Attorney at Law
1305 Post Road
Fairfield, Connecticut 06430

Re: High Ridge Apts.
GNMA #06 607334-2
FHA #017 55028

Dear Mr. Darcy:

As a result of the recent payment in full of our mortgage balance with respect to the above loan, we are, at your request, forwarding the following to you:

1. Release of Mortgage
2. Original Recorded Mortgage
3. Termination Statements relative to the Chattel Mortgage
4. Original tax receipts for the payment due April, 1978

The Release of Mortgage and the Termination Statement should be filed as soon as possible, to remove our lien from the public record. We would appreciate your acknowledgement of the enclosures by signing the attached copy of this letter, that has been provided for that purpose. If there is anything additional that you will need from our office, please do not hesitate to call me.

Sincerely,

John J. Hagerty
Senior Loan Representative

JJH:kg

cc: Bernard Gilhuly

EXHIBIT H

FEDERAL NATIONAL MORTGAGE ASSOCIATION

FNMA

May 25, 1978

Mr. Bernard Gilhuly
c/o High Ridge Associates
144 Island Brook Avenue
Bridgeport, Connecticut 06606

Re: High Ridge Apts.
GNMA #06 607334-2
FHA #017 55028

Dear Mr. Gilhuly:

We have just received final approval from HUD, relative to your recent payoff of the above loan, indicating that no monies will be due the Department of Housing and Urban Development. As a result, we are enclosing herewith our check in the amount of $2,873.56, representing a refund of the escrow account. This should complete the transaction, however, if there is anything additional that you would like from us, please do not hesitate to call me.

Sincerely,

Copy of letter sent to John Denney 6/23/78

John J. Hagerty
Senior Loan Representative

JJH:kg

Enclosure

JUN 2 1978