



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

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**Special Attention of:**

All Homeownership Center Directors  
All Real Estate Owned Division Directors  
All Process & Underwriting Directors  
All Quality Assurance Directors  
All Real Estate Owned Branch Chiefs  
All Management and Marketing Contractors

**Notice: H 2005 - 13**

Issued: June 10, 2005  
Expires: June 30, 2006

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Cross References:

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**Subject: Purchase Money Mortgages (PMMs) - Processing, Underwriting, Closing, Servicing and Subordination**

A Purchase Money Mortgage (PMM) is a financing option that may be offered by the Department to qualified affordable homeownership providers to facilitate the purchase of acquired single-family properties under the provisions of 24 CFR part 291 and Housing Notices. Utilizing PMM financing, HUD-approved participants may acquire HUD-owned single-family properties across the country. This financing option facilitates the purchase, rehabilitation and ultimate resale of a property and assists in stabilizing distressed neighborhoods by promoting homeownership for families that earn less than 115 percent of the area median income in a given locale.

PMM financing is limited to HUD approved nonprofit organizations and governmental entities, including public housing authorities, and approved Asset Control Area (ACA) program participants. The funding authority for PMMs is limited. Prior to the approval of any PMM, the Real Estate Owned (REO) Director of the jurisdictional Homeownership Center (HOC) must receive written authorization from Housing's Office of Budget and Field Resources indicating that sufficient funds are available for the PMM amount being requested. This authorization is to be placed in the property file maintained by the Management and Marketing (M&M) Contractor.

Procedures for processing, underwriting, closing and servicing PMMs are outlined below:

**Terms of PMM Financing**

The mortgage term for PMM loans granted to non-ACA program participants shall not exceed five years with a principal and interest payment due monthly. The mortgage term for PMM loans granted to ACA program participants must not exceed 180 days with the entire principal balance due at the end of the term of mortgage. At no time shall the total mortgage amount exceed the purchase price of any property secured by a PMM.

Interest rates for the non-ACA participant shall be 1.5 basis points above the reported

Federal Reserve Selected Interest Rate for the five year constant maturity Treasury Bill as posted in the Federal Reserve Bulletin the week prior to the date of the loan application.<sup>1</sup> The average interest rate for the prior week shall be the appropriate rate. The loan will be amortized over five years.

PMMs for ACA program participants are interest-free until the 89<sup>th</sup> day following the closing date. Interest shall accrue at 1.5 basis points above the reported Federal Reserve Selected Interest Rate for the five year constant maturity Treasury Bill as posted in the Federal Reserve Bulletin the week prior to the date of the loan application<sup>1</sup> commencing on the 90<sup>th</sup> day until the term of the mortgage expires. The average interest rate for the prior week shall be the appropriate rate.

### **Documents to Be Presented with Application for Financing**

Following acceptance of a sales offer, non-ACA program participants are required to submit the Sales Contract (form HUD-9548) and the application for a PMM (Fannie Mae form 1003, Uniform Residential Loan Application) to the appropriate M&M contractor for execution. ACA participants are required to submit a copy of the ACA agreement along with the application for PMM to the M&M contractor. Additionally, any entity applying for a PMM will be required to submit a certification, as identified below, that they will comply with the Department's affirmative marketing requirements and goals to increase minority homeownership. Supporting documents to be included with the application are described below:

- Participants with tax-exempt status, with the exception of ACA program participants, must submit documentation which supports the exemption from paying taxes on real estate in the county where the property to be purchased is located. Failure to provide said documentation shall result in the requirement that funds be escrowed at closing in an amount sufficient to pay taxes owed to appropriate state, county, and city tax authorities. Documentation shall become a part of the property file.
- Nonprofit organizations that expended the threshold amount as prescribed under Single Audit Act (SAA), currently established at \$500,000 (pursuant to OMB Circular A-133) or more in federal awards in the most recent fiscal year must attach the following documents to the Sales Contract and PMM application: (1) a financial audit for the entity's most current fiscal year by an Independent Public Accountant certifying that the participant maintains control over federal awards; complies with applicable laws, regulations and contract grant provisions, and prepares appropriate financial statements; and (2) a Letter of Approval/Recertification from HUD's Program Support Division in the jurisdictional HOC.
- Nonprofit organizations that expended less than the threshold amount as prescribed under Single Audit Act (SAA) currently established at \$500,000 (pursuant to OMB Circular A-133) in federal awards in the most recent fiscal year must attach the following documents to the Sales Contract and PMM application: (1) the most recent complete year-end financial statement, prepared in accordance with generally accepted accounting principles (GAAP) and reporting practices, including any supplemental schedules and an itemized statement of the organization's cash flow which provides evidence of financial capacity, stability, and proper cash management according to Mortgage Letter 2002-01, or subsequent directives; and (2) a Letter of

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<sup>1</sup> Federal Reserve Statistical Release H.15, as posted on the Federal Reserve webpage at [www.federalreserve.gov/releases](http://www.federalreserve.gov/releases) or subsequent guidance resource as designated by HUD's FHA Commissioner.  
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- Approval/Recertification from HUD's Program Support Division in the jurisdictional HOC.
- All non-ACA program participants must attach the following documentation (unless previously provided) to the Sales Contract and PMM application: (1) evidence from its legal counsel that it has the legal authority and capacity to become the mortgagor and that the entity is not in bankruptcy; and (2) a statement that there is no legal prohibition that would prevent HUD from obtaining a deficiency judgment (if permitted by state law for other types of mortgages) in the event of foreclosure.
  - ACA program participants shall provide any additional documents necessary as part of HUD's ACA Program requirements.
  - All participants must submit a self certification indicating they will abide by the Fair Housing Act, Section 808 (e)(5), which requires the Department to administer its housing and urban development programs in a manner to affirmatively further fair housing. The Affirmative Fair Housing Marketing (AFHM) regulations (24 CFR Part 200, Subpart M) are designed to promote fair housing marketing of units insured by HUD. All sponsors/developers of projects involving the development or rehabilitation of five or more units are required to submit an affirmative fair housing marketing plan (AFHMP). The AFHMP requires the housing provider to advertise the housing developments or projects to a broad cross-section of the eligible population, regardless of race, color, religion, sex, national origin, familial status, or disability. A sample self-certification is attached as Exhibit 4.

### **Processing and Underwriting**

For non-ACA program participants, the M&M contractor shall send a copy of the Sales Contract and the application for PMM financing to their Government Technical Representative (GTR) of the jurisdictional HOC within five business days of the execution of the sales contract. The GTR will ensure the application package is logged in by property address and original Federal Housing Administration (FHA) case number and forwarded to the HOC's Processing and Underwriting (P&U) Division for credit analysis. The P&U Division shall underwrite the application in accordance with the processing and underwriting requirements of Mortgagee Letters 01-30, 02-01, and any subsequent directives. The P&U Division shall prepare and send form HUD-92900-PUR (Mortgage Credit Analysis Worksheet for Purchase Money Mortgages) to the GTR indicating approval or rejection of the application. The P&U Division shall complete the underwriting process within seven business days of receipt of an application. The extension fee requirement will be waived in the event the underwriting process is delayed through no fault of the participant.

Following receipt of the underwriting decision for non-ACA program participants, the GTR will notify the M&M contractor. If the application is approved, the GTR will send form HUD-92900-PUR to the M&M contractor. This form provides the principal, interest, loan amount, and interest rate for the PMM. The M&M contractor shall issue a letter of approval or rejection of PMM financing to the purchaser within five business days of receiving notification of the underwriting decision. If the PMM is approved, the M&M contractor shall forward the executed sales contract and the form HUD-92900-PUR to the appropriate HUD closing agent for sales closing. If the non-ACA program participants cannot complete the purchase with PMM financing and cannot obtain alternate financing, HUD will accept the next sales offer that results in the highest net offer to HUD for sale or, at its option, the property may be placed back on the market for sale. In the event the non-ACA program participant is unable to secure PMM financing and cannot complete the purchase, all earnest money deposit will be returned to the

purchaser.

For ACA program participants, the M&M contractor shall send a copy of the ACA agreement and the application for PMM financing to their GTR of the jurisdictional HOC within five business days. The GTR will ensure the application package is logged in by property address and original Federal Housing Administration (FHA) case number and forwarded to the HOC's Processing and Underwriting (P&U) Division for credit analysis. The P&U Division shall underwrite the application in accordance with the processing and underwriting requirements of Mortgagee Letters 01-30, 02-01, and any subsequent directives. The P&U Division shall prepare and send form HUD-92900-PUR (Mortgage Credit Analysis Worksheet for Purchase Money Mortgages) to the GTR indicating approval or rejection of the application. The P&U Division shall complete the underwriting process within seven business days of receipt of an application.

Following receipt of the underwriting decision for ACA program participants, the GTR will notify the M&M contractor. If the application is approved, the GTR will send form HUD-92900-PUR to the M&M contractor. This form provides the principal, interest, loan amount, and interest rate for the PMM. The M&M contractor shall issue a letter of approval or rejection of PMM financing to the ACA program participant within five business days of receiving notification of the underwriting decision. If the PMM is approved, the M&M contractor shall forward the executed sales contract and the form HUD-92900-PUR to the appropriate HUD closing agent for sales closing.

### **PMM Closing**

HUD's contract closing agent will be responsible for the closing of properties sold with PMMs. HUD will not pay a broker's sales commission on direct sales to nonprofit organizations and government agencies obtaining a PMM. All closing costs, with the exception of transfer charges HUD is legally obligated to pay, and prepaid items are the responsibility of the purchaser.

HUD's closing agent shall prepare a special warranty deed, in addition to preparing the PMM and note. The Mortgage and Note forms attached to this Notice are models. Each HOC should consult with counsel to determine the changes necessary to conform to state law.

Prior to closing, non-ACA program participants must present verification of any property and/or local municipal tax exemptions. If the purchaser is liable for taxes, the name and addresses for all taxing authorities and due dates for tax payments must be presented at closing. An escrow account consisting of three months prepaid property taxes will be established. For ACA program participants, no escrow account shall be established. The ACA program participant is required to pay the taxes directly to the appropriate taxing authority.

HUD does not escrow for the payment of hazard insurance premiums. At sales closing, the purchaser must present an insurance binder in the amount of the sales price of the property [excluding the discount amount]. Unless an exception has been approved in writing, the insurance policies and any renewals shall be held by HUD and shall include loss payable clauses in favor of, and in a form acceptable to, HUD. The closing agent may not close the transaction without proper evidence of hazard insurance. Annually, on the anniversary date of the hazard insurance policy, the

purchaser will be required to provide evidence of hazard insurance to HUD's servicing agent.<sup>2</sup>

If a building or mobile home on a HUD-owned property is located in a special flood hazard area and eventually sold with a discounted sales price, FHA-insured mortgage, PMM, cash rebate, buy down, closing cost assistance or other HUD assistance, the M&M contractor shall notify the closing agent that flood insurance is required. Where flood insurance is required and the sale is made with a PMM, the M&M contractor shall instruct the closing agent to obtain from the purchaser written acknowledgement of receipt of the flood notice required by 42 USC 4104a(a)(3).

Where HUD requires an escrow for taxes or other charges in connection with a particular PMM to a non-ACA program participant for a property with improvements<sup>3</sup> that are located in a Special Flood Hazard Area, HUD will establish an escrow account for the payment of flood insurance premiums in accordance with Section 102(d)(2) of the Flood Disaster Protection Act of 1973.

The closing agent shall be responsible for recording the deed of trust/mortgage, and related riders, if any, as well as paying HUD's pro rata share of real estate taxes due. The closing agent must record the documents in the following order: (1) Deed; (2) PMM Deed of Trust/Mortgage; (3) construction financing document; (4) the ACA Purchaser Compliance Mortgage, if an ACA Program participant; and (5) any other mortgage and/or liens. The Mortgage and the Deed should contain instructions that, following recordation, the Deed shall be returned to the purchaser and the Mortgage shall be sent to HUD's servicing agent. The closing agent shall send **all** other original documents of the sales transaction, including the Note, and the escrow check, if applicable, to the M&M contractor in accordance with its contract requirements.

The escrow funds and closing package shall be sent by the M&M contractor to HUD's Servicing Agent, First Madison Services, Incorporated, at 4111 South Darlington, Suite 300, Tulsa, Oklahoma 74135. To identify the escrow funds, the M&M contractor shall ensure that the entity's legal name, the FHA case number and the property address are printed on the front of the check.

### **PMM Servicing**

PMM loans will be serviced according to the terms and agreements set forth in the executed mortgage and note, which may include, but are not limited to, those described below:

- For non-ACA program participants, billing statements will be prepared and sent by HUD's servicing agent based on information in the deed of trust/mortgage note.
- The billing statement will reflect the monthly principal, interest, real estate tax escrow and other amounts (delinquent interest, advances, etc.).
- Interest is not collected at closing and must be included in the first billing statement.
- The first payment will be due no later than 45 days from sales closing and must be scheduled for the first day of the month. If two first days of the month exist within the 45 days, the first payment will be due on the second first day of the month.
- In the event the borrower fails to pay in full any monthly payment, HUD may require immediate payment of the remaining principal balance and all accrued interest.
- For ACA program participants, the billing statement will be prepared and sent by

<sup>2</sup> First Madison Services, Incorporation or its successor.

<sup>3</sup> In reference to improvements, flood insurance is available only to eligible buildings and appurtenant structures.

- HUD's servicing agent based on information in the deed of trust/mortgage note. The payment will be due on the 180<sup>th</sup> day after the date of the note.
- In the event the ACA program participant fails to make payment in full within 180 days after the note date, at the HOC's discretion, unless regulatory standards for compromise, suspension, or termination have been met, the HOC can initiate collection actions that may include foreclosure.
  - HUD's servicing agent will notify the Program Support Division and the appropriate HOC Director or his/her designee by e-mail of each PMM loan delinquency. The Program Support Division monitors nonprofit compliance with program requirements. Failure to comply with program requirements, which includes PMM default issues, can lead to sanction and loss of the right to purchase HUD properties at a discount either with or without PMM financing. For the purpose of the ACA program, the HOC is tasked with monitoring both nonprofit organizations and governmental agencies compliance. Those failing to perform are also subject to sanctions and removal from the ACA program as well as other REO programs.
  - HUD may allow the subordination of a PMM to a first deed of trust/mortgage where funds are needed to rehabilitate a property (see Exhibit 3). The closing agent must record the documents in the following order: (1) Deed; (2) construction financing document; (3) PMM Deed of Trust/Mortgage; (4) the ACA Purchaser Compliance Mortgage, if an ACA Program participant; and (5) any other mortgage and/or liens. In such instances, the following shall occur.
    - Fund proceeds shall be disbursed for the sole purpose of rehabilitation of the property.
    - Request for subordination must be made to HUD's servicing agent. The combined indebtedness of the new trust/mortgage and the PMM cannot exceed the value of the property on the date that the new mortgage is executed as evidenced by an existing (as is) FHA appraisal or a new appraisal paid for by the borrower. Existing HUD appraisals are valid for 180 days and acceptance is strictly at borrower's discretion. The HUD appraisal must fully conform with the requirements and processing procedures prescribed in Mortgagee Letter 99-18 and the Appraisal Handbook 4150.2. New appraisal requests by the lender will be the sole responsibility of the borrower.
    - Borrowers shall be responsible for making payments under both the new first mortgage and the PMM.
    - Borrowers or their agent shall prepare the subordination agreement and submit a request to subordinate to HUD's servicing agent for processing.
    - Borrowers shall be responsible for the costs associated with the preparation and recordation of these documents.
  - Where improvements on the property are located in a special flood hazard area, HUD's servicing agent will monitor to ensure that the property is covered by flood insurance in the amount required by the Flood Disaster Protection Act of 1973. If HUD's servicing agent determines at any time during the term of the PMM that the building or mobile home and any personal property securing the PMM are not covered by flood insurance or are covered by flood insurance in amount less than the amount required, then HUD's servicing agent shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required, for the remaining term of the PMM. If the borrower fails to obtain flood insurance

within 45 days after notification, then HUD's servicing agent shall purchase insurance on the borrower's behalf. HUD's servicing agent may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

Upon receipt of the closing packages, HUD's servicing agent shall establish the PMM accounts in Strategy (i.e., HUD's system of record) or a subsequent tracking system designated by HUD. The servicing data shall include, but not be limited to, information obtained from the settlement documents (e.g., Note, Mortgage, Deed of Trust, Settlement Statement). At a minimum, by the fifth business day of each month, in order to insure receipt of all closing packages, HUD's servicing agent shall pull a listing of all PMM closings from the Single Family Acquired Asset Management System (SAMS). The Government Technical Representative/Government Technical Monitor for the M&M contractor and the appropriate REO Director shall be notified in writing of any discrepancies or omissions found.

The original recorded legal documents and Note shall be maintained in HUD's official servicing case file, which shall be HUD's official servicing case file. HUD's servicing agent shall notify the appropriate REO Director and the Program Support staff, via email, of all PMM payoffs providing, at a minimum, the property address, FHA case number, date of closing and amount collected.

### **Protection and Handling the PMM Promissory Note**

Following recordation, the original Deed shall be sent to the purchaser and the mortgage should be sent to HUD's servicing agent. The servicing agent shall protect the Note and the PMM in accordance with HUD Handbook 1911.1, REV. 4, Handling and Protecting Cash and Other Negotiable Instruments.

### **Notices Regarding Flood Insurance**

When HUD sells a property financed by a PMM, flood insurance is required for improvements located in a special flood hazard area. Therefore, prior to offering for sale such properties, the M&M contractor shall include in the Property Condition Report a notice with the following information:

- (1) a warning, in a form approved by the Director of the Federal Emergency Management Agency, that the HUD-owned single family property is located in a special flood hazard area;
- (2) a description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));
- (3) a statement, where applicable, that flood insurance coverage is available under the National Flood Insurance Program and may also be available from private insurers;
- (4) a statement whether federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a federally-declared disaster.

If you have any questions regarding this Notice, please contact Wanda Sampedro, Director of the Asset Management and Disposition Division, at (202) 708-1672.

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Assistant Secretary for Housing-  
Federal Housing Commissioner

Attachments



## EXHIBIT 1

## NON-ACA MODEL MORTGAGE FORM

\_\_\_\_\_  
State of

## M O R T G A G E

THIS MORTGAGE ("Security Instrument") is given on \_\_\_\_\_, 20 . The Mortgagor is \_\_\_\_\_, whose address is \_\_\_\_\_ ("Borrower"). This Security Instrument is given to the Secretary of Housing and Urban Development of \_\_\_\_\_ and whose address is: \_\_\_\_\_ ("Lender"). Borrower owes Lender the principal sum of Dollars (U.S. \$ \_\_\_\_\_). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on \_\_\_\_\_.

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 6 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, the following described property located in \_\_\_\_\_ County: \_\_\_\_\_ which has the address of \_\_\_\_\_ Street, City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_, ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances or record.

### UNIFORM COVENANTS. (Optional Heading)

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.
2. **Monthly Payment of Taxes and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, an installment of any (a) taxes and special assessments levied or to be levied against the Property and (b) leasehold payments or ground rents on the Property.

Each monthly installment for items (a) and (b) shall equal one-twelfth of the annual amounts, as reasonably estimated by Lender, plus an amount sufficient to maintain an additional balance of not more than one-sixth of the estimated amounts. Lender shall accumulate the full annual amount for each item within a period ending one month before an item would become delinquent. Lender shall hold the amounts collected in trust-to-pay items (a) and (b) before they become delinquent.

If at any time the total of the payments held by Lender for items (a) and (b), together with the future monthly payments for such items payable to Lender prior to the due dates of such items, exceeds by more than one-sixth the estimated amount of payments required to pay such items when due, and if payments on the Note are current, then Lender shall either refund the excess over one-sixth of the estimated payments or credit the excess over one-sixth of the estimated payments to subsequent payments by Borrower, at the option of Borrower. If the total of the payments made by Borrower for item (a) and (b) is insufficient to pay the item when due, then Borrower, shall pay to Lender any amount necessary to make up the deficiency on or before the date the item becomes due.

As used in this Security Instrument, "Secretary" and "Lender" means the Secretary of Housing and Urban Development or his or her designee.

If Borrower tenders to Lender the full payment of all sums secured by this Security Instrument, Borrower's account shall be credited with the balance remaining for all installments for items (a) and (b) and Lenders shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a) and (b).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to interest on advances for taxes, special assessments, leasehold payments or ground rents, and flood insurance premiums as required; Second, to late charges due under the Note; Third, to NSF fees; Fourth, to tax escrow and advances; Fifth, to mortgage interest; and Sixth, to amortization of the principal of the Note.

4. **Flood Insurance.** Borrower shall insure the original structure and all improvements on the Property, whether now in existence or subsequently erected, against loss by flood if the

Property is subject to the Flood Disaster Protection Act of 1973 and National Flood Insurance Act (42 USC 4001 et seq.) and all Amendments. This insurance shall be maintained in the amounts and for the periods that Lender requires. All insurance shall be carried with companies approved by the Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this security Instrument, first to any delinquent amounts applied in the order in Paragraph 3, and then to repayment of principal, or (b) to the restoration or repair of the damaged property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments that are referred to in Paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

**5. Preservation, Maintenance and Protection of the Property; Borrower's Loan**

**Application; Leaseholds.** Borrower shall not commit waste or destroy, damage or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if, Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

**6. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity that is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments. If Borrower fails to make these payments or the payments required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of

Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

**7. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in Paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in Paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note shall be paid to the entity legally entitled thereto.

**8. Fees.** Lender may collect reasonable fees and charges.

**9. Grounds for Acceleration of Debt.**

(a) Default. Lender may require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of 30 days, to perform any other obligations contained in this Security Instrument.

(b) Sale. Lender shall require immediate payment in full of all sum secured by this Security Instrument if:

All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent) by the Borrower.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

**10. Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's amount current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit

reinstatement if: (i) lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

- 11. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
- 12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent.
- 13. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.
- 14. Governing Law; Severability.** Federal law and the law of the jurisdiction in which the Property is located shall govern this Security Instrument. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.
- 15. Borrower's Copy.** Borrower shall be given one conformed copy of this Security Instrument.
- 16. Foreclosure Procedure.** For illustration only - needs state adaptation. If Lender requires immediate payment in full under Paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to,

reasonable attorney's fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give notice of sale to Borrower in the manner provided in Paragraph 13. Lender shall publish and post the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

Add any state-specific provisions in accordance with HUD requirements. At the Lender's option, the provisions may be designated as NON-UNIFORM COVENANTS.

Number as final paragraph or leave unnumbered but place after numbered paragraphs. Riders to this Security Instrument: If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were in a part of this Security Instrument. Check applicable box(s).

- Condominium Rider
- Planned Unit

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ Space Below This Line for Acknowledgement \_\_\_\_\_

**EXHIBIT 2****NON-ACA MODEL NOTE FORM**

State of

NOTE

\_\_\_\_\_, 20

Property Address

## 1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means the Secretary of Housing and Urban Development and its successors and assigns.

In return for a loan received from Lender, Borrower promises to pay the principal sum of Dollars (U.S. \$ \_\_\_\_\_), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of ( \_\_\_\_\_ percent) per year until the full amount of principal has been paid.

## 2. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses that might result if Borrower defaults under this Note.

## 3. MANNER OF PAYMENT

## (a) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on \_\_\_\_\_, 20\_\_\_. Any principal and interest remaining on the first day of \_\_\_\_\_, 20\_\_\_ [insert date that is 5 years after the date that the Borrower begins making payments] will be due on that date, which is called the maturity date.

## (b) Place

Payment shall be made payable to "HUD" and transmitted to the HUD National Servicing Center's (NSC) Secretary-held servicing contractor, or to such place as Lender may designate in writing by notice to Borrower.

## (c) Amount

Each monthly payment of principal and interest will be in the amount of \$\_\_\_\_\_. This

amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(d) Allonge to this note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. Check applicable box.

4. BORROWER'S RIGHT TO REPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month.

5. BORROWER'S FAILURE TO PAY

(a) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 3(c) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of percent ( %) of the overdue amount of each payment.

(b) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default.

(c) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney's fees for enforcing this Note. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

6. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to



Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 3(b) or at a different address if Borrower is given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Anyone who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

**EXHIBIT 3****SUBORDINATION OF PMM NOTES**

Instructions for the completion of an agreement to subordinate a purchase money mortgage or deed of trust held by HUD to a mortgage or deed of trust where the proceeds are used for rehabilitation.

1. Use of the subordination agreements - The mortgagee can use the appropriate sample agreement for a purchase money mortgage or deed of trust that is subordinated to a mortgage or deed of trust where the proceeds are used for rehabilitation.
2. Exhibits to be used:
  - EXHIBIT 2-A, Mortgage subordination agreement to be used in a purchase money mortgage.
  - EXHIBIT 2-B, Deed of trust subordination agreement to be used in a purchase money deed of trust.
3. Conformity to state and local laws - these exhibits must conform with state and local laws.

Required information for the mortgage subordination agreement document where the proceeds are used for rehabilitation, are as follows:

1	Old FHA Case Number
2 THRU 4	Current day, month and year - execution date of the agreement
5	Name of the mortgagors
6	Name of the mortgagee of the rehabilitation mortgage
7	Execution date of the purchase money mortgage
8 AND 9	Liber and folio
10 AND 11	County and State in which the mortgage is recorded
12	Amount of the purchase money mortgage
13	Rehabilitation mortgage amount
14	Legal description
15 THRU 17	Witnesses
18 THRU 20	First party (mortgagors), second party (HUD) and third party (mortgagee)

**NOTE: SUBORDINATION AGREEMENTS RESPECTIVE TO THESE TRANSACTIONS MUST BE EXECUTED BY THE AUTHORIZED OFFICIAL AT THE NATIONAL SERVICING CENTER (NSC)**

**EXHIBIT 3A**

**SAMPLE SUBORDINATION AGREEMENT**  
(Mortgage)

OLD FHA Case No.: #1

This Agreement made the #2 day of #3, 20#4 among #5 (Owner), party of the first part (hereinafter called First Party) and Secretary of the Department of Housing and Urban Development, party of the second part (hereinafter called Second Party) and #6, party of the third part (hereinafter called Third Party).

WHEREAS, First Party executed a mortgage dated #7 and recorded in Liber #8, Folio #9 of the Land Records of #10 County, State of #11 made payable to the Second Party in the principal sum of \$ #12; and

WHEREAS, Third Party has agreed to make a loan of \$ #13 to be secured by a mortgage covering #14 description; provided the Second Party will agree that the lien of said mortgage shall be prior and superior to any right, title, interest, claim or lien which the Second Party may have in or to said premises;

NOW, Therefore, in consideration of the premises and the promises of the parties contained herein, each to the other, the benefits to be derived, the parties hereby covenant and agree as follows:

The Second Party covenants and agrees with said Third Party that said mortgage securing a loan to First Party shall be a first lien upon said property, superior to any rights, title, interest, claim or lien which Second Party may have in or upon said premises.

In Witness Whereof, the said First Party, Second Party and Third Party have duly executed this Agreement the day and year first above written.

\_\_\_\_ #15 \_\_\_\_\_ #18 \_\_\_\_\_  
Witness First Party

\_\_\_\_ #16 \_\_\_\_\_ #19 \_\_\_\_\_  
Witness Second Party

\_\_\_\_ #17 \_\_\_\_\_ #20 \_\_\_\_\_  
Witness Third Party

(Acknowledgments required by State law)

**EXHIBIT 3B**

Deed of trust subordination agreement to be used with a deed of trust where proceeds are used for rehabilitation.

1	Old FHA Case Number
2 THRU 4	Current day, month and year - execution date of the agreement
5	Name of the mortgagors
6	Name of the mortgagee of the rehabilitation deed of trust
7 AND 8	Execution date and recordation date of the purchase money deed of trust
9 AND 10	Liber and folio
11 AND 12	County and State in which the purchase money deed of trust is recorded
13	Amount of the purchase money deed of trust
14	Amount of the rehabilitation deed of trust
15 AND 16	Execution date of the rehabilitation deed of trust
17	Legal description
18	Execution date of the rehabilitation deed of trust
19 THRU 21	Witnesses
22 THRU 24	Grantors (Mortgagors), Beneficiary (HUD) and Lender (Mortgagee)

NOTE: MORTGAGE SUBORDINATION AGREEMENTS RESPECTIVE TO THESE TRANSACTIONS MUST BE EXECUTED BY THE AUTHORIZED OFFICIAL AT THE NATIONAL SERVICING CENTER (NSC).

**SAMPLE SUBORDINATION AGREEMENT  
(Deed of Trust)**

OLD PMM FHA Case No.: #1

This Agreement made this #2 day of #3, 20 #4 by and among, #5, owner of the real property described in this Agreement, hereinafter referred to as "Grantor", Secretary of Housing and Urban Development, present owner of the Note secured by the deed of trust first described in this Agreement, hereinafter referred to as "Beneficiary," and #6, beneficiary named in the deed of trust secondarily described in the Agreement, hereinafter referred to as "Lender."

WHEREAS, Grantor is a party to a Deed of Trust dated #7 and recorded #8 in Liber #9 folio #10 of the Land Records of #11 County, State of #12 to secure a Note made payable to the Beneficiary in the principal sum of \$ #13, (hereinafter called the Purchase Money Deed of Trust) and,

WHEREAS, Grantor has executed, or is about to execute, a Deed of Trust to be recorded concurrently with this Agreement to secure a Note for the sum of \$ #14 dated #15, 20 #16, in favor of the Lender, which conveys in trust real property described as follows:

#17  
description

and,

WHEREAS, it is the intention and understanding of all parties to this Agreement that the lien or charge of the Deed of Trust last above mentioned, and of any renewals, replacements, modifications or extensions of that Deed of Trust, shall be and remain at all times, prior and superior to any rights, title, interest, claim, or lien which the Beneficiary may have in or upon said premises as set forth in the Purchase Money Deed of Trust first above mentioned.

Now, Therefore, in consideration of the premises, the promises of the parties contained herein, each to the other, the benefits to be derived, the parties hereby covenant and agree as follows:

The said Beneficiary covenants and agrees with said Lender that said Deed of Trust dated #18 to secure a loan made by Lender to Grantor shall be and remains at all times a lien or charge upon said property, superior to any rights, title, interest, claim or lien which Beneficiary may have in or upon said premises.

In Witness Whereof, the said Grantor, Beneficiary, and Lender have duly executed this Agreement the day and year first above written.

\_\_\_\_\_ #19 \_\_\_\_\_ #22  
 Witness Grantor

\_\_\_\_\_ #20 \_\_\_\_\_ #23  
 Witness Beneficiary

\_\_\_\_\_ #21 \_\_\_\_\_ #24  
 Witness Lender

(Acknowledgments required by State law)  
 Purchase Money Note & Mortgage

State of \_\_\_\_\_

**SAMPLE NOTE FOR ACA PARTICIPANTS**

Date:

Property Address:

**1. PARTIES**

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means the Secretary of Housing and Urban Development and its successors and assigns.

**2. BORROWER'S PROMISE TO PAY; INTEREST**

In return for a loan received from Lender, Borrower promises to pay the principal sum of \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from **[insert date that is 90 days after the date of the note]**, at the rate of [ 1.5 basis points above the reported Federal Reserve Selected Interest Rate for the five year constant maturity Treasury Bill as posted in the Federal Reserve Bulletin the week prior to the date of the loan application<sup>3</sup>.] until the full amount of principal has been paid.

**3. PROMISE TO PAY SECURED**

Borrower's promise to pay is secured by a mortgage, deed of trust, or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses that might result if Borrower defaults under this Note.

**4. MANNER OF PAYMENT****(A) Time**

Borrower shall pay the principal plus interest on or before **[insert date that is 180 days after the date of the note.]**, which is called the maturity date.

**(B) Place**

Payment shall be made at **[insert address]** or at such place as Lender may designate in writing by notice to Borrower.

**5. BORROWER'S RIGHT TO REPAY**

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty.

**6. DEFAULT**

#### (A) Default

If Borrower defaults by failing to perform any obligations contained in the Security Instrument, then Lender may, in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payment, Lender does not waive its rights with respect to subsequent events.

#### (B) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney's fees for enforcing this Note. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

### 7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

### 8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 5(B) or at a different address if Borrower is given a notice of that different address.

### 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.



BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

FHA Case No.

\_\_\_\_\_ Space Above This Line for Recording Data \_\_\_\_\_

### MORTGAGE FOR ACA PARTICIPANTS

THE MORTGAGE ("Security Instrument") is given on \_\_\_\_\_, 19\_\_\_\_.  
 The Mortgagor is \_\_\_\_\_ whose  
 address is \_\_\_\_\_ ("Borrower").  
 This Security Instrument is given to \_\_\_\_\_,  
 which is organized and existing under the laws of \_\_\_\_\_,  
 and whose address is \_\_\_\_\_ ("Lender"). Borrower  
 owes Lender the principal sum of \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_). This  
 debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"),  
 which provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
 \_\_\_\_\_. This Security Instrument secures to Lender:  
 (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and  
 modifications of the Note; (b) the payment of all other sums, with interest, advanced under  
 Paragraph 6 to protect the security of this Security Instrument; and (c) the performance of  
 Borrower's covenants and agreements under this Security Instrument and the Note. For this  
 purpose, Borrower does hereby mortgage, warrant, grant and convey to the Lender, with power of  
 sale the following described property located in \_\_\_\_\_  
 County, [State]:

which has the address of \_\_\_\_\_ [Street] \_\_\_\_\_  
 [City], \_\_\_\_\_ [State] \_\_\_\_\_ [Zip Code],  
 ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all  
 easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements  
 and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in  
 this Security Instrument as the "Property."

BORROWER COVENANTS that borrower is lawfully seized of the estate hereby  
 conveyed and has the right to mortgage, grant and convey the Property and that the Property is  
 unencumbered, except for encumbrances of record. Borrower warrants and will defend generally  
 the title to the Property against all claims and demands, subject to any encumbrances or record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-  
 uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument  
 covering real property.

Borrower and Lender covenant agree as follows:

#### UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal  
 of, and interest on, the debt evidenced by the Note.

{D0204239.DOC / 1}

2. Taxes, Insurance, and Other Charges. Borrower shall promptly pay (a) taxes and special assessments levied or to be levied against the Property, and (b) leasehold payments or ground rents on the Property.

3. Flood Insurance. If any improvement on the Property is located within a special flood hazard area, Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by law. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the Maturity Date of the Note. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that distinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

4. Preservation, Maintenance and Protection of the Property; Leaseholds. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned property. Borrower shall also be in default if borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note. If this Security Instrument is on leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

5. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the Indebtedness under the Note and this Security Instrument. Any application of the proceeds to the principal shall not extend or postpone the Maturity Date of the Note. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

6. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity that is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request

Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear Interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument, unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien that may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

#### 7. Grounds for Acceleration of Debt.

(a) Default. Lender may require immediate payment in full of all sums secured by this Security Instrument if Borrower defaults by failing, for a period of thirty days, to perform any obligations contained in this Security Instrument.

(b) Sale. Without Credit Approval. Lender shall require immediate payment in full of all sums secured by this Security Instrument if all or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

8. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if (i) reinstatement will preclude foreclosure on different grounds in the future, or (ii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

9. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time of payment of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower. Borrowers covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent.

11. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

12. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

13. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

14. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any Investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any

removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 14, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in the paragraph 14, "Environmental law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

16. Foreclosure Procedure. [For illustration only. Needs state adaptation as provided in attached instructions.] If Lender requires immediate payment in full under Paragraph 7, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 16, including, but not limited to, reasonable attorney's fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give notice of sale to Borrower in the manner provided in Paragraph 11. Lender shall publish and post the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 7, the Secretary may invoke the non-judicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 16 or applicable law.

[Number as final paragraph or leave unnumbered but place after numbered paragraphs].

Riders to this Security Instrument: If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

Condominium Rider  Planned Unit Development Rider  Other [Specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ [Space Below This Line for Acknowledgement] \_\_\_\_\_

**Self-Certification Statement**

I certify that I will comply with the following: (a) carry out an affirmative program to attract all minority and majority groups to the housing for initial sale or rental. Such a program shall typically involve publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex, handicap, familial status or national origin, through the type of media customarily utilized by the applicants; (b) Maintain a nondiscrimination hiring policy in recruiting from both minority and majority groups; (c) Instruct all employees and agents in writing and orally in the policy of nondiscrimination and fair housing; (d) Conspicuously display the Fair Housing Poster in all Sales Offices, include the Equal Housing Opportunity logo, slogan and statement in all printed material used in connection with sales, and post in a prominent position at the project site a sign which displays the Equal Opportunity logo, slogan or statement, as listed in 24 CFR 200.620 and appendix to subpart M to part 200. I understand that I am obliged to develop and maintain records on these activities, and to make them available to HUD upon request.

\_\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_\_ (SEAL)  
Borrower