

AN ORDINANCE VACATING
A PORTION OF FISH ALLEY

WHEREAS, the City Council of the City of Urbana, Illinois has, by Resolution No. 7778-R25, which was passed on November 28, 1977 and approved on November 29, 1977, heretofore resolved to vacate a portion of an east-west alley known as Fish Alley in the block bounded by Main, Cedar, Elm and Race Streets, the cost of which said vacation to be included in the selling price of certain municipal property to Busey First National Bank as otherwise more particularly described in a Triparty Contract For Sale of Real Estate attached hereto; and

WHEREAS, on October 31, 1978, a proper petition addressed to the Mayor and the City Council of the City of Urbana, Illinois, was duly filed requesting the vacation of a portion of said alley; and

WHEREAS, the City Council of the City of Urbana, Illinois, has determined that it is in the best interest of the City of Urbana to vacate said portion of the alley and that the public interest will be subserved thereby; and

WHEREAS, the City of Urbana, Illinois, has determined that it is in the best interest of the City to retain certain easements, covenants and restrictions as to the use of said portion of the alley as hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1: That the City Council of the City of Urbana, Illinois, hereby vacates, subject to the terms and conditions set forth in this Ordinance, that portion of the alley which lies between Race and Cedar Streets on the east and west and between Main and Elm Streets on the north and south, more specifically described as:

All that portion of the East-West Alley being 12.00 feet in width, lying in the block bounded by Main Street, Elm Street, Race Street and Cedar Street, commonly known as Fish Alley, commencing at the Southeast corner of Lot 1 in James T. Roe's Addition, thence West 243.00 feet, to the Southwest corner of Lot 3 in James T. Roe's Addition, to the City of Urbana, Illinois, said tract containing a total of 2,916.00 sq. feet.

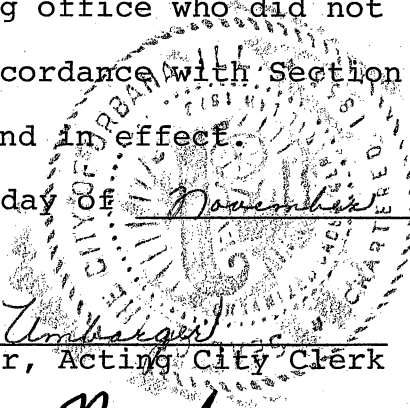
Section 2: That the City of Urbana, Illinois, hereby reserves an easement under and upon the real estate described in Section 1 for the maintenance and repair of all public sewers and drains which are now located under the surface of said alley and the owners of abutting real estate shall reimburse the City of Urbana for any damages resulting to said sewers or drains from their use of the real estate described in Section 1.

Section 3: That title to the land described in Section 1 shall vest in the adjoining landowners subject to any easement or easements in favor of public utilities, their successors or assigns, to operate, maintain, renew and reconstruct their facilities as now existing over or under said alley, this corporate body having determined that it is both necessary and desirable for the public interests that the services of said public utilities be continued by means of such facilities.

Section 4: That this Ordinance is expressly conditioned upon all the terms, representations and conditions that are to be fulfilled at or prior to closing as provided in a Triparty Contract For Sale of Real Estate between and among the City of Urbana, Illinois, a municipal corporation, Busey First National Bank, a national banking association, Fridh Enterprises, a general partnership, and Knowland, Smith and Tyson, Inc., an Illinois corporation, a copy of which said contract is attached hereto and hereby incorporated by reference, and further, that this Ordinance shall not become effective until immediately after the respectively described tracts in said contract have been duly conveyed in accordance therewith.

Section 5: This Ordinance is hereby passed at a regular meeting of the City Council by the affirmative vote of three-fourths (3/4) vote of the aldermen and alderwomen holding office who did not abstain from voting on this Ordinance, all in accordance with Section 2.6 of the Urbana City Code heretofore adopted and in effect.

PASSED by the City Council this 6th day of November, 1978.


Beverly Umbarger
Beverly Umbarger, Acting City Clerk

APPROVED by the Mayor this 15th day of November, 1978.

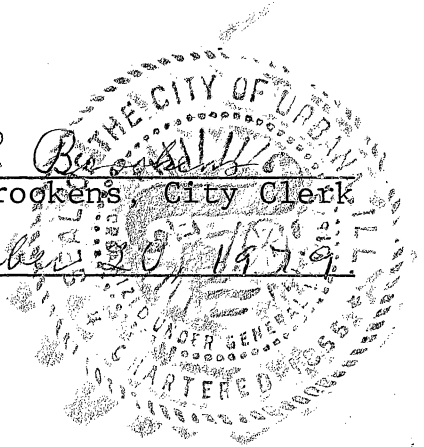
Jeffrey T. Markland
Jeffrey T. Markland, Mayor

7879-44, 45 & 46

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN ORDINANCE
NOS. 7879-44, 7879-45, and 7879-46 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens City Clerk

November 20, 1979
Date



TRIPARTY CONTRACT FOR SALE OF REAL ESTATE

This Contract is made and entered into by and among the City of Urbana, Illinois, a municipal corporation (City), Busey First National Bank, Urbana, Illinois, a National banking association (Bank), Fridh Enterprises, a general partnership (Contractor) and Knowland, Smith & Tyson, Inc., an Illinois corporation (Architects). Contractor and Architects may be referred to collectively herein as "Developers".

WITNESSETH THAT:

WHEREAS, Bank is the owner of real estate (assuming vacation of the described alley) legally described as:

Lots 4, 5 and 6 of James S. Busey's Addition to the City of Urbana, Champaign County, Illinois, except so much thereof as has been previously dedicated to the City of Urbana for streets and sidewalks, together with the entire alley south and adjacent thereto, subject to an easement reserved in favor of Busey First National Bank for ingress and egress in favor of Lots 31, 32 and 33 of said Addition and over the west 30 feet of said vacated alley.

which is located at the southeast corner of Race and Illinois streets in Urbana, Illinois and is referred to herein as "Tract I"; and,

WHEREAS, City is the owner of real estate legally described as:

Lots 16 and 17 and the West Half, being 6.00 feet in width, of the vacated Cherry Alley in James T. Roe's Second Addition to the City of Urbana, Champaign County, Illinois; said tract containing a total of 14,033.25 square feet.

which is located north and adjacent to Elm Street, between Race and Cedar streets, and is currently used for a City parking lot and alley, and shall be referred to herein as "Tract II"; and,

WHEREAS, City is desirous of encouraging the development of elderly housing in downtown Urbana and Developers have preliminary approval from HUD for an allocation of rent subsidy for 50 units of new elderly housing on Tract I and are desirous of building such housing on Tract I; and

WHEREAS, Bank is desirous of obtaining additional space in its banking block and is specifically desirous of obtaining Tract II and the

vacation of a portion of the east-west alley in such block; and

WHEREAS, the parties hereto have agreed upon the terms and conditions relating to the sale and purchase of such real estate and wish to reflect their agreement in writing;

NOW THEREFORE, it is agreed by and between the parties as follows:

1. Covenants of Sale and Purchase.

A. Bank agrees to sell, and Developers agree to purchase, Tract I, together with all improvements and appurtenances, upon the terms set forth in this Contract.

B. City agrees to sell, and Bank agrees to purchase, Tract II, together with all improvements and appurtenances, upon the terms set forth in this Contract.

Bank and City may be referred to herein individually as "Sellers" with respect to the respective lands that each is selling hereunder. Developers and Bank may be referred to herein individually as "Buyers" with respect to the respective lands that each is buying hereunder. When so referred to, each of the Sellers or Buyers, as the case may be, shall individually be deemed to have made the relevant covenants concerning their respective transactions.

2. Purchase Price.

A. Developers agree to pay to Bank at closing the total sum of One Hundred Thousand Dollars (\$100,000.00) in bankable funds as the purchase price for Tract I.

B. Bank agrees to pay to City at closing the total sum of Eighty-Five Thousand Eight Hundred Dollars (\$85,800.00) in bankable funds as the purchase price for Tract II.

3. Deeds of Conveyance. At the closing, as defined herein, Sellers shall execute their respective Warranty Deeds sufficient in form to convey the above-described Tracts to the respective Buyers, in fee simple, subject only to the lien of general taxes for 1978, covenants, conditions, restrictions and easements apparent or of record, and the zoning ordinances of any governmental body having jurisdiction thereof.

In addition, at the closing or at anytime thereafter, Sellers, when requested by the appropriate Buyers, agree to execute such other documents, instruments and quit-claim deeds as are necessary or appropriate to complete the conveyance and delivery of possession of Tract I to Developers and Tract II to Bank.

4. Possession. Sellers shall deliver possession of their respective Tracts to Buyers concurrently with the closing of their respective transactions.

5. Closing. The closing of the transactions contemplated hereunder shall be held on the date of satisfaction of the conditions of subparagraph B of Paragraph 7 hereof, or within a reasonable time thereafter as agreed by the parties, at Webber, Balbach & Thies, P.C., Law Offices, 202 Lincoln Square, Urbana, Illinois, or at such other place as the parties may agree.

6. Representations.

A. Each party represents that it has duly authorized the execution of this Contract and such other documents as are called for hereunder by all necessary action and certificates shall be delivered by an appropriate person from each party hereto at the closing describing such authorizations.

B. City represents that it shall have passed ordinances vacating the following described alleys before the date of closing, subject only to the consumation of the transactions contemplated hereunder which shall make such ordinances effective:

All that portion of the East-West Alley being 12.00 feet in width, lying in the block bounded by Illinois Street, California Avenue, Broadway Avenue and Race Street, commonly known as Cedar Alley, commencing at the Southeast corner of Lot 4 in James S. Busey's Addition, thence West 165.25 feet, to the Southwest corner of Lot 6 in James S. Busey's Addition to the City of Urbana, Champaign County, Illinois; said Southwest corner of Lot 6 being a new corner established by R.O.W. acquisition for Project Number 113-C.S.; said tract containing a total of 1,983.00 sq. feet.

All that portion of the East-West Alley being 12.00 feet in width, lying in the block bounded by Main Street, Elm Street, Race Street and Cedar Street, commonly known as Fish Alley, commencing at the Southeast corner of Lot 1 in James T. Roe's Addition, thence West 243.00 feet, to the Southwest corner of Lot 3 in James T. Roe's Addition, to the City of Urbana, Champaign County, Illinois, said tract containing a total of 2,916.00 sq. feet.

C. Developers represent that, should the conditions to closing hereunder be satisfied, they will construct the elderly housing project herein referred to in accordance with their agreements with HUD and subject to Acts of God and inabilities beyond their control.

7. Conditions.

A. The closings hereunder are conditioned upon the truth of the covenants contained in Paragraph 6 at the time of closing.

B. The closing of the sales herein are conditioned upon the execution by the United States Department of Housing and Urban Development of an Agreement to Enter into a Housing Assistance Payments Contract in form similar to Exhibit A hereto.

C. This Contract shall terminate without liability of any party to any other party if the conditions of subparagraph B of this Paragraph 7 are not met within six months from the date hereof.

8. Taxes and Assessments. Real Estate taxes for all prior years on the respective Tracts shall be paid by the Seller thereof. Real estate taxes for the current year shall be prorated between the Seller and Buyer of each Tract as of the date of possession on the basis of the last ascertainable taxes. This shall not require any payments by City regarding alleys or other lands hereunder. All special assessments which are a lien upon the real estate as of the date of this Contract shall be paid by the appropriate Seller. All special assessments levied and confirmed against the real estate after the date of this Contract shall be paid by the appropriate Buyer. Real Estate Transfer

Tax, if any, shall be paid by the transferring Seller. All such taxes and special assessments chargeable to Seller shall constitute a credit to his Buyer against the purchase price.

9. Risk of Loss. The Uniform Vendor and Purchase Risk Act shall govern the rights of the parties hereunder.

10. Evidence of Title. Within ten (10) days of the date hereof, Sellers shall deliver one of the following to their respective Buyers as evidence of their title to the respective Tracts of real estate to be sold hereunder:

(a) an abstract of title showing merchantable title of record to said real estate in Seller's name and certified as of the date of this Contract, or some later date, by an abstractor regularly doing business in Champaign County, Illinois; or

(b) a title commitment letter issued by a title insurance company regularly doing business in Champaign County, Illinois, committing the company to issue a policy in the usual form insuring title to said real estate in Buyer for the amount of the purchase price set forth above.

Each evidence of title shall be subject to the matters hereinabove expressed and shall be at the sole expense of the providing Seller, except that each Buyer shall pay one-half (1/2) of the service or search charge in connection with the issuance of his title insurance, if any, and each Buyer shall also pay for his mortgage insurance policy, if any.

Buyers shall point out in writing to Sellers, within ten (10) days after receipt of the evidence of title, any objection which Buyers may have thereto and unless so pointed out the evidence of title shall be conclusively presumed to be accepted by the respective Buyer.

Each Seller shall have a reasonable time to cure any objection actually interfering with or impairing the merchantability of the title to his Tract. Sellers or Buyers shall have the right to cure any such objection which may be removed by the payment of money by deducting from the purchase price at the time of closing the amount due and owing.

If a Seller is unable to cure such objection and is unable to procure a title policy insuring over such objection, then his Buyer shall have the option to terminate this Contract or to continue the Contract and seek an appropriate legal remedy.

11. Condition of Premises. Buyers have inspected the real estate and the improvements thereon prior hereto and accept them in their present condition subject to normal wear and tear.

Bank agrees that City shall have a reasonable time to remove the meters now located on Tract II, which meters are not a part of this sale.

12. Default. In the event of the failure of a Buyer to make any payment or to perform any obligation imposed upon it by this Contract, and in the further event that such failure continues for a period of ten (10) days after the date that such payment be due or after the time that such obligation should have been performed, his Seller may serve written notice of such default upon such Buyer and if such Buyer fails to remedy said default within five (5) days thereafter, his Seller has the option, by written notice served upon said Buyer, to terminate this Contract, or to continue the Contract and seek an appropriate legal remedy.

In the event of the failure of a Seller to perform the obligations

imposed upon it by this Contract, his Buyer has the option to terminate this Contract upon similar notice of default and similar notice of termination served upon his Seller, or to seek an appropriate legal remedy.

13. Notices. All notices required under this Contract shall be deemed to be properly served if delivered in writing personally or sent by Certified Mail to Developers at 202 Lincoln Square, Urbana, Illinois, Attention: Mr. Byron Balbach; to Bank at Busey First National Bank, Urbana, Illinois, Attention: Mr. Douglas C. Mills and to City at 400 S. Vine Street, Urbana, Illinois, Attention: Mayor Jeffrey T. Markland.

14. Number and Gender. Each pronoun used in this Contract shall be construed to be singular or of neutral gender if required by the number or gender of the parties.

15. Merger. All offers, acceptances, oral representations, agreements and writings between the parties heretofore made are merged herein and shall be of no force or effect unless contained in this Contract.

16. Time of the Essence. The time for performance of the obligations of the parties is of the essence of this Contract.

17. Succession of Obligations. All terms of this Contract shall be binding upon the heirs, legatees, devisees, personal representatives and assignees of the parties.

IN WITNESS WHEREOF, the parties have executed this Contract as of the 4th day of December, 1978.

ATTEST: Beverly Umbarger
Beverly Umbarger
Acting City Clerk

CITY OF URBANA, ILLINOIS

By Jeffrey T. Markland
Jeffrey T. Markland, Mayor

BUSEY FIRST NATIONAL BANK, URBANA, ILLINOIS

By Douglas C. Mills
Douglas C. Mills, Chairman of the Board

KNOWLAND, SMITH & TYSON, INC.

By [Signature]
Title:

FRIDH ENTERPRISES

By Ray Fridh
General Partner

PART I OF THE
AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT
PRIVATE-OWNER/PHA PROJECT

MASTER SECTION 8 ACC NUMBER:	ACC LIST NUMBER AND DATE:	PROJECT NUMBER:
------------------------------	---------------------------	-----------------

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the _____ ("PHA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at section 1437a(6), and _____ ("Owner").

WHEREAS, the Owner proposes to complete a housing project consisting of improvements and land, as described in the approved Final Proposal; and

WHEREAS, the Owner and the PHA propose to enter into a Housing Assistance Payments Contract ("Contract") upon the completion of said project for the purpose of making housing assistance payments to enable eligible Lower-Income Families ("Families") to occupy units in said project; and

WHEREAS, the PHA has entered into an Annual Contributions Contract dated _____, 19____, with the United States of America acting through the Department of Housing and Urban Development ("Government") with respect to Project No. _____ ("ACC"), under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act for the purpose of making housing assistance payments; and

WHEREAS, the Owner is also the developer, or, if the developer is other than the Owner, the developer's name is _____.

NOW THEREFORE, the parties hereto agree as follows:

1.1 SIGNIFICANT DATES; CONTENTS OF AGREEMENT.

a. Time for Completion of Project. The time for completion of the project (see Section 1.2a) is _____ calendar days after the effective date of this Agreement.

b. Date for Commencement of Work. The date for commencement of work (see Section 1.2b) is 19____.

c. Contents of Agreement. This Agreement consists of Part I, Part II, and the following exhibits:

Exhibit A: The approved Final Proposal including, among other things, the architect's certification, the Affirmative Fair Housing Marketing Plan (if required), evidence of management capability, and management program (if required);

Exhibit B: The Housing Assistance Payments Contract ("Contract") to be executed upon acceptable completion of the project;

Exhibit C: The Annual Contributions Contract;

Exhibit D: The schedule of completion in stages, if applicable;

Exhibit E: The schedule of minimum rates of wages, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Agreement, including said exhibits, comprises the entire agreement between the parties hereto with respect to the matters contained herein, and neither party is bound by any representations or agreements of any kind except as contained herein or except agreements entered into in writing which are not inconsistent with this Agreement. Nothing contained in this Agreement shall create or affect any relationship between the PHA and the lender or any contractors or subcontractors employed by the Owner in the completion of the project.

1.2 SCHEDULE OF COMPLETION.

a. Time for Completion. The project shall be completed in accordance with Section 1.4 no later than the end of the period stated in Section 1.1a, or in stages as provided for in Exhibit D which identifies the units comprising each stage and the date of commencement and time for completion of each stage. Where completion in stages is provided for, all references to project completion shall be deemed to refer to project completion and/or completion of any stage, as appropriate.

b. Timely Performance of Work. The Owner agrees that no later than the date stated in Section 1.1b the work will be commenced and diligently continued. In the event the work is not commenced, diligently continued, and/or completed as aforesaid, the PHA reserves the right, subject to Government approval, to rescind this Agreement or take other appropriate action. The Owner shall report to the PHA the date work was commenced and shall thereafter furnish the PHA with periodic progress reports (quarterly unless more frequent reporting is required by the PHA).

c. Delays. In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the PHA, the time for completion shall be extended to the extent that completion is delayed due to one or more of these causes. No increase in the rents set forth in Exhibit B ("Contract Rents") may be granted on account of any such delays.

1.3 CONSTRUCTION PERIOD.

a. Changes. The Owner shall submit for PHA and Government approval any changes from Exhibit A which would materially reduce or alter his obligations or any changes which would alter the design or materially reduce the quality or amenities of the project. Approval of such changes may be conditioned on a reduction of Contract Rents. If such changes are made without prior approval by the PHA and the Government, the Owner may be required to reduce the Contract Rents or remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications except those required by changes in local codes or ordinances made subsequent to execution of the Agreement, and then only if Government approval is obtained prior to incorporation of any such changes in the project.

b. Commencement of Marketing. The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days prior to the estimated completion date. The Owner shall notify the PHA of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulation. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the PHA of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.7b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

1.4 PROJECT COMPLETION.

- a. Conformance to Final Proposal. The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.
- b. Notification of Completion. The Owner shall notify the Government, with a copy to the PHA, when the work is completed and shall submit to the Government the evidence of completion described in paragraph c of this Section.
- c. Evidence of Completion. Completion of the project shall be evidenced by furnishing the Government with all of the following:
- (1) A set of as-built drawings.
 - (2) A certificate of occupancy and/or other official approvals necessary for occupancy.
 - (3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:
 - (i) The project has been completed in accordance with the requirements of this Agreement;
 - (ii) The project is in good and tenantable condition;
 - (iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified);
 - (iv) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in his Final Proposal other than changes approved in writing by the PHA and the Government in accordance with Section 1.3a; and
 - (v) He has complied with the provisions of Sections 2.6 through 2.11 of this Agreement, and that to the best of his knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or the PHA or the Government, the Owner shall be required to place a sufficient amount in escrow, as determined by the Government, to assure such payments.
 - (4) A certification by the registered architect responsible for inspection of construction that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment:
 - (i) The project has been completed in conformance with the certified working drawings and specifications for the project or approved changes thereto (such changes to be listed);
 - (ii) The project is in good and tenantable condition;
 - (iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified); and
 - (iv) The project has been constructed in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.
- d. Review and Inspection.
- (1) Within ten working days of the receipt of the evidence of completion, the Government shall review the evidence of completion for compliance with paragraph c of this Section.
 - (2) Within the same time period, a Government representative accompanied by a PHA representative shall inspect the project in a manner sufficient to enable the inspector to report that he has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection, the project has been completed in accordance with the Agreement and that there are no observable conditions inconsistent with the evidence of completion, including the certifications of the Owner and the design or inspecting architects. If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs f(1) and (2) of this Section.
 - (3) At the time of inspection by the Government, the Owner shall furnish evidence satisfactory to the Government of correction of any deficiencies included in any Government notifications to the Owner during the course of construction.
 - (4) If the Government finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate and/or official approval required for occupancy, but the evidence of completion in other respects is not acceptable, the Government shall upon request by the Owner execute or approve the execution of the Contract; in such case, however, until such evidence of completion is submitted to and found acceptable by the Government, (i) the Contract Rent for the purpose of computing the Housing Assistance Payment with respect to any unit shall be the monthly amount of the debt service on the permanent obligations attributable to the unit (without reduction because of vacancy during the first sixty days) and (ii) rent-up and occupancy shall be subject to such conditions as the Government may require. An addenda to the Contract shall be executed by the parties to state the conditions under which rent-up and occupancy shall be conducted.

e. Acceptance. If the Government determines from the review and inspection that the project has been completed in accordance with the Agreement, the project shall be accepted.

f. Acceptance Where Defects or Deficiencies Reported. If the project is not acceptable under paragraph e, the following shall apply:

(1) If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete the items within a reasonable time to the satisfaction of the Government and the PHA, the Government may, upon 30 days notice to the Owner and the PHA, cancel its approval of the Contract and require its termination and/or exercise its other rights under the Contract and the ACC.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, the Government shall determine whether and to what extent the defects or deficiencies can be corrected, what corrections are essential to permit the Government to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the project, and the extension of time required for the remaining work to be done. The Owner and the PHA shall be notified of the Government's determinations, and, if he agrees to comply with the conditions, an agreement shall be entered into pursuant to which the defects or deficiencies will be corrected and the project then accepted. If the Owner is unwilling to enter into such agreement or if he fails to perform the agreement, the project shall not be accepted.

g. Notification of Nonacceptance. If the Government determines that, based on the review of the evidence of completion and inspection, the project cannot be accepted, the Owner shall be promptly notified of this decision and the reasons.

¹Strike this paragraph if the project involves fewer than nine Contract units.

h. Arbitration. In the event the Owner disputes the Government determinations, he may submit the controversy to third-party arbitration at his expense, provided that the arbitration is advisory only.

i. Completion in Stages. If the project is to be completed in stages, the procedures of this Section shall apply to each stage.

1.5 EXECUTION OF HOUSING ASSISTANCE PAYMENTS CONTRACT.

a. Time of Execution. Upon acceptance of the project by the Government pursuant to Sections 1.3 and 1.4, the Contract shall be executed by the Owner and the PHA and shall then be approved by the Government.

b. Completion in Stages. If completion is in stages, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the PHA and approved by the Government, and Exhibits A-2, A-3, etc., covering the additional units, shall become part of the Contract.

c. Unleased Units at Time of Execution. At the time of execution of the Contract, the PHA shall examine the lists of dwelling units leased and not leased, referred to in Section 1.3b, and shall determine whether or not the Owner has met his obligations under that Section with respect to any unleased units. The PHA shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to in this paragraph shall be furnished to the Government.

d. Contract Rents. The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except as provided in Section 1.3a and in paragraph f of this Section (where applicable).

e. No Changes in Contract. Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than as provided in this Agreement.

f.² Adjustment of Contract Rents to Reflect Actual Cost of Permanent Financing. (The provisions of this paragraph shall apply if the project is permanently financed on or before the effective date of the Contract; if the permanent financing does not occur until after the effective date of the Contract, the adjustments contemplated by this paragraph f will be made in accordance with the comparable provisions contained in the Contract.) After the project is permanently financed, the Financing Agency shall submit a certification to the Government as to the actual financing terms. If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The maximum ACC commitment shall not be reduced. If the actual debt service is higher, the Contract Rents shall not be increased.

1.6 GOVERNMENT ASSURANCE TO OWNER. The approval of this Agreement by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payments to assist the PHA in the performance of its obligations under the Contract. The Government and the PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of annual contributions payable thereunder for housing assistance payments except as authorized in the ACC and the Contract.

1.7 AUTHORITY OF THE PHA. The PHA warrants that it is a "public housing agency" as defined in section 3(6) of the Act and that it is in fact and in law authorized to execute this Agreement.

EFFECTIVE DATE. This Agreement shall be effective as of the date of approval by the Government.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in four original counterparts.

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

PHA _____

By _____

(Official Title)

Date _____, 19____

OWNER _____

By _____

(Official Title)

Date _____, 19____

APPROVED:

United States of America
Secretary of Housing and Urban Development

By _____

(Official Title)

Date _____, 19____

²Delete this paragraph unless the project is subject to 24 CFR, Section 880.125.

PART II OF THE
AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT
PRIVATE-OWNER/PHA PROJECT

MASTER SECTION 8 ACC NUMBER:	ACC LIST NUMBER AND DATE:	PROJECT NUMBER:
------------------------------	---------------------------	-----------------

2.1 TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER-INCOME PERSONS.³

- a. The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.
- c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Agreement, and to such sanctions as are specified by 24 CFR, Section 135.135.
- d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

- "A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
 - "B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
 - "C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
 - "D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
 - "E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR, Section 135.135."
- e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.2 EQUAL EMPLOYMENT OPPORTUNITY.⁴

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

"EQUAL EMPLOYMENT OPPORTUNITY

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

- "(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed,

³ Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$500,000 or less.

⁴ As used in Section 2.2, "HUD" means the United States of America acting through the Department of Housing and Urban Development.

sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by or at the direction of the Government setting forth the provisions of this Equal Opportunity clause.

- "(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.
- "(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- "(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- "(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- "(6) In the event of the contractor's noncompliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
- "(7) The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States."

- b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.
- c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.
- d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.3 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS.

The FHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 FLOOD INSURANCE.

If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (*less estimated land cost*) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.⁵

In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("*Air Act*"), 42 U.S.C. 1857, *et seq.*, the Federal Water Pollution Control Act, as amended ("*Water Act*"), 33 U.S.C. 1251, *et seq.*, and Executive Order 11738, the Owner agrees that:

- a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;
- b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;
- c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and
- d. He will include or cause to be included the provisions of this Section in every nonexempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 PREVAILING WAGE RATES.⁶

- a. Attached hereto and incorporated herein as Exhibit E is a schedule of minimum rates of wages applicable to this Agreement.

⁵Strike this Section if the Contract Rents under the proposed Housing Assistance Payments Contract, over the maximum term of said Contract, are \$100,000 or less.

⁶As used in Sections 2.6 through 2.11, "HUD" means the United States of America acting through the Department of Housing and Urban Development. Strike Sections 2.6 through 2.11 if the project involves fewer than nine Contract units.

... laborers and mechanics employed in the construction of the project and of any subcontractor... week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, which is incorporated herein, regardless of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this Section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

- c. The Owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.
- d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.
- e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.
- f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.
- g. (1) (i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U. S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U. S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subsection (ii) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.
 - (ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (ii) immediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.
 - (iii) On contracts in excess of \$10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR, Section 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).
- (2) The Owner agrees that:
 - (i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;
 - (ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;
 - (iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;
 - (iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and he will make these records available for inspection upon request of the Department of Labor and HUD;
 - (v) If he claims compliance based on the criterion stated in 29 CFR, Section 5a.4(b), he will maintain records of employment, as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD; and
 - (vi) He will supply one copy of the written notices required in accordance with 29 CFR, Section 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 SUBMITTAL OF PAYROLLS AND RELATED REPORTS.

- a. Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the construction of the project. Such records shall contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under Section 2.6c that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Owner shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

- b. The Owner shall submit weekly to the other party to this Agreement such copies and summaries of all his payrolls and those of each of his subcontractors as such other party may require. Each payroll and summary shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance," which is required under this Agreement and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3), and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under Section 2.6c shall satisfy this requirement. The Owner shall make the records required under the labor standards clauses of this Agreement available for inspection by authorized representatives of HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.
- c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 DISPUTES CONCERNING WAGE RATES AND CLASSIFICATIONS OF LABOR.

- a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.
- b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (*Anti-Kickback*) Act shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

2.9 WAGE CLAIMS AND ADJUSTMENTS.

In cases of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner (or any of his subcontractors), the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by HUD for and on account of the Owner or the subcontractor to the respective employees to whom they are due.

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

- a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.
- b. In the event of any violation of the clause set forth in paragraph a of this Section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this Section, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.
- c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy any liability of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this Section.

2.11 TERMINATION; DEBARMENT; SUBCONTRACTS.

- a. A breach of the provisions of the foregoing Sections 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR, Section 5.6.
- b. The Owner shall insert in any subcontracts Sections 2.6 (and with respect to Section 2.6g(2), copies of 29 CFR, Sections 5a.4, 5a.5, 5a.6 and 5a.7 shall be attached), 2.7, 2.8, 2.9, 2.10, and 2.11a, and also a clause requiring the subcontractors to include these Sections in any lower tier subcontract which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.12 FAILURE OR INABILITY OF PHA TO COMPLY WITH AGREEMENT.

The following provisions of the ACC are hereby made a part of this Agreement:

"a. Rights of Owner if PHA Defaults Under Agreement or Contract.

- "(1) In the event of failure of the PHA to comply with the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under such Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.
- "(3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(a) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.
- "(4) The provisions of this Section 2.16(a) are made with, and for the benefit of, the Owner, the PHA (where it is the lender and then only in its capacity as lender), or the Owner's other assignees, if any, who will have been specifically approved by the Government prior to such assignment. If such parties are not in default, they may, in order to enforce the performance of these provisions, (i) demand that the Government, after notice to the PHA giving it a reasonable opportunity to take corrective action, make a determination whether a Substantial Default exists, demand that the Government take action as authorized in paragraph (a)(1) or (a)(2), and (iii) proceed against the Government by suit at law or in equity."

2.13 DISPUTES.

- a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

party must or otherwise turn over to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the field office director.

- c. This Section does not preclude consideration of questions of law in connection with decisions rendered under paragraphs a and b of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

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

No member, officer, or employee of the PHA, no member of the governing body of the locality (*city and county*) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom.

2.15 INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS.

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

2.16 NONASSIGNABILITY.

- a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government.
- b. The Owner agrees that he will not change to a different developer from the one named in the preamble of this Agreement, except with the prior consent of the PHA and the Government.
- c. The Owner agrees that the approved developer has not made, and will not make, except with the prior consent of the PHA and the Government, any assignment or transfer in any form of the developer's contract to construct the project, or of any part thereof, or any of the developer's interests therein.
- d. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto.
- e. (1) A transfer by the Owner, in whole or in part, or a transfer by a party having a substantial interest in said Owner, or transfers by more than one party of interests aggregating a substantial interest in said Owner, or any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means (e.g., increased capitalization, merger with another corporation or other entity, corporate or other amendments, issuance of new or additional ownership interests or classification of ownership interests or otherwise) shall be deemed an assignment, conveyance, or transfer for purposes of this Section 2.16. An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer.
- (2) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.
- (3) The Owner, and the party signing this Agreement on behalf of said Owner, represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect thereto.
- (4) The provisions of this Section 2.16 shall also apply to transfers of interest by the developer and by persons having interests in said developer.

6-15

PART I OF THE
ANNUAL CONTRIBUTIONS CONTRACT
PRIVATE-OWNER/PIA PROJECT

EFFECTIVE DATE: _____

[Date of execution by the Government of this ACC Part I]

MAXIMUM SECTION 8 ACC NUMBER:	ACC LIST NUMBER AND DATE:	PROJECT NUMBER:
-------------------------------	---------------------------	-----------------

1.1 THE PROJECT. The PIA proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to newly constructed dwelling units pursuant to an Agreement to Enter into Housing Assistance Payments Contract ("Agreement") executed prior to the commencement of construction. The numbers and sizes of units will be as follows:

Size of Unit Number of Units

The PIA shall enter into an Agreement and Contract in accordance with the numbers and sizes of units specified above. The PIA shall not enter into any Agreement or Contract or take any other action which will result in a claim for an Annual Contribution in respect to the Project in excess of the maximum amount stated in Section 1.4(a).

1.2 AUTHORIZATION OF ACTIONS BY PIA. In order to carry out the Project, the PIA is authorized to (a) enter into an Agreement, (b) enter into a Contract, (c) make housing assistance payments on behalf of Families, and (d) take all other necessary actions, all in accordance with the forms, conditions and requirements prescribed or approved by the Government; Provided, however, that neither the PIA nor the Government shall assume any obligation beyond that provided in the Government-approved Agreement and Contract.

1.3 TERM OF CONTRACT AND ACC.

(a) Term of Contract. [Alternative provisions—incorporate alternative 1 or 2, as applicable.]

Alternative 1 -- General:

The total Contract term for any unit, including all renewals, shall not exceed _____ years. [Insert 20 unless the project is owned by, or financed by a loan or loan guarantee from, a State or local agency. In the latter case, insert number, not to exceed 40, which will provide a term ending with the scheduled maturity date for the last payment under such financing.] If the Project is completed in stages, the total Contract term for all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term specified in the first sentence of this paragraph (a), plus 2 years.

Alternative 2 -- For mobile home projects:

~~The total Contract term for any mobile home unit, including all renewals, shall not exceed _____ years. [insert number as authorized by the Government pursuant to 24 CFR, Section 820.109, but in no event more than 20.] If the Project is completed in stages, the total Contract term for all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term specified in the first sentence of this paragraph (a), plus 2 years. For purposes of this paragraph (a), the term "mobile home" means the original mobile home and any replacement(s) combined.~~

(b) Term of ACC. This ACC shall remain in effect so long as the Contract is in effect but in no event shall the term of the ACC exceed _____ years from the beginning of the first Fiscal Year [insert number specified in the first sentence of paragraph (a) of this Section, plus two years]; Provided, however, that where the project is owned by, or financed by a loan or loan guarantee from, a State or local agency, the annual contributions pursuant to Section 1.4 with respect to any dwelling unit shall be payable over a period not to exceed 40 years.

1.4 ANNUAL CONTRIBUTIONS.

(a) Notwithstanding any other provisions of this ACC (other than paragraph (c) of this Section) or any provisions of any other contract between the Government and the PIA, the Government shall not be obligated to make any Annual Contribution or any other payment with respect to any Fiscal Year in excess of \$_____ per year for all Project Expenditures in respect to the Project (Maximum ACC Commitment); Provided, however, that this amount shall be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents under the Contract or pursuant to any other provision of this ACC or the Contract.

(b) Subject to the maximum dollar limitation in paragraph (a) of this Section, the Government shall pay for each Fiscal Year an Annual Contribution to the PIA in respect to the Project in an amount equal to the sum of the following (subject to reduction by the amount of any Project Receipts other than Annual Contributions, which Receipts shall be available for Project Expenditures):

- (1) The amount of housing assistance payments payable during each Fiscal Year (see Section 1.5) by the PIA pursuant to the Contract, as authorized in Section 1.2.
- (2) The allowance, in the amount approved by the Government, for preliminary costs of administration.
- (3) The allowance, in the amount approved by the Government, for the regular costs of administration, including costs of Government-required audits of Owners and the PIA.

For housing already under construction prior to execution of the Agreement, substitute the following for the introductory portion of Section 1.1:

The PIA proposes to enter into a Housing Assistance Payments Contract ("Contract") with respect to dwelling units which will qualify as newly constructed under the applicable Government regulations because, among other things, the Owner has certified and been stated that a substantial amount of construction remained to be completed at the date of the application to HUD and that, if not for the project, could not be completed without a commitment for assistance under said regulations. Said Contract is to be entered into pursuant to an Agreement to Enter into Housing Assistance Payments Contract ("Agreement") executed prior to completion of construction. The numbers and sizes of units will be as follows:

(c) In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Federal Family Income:

(1) A Project Account shall be established and maintained, in an amount as determined by the Government consistent with its responsibilities under section 8(e)(6) of the Act, out of amounts by which the Maximum ACC Commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by the Government as a separately identified and segregated account. To the extent funds are available in said account, the maximum Annual Contribution otherwise payable for any Fiscal Year may be increased by such amount, if any, as may be required for increases reflected in the estimate of required Annual Contribution applicable to such Fiscal Year as approved by the Government in accordance with Section 2.11. Any amount remaining in said account after payment of the last Annual Contribution with respect to the Project shall be applied by the Government in accordance with law.

(2) Whenever the Government approved estimate of the required Annual Contribution exceeds the Maximum ACC Commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such Maximum ACC Commitment, the Government shall, within a reasonable period of time, take such additional steps authorized by section 8(e)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the revocation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorization for the purpose of amending housing assistance contracts."

(d) The Government will make periodic payments on account of each Annual Contribution upon requisition therefor by the PHA in the form prescribed by the Government. Each requisition shall include certifications by the PHA that housing assistance payments have been or will be made only:

(1) In accordance with the provisions of the Contract as such provisions apply respectively to (i) units under lease by Families and (ii) units not under lease by Families; and

(2) With respect to units which the PHA has inspected or caused to be inspected, pursuant to Section 2.4 of Part II of this ACC, within one year prior to the making of such housing assistance payments.

(e) Following the end of each Fiscal Year, the PHA shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of the periodic payments during the Fiscal Year exceeds the total amount of the Annual Contribution payable for such Fiscal Year in accordance with this Section.

1.5 FISCAL YEAR. The Fiscal Year for the Project shall be the Fiscal Year established by Section 0.3 of this ACC; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the Maximum ACC Commitment may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.6 PERIODIC ADJUSTMENT OF CONTRACT RENTS. The Contract may provide for periodic adjustments in the Contract Rents chargeable by the Owner and commensurate increases in amounts of housing assistance payments, in accordance with applicable Government regulations, up to the maximum amount authorized for housing assistance payments in the Government approved estimate under Section 2.11.

1.7 AFFIRMATIVE FAIR HOUSING MARKETING REGULATION. The PHA shall require the Owner to comply with the Affirmative Fair Housing Marketing Regulation (subject to any exceptions therein) including the submission for Government approval of an Affirmative Fair Housing Marketing Plan and compliance with such approved Plan, as if the Owner were expressly subject to said Regulation.

1.8 EXPEDITIOUS CARRYING OUT OF PROJECT. The PHA shall proceed expeditiously with the Project. If the PHA fails to proceed expeditiously and no Agreement with the Owner has yet been entered into, the Government, after giving the PHA reasonable opportunity to take corrective action, may terminate or reduce its obligation hereunder with respect to the Project. If an Agreement has been entered into, and the PHA or the Owner is not proceeding expeditiously with the Project, the Government will take appropriate action, including the Governmental action provided for in the Agreement, after giving the PHA or the Owner, as appropriate, reasonable opportunity to take corrective action.

1.9 RESPONSIBILITY FOR ADMINISTRATION OF CONTRACT. The PHA is primarily responsible for administration of the Contract, subject to review and audit by the Government.

1.10 AGREEMENT TO OPERATE OR OWN PROJECT.

(a) The parent Entity PHA agrees that upon a declaration by the Government of a default under the Contract, the Parent Entity PHA shall take such actions as are required to correct such default and to either acquire the right to operate the project or to assist the trustee, under the project bond indenture in locating a management entity acceptable to HUD with a view to providing continued operation of the project for the housing of eligible families under this contract. The Parent Entity PHA shall require that the project be administered in full compliance with the Contract.

(b) In the event of such occurrence, the Government shall continue to make housing assistance payments available to the Parent Entity PHA or entity approved by the Government as owner or manager of the project pursuant to the Contract.

1.11 RELATIONSHIP TO AGENCY OR INSTRUMENTALITY.

(a) The Parent Entity shall perform the following functions with regard to the Agency or Instrumentality PHA:

(1) Approve amendments to the charter or other organic document and to the by-laws of the Agency or Instrumentality PHA only upon receiving the prior approval of the Government in writing.

(2) Approve amendments to the financing documents submitted to the Government pursuant to Part 811 and the applicable Section 8 regulations (e.g., trust indenture or note and mortgage, etc.), only upon receiving the prior approval of the Government in writing.

MASTER SECTION 8 ACC NUMBER: _____

2.1. DEFINITIONS.

- (a) "Families" means Lower-Income Families (including "Very Low-Income Families") and includes Families consisting of a single person in the case of Elderly Families and Displaced Families and includes the remaining member of a tenant family.
- (b) "Elderly Families" means Families whose heads (or their spouses), or whose sole members, are persons who are at least 62 years of age and are under a disability as defined in section 223 of the Social Security Act or in section 102(5) of the Developmental Disabilities Service Facilities Construction Amendments of 1970, or are handicapped. The term Elderly Families includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living together with another person who is determined by the regulations of the Secretary of Housing and Urban Development ("Secretary") to be a person essential to their care or well being.
- (c) "Displaced Families" means Families displaced by governmental action, or Families whose dwellings have been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.
- (d) "Lower-Income Families" means Families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income limits higher or lower than 80 percent of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.
- (e) "Very Low-Income Families" means Families whose incomes do not exceed 50 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.
- (f) "Income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary.
- (g) "Owner" means the person or entity, including a cooperative, with which the Agreement and Contract are entered into.
- (h) "Rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.
- (i) "Project Receipts" with respect to each Project means the Annual Contributions payable hereunder and all other receipts under this Agreement, accruing to the PHA from, out of, or in connection with such Project.
- (j) "Project Expenditures" with respect to each Project means all costs allowable under Section 1.4(b), Part I of this ACC, with respect to such Project.
- (k) "Substantial Default" means the occurrence of any of the events listed in Section 2.16.

2.2. LOWER-INCOME HOUSING USE: COMPLIANCE WITH ACT AND REGULATIONS.

The PHA shall use the Annual Contribution solely for the purpose of providing Decent, Safe, and Sanitary dwellings for Families in compliance with all applicable provisions of the Act and all regulations issued pursuant thereto.

2.3. ELIGIBILITY AND AMOUNT OF HOUSING ASSISTANCE PAYMENTS.

- (a) The PHA shall comply with the income limits established by the Government, and with the requirements of the Government pursuant to section 8(c)(7) of the Act that at least 30 percent of the Families assisted in all its Projects under its Master Section 8 ACC shall be Low-Income Families.
- (b) The PHA shall comply or assure compliance with the schedules and criteria established by the Government with respect to the amount of housing assistance payments made on behalf of Families.
- (c) The PHA shall make or cause to be made periodic re-examinations of the income, composition, and extent of exceptional medical or unusual expenses of Families for whom housing assistance payments are being made, for the purpose of confirming or adjusting the amount of housing assistance payment in accordance with the applicable schedules established by the Government, the amount of rent payable by the Family and the amount of housing assistance payment.
- (d) The PHA shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling unit on grounds of changes of general applicability. If the PHA determines that an adjustment should be made, the PHA shall prescribe the amount of the adjustment and notify the Owner accordingly, and the PHA shall cause the Owner to make a corresponding adjustment in the amount of rent to be paid by the affected Family and the amount of housing assistance payment.
- (e) Prior to the approval of eligibility of a Family by the PHA or the Owner, as the case may be, and thereafter on the date established for reexamination of the status of such Family, the PHA or the Owner, as the case may be, shall review or cause to be reviewed a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary for the determination of the amount, if any, of housing assistance payment which can be made with respect to the Family.

2.4. INSPECTIONS.

- (a) The PHA shall require, as a condition for the making of housing assistance payments, that the Owner maintain the assisted dwelling unit and related facilities in Decent, Safe, and Sanitary condition.
- (b) The PHA shall inspect or cause to be inspected dwelling units and related facilities prior to commencement of occupancy by Families, and thereafter at least annually, adequate to assure that Decent, Safe, and Sanitary housing accommodations are being provided and that agreed-to services are being furnished.

(3) Review the annual financial audit of the Agency or Instrumentality PHA by an independent certified public accountant and review the activities of such PHA and submit copies of the audit and reviews to the Government.

(b) "The Parent Entity PHA hereby agrees to accept title to or other interest in any real or personal property owned by the Agency or Instrumentality PHA which will be given, conveyed and distributed to the Parent Entity PHA free and clear of any liens, charges or encumbrances, or any rights or claims of any creditors, upon liquidation or dissolution of the Agency or Instrumentality PHA, and if the Parent Entity PHA is unable to accept such gift, conveyance and distribution, the the Parent Entity PHA shall designate a body corporate and politic or political subdivision of the State of Illinois to accept such gift, conveyance and distribution."

PHA _____

By _____

(Official Title)

Date _____

United States of America
Secretary of Housing and Urban Development

By _____

(Official Title)

Date _____

- (a) The PHA shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; requirements of said Department pursuant to said regulations; and Executive Order 11063, to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The PHA shall, by contractual requirement, covenant, or binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

"This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress breach thereof or to compel compliance therewith by the [contractor or other]."

- (b) The PHA shall incorporate or cause to be incorporated into all Housing Assistance Payments Contracts a provision requiring compliance with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations issued pursuant thereto.
- (c) The PHA shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use or occupancy thereof, nor deny to any Family the opportunity to apply for housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mother, recipients of public assistance, etc.

2.6 EQUAL EMPLOYMENT OPPORTUNITY.

- (a) The PHA shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, creed, 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.
- (b) (1) The PHA shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this contract, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY

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

(A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, or sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the PHA set forth the provisions of this Equal Opportunity clause.

(B) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(C) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the said labor union or workers' representative of contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the regulations, and relevant orders of the Secretary of Labor.

(E) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such regulations, and orders.

(F) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further 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.

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

- (2) The PHA agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for such compliance.

11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

7. TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS.

- (a) The project assisted under this ACC is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701a. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.
- (b) Notwithstanding any other provision of this ACC, the PHA shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this ACC. The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the Project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by Section 135.20(b) of the regulations in all contracts for work in connection with the Project. The PHA certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.
- (c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this ACC shall be a condition of the Federal financial assistance provided to the Project, binding upon the PHA, its successors and assigns. Failure to fulfill these requirements shall subject the PHA, its contractors and subcontractors, its successors, and assigns to the sanction specified by this ACC and to such sanctions as are specified by 24 CFR, Section 135.135.
- (d) The PHA shall incorporate or cause to be incorporated into any contract pursuant to this contract such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Housing and Urban Development Act, as amended. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

8. COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS.

The PHA shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.

The PHA shall incorporate or cause to be incorporated, into any contract for construction or substantial rehabilitation, such clause or clauses as are required by the Government for compliance with the regulations issued by the Environmental Protection Agency pursuant to the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and Executive Order 11738. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

10. LABOR STANDARDS.

The PHA shall incorporate or cause to be incorporated into any contract for construction or substantial rehabilitation of nine or more dwelling units, such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Copeland Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

11. ESTIMATES OF REQUIRED ANNUAL CONTRIBUTION.

The PHA shall from time to time submit to the Government estimates of required annual contribution at such times and in such form as the Government may require. All estimates and any revisions thereof submitted under this Section shall be subject to Government approval.

12. INSURANCE AND FIDELITY BOND COVERAGE.

For purposes of protection against hazards arising out of or in connection with the administrative activities of the PHA in carrying out the Project the PHA shall carry adequate (a) comprehensive general liability insurance, (b) workmen's compensation coverage (statutory or voluntary), (c) automobile liability insurance against property damage and bodily injury (owned and non-owned), and (d) fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

13. BOOKS OF ACCOUNT AND RECORDS: REPORTS.

- (a) The PHA shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose the amount and the disposition by the PHA of the Annual Contributions and other Project Receipts, if any.
- (b) The books of account and records of the PHA shall be maintained for each Project as separate and distinct from all other Projects and undertakings of the PHA except as authorized or approved by the Government.
- (c) The PHA shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.
- (d) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the PHA that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.
- (e) The PHA shall incorporate or cause to be incorporated in all Contracts the following clauses:

"PHA AND GOVERNMENT ACCESS TO PREMISES AND OWNER'S RECORDS.

- "(1) The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA and the Government.
- "(2) The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing maintenance payments."

shall be compensated under this ACC for the cost of such services.

AF 78-29-14, 15, 16
(p. 21)

2.14 DEPOSITARY AGREEMENT.

- (c) (1) The PHA shall maintain one or more agreements, which are herein collectively called the "General Depository Agreement," with a bank(s) selected as a depository by the PHA.
 - (2) The PHA may maintain one or more agreements, which are herein collectively called the "Savings Depository Agreement," with a savings and loan institution(s) or credit union(s) selected as a depository by the PHA for the investment of excess funds.
 - (3) All such General Depository Agreements and Savings Depository Agreements are herein collectively called the "Depository Agreement." All such banks, savings and loan institutions, and credit unions are herein collectively called the "Depository."
 - (4) The Depository Agreement shall be in the form prescribed by the Government for the particular type of Depository. The Depository shall be, and continue to be, a member of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Share Insurance Fund, as the case may be.
 - (5) Immediately upon the execution of any Depository Agreement, the PHA shall furnish to the Government such executed or conformed copies thereof as the Government may require.
 - (6) No such Depository Agreement shall be terminated except after 30 days notice to the Government.
- (b) The PHA shall deposit promptly with such Depository, under the terms of the Depository Agreement, all monies received pursuant to this ACC.
 - (c) The PHA may withdraw monies pursuant to the Depository Agreement only for (1) payments pursuant to the Housing Assistance Payments Contract, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the PHA stating in proper detail the purpose for which such withdrawal is made.
 - (d) If the Government makes a determination, after notice to the PHA giving it a reasonable opportunity to take corrective action, that PHA is in Substantial Default or if the Government determines that the PHA has made any fraudulent or willful misrepresentation of material fact in any of the documents or data submitted to the Government pursuant to this ACC or in any document or data submitted to the Government as a basis for this ACC or as an inducement to the Government to enter into this ACC, the Government shall have the right to (1) give notice of such determination to any Depository which holds any monies pursuant to the Depository Agreement and (2) require such Depository, on the basis of such notice, to refuse to permit any withdrawals of such monies; Provided, however, that upon the ending of such Default the Government shall promptly rescind such notice and requirement.

2.15 POOLING OF FUNDS UNDER SPECIAL CONDITIONS AND REVOLVING FUND.

- (a) The PHA may deposit under the terms of the General Depository Agreement monies received or held by the PHA in connection with other ACC or any administration contract or lease between the PHA and the Government.
- (b) The PHA may also deposit under the terms of the General Depository Agreement amounts necessary for current expenditures of any project or enterprise of the PHA, including any project or enterprise in which the Government has no financial interest; Provided, however, that such deposits shall be lump-sum transfers from the depositories of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.
- (c) If the PHA operates other projects or enterprises in which the Government has no financial interest, it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depository Agreement for deposit in disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other project enterprises of the PHA; Provided, however, that all deposits in such revolving fund shall be lump-sum transfers from the depositories of related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.
- (d) The PHA may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depository Agreement.
- (e) In no event shall the PHA withdraw from any of the funds or accounts authorized under this Section 2.15 amounts for the Projects or any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.16 DEFAULTS BY PHA AND/OR OWNER.

- (a) Rights of Owner if PHA Defaults Under Agreement or Contract. (The provisions of this paragraph (a) shall not apply to any Existing Housing Project.)
 - (1) In the event of failure of the PHA to comply with the Agreement with the Owner, or if such Agreement is held to be void, void ab initio, or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under the Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.
 - (2) In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, void ab initio, or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes Substantial Default hereunder. Where the Government so determines, it shall have the right to assume the PHA's rights and obligations under such Contract, perform the obligations and enforce the rights of the PHA, and exercise such other powers as the Government may have to cure the Default; however, whether or not the Government elects to proceed in this manner, the Government shall, if it determines that the Owner is not in default, continue for the duration of such Contract to pay All Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract.
 - (3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(a) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

- (4) The provision of this Section 2.16(a) are made with, and for the benefit of, the Government, and the Government shall have the right to assign such assignment. If such parties are not in default, they may, in order to enforce the performance of these provisions: (i) demand that the Government, after notice to the PHA giving it a reasonable opportunity to take corrective action, make a determination whether a Substantial Default exists under paragraph (a)(1) or (a)(2) of this Section, (ii) if the Government determines that a Substantial Default exists, demand that the Government take action as authorized in paragraph (a)(1) or (a)(2), and (iii) proceed against the Government by suit at law or in equity.
- (5) The provisions of paragraphs (a)(1), (3) and (4) of this Section shall be included in the Agreement and the provisions of paragraphs (a)(2), (3) and (4) of this Section shall be included in the Contract.

(b) Rights of Government if PHA Defaults Under ACC, Agreement, or Contract.

- (1) If the PHA defaults in the observance or performance of the provisions of Section 2.4; fails to comply with its obligations under a duly issued Certificate of Family Participation in accordance with its terms; fails to comply with the requirements of Sections 2.5, 2.7 or 2.8; defaults in the performance or observance of any other term, covenant, or condition of this ACC or of any other covenant, or condition of any Contract or Agreement; fails, in the event of any default by the Owner, to enforce its rights under the Agreement or Contract by way of action to achieve compliance to the satisfaction of the Government or to terminate the Agreement or Contract in whole or in part, as directed by the Government; or fails to comply with the applicable provisions of the Act or the regulations issued pursuant thereto; the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder as to the Project. Upon the occurrence of a Substantial Default with respect to any Project, the PHA shall, if the Government so requires, assign to the Government all of its rights and interests under the Agreement or Contract, including any funds, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this ACC and of such Contracts until reassigned to the PHA.
- (2) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(b) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(c) Rights of PHA and Government if Owner Defaults Under Contract. (new Construction and Substantial Rehabilitation Projects.)

For New Construction and Substantial Rehabilitation Projects, the Contract shall contain the following provisions:

"a. A default by the Owner under this contract shall result if:

"(1) The Owner has violated or failed to comply with any provision of, or any right or obligation under this Contract or of any lease; or

"(2) The Owner has asserted or demonstrated an intention not to perform some or all of its obligation under the Contract or under any lease.

"b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner and the Trustee, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments); and (3) the time within which the Owner shall respond with a showing that the Owner has taken all the actions required.

"c. If the Owner fails to respond or take action to the satisfaction of the Trustee, the PHA and the Government, the PHA shall assist the Trustee in locating a management entity acceptable to the Government with a view of providing continued operation of the project for the housing of eligible families under this Contract.

"d. At the direction of the Trustee and the Government, where the Owner fails to respond or to take action to the satisfaction of the Trustee, the PHA and the Government, the PHA may take the following corrective actions:

"(1) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of the Contract until such time as the PHA in its discretion or as directed by the Government determines that the Owner is again in a position to operate the project in accordance with the terms of this Contract.

"(2) Collect all rents and charges in connection with the operation of the project and use such funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage.

"e. In addition to the remedies stated above, the PHA shall have the right to take action to achieve compliance, in its discretion or as directed by the Government, by:

"(1) Terminating this Contract in whole or in part.

the appointment of a receiver to take over the project in accordance with the terms of the Contract, or for such other relief as may be appropriate, since the injury to the PHA and/or the Government arising from a default under any of the terms of this Contract would be difficult to ascertain.

"f. The availability of any remedy under this Contract shall not preclude the exercise of any other remedy available under this Contract or under any provision of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

"g. Notwithstanding any other provisions of this Contract, in the event the Government determines that the Owner is in default of its obligations under the Contract, the Government shall have the right, after notice to the Owner and the PHA giving them a reasonable opportunity to take corrective action, to abate or terminate housing assistance payments and recover overpayments in accordance with the terms of the Contract. In the event the Government takes any action under this paragraph, the Owner and the PHA hereby expressly agree to recognize the rights of the Government to the same extent as if the Action were taken by the PHA. The Government shall not have the right to terminate the Contract except by proceeding in accordance with Section 2.16(b) of the ACC and this Section."

(d) Rights of PHA if Owner Defaults Under Contract (Existing Housing Projects). For Existing Housing projects, the Contract shall contain the following provisions:

"a. A default by the Owner under this Contract shall result if:

"(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

"(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract under any Lease.

"b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or take other corrective action to achieve compliance, in its discretion directed by the Government."

2.17. REMEDIES NOT EXCLUSIVE AND NON-WAIVER OF REMEDIES.

The availability of any remedy provided for in this ACC or in the Contract shall not preclude the exercise of any other remedy under this ACC or the Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

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

(a) Neither the PHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employee of the PHA, or any member of the governing body of the locality in

which the Project is situated, or any member of the governing body of the locality in which the PHA was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project, during his tenure or for one year thereafter, has any interest, direct or indirect. If any such present or former member, officer, or employee of the PHA, or any member of the governing body or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the PHA and such disclosure is entered upon the minutes of the PHA, the PHA, with the prior approval of the Government, may waive the prohibition contained in this subsection. Provided, however, that any such present member, officer, or employee of the PHA shall not participate in any action by the PHA in connection with such contract, subcontract, or arrangement.

(b) The PHA shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in the Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

"No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or in any proceeds or benefits arising therefrom."

(c) The provisions of the foregoing subsections (a) and (b) of this Section 2.18 shall not be applicable to the Depository Agreement, or to utility service the rates for which are fixed or controlled by a governmental agency.

2.19. INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS.

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

PART I OF THE
HOUSING ASSISTANCE PAYMENTS CONTRACT
PRIVATE OWNERSHIP PROJECT

MASTER SECTION R ACC NUMBER:	ACC LIST NUMBER AND DATE:	PROJECT NUMBER:
------------------------------	---------------------------	-----------------

This Housing Assistance Payments Contract ("Contract") is entered into by and between the _____ ("PIA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at section 1437a(6), and _____ ("Owner"), and approved by the United States of America acting through the Department of Housing and Urban Development ("Government"), pursuant to the Act and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq.

The parties hereto agree as follows:

1.1 SIGNIFICANT DATES AND OTHER ITEMS: CONTENTS OF CONTRACT.

a. The term of the Contract shall be 30 years. The effective date of the Contract shall be 10 working days after the notification of project completion to the Government, or the date of the Government inspection if earlier, provided that the Owner's and Architect's Certifications and other evidence of completion is found by the Government to be acceptable as of that date. If the certifications and other evidence of completion are found not to be acceptable as of that date, the effective date of the Contract shall be the earliest subsequent date ^{as} of which the evidence of completion is found by the Government to be acceptable.

e. Fiscal Year. The ending date of each Fiscal Year (See Section 1.4b) shall be _____ [insert March 31, June 30, September 30, or December 31, as determined by the Government].

f. Annual Contributions Contract. The Annual Contributions Contract applicable to this Contract ("ACC") (see Section 1.5a) is the ACC dated _____ with respect to Project No. _____.

g. Maximum Housing Assistance Commitment. The maximum amount of the commitment for housing assistance payments under this Contract (see Section 1.6a) is \$ _____ per annum. [Enter amount specified in the ACC for housing assistance payments.]

h. Contents of Contract. This Contract consists of Part I, Part II, and the following exhibits:

Exhibit A: The schedule showing the number of units by size ("Contract Units") and their applicable rents ("Contract Rents");

Exhibit B: The project description;

Exhibit C: The statement of services, maintenance and utilities to be provided by Owner;

Exhibit D: The Affirmative Fair Housing Marketing Plan, if applicable; and

Additional exhibits: [Specify additional exhibits, if any. If none, insert "None."]

This Contract, including said exhibits, comprises the entire agreement between the parties hereto with respect to the matters contained herein, and neither party is bound by any representations or agreements of any kind except as contained herein or except agreements entered into in writing which are not inconsistent with this Contract.

1.2 OWNER'S WARRANTIES.

a. Legal Capacity. The Owner warrants that he has the legal right to execute this Contract and to lease dwelling units covered by this Contract.

b. Completion of Work. The Owner warrants that the project as described in Exhibit B is in good and tenantable condition and that the project has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract ("Agreement") or will be completed in accordance with the terms on which the project was accepted. The Owner further warrants that he will remedy any defects or omissions covered by this warranty if called to his attention within 12 months of the effective date of this Contract. The Owner and the PIA agree that the continuation of this Contract shall be subject to the conditions set forth in Section 1.4f of the Agreement.

1.3 FAMILIES TO BE HOUSED: PIA ASSISTANCE.

a. Families To Be Housed. The Contract Units are to be leased by the Owner to eligible Lower-Income Families ("Families") for use and occupancy by such Families solely as private dwellings.

b. PIA Assistance.

(1) The PIA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable such Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act. Such housing assistance payments shall equal the difference between the Contract Rents for units leased by Families and the portion of such rents payable by Families as determined by the Owner in accordance with schedules and criteria established by the Government.

(2) If there is an Allowance for Utilities and Other Services and if such Allowance exceeds the Gross Family Contribution, the Owner shall pay the Family the amount of such excess on behalf of the PIA upon receipt of funds from the PIA for that purpose.

[Alternative provisions--incorporate alternative 1 or 2, as applicable]

Alternative 1-General:

The ~~initial~~ term of this Contract shall be as stated in Section 1.1b. ~~This Contract may be renewed, at the sole option of the Owner, for the number and length of additional terms stated in Section 1.1c, provided that the total Contract term for any unit, including all renewals, shall not exceed the number of years stated in Section 1.1d. Renewal shall be automatic unless the Owner notifies the PHA, no later than 60 days prior to the expiration of the current term, of his intention not to renew.~~ If the project is completed in stages, the dates for the ~~initial~~ term and renewal terms shall be separately related to the units in each stage: Provided, however, that the total Contract term for all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in Section 1.1d, plus two years. In any case where the project is owned by, or financed by a loan guarantee from, a State or local agency, the housing assistance payments pursuant to this Contract with respect to any dwelling unit shall be payable over a period not to exceed 40 years.

Alternative 2-For mobile homes project:

In the case of mobile homes, the initial term of this Contract for each mobile home shall be as stated in Section 1.1b. This Contract shall be renewed, as may be mutually agreed upon by the Owner and the PHA with the approval of the Government, with respect to any mobile home, for the number and length of additional terms as stated in Section 1.1c, provided that the total Contract term for mobile home, including all renewals, shall not exceed the number of years stated in Section 1.1d. Renewals shall become effective only if either party gives written notice, no later than 60 days prior to the expiration of the current term, of his desire to renew, and the other party concurs or fails to object before the expiration of the current term. If the project is completed in stages, the dates for the initial term and renewal terms shall be separately related to the mobile homes in each stage; Provided, however, that the total Contract term for all the stages, beginning with the effective date of the Contract with respect to the first stage, shall not exceed the total Contract term stated in Section 1.1d, plus two years. For purposes of this paragraph a, the term "mobile home" means the original mobile home and any replacement(s), combined.

- b. Fiscal Year. The Fiscal Year for the project shall be the 12-month period ending on the date stated in Section 1.1c; Provided, however that the first Fiscal Year for the project shall be the period beginning with the effective date of the Contract and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in Section 1.6a may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.5 ANNUAL CONTRIBUTIONS CONTRACT.

- a. Identification of Annual Contributions Contract. The PHA has entered into an Annual Contributions Contract with the Government, as identified in Section 1.1f, under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act for the purpose of making housing assistance payments. A copy of the ACC shall be provided upon request.
- b. PHA Pledge of Certain ACC Payments. The PHA hereby pledges to the payment of housing assistance payments pursuant to this Contract the portion of annual contributions payable under the ACC for such housing assistance payments. The PHA shall not, without the consent of the Owner, amend or modify the ACC in any manner which would reduce the amount of such annual contributions, except as authorized in the ACC and this Contract.
- c. Government Approval of Housing Assistance Payments Contract. The approval of this Contract by the Government signifies that the Government has executed the ACC and that the ACC has been properly authorized; that the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to said ACC; and that funds have been obligated by the Government for such payments to assist the PHA in the performance of its obligations under the Contract.

1.6 MAXIMUM HOUSING ASSISTANCE COMMITMENT; PROJECT ACCOUNT.

- a. Maximum Housing Assistance Commitment. Notwithstanding any other provisions of this Contract (other than paragraph b of this Section) or any provisions of any other contract between the PHA and the Owner, the PHA shall not be obligated to make and shall not make any housing assistance payments under this Contract in excess of the amount per unit stated in Section 1.1g; Provided, however, that this amount shall be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents or pursuant to any other provision of the ACC or this Contract.
- b. Project Account. As provided in the ACC, in order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:
- (1) A Project Account shall be established and maintained, in an amount as determined by the Government consistent with its responsibilities under section 8(c)(6) of the Act, out of amounts by which the Maximum ACC Commitment per year exceeds amounts paid under the ACC for any Fiscal Year. This account shall be established and maintained by the Government as a specifically identified and segregated account. To the extent funds are available in said account, the maximum total annual housing assistance payments for any Fiscal Year may exceed the maximum amount stated in paragraph a of this Section to cover increases in Contract Rents or decreases in Family Incomes (see Section 1.9). Any amount remaining in said account after payment of the last housing assistance payment with respect to the project shall be applied by the Government in accordance with law.
 - (2) Whenever the Government approved estimate of the required Annual Contribution exceeds the Maximum ACC Commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such Maximum ACC Commitment, the Government shall, within a reasonable period of time, take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

1.7 HOUSING ASSISTANCE PAYMENTS TO OWNERS.a. General.

- (1) Housing assistance payments shall be paid to the Owner for units under lease by Families in accordance with the Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of said rent payable by the Family as determined in accordance with the Government-established schedules and criteria.
- (2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by such Family shall be subject to change by reason of changes in Family Income, Family composition, or extent of exceptional medical or other unusual expenses, in accordance with the Government-established schedules and criteria; or by reason of adjustment by the PHA of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification of such change to the Family.

Housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with Section 1.25 of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to the PHA.

c. Vacancies After Rent-up.

- (1) If a Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; Provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct. (See also Section 1.10b.) The Owner shall not be entitled to any payment under this subparagraph unless he: (i) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs b(2) and b(3) of this Section.
- (2) If the Owner evicts a Family, he shall not be entitled to any payment under paragraph c(1) of this Section unless the request for such payment is supported by a certification that (i) he gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

d. Limitation on Payments for Vacant Units. The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section to the extent he is entitled to payments from other sources (e.g., payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.10b of this Contract).

e. PHA Not Obligated for Family Rent. The PHA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with Section 1.10b of this Contract. The financial obligation of the PHA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

f. Owner's Monthly Requests for Payments.

- (1) The Owner shall submit monthly requests to the PHA or as directed by the PHA for housing assistance payments. Each such request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of units, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit A for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with Section 1.3b(2)); and (v) the total amount of housing assistance payments requested by the Owner.
- (2) Each of the Owner's monthly requests shall contain a certification by him that to the best of his knowledge and belief (i) the dwelling units are in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, and (iv) none of the amount claimed has been previously claimed or paid.
- (3) If the Owner has received an excessive payment, the PHA or the Government, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.
- (4) The Owner's monthly requests for housing assistance payments shall be made subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

g.¹ Recoupment of Savings in Financing Cost.

- (1) In the event that interim financing is continued after the first year of the term of the Contract and the debt service of the interim financing for any period of three months, after such first year, is less than the anticipated debt service under the permanent financing on which the Contract Rents were based, an amount reflecting the savings in financing cost, computed in accordance with paragraph g(2) of this Section, shall be credited by the Government to the Project Account, and withheld from housing assistance payments to the Owner. If during the course of the same year there is any period of three months in which the debt service is greater than the anticipated debt service under the permanent financing, an adjustment shall be made so that only the net amount of savings in financing cost for the year is credited by the Government to the Project Account and withheld from housing assistance payments to the Owner as aforesaid (no increased payments shall be made to the Owner on account of any net excess for the year of actual interim debt service over the anticipated debt service under the permanent financing). Nothing in this paragraph g shall be construed as requiring a reduction in the Contract Rents or precluding adjustments of Contract Rents in accordance with Section 1.9.
- (2) The computation and recoupment under this paragraph g may be made on an annual or on a quarterly or other periodic basis, but in any event no later than as of the end of each Fiscal Year; Provided, however, that if recoupment is to be made less often than quarterly, the amounts of recoupment shall be computed on at least a quarterly basis and the funds shall be deposited in a special account from which withdrawals may be made only with the authorization of the PHA. The manner of computing the amount of recoupment shall be as follows:
 - (i) Determine the amount by which the debt service for the interim financing for the period in question is less than the anticipated debt service under the permanent financing on which the Contract Rents were based;
 - (ii) Determine what percentage the amount found under paragraph g(2)(i) of this Section is of the aggregate Contract Rents for all Contract Units for the period in question;
 - (iii) Apply the percentage found in paragraph g(2)(ii) of this Section to the aggregate Contract Rents for those Contract Units which are included in the Owner's claim(s) for housing assistance payments for the period in question; and
 - (iv) The amount found in paragraph g(2)(iii) of this Section shall be credited to the Project Account and withheld from the next housing assistance payment or payments to the Owner.

~~1.2 Payments by PHA. The amount of the housing assistance payment, determined in accordance with the provisions of this Contract, up to the amount of the mortgage repayments due the PHA from the Owner pursuant to the mortgage loan made by the PHA for the project, shall be credited to the Owner and transferred monthly by the PHA from the account maintained under the General Depository Agreement pursuant to the AUC to the trustee under the note or bond resolution of the PHA under which the notes or bonds to provide the mortgage loan were issued. Any amount of the housing assistance payment in excess of such credit shall be paid by the PHA directly to the Owner.~~

1.8 MAINTENANCE, OPERATION AND INSPECTION.

a. Maintenance and Operation. The Owner agrees (1) to maintain and operate the Contract Units and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in Exhibit C. If the PHA determines that the Owner is not meeting one or more of these obligations, the PHA shall have the right, in addition to its other rights and remedies under this Contract, to abate housing assistance payments in whole or in part.

¹ Delete this paragraph unless the project is subject to 24 CFR Section 100.125.

- (1) Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by the Government, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.
- (2) The PHA shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy and re-letting of any unit) as may be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The PHA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.
- c. Units Not Decent, Safe, and Sanitary. If the PHA notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the PHA does not have other section 8 funds for such purposes, the PHA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if (1) the unit is restored to Decent, Safe, and Sanitary condition, (2) the Family is willing to and does move back into the restored unit, and (3) a deduction is made for the expenses incurred by the Family for both moves.
- d. Notification of Abatement. Any abatement of housing assistance payments shall be effective as provided in written notification to the Owner. The PHA shall promptly notify the Family of any such abatement.
- e. Overcrowded and Underoccupied Units. If the PHA determines that a Contract Unit is not Decent, Safe, and Sanitary by reason of increase in Family size, or that a Contract Unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, the PHA will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of Section 1.7c(1).

1.9 RENT ADJUSTMENTS.

- a. Funding of Adjustments. Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this Section, up to the maximum amount authorized under Section 1.6a of this Contract.
- b. Automatic Annual Adjustments.
- (1) Automatic Annual Adjustment Factors will be determined by the Government at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the Federal Register. These published Factors will be reduced appropriately by the Government where utilities are paid directly by the Families.
 - (2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by the Government. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted Contract Rents be less than the Contract Rents on the effective date of the Contract.
- c. Special Additional Adjustments. Special additional adjustments shall be granted, when approved by the Government, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to the Government financial statements which clearly support the increase.
- d. Overall Limitation. Notwithstanding any other provisions of this Contract, adjustments as provided in this Section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the Government; provided, that this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial Contract Rents.
- e. Incorporation of Rent Adjustment. Any adjustment in Contract Rents shall be incorporated into Exhibit A by a dated addendum to the exhibit establishing the effective date of the adjustment.
- f. Adjustment to Reflect Actual Cost of Permanent Financing. This paragraph f shall apply if the project is not permanently financed until after the effective date of the Contract. After the project is permanently financed, the Financing Agency shall submit a certification to the Government as to the actual financing terms. If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the Contract Rents currently in effect shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The Maximum ACC Commitment shall not be reduced. If the actual debt service is higher, the Contract Rents shall not be increased.

1.10 MARKETING AND LEASING OF UNITS.

- a. Compliance with Equal Opportunity. Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's Government-approved Affirmative Fair Housing Marketing Plan, shown as Exhibit D, and with all regulations relating to fair housing advertising.
- b. Security and Utility Deposits.
- (1) The Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local law, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from the PHA, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this Section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease, or if the amount owed is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.
 - (2) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.
 - (3) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or

c. Eligibility, Selection and Admission of Families.

- (1) The Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, and computation of the amount of housing assistance payments on behalf of each selected Family in accordance with schedules and criteria established by the Government. In the initial renting of the Contract Units, the Owner shall lease at least 30 percent to Very Low-Income Families (determined in accordance with the Government-established schedules and criteria) and shall thereafter exercise his best efforts to maintain at least 30 percent occupancy of the Contract Units by Very Low-Income Families as determined in accordance with such schedules and criteria.
- (2) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by the Government.
- (3) The Owner shall make a reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family, at least annually (except that such reviews may be made at intervals of no longer than two years in the case of elderly Families), and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with schedules and criteria established by the Government. In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families. If there are fewer than 30 percent Very Low-Income Families in occupancy, the Owner shall report the fact to the Government and shall adopt changes in his admission policies to achieve, as soon as possible, at least 30 percent occupancy by such Families.

d. Rent Redetermination after Adjustment in Allowance for Utilities and Other Services. In the event that the Owner is notified of a PHA determination making an adjustment in the Allowance for Utilities and Other Services applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

e. Processing of Applications and Complaints. The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable PHA or Government requirements and shall maintain records and furnish such copies or other information as may be required by the PHA or the Government.

f. Review; Incorrect Payments. In making housing assistance payments to Owners, the PHA or the Government will review the Owner's determinations under this Section. If as a result of this review, or other reviews, audits or information received by the PHA or the Government at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or the Government shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery thereof.

1.11 TERMINATION OF TENANCY. The Owner shall be responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies shall be as set forth in Section 1.7c.

1.12 REDUCTION OF NUMBER OF CONTRACT UNITS FOR FAILURE TO LEASE TO ELIGIBLE FAMILIES.

- a. After First Year of Contract. If at any time, beginning six months after the effective date of this Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract Units leased or available for leasing by Families, the PHA, with Government approval, may on 30 days notice reduce the number of Contract units to not less than the number of units under lease or available for leasing by Families, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.
- b. At End of Initial and Each Renewal Term. At the end of the initial term of the Contract and of each renewal term, the PHA, with Government approval, may, by notice to the Owner, reduce the number of Contract Units to not less than (1) the number of units under lease or available for leasing by Families at that time or (2) the average number of units so leased or available for leasing during the last year, whichever is the greater number, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.
- c. Restoration of Units. The Government will agree to an amendment of the ACC to provide for subsequent restoration of any reduction made pursuant to paragraph a or b of this Section if the Government determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under this Contract and if annual contributions contract authority is available; and the Government will take such steps authorized by section 8(c)(6) of the Act as may be necessary to carry out this assurance (see Section 1.6).

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

APPROVED:

United States of America
Secretary of Housing and
Urban Development

By _____

(Official Title)

Date _____, 19__

OWNER _____
By _____

(Official Title)

Date _____, 19__

PHA _____
By _____

(Official Title)

Date _____, 19__

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

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES
STAGE 1

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

EFFECTIVE DATE. The effective date of this Contract with respect to the units described in Exhibit A-1 is _____, 19____
[Insert date which shall be no earlier than the date of Government acceptance of the project.]

APPROVED:

United States of America
Secretary of Housing and
Urban Development

By _____

(Official Title)

Date _____, 19____

OWNER _____

By _____

(Official Title)

Date _____, 19____

PHA _____

By _____

(Official Title)

Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES
STAGE 2

This Contract is hereby executed with respect to the units described in Exhibit A-2.

EFFECTIVE DATE. The effective date of this Contract with respect to the units described in Exhibit A-2 is _____, 19____
[Insert date which shall be no earlier than the date of Government acceptance of the project.]

APPROVED:

United States of America
Secretary of Housing and
Urban Development

By _____

(Official Title)

Date _____, 19____

OWNER _____

By _____

(Official Title)

Date _____, 19____

PHA _____

By _____

(Official Title)

Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES
STAGE 3

This Contract is hereby executed with respect to the units described in Exhibit A-3.

EFFECTIVE DATE. The effective date of this Contract with respect to the units described in Exhibit A-3 is _____, 19____
[Insert date which shall be no earlier than the date of Government acceptance of the project.]

APPROVED:

United States of America
Secretary of Housing and
Urban Development

By _____

(Official Title)

Date _____, 19____

OWNER _____

By _____

(Official Title)

Date _____, 19____

PHA _____

By _____

(Official Title)

Date _____, 19____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM
NEW CONSTRUCTION
PART II OF THE
HOUSING ASSISTANCE PAYMENTS CONTRACT
PRIVATE-OWNER/PHA PROJECT

MASTER SECTION 8 ACC NUMBER:

ACC LIST NUMBER AND DATE:

PROJECT NUMBER:

2.1 NONDISCRIMINATION IN HOUSING.

- a. The Owner shall not in the selection of families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.
- b. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.
- c. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the grounds of race, color, creed, religion or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government, of the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Owner.

2.2 TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER-INCOME PERSONS.⁴

- a. The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- b. Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Contract. The requirements of said regulations include; but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.
- c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Contract, and to such sanctions as are specified by 24 CFR, Section 135.135.
- d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Contract in excess of \$50,000 cost, the following clause:

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

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

⁴ Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum term of this Contract, are \$500,000 or less.

Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR, Section 135.135."

e. The Owner agrees that he will be bound by the above Employment of Project Area Residents and Contractors clause with respect to his own employment practices when he participates in federally assisted work.

2.3 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS. The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.4 FLOOD INSURANCE. If the project is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.5 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.⁵ In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

- a. Any facility to be utilized in the performance of this Contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;
- b. He will promptly notify the PHA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and
- d. He will include or cause to be included the provisions of this Section in every nonexempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 PHA AND GOVERNMENT ACCESS TO PREMISES AND OWNER'S RECORDS.

- a. The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA or the Government.
- b. The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

2.7 FAILURE OR INABILITY OF PHA TO COMPLY WITH CONTRACT.

The following provisions of the ACC are hereby made a part of this Contract:

"(a) Rights of Owner if PHA Defaults Under Agreement or Contract.

"(2) In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default, hereunder. Where the Government so determines, it shall have the right to assume the PHA's rights and obligations under such Contract, perform the obligations and enforce the rights of the PHA, and exercise such other powers as the Government may have to cure the Default; however, whether or not the Government elects to proceed in this manner, the Government shall, if it determines that the Owner is not in default, continue for the duration of such Contract to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract.

"(3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(a) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

"(4) The provisions of this Section 2.16(a) are made with, and for the benefit of, the Owner, the PHA (where it is the lender and then only in its capacity as lender), or the Owner's other assignees, if any, who will have been specifically approved by the Government prior to such assignment. If such parties are not in default, they may, in order to enforce the performance of these provisions, (i) demand that the Government, after notice to the PHA giving it a reasonable opportunity to take corrective action, make a determination whether a Substantial Default exists under paragraph (a)(1) or (a)(2) of this Section, (ii) if the Government determines that a Substantial Default exists, demand that the Government take action as authorized in paragraph (a)(1) or (a)(2), and (iii) proceed against the Government by suit at law or in equity."

⁵ Strike this Section if the Contract Rents on the effective date of this Contract, over the maximum total term of this Contract, are \$100,000 or less.

a. A default by the Owner under this Contract shall result if:

- (1) The Owner has violated or failed to comply with any provision of, or obligation under this Contract or of any lease; or
- (2) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under the Contract or under any lease.

b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner and the Trustee, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that the Owner has taken all the actions required.

c. If the Owner fails to respond or take action to the satisfaction of the Trustee, the PHA and the Government, the PHA shall assist the Trustee in locating a management entity acceptable to the Government with a view to providing continued operation of the project for the housing of eligible families under this Contract.

d. At the direction of the Trustee and the Government, where the Owner fails to respond or to take action to the satisfaction of the Trustee, the PHA and the Government, the PHA may take the following corrective actions:

- (1) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of the Contract until such time as the PHA is its discretion or as directed by the Government determines that the Owner is again in a position to operate the project in accordance with the terms of this Contract.
- (2) Collect all rents and charges in connection with the operation of the project and use such funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage.

e. In addition to the remedies stated above, the PHA shall have the right/to take action to achieve compliance, in its discretion or as directed by the Government, by:

- (1) Terminating this Contract in whole or in part.
- (2) Applying to any court, State or Federal, for specific performance of this Contract, for an injunction against any violation of the Contract, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Contract, or for such other relief as may be appropriate, since the injury to the PHA and/or the Government arising from a default under any of the terms of this Contract would be irreparable and the amount of the damage would be difficult to ascertain.

f. The availability of any remedy under this Contract shall not preclude the exercise of any other remedy available under this Contract or under any provision of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

g. Notwithstanding any other provisions of this Contract, in the event the Government determines that the Owner is in default of its obligations under the Contract the Government shall have the right, after notice to the Owner and the PHA giving them a reasonable opportunity to take corrective action, to abate or terminate housing assistance payment and recover overpayments in accordance with the terms of the Contract. In the event the Government takes any action under this paragraph, the Owner and the PHA hereby expressly agree to recognize the rights of the Government to the same extent as if the Action were taken by the PHA. The Government shall not have the right to terminate the Contract except by proceeding in accordance with section 2.16(b) of the ACC and this Section.

exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.10 DISPUTES.

- a. Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the PHA and the Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.
- b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the field office director.
- c. This Section does not preclude consideration of questions of law in connection with the decisions rendered under paragraphs a and b of this Section; Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

2.11 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF PHA, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS. No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising therefrom.

2.12 INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS. No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

2.13 ASSIGNMENT, SALE, OR FORECLOSURE.

- a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Contract or the project or any part thereof or any of his interest therein, without the prior consent of the PHA and the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the PHA and the Government shall consent in writing if the terms of the financing have been approved by the Government.
 - b. The Owner agrees to notify the PHA and the Government promptly of any proposed action covered by paragraph a of this Section. The Owner further agrees to request the written consent of the PHA and the Government in regard thereto.
 - c. (1) A transfer by the Owner, in whole or in part, or a transfer by a party having a substantial interest in said Owner, or transfers by more than one party of interests aggregating a substantial interest in said Owner, or any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means (e.g., increased capitalization, merger with another corporation or other entity, corporate or other amendments, issuance of new or additional ownership interests or classification of ownership interests or otherwise) shall be deemed an assignment, conveyance, or transfer for purposes of this Section 2.13. An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer.
 - (2) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.
 - (3) The Owner, and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect thereto.
- d. In the event of foreclosure, or assignment or sale to the financing agency in lieu of foreclosure, or in the event of assignment or sale agreed to by the financing agency and approved by the Government (which approval shall not be unreasonably delayed or withheld) or in the event the PHA takes over possession, operation or ownership of the project pursuant to paragraph 2.8 hereof, housing assistance payments shall continue in accordance with the terms of this Contract.