



AGREEMENT BETWEEN

COUNTY OF SAN MATEO

DEPARTMENT OF HOUSING

AND

HILLCREST SENIOR HOUSING CORPORATION

to assist with

Development of Senior Housing in Daly City

for the period

July 1, 2006 to June 30, 2008

Contact Person: Jack Marquis
Telephone number: (650) 802-5035

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
HILLCREST SENIOR HOUSING CORPORATION**

THIS AGREEMENT, entered into this ____ day of _____, 20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and HILLCREST SENIOR HOUSING CORPORATION hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, American Baptist Homes of the West (ABHOW) applied for funding assistance to assist with the development of Senior Housing in Daly City; and

WHEREAS, Hillcrest Senior Housing Corporation has been created by ABHOW as an **affiliate** non-profit corporation for the sole purpose of developing, owning and operating the housing; and

WHEREAS, on May 2, 2006, the County Board of Supervisors approved the CDBG/ESG/ HOME funding for FY 2006-07, which included funding to assist with the development of Senior Housing in Daly City; and

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of developing Senior Housing in the City of Daly City;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits

The following exhibits and attachments are included hereto and incorporated by reference herein:

- Exhibit A – Program/Project Description
- Exhibit B – Payments and rates
- Exhibit C – Equal Benefits Compliance Declaration Form
- Exhibit D – Additional Program Requirements
- Exhibit E – 504 Compliance
- Exhibit F – HUD Required Provisions Rider

Notwithstanding any other provisions of this Agreement, in the event of a conflict between the terms of this Agreement and those of an Exhibit, the terms of the Exhibit shall control.

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform the services (hereinafter referred to as the "services" or the "work") necessary to implement the Program/Project as described in Exhibit A. For the purposes of this contract "Program" or "Project" may be used interchangeably.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein. County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Ninety Five Thousand Three Hundred Fifty One Dollars, (\$395,351).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2006 through June 30, 2008, unless otherwise modified in Exhibit A.

County may terminate this Agreement for cause after giving Contractor notice of any breach or default and 30 days to cure said breach or default.

County reserves the right to waive any and all breaches of this Agreement, and any such waiver shall not be deemed a waiver of all previous or subsequent breaches. In the event County chooses to waive a particular breach of this Agreement, it may condition same on payment by Contractor of actual damages occasioned by such breach of Agreement and shall make every effort to resolve the same quickly and amicably.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any services or work provided by Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by

Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination

- A. Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. Where applicable, the Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.
- G. *Compliance with Contractor Employee Jury Service Ordinance.* Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees regular pay the fees received for jury service.

12. Retention of Records, Right to Monitor and Audit

- A Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
- B Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.
- C Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance

with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

13. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

14. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

15. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

<p>In the case of County, to:</p> <p>County of San Mateo</p> <p>Director, Department of Housing</p> <p>262 Harbor Blvd. Bldg. A</p> <p>Belmont, CA 94002</p>	<p>In the case of Contractor, to:</p> <p>Ancel Romero</p> <p>Senior Vice-President</p> <p>6120 Stoneridge Mall Rd, 3rd Flr.</p> <p>Pleasanton, CA 94588</p>
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IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

HILLCREST SENIOR HOUSING CORPORATION

Contractor's Signature

Date: _____

Exhibit "A"
Program/Project Description

Contractor's services and work shall consist of Contractor's serving as the developer of the Project described herein.

A. Performance. On that property acquired from the City of Daly City located on Hillcrest Drive at Vendome Avenue, the Contractor shall develop 40 units of affordable rental housing for seniors. This development shall hereinafter be referred to as "the Project".

Contractor shall be responsible for applying for and acquiring all necessary funding to complete the development of the Project

B. Performance Period. The performance period is defined as the segment of time for Contractor to perform the services or work identified above. The performance period shall end on June 30, 2008. Failure to complete the work as defined above during the Performance Period shall be ground for termination of the Agreement. The Performance Period may be extended at the sole discretion of the Director of the Department of Housing.

During the Performance Period, Contractor shall submit Progress Reports within 30 days of the end of each quarter which shall detail the status of the project. The report should be in the form of a narrative description of all activities performed in relation to the project including all pre-development activities. The report should include a project time-line and indicate the status of the project in relationship to this time-line. Contractor must document any changes from the time-line submitted with the original application. This report requirement is in addition to any information submitted with requests for reimbursement; this requirement shall extend until completion of the project even if all of the funds provided under this Agreement have been expended.

C. Compliance Period. The Compliance Period is defined as the time frame beginning after the completion of the Performance Period and ending no earlier than fifty-five (55) years from the date of the beginning of the Compliance Period. The demarcation date denoting the completion of the Performance Period and the beginning of the Compliance Period shall be the date of issuance of a Certificate of Occupancy from the City of Daly City, which Contractor shall provide the Department of Housing, along with a housing completion report and tenant profile on forms provided by the County.

Thereafter on an annual basis during the Compliance Period, or more often if required by the County, Contractor shall provide the County with information necessary to monitor the Project relating to program compliance matters. Annual information required shall include: evidence of continuing fire and liability insurance; annual certified financial audit; tenant incomes and rents; certificate of continuing use, and any other compliance information as may be required by the County.

Notwithstanding Section 13(a) of this Agreement pertaining to retention of records, Contractor shall maintain all required records for a period of three (3) years after the end of the Compliance Period.

D. Financing: The funds from the County shall be provided to the Contractor in the form of a loan. The funds shall be evidenced by a Promissory Note secured by a Deed of Trust in favor of the County of San Mateo. The Note shall bear interest at the rate of 3% per annum, non-compounding. The term of the Note loan shall comply with the term of the Performance Period as set forth above. Upon satisfactory completion of the service or work required during that period, the term shall be extended to coincide with the Compliance Period. Repayment of the loan shall be from a prorata share of 50% of the Residual Receipts, as defined in said Promissory Note, from the operation of the Project. The prorata share shall be determined by dividing the total County of San Mateo loan amount by the sum of the HEART Loan currently in the amount of \$510,000, this County of San Mateo loan, and the City of Daly City Loan in the current amount of \$3,485,570. Based on the current budget, the County share shall be 5.7% of Residual Receipts. In the event any of the above amounts should be changed, the share of Residual Receipts shall be adjusted accordingly.

E. Prepayment. Prepayments may be made at any time without penalty.

F. Due on Sale, Refinance or Transfer of Title. Contractor shall not assign its rights under this Agreement without obtaining the prior written consent of the Director or his/her designee or sell or refinance the Property or Project other than a refinance for a permanent loan to repay any interim loans taken out to undertake the construction of the Project. In the event of a sale or transfer of the Project or any interest therein by Contractor without such consent, the entire principal balance of the Note, including any accumulated interest, shall be immediately due and payable.

G. Acceleration of Note. In the event Contractor breaches any of the terms and conditions of this Agreement after notice and an opportunity to cure as provided in Exhibit D herein, the Contractor will be in default of the terms and conditions of this Agreement as well as the Note, and the County may demand immediate and full payment of the principal amount of the Note and any accrued interest, and/or may initiate foreclosure proceedings under the Deed of Trust.

H. Fire and Extended Coverage. Upon completion of construction of the Project, Contractor at its costs shall maintain on the Project a policy of standard fire and extended coverage during the life of the Notes and Deeds of Trust securing this Agreement, or any subsequently executed document which replaces the Notes and Deeds of Trust, with vandalism and malicious mischief endorsements, to the extent of at least the full replacement value of the improvements which are part of the premises. The insurance policy shall be issued in the names of Contractor and the County as their interests appear. The insurance policy shall contain a lender's loss payable endorsement, providing that any proceeds shall be payable to the County as its interests appear.

In the event that Contractor shall undertake to restore the damaged improvements or to reconstruct the destroyed improvements within a period of sixty (60) days of receipt of insurance proceeds, such insurance proceeds received by the County shall be released to Contractor as payments are required for said purposes, and upon completion of such restoration or reconstruction, any balance thereof remaining shall be paid to Contractor forthwith.

In the event that Contractor shall fail to undertake the restoration or reconstruction of such improvements within sixty (60) days after receipt of insurance proceeds following any such damage or destruction, there shall be paid and released to the County from such insurance proceeds a sum equal to the cost of clearing the premises in the event Contractor does not at its own expense clear the premises within said period. The balance shall be held to compensate the parties to this Agreement as if the premises were sold. Contractor shall also sell the vacant land on the open market and the proceeds of said land sale shall be distributed among the parties to this Agreement.

I. Deed Restriction. In compliance with the requirements of the HOME Program which is providing a portion of the funding for this project, a Deed Restriction shall be recorded against the property comprising the Project. Said Deed Restriction shall restrict the rent and occupancy of units in accordance with the requirements of the HOME Investment Partnership Act. The term of said Deed Restriction shall be 20 years, and shall stand independent of this Agreement. The Deed Restriction shall only affect the 11 HOME units and shall stand in addition to any restriction imposed by this Agreement.

J. Mandatory Acknowledgement of Funder. All projects/programs receiving any type of funding assistance and or substantial technical assistance through the San Mateo County Department of Housing will be required to state such in any advertising, marketing, public presentations, press releases, written materials or project descriptions. Such acknowledgement should also identify the U.S. Department of Housing & Urban Development.

All Capital projects shall display signage as described below:

- **Temporary Construction Signage** must be appropriately displayed during the major portion of the construction phase. Such signage must be provided by the Contractor and must be pre-approved by the Department of Housing in design and content.
- **Permanent Historical Signage** must be attached to all completed projects and must be displayed in a visible, highly trafficked area of the project, IE. front lobby, main entry or walkway, etc. Location of display must be approved by the Department of Housing. **Permanent historical signage in the form of an 8" x 10" bronze plaque provided by the Department of Housing; cost of said plaque shall be reimbursed to County from loan proceeds as a project cost.** The Director of the Department of Housing may, at his sole discretion, waive this requirement if he determines that such placement would not be appropriate to the project.

Exhibit B
Method and Rate of Payment to Contractor

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following terms:

Disbursement of Funds.

A. County and Contractor anticipate that all County Loan proceeds shall be disbursed by County in one disbursement into the construction disbursement account prior to close of escrow of the HUD capital advance. Disbursement from the construction disbursement account shall be subject to closing of the HUD capital advance and to HUD approval.

B. A copy of all disbursement requests from the construction disbursement account shall be sent to County prior to disbursement. Each request shall describe the services for which reimbursement or payment is requested and must include a brief narrative description of the progress of the project. Each request must be accompanied by copies of the invoices paid together with together with warrants, canceled checks or other proof that the invoices have been paid.

C. Contractor shall certify in writing that the specific services for which reimbursement or payment is being requested have been satisfactorily completed, that the payments are proper and that all funds to be expended are on behalf of and exclusively for the project. County reserves the right to verify such completion prior to payment.

D. None of the funds shall be used for salary, fringe benefits or other compensation of employees of Contractor or its affiliates.

Exhibit C
Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor _____
Contact Person _____
Address: _____

Phone Number _____
Fax Number _____

II Employees

Does the Contractor have any employees? Yes No

Does the Contractor provide benefits to spouses of employees? Yes No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
- Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- No, the Contractor does not comply.
- The Contractor is under a collective bargaining agreement which began on _____ (date) , and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature

Name (Please Print)

Title

Date

Exhibit D
Additional Program Requirements

1. BREACH OF AGREEMENT

This Agreement is governed by applicable federal statutes and regulations, as referred to elsewhere herein. Any material deviation by Contractor for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of County or upon the direction of HUD.

2. AGREEMENT TERMINATION

In the event Contractor is unable to fulfill its responsibilities under this Agreement for any reason whatsoever, including circumstances beyond its control, County may terminate this Agreement in whole or in part in the same manner as for breach hereof.

3. CONFLICT OF INTEREST

No members, officers, or employees or agents of County, no member of the County's Board of Supervisors, and no other public official who exercises any function or responsibility with respect to this Program during his/her tenure, or for one year thereafter, shall have any financial interest, direct or indirect, in this Agreement or a related subcontract, or the proceeds thereof.

Contractor shall not contract with any third party or subcontractor that will cause a violation of the preceding paragraph. Contractor shall incorporate the above provision into all contracts awarded in connection with this Agreement.

4. LOBBYING PROHIBITED

Federal funds shall not be used by Contractor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government. Federal funds shall not be used by Contractor to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal contract.

5. INFLUENCING PROHIBITED

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and

C. The language of paragraphs 5A and 5B shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

6. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Contractor, to the extent applicable to this Agreement, shall comply with the following Federal laws and regulations as set forth in 24 CFR §§570.600-612:

A. Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, including community development funds, on the grounds of race, color, or national origin.

B. Public Law 90-284, Fair Housing Act (42 U.S.C. §§3601- 20), which provides that it is the policy of the United States to provide, within constitutional limitations, fair housing throughout the United States and prohibits any person from discriminating in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin handicap or familial status. The Fair Housing Act, as amended in 1988, also establishes requirements for the design and construction of new rental or for sale multifamily housing to ensure a minimum level of accessibility for persons with disabilities. Multifamily dwelling units in buildings containing 4 or more units served by one or more elevators, or ground floor dwellings units with 4 or more units, constructed for first occupancy after March 13, 1991, must be designed and constructed in a manner that the public and common use portions of such dwellings are readily accessible to and usable by disabled persons. All premises within such dwellings must incorporate features of adaptive design regarding accessibility routes into and through the dwelling and design features within the units. (Regarding accessibility design issues, State accessibility requirements will prevail if they are stricter than federal requirements.)

C. Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services, programs or benefits supported by Federal funds.

D. Rehabilitation Act of 1973, Section 504, which prohibits discrimination against otherwise qualified handicapped persons in the provision of programs, facilities and employment supported by Federal funds.

In the case of multifamily rental housing, projects of five or more units must be designed and constructed to be readily accessible to and usable by persons with disabilities. For new construction involving five or more units, and substantial rehabilitation projects of 15 or more units (with substantial rehabilitation defined as rehabilitation costs representing 75 percent or more of the replacement costs of the completed facility), the following requirements must be followed - a minimum of 5 percent of the dwelling units must be accessible to individuals with mobility impairments and an additional 2 percent accessible to individuals with sensory impairments. At the minimum, one unit shall be made accessible to mobility-impaired individuals and one unit accessible to sensory impaired individuals. When less than substantial rehabilitation is undertaken in multifamily rental housing projects of any size, these alterations must, to the maximum extent feasible, make the dwelling units accessible to and usable by individuals with disabilities, until a minimum of 5 percent of the dwelling units (but not less than one unit) are accessible to persons with mobility impairments; for this category of less than substantial rehabilitation, the additional 2 percent of the units for persons with sensory impairments does not apply. Also for this category of rehabilitation, if undertaking accessibility alterations imposes undue financial and administrative burdens on the operation of the multifamily housing project, the alterations are not required.

In the case of non-housing facilities involving new construction, the facilities shall be designed and constructed to be readily accessible to and usable by persons with disabilities. For facilities involving alterations, to the extent possible, the alterations should ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible, if doing so, would impose undue financial and administrative burdens on the operation of the recipient program or activity. (However, State law will prevail if State accessibility requirements are stricter

than federal 504 requirements.) Recipients are still required to take other actions that would ensure that persons with disabilities receive the benefits and services of the program.

E. Davis-Bacon Act, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with Federal funds shall be paid prevailing wages of the locality as determined by the Secretary of Labor.

F. Section 3, Housing & Urban Development Act of 1968. For all programs receiving \$100,000 or more, or construction projects receiving \$200,000 or more, of HUD financial assistance, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in the area. Section 3 Residents are defined as: 1) residents of public housing; or 2) low and very-low income persons living in the area. Section 3 Businesses are defined as businesses: 1) that are at least 51% owned by Section 3 Residents; 2) whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or 3) that provide evidence of a commitment to subcontract in excess of 25 % of the dollar award of all subcontract to be awarded to a section 3 business concern. Contractors must maintain appropriate documentation of their efforts to comply with Section 3 requirements.

G. Flood Disaster Protection Act of 1973, which provides that no federal financial assistance for acquisition or construction purposes may be approved for an area having special flood hazards unless the community in which the area is located is participating in the National Flood Insurance Program.

H. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which provides for relocation assistance for any family, individual, business, non-profit organization or farm displaced as a result of acquisition of property with federal funds.

I. Executive Order 11246, amended by Executive Order 12086, Equal Employment and Contracting Opportunities, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally assisted construction contracts.

J. Housing and Urban Development Act of 1968, Section 3, which requires that, in the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible, opportunities for training and employment be given to low and moderate income persons residing within the unit of local government in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same unit of local government as the project.

K. Lead-Based Paint Poisoning Act, which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance.

L. Housing & Community Developments Act of 1974, 24 CFR Part 5 which provides that assistance shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR part 24. This provision covers all Contractors and subrecipients, as well as subcontractors of Contractor or subrecipient, whose names are included in the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs." Inclusion in the aforementioned List during the term of this agreement would constitute grounds for contract termination as described in Sections 1 and 2 herein this Exhibit. The aforementioned List can be found on the Web at <http://epls.arnet.gov>.

7. UNIFORM ADMINISTRATIVE REQUIREMENTS

A. Contractor, if a governmental entity or public agency, shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments", OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations", and applicable sections of 24 CFR §85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as set forth in 24 CFR §570.502(a).

B. Contractor, if a non-profit organization, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations, OMB Circular A-133 Audits of State, Local Governments and Non-Profit Organizations", and applicable Attachments to OMB Circular No. A-110, as set forth in 24 CFR §570.502(b).

8. The CFDA # for the entitlement programs to which this applies are as follows:

- 1) Community Development Block Grant (CDBG): 14.218)
- 2) Emergency Shelter Grant (ESG): 14.231
- 3) HOME Investment Partnership (HOME): 14.239
- 4) McKinney Supportive Housing: 14.235

Exhibit E

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person - Type or Print

Name of Contractor(s) - Type or Print

Street Address or P.O. Box

City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

Signature

Title of Authorized Official

Date

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with the facility accessibility regulations other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

Exhibit F
HUD-REQUIRED PROVISIONS RIDER

This HUD-Required Provisions Rider (the "Rider") is attached to and made a part of this Agreement. In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the balance of the Agreement, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Lender Documents. As used in this Rider, the term "HUD Documents" shall mean the following documents relating to the HUD Section 202 Capital Advance for the Development, HUD Project No. _____:

- A. Deed of Trust on the Property from Borrower to HUD (the "HUD Deed of Trust");
 - B. Regulatory Agreement between Borrower and HUD recorded against the Property ("HUD Regulatory Agreement");
 - C. Capital Advance Program Use Agreement between Borrower and HUD recorded concurrently herewith (the "HUD Use Agreement"), incorporated by reference in the HUD Deed of Trust;
 - D. HUD Security Agreement between Borrower and HUD (the "HUD Security Agreement"); and
 - E. HUD Project Rental Assistance Contract (the "PRAC").
1. Term of Rider. Notwithstanding anything else in this Rider to the contrary, the provisions of this Rider shall be and remain in effect only so long as the HUD Documents, or any of them, are in effect; thereafter, this Rider and its requirements shall be deemed no longer in effect.
 2. Subordination. The covenants contained in the Lender Documents shall be subordinate to the rights of HUD under the HUD Documents, and to the HUD rules and regulations pertaining thereto; and furthermore, the Lender Documents shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Property by power of sale, foreclosure, or by deed in lieu of foreclosure. In addition, so long as the HUD Documents are in effect, in the event that there are any conflicts between the terms and conditions in the Lender Documents and the terms and conditions of the HUD Documents and HUD rules and regulations pertaining thereto, the HUD Documents and HUD rules and regulations shall prevail. No default may be declared under the Lender Documents without HUD prior written consent.
 3. HUD Rules. During the time period in which Section 202 or the PRAC regulations apply to the Development, rents approved by HUD pursuant to the Section 202 program and the PRAC shall be deemed to be in compliance with the Lender Regulatory Agreement, and compliance by the Developer with the Section 202 Regulations and the PRAC with respect to continued occupancy by households whose incomes exceed the eligible income limitations of the Lender Regulatory Agreement, or other matters set forth in the Lender Regulatory Agreement, shall be deemed to be compliance with the requirements of the Lender Documents. Nothing in the Lender Documents shall in any way limit, interfere or conflict with the rights of HUD with respect to the management, operation or occupancy of the Development; nor can the Lender Documents in any way jeopardize the continued operation of the project on terms at least as favorable to existing as well as future tenants.
 4. Lender Loan Disbursement. Upon continued satisfaction of the conditions precedent to loan disbursement set forth in the Lender Loan Agreement, the Lender shall disburse the Lender Loan proceeds to Borrower from time to time following approval by the Lender and HUD of Borrower's requisitions in accordance with the HUD Documents. HUD approval of a requisition shall be deemed Lender approval, provided that the requisition conforms to the use of Lender Loan funds shown in the Financing Plan approved by the Lender. The Lender agrees that the uses of Lender Loan funds shown in the Financing Plan are eligible

uses. Requisitions not requiring HUD approval shall be submitted only to the Lender for approval and disbursement pursuant to the Lender Loan Agreement.

5. Residual Receipts. Any whole or partial repayment of the principal and any other payments as set forth in the Lender Documents shall be made only from Residual Receipts (as defined in the HUD Documents), and then only after obtaining the prior written approval of HUD, or from the Borrower's own funds.

6. Indemnification. Enforcement by the Lender of any indemnification provisions in the Lender Documents will not and shall not result in any monetary claim against the Development, the HUD Capital Advance proceeds, any reserve or deposit required by HUD in connection with the HUD Capital Advance, or the rents or other income from the Development other than residual receipts authorized for release by HUD, without the prior written consent of HUD, but Lender shall have the right to add any amounts due the Lender pursuant to indemnification provisions in the Lender Documents to the principal amount of the Loan and the Note and interest shall accrue thereon commencing on the date indemnification payments are due.

7. Transfer. Approval by HUD of a Transfer of Physical Assets (as defined in Handbook 4350-1 Rev-1) ("TPA") shall constitute approval of the transfer by the Lender and the Borrower shall deliver to the Lender, at the same time as its delivery to HUD, any application for HUD's approval of a proposed transfer. Also, the Borrower shall require the transferee to expressly assume the Borrower's obligations under the Lender Documents; provided, however, HUD shall not be required to enforce the requirements of this sentence and if Borrower and any transferee fail to include such assumption in transfer documents, such failure shall not affect the validity of the transfer. The Lender shall have the right to specifically enforce the requirement that any transferee assume the Borrower's obligations under the Lender Documents. In the absence of such written assumption, no transfer shall be deemed to relieve the transferor from any obligations under the Lender Documents.

8. Default under Lender Documents. The Lender shall not declare a default under the Lender Documents unless it has received the prior written approval of HUD, and the Lender's right to accelerate the Lender Note during the term of the HUD Documents shall be enforceable only with the prior written approval of HUD.

9. Receiver. The Lender, for itself, its successors and assigns further covenants and agrees that in the event of the appointment of a receiver in any action by the Lender, its successors or assigns, to foreclose the Lender Deed of Trust, no rents, revenue or other income of the Development collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal, or any other charges due and payable under the Lender Deed of Trust, except from Residual Receipts, if any, as the term is defined in the HUD Regulatory Agreement. The appointment of a receiver shall require approval by the Secretary of HUD, and pursuant to HUD regulations, as long as the Lender is the beneficiary under the Lender Deed of Trust, the Lender cannot be mortgagee-in-possession. In the event of the appointment, by any court, of any person, other than HUD or the Lender, as a receiver or a mortgagee or party in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the Lender Documents, with or without court action, no rents, revenue or other income of the Development collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Lender Documents, except from Residual Receipts in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Development in accordance with all provisions of the HUD Documents.

10. Amendment. No amendment to the Lender Documents made after the date of this Rider shall have any force or effect until and unless such amendment is approved in writing by HUD.