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U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM
HOUSING FINANCE AND DEVELOPMENT AGENCIES
PART I OF THE

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION

MASTER SECTION 8 ACC NUMBER:	ACC LIST NUMBER AND DATE:	NEW CONSTRUCTION PROJECT NUMBER: OR SUBSTANTIAL REHABILITATION PROJECT NUMBER:
NY-1218	NY-80-770 9/29/80	NJ39-H085-099

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is made and entered into by and between the NEW JERSEY HOUSING FINANCE AGENCY ("HFA"), which is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. 1437, et seq. ("Act"), at section 1437a(6), and PILGRIM BAPTIST VILLAGE INC. ("Owner").

WHEREAS, the Owner proposes to complete a housing project consisting of improvements and laNd [if new construction, insert "improvements and land"; if substantial rehabilitation, insert "the substantial rehabilitation of certain property"], as described in the approved Proposal; and

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

WHEREAS, the HFA has entered into an Annual Contributions Contract dated ____________, 19___, with the United States of America acting through the Department of Housing and Urban Development ("Government") with respect to Project No. NJ39-H085-099 ("ACC"), under which the Government will provide financial assistance to the HFA pursuant to section 8 of the Act for the purpose of making housing assistance payments; and

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

NOW THEREFORE, the parties hereto agree as follows:

1.1 SIGNIFICANT DATES; CONTENTS OF AGREEMENT.

a. Time for Completion of Project. The time for completion of the project (see Section 1.2a) is 60 calendar days after the effective date of this Agreement.

b. Date for Commencement of Work. The date for commencement of work (see Section 1.2b) is the effective date of this Agreement.

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

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

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

Exhibit C: The Annual Contributions Contract;

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

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

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

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

1.2 SCHEDULE OF COMPLETION.

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

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

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

1.3 CONSTRUCTION OR REHABILITATION PERIOD.

a. Changes. The Owner shall submit for HFA approval any changes from Exhibit A which would materially reduce or alter his obligations or any changes which would alter the design or materially reduce the quality or amenities of the project. Approval of such changes may be conditioned on a reduction of Contract Rents. If such changes are made without prior approval by the HFA, the Owner may be required to reduce the Contract Rents or remedy the defects or deficiencies as a condition for acceptance of the project. Contract Rents may not be increased by reason of any changes or modifications except those required by changes in local codes or ordinances made subsequent to execution of the Agreement, and then only if Government approval is obtained prior to incorporation of any such changes in the project. If any changes under this paragraph are approved by the HFA, the HFA is required to submit to the Government, at such times as it deems appropriate but not later than the certification of completion described in Section 1.4, a statement specifying the changes approved and either (1) a certification by the HFA that such changes do not justify a reduction of Contract Rents, or (2) a statement of the amounts by which Contract Rents were reduced and a certification that such reduction is appropriate and adequate in light of the changes approved.

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b. Commencement of Marketing. The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days (or 60 days in the case of substantial rehabilitation) prior to the estimated completion date. The Owner shall notify the HFA of the date of commencement of marketing. The Owner shall also comply with all reporting requirements under the Affirmative Fair Housing Marketing Regulations. Not later than 30 days prior to the estimated completion date and periodically thereafter, the Owner shall notify the HFA of any units which he anticipates will be vacant on the effective date of the Contract. At the time the Contract is executed, the Owner shall submit a list of the dwelling units leased as of the effective date of the Contract and a list of the units not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased units pursuant to Section 1.7b of the Contract only if he has fully complied with the requirements of this paragraph and the provisions of that Section.

1.4 PROJECT COMPLETION.

a. Certifications Upon Completion. Upon completion of the project, the HFA shall submit to the Government the following certifications:

(1) A certification by the HFA that:

(i) The project has been completed in accordance with the requirements of the Agreement;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified);

(iv) There has been no change in evidence of management capability or in the proposed management program (if one was required) specified in the Proposal, other than changes approved in writing by the HFA in accordance with the Agreement;

(v) There has been compliance with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the HFA's knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner, the Government, or the HFA, the HFA's certification shall include a statement that the Owner has placed a sufficient amount in escrow, as determined by the Government, to assure such payments; and

(vi) The project has been constructed or rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(2) A certification by the Owner that:

(i) The project has been completed in accordance with the requirements of the Agreement;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified);

(iv) There has been no change in evidence of management capability or in the proposed management program (if one was required) specified in the Proposal, other than changes approved in writing by the HFA in accordance with the Agreement; and

(v) He has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and to the best of his knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner, the Government, or the HFA, the Owner's certification shall include a statement that he has placed a sufficient amount in escrow, as determined by the Government, to assure such payments.

(3) In the case of substantial rehabilitation projects, a certification by the Owner that the property has been treated and is in compliance with Government Lead Based Paint Regulations, 24 CFR, Part 35. If the property was constructed prior to 1950, the Owner shall provide a certification that each Family upon occupancy will receive the notice required by Government Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning and that records showing receipt of such notice by each tenant will be maintained for at least three years.

b. Additional Work to be Completed. If the HFA certification states that the project is complete except for ordinary punchlist items or incomplete work awaiting seasonal opportunity, the project may be accepted and the Contract executed subject to completion of such items within a reasonable time. When the Owner reports to the HFA that the remaining work has been completd, the HFA shall inspect the work, and if it finds that the work has been completed satisfactorily, it shall so certify to the Government. If the Government fails to receive such additional certification within a reasonable time from the acceptance of the project, the Government may, upon 30 days notice to the HFA and the Owner, cancel its approval of the Contract and require its termination or exercise its other rights under the Contract or the ACC.

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

1.5 HOUSING ASSISTANCE PAYMENTS CONTRACT.

a. Time of Execution. If the Government determines that the certifications of completion comply with the requirements of Section 1.4 of this Agreement, the Government shall authorize execution of the Contract. Upon receipt of this authorization, the Contract shall be executed first by the Owner and the HFA, and then approved by the Government.

b. Completion in Stages. If completion is in stages, pursuant to Section 1.4, the Contract shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Schedule A-1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed by the Owner and the HFA and approved by the Government, and Schedule A-2, A-3, etc., covering the additional units, shall become part of the Contract.

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

d. Contract Rents. The rents to the Owner, by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract except as provided in Section 1.3a, and except that if the project is permanently financed on or before the effective date of the Contract, the Contract Rents shall be subject to adjustment in accordance with paragraph e or f of this Section, as appropriate. (If permanent financing does not occur until after the effective date of the Contract, the adjustments contemplated by paragraph f will be made in accordance with the comparable provisions contained in the Contract.) (See RIDER attached which is incorporated and made a part of this Agreement)

e. Adjustments of Contract Rents to Reflect Actual Costs Where Only Permanent Financing is Utilized.

(1) In the event that only permanent financing is utilized for the project, the HFA shall, at the time the terms of said financing are agreed to by the lender, certify to the Government:

(i) The interest rate on said permanent financing, and

(ii) Any change in the amount of mortgage loan required for the project because of the difference between the interest rate payable on said permanent financing and the anticipated interest rate which would have been payable if interim financing had been utilized during the construction period for the project.

(2) The Contract Rents, the maximum Contract commitment and the Maximum ACC Commitment shall be adjusted to reflect the foregoing. In no event shall the maximum Contract commitment or the Maximum ACC Commitment be increased by more than the amount of the Financing Cost Contingency, as specified in Section 1.4(b) of the ACC. Any unused portion of the Financing Cost Contingency shall be reallocated to the then current set-aside of the HFA, if any.

f. Adjustments of Contract Rents to Reflect Actual Costs of Permanent Financing Where Interim and Permanent Financing are Utilized. This paragraph shall apply if interim financing is utilized for the project and the project is permanetly financed on or before the effective date of the Contract. At the time the terms of the permanent financing are agreed to by the lender, the HFA shall submit a certification to the Government as to the actual financing terms and the following provisions shall apply:

(1) If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. The Maximum ACC Commitment shall not be reduced except by the amount of the contingency, if any, which was included for possible increases under paragraph f(2) of this Section.

(2) If the actual debt service under the permanent financing is higher than the anticipated debt service on which the Contract Rents were based, and the HFA is using its set-aside for the project, the initial Contract Rents shall be increased commensurately, not to exceed the limitations in this paragraph f(2) and the amount of the Financing Cost Contingency, if the projected borrowing rate (net interest cost) was not less than the average net interest cost for the preceding quarter (at the time the projection was submitted to the Government) of the "20 Bond Index" published weekly in the Bond Buyer, plus 50 basis points. An adjustment under this paragraph f(2) shall not be more than is necessary to reflect an increase in debt service (based upon the original projected capital cost and the actual term of the permanent financing for the project) resulting from an increase in interest rate of not more than:

(i) One and one-half percent if the projected spread as submitted to the Government was three-fourths of one percent or less, or

(ii) One percent if such projected spread was more than three-fourths of one percent but not more than one percent, or

(iii) One-half of one percent if such projected spread was more than one percent.

(3) After Contract Rents have been adjusted in accordance with paragraph f(1) or f(2) of this Section, the maximum amount of the ACC commitment shall be reduced by the amount of any unused portion of the Financing Cost Contingency, and such portion shall be reallocated to the then current set-aside of the HFA, if any. At the same time, if the Contract Rents have been increased in accordance with paragraph f(2) of this Section, the maximum Contract amount specified in Section 1.1g of the Contract shall be increased commensurately.

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

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

~~1.7 RELOCATION REQUIREMENTS FOR PROJECT OWNED BY A PUBLIC HOUSING AGENCY.~~[1]

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

Alternative 1—For projects which were without site occupants as of the date indicated in this alternative.

The Owner hereby certifies that the site of the project was without occupants as of the date the HFA made a commitment to provide the permanent financing for the project or the date the HFA submitted the Proposal to HUD, whichever was earlier.

Alternative 2—For projects which do not qualify for alternative 1.

a. Owner Compliance with Relocation Act. The Owner agrees that, pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, it undertakes liability for (1) the provision of relocation payments and assistance as prescribed in sections 202, 203, and 204 of the Act; (2) the provision of relocation assistance programs offering the services described in section 205 of the Act; and (3) assuring that within a reasonable period of time prior to displacement, Decent, Safe, and Sanitary replacement dwellings will be available to displaced persons.

b. Relocation Payments Other than by Owner. The Government has determined that satisfactory commitments have been made for the funding of relocation payments required by sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as follows:

____

____

____

____

c. Relocation Payments by Owner. If paragraph b is inapplicable, the following shall apply:

(1) The maximum potential amount of all relocation payments as estimated by the Government is $ ____________________ .

(2) The Owner has deposited this amount in an escrow account under the terms of which payments may be made only upon presentation of written authorization by the Government for the purpose of meeting relocation payments.

(3) The Owner hereby voluntarily undertakes liability for all relocation payments and agrees that, if the funds in the escrow account shall prove to be insufficient to meet all such relocation payments, he will deposit such additional amounts as the Government determines to be necessary for such purpose.

[1] Strike this Section unless the project is owned by a public housing agency.

~~(4) When the Government determines that there is no longer any potential liability for relocation payments, any balance in the escrow account shall be paid to the Owner.~~

~~(5) The Owner agrees to hold harmless and to indemnify the Government for any costs incurred under sections 202, 203, and 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 in connection with the relocation of site occupants, and the Owner further agrees that the Government shall have the right to be reimbursed for any such costs by withholding from housing assistance payments payable to the Owner.~~

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

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

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

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

APPROVED:

United States of America
Secretary of Housing and Urban Development

By [signature]
[Dir/Housing]
(Official Title)

Date 9/29, 19 80

HFA NEW JERSEY HOUSING FINANCE AGENCY

By [signature]
Director of Personnel
(Official Title)

Date 9/29, 19 80

OWNER PILGRIM BAPTIST VILLAGE INC.

By [signature]
President
(Official Title)

Date 9-29, 19 80

R I D E R

NY-1218
Project No. NJ39-H085-099
Pilgrim Village II

The HFA has elected to have HUD process Contract Rent Increases and Amendments of Fair Market Rents to Reflect Increases in Financing Costs in accordance with the provisions of Notice H 80-74 (HUD). Because at the time of execution of this ACC, the HFA has not sold its bonds, the rents established for this project, as set forth in the Contract, are based on the assumption that the permanent financing by the HFA will be at a rate comparable to a debt service rate specified by HUD.

In the event that there are additional financing costs attributable to an actual debt service rate in excess of the rate specified by HUD, the HFA may request HUD to approve an increase in contract rents in an amount necessary to support such greater debt service. Conversely, in any case where the actual debt service rate is lower than assumed, the HFA shall so advise HUD. Contract rents shall be adjusted accordingly.

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM
HOUSING FINANCE AND DEVELOPMENT AGENCIES
PART II OF THE

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION

MASTER SECTION 8 ACC NUMBER:	ACC LIST NUMBER AND DATE:	NEW CONSTRUCTION PROJECT NUMBER:
NY-1218	NY-80-770 9/29/80	NJ39-H085-099 OR SUBSTANTIAL REHABILITATION PROJECT NUMBER:

2.1 TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER-INCOME PERSONS.[2]

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

b. Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this Agreement. The requirements of said regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph d of this Section in all contracts for work in connection with the project. The Owner certifies and agrees that he is under no contractual or other disability which would prevent him from complying with these requirements.

c. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, his successors and assigns. Failure to fulfill these requirements shall subject the Owner, his contractors and subcontractors, his successors, and assigns to the sanction specified by this Agreement, and to such sanctions as are specified by 24 CFR, Section 135.135.

d. The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of $50,000 cost, the following clause:

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

"A. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

"B. The parties to this Agreement will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

"C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

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

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

2.2 EQUAL EMPLOYMENT OPPORTUNITY.[3]

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

"EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

"(6) In the event of the contractor's noncompliance with the Equal Opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

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

b. The Owner agrees that he will be bound by the above Equal Opportunity clause with respect to his own employment practices when he participates in federally assisted construction work.

c. The Owner agrees that he will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that he will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that he will otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

d. The Owner further agrees that he will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

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

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

2.5 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.[4] In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, 39 F.R. 11099, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 1857, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees that:

a. Any facility to be utilized in the performance of this Agreement or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to section 15.20 of said regulations;

b. He will promptly notify the HFA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;

c. He will comply with all the requirements of section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder; and

d. He will include or cause to be included the provisions of this Section in every nonexempt subcontract, and that he will take such action as the Government may direct as a means of enforcing such provisions.

2.6 PREVAILING WAGE RATES.[5]

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

b. All laborers and mechanics employed in the construction of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR, Part 3)), the full amounts due at the time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, which is incorporated herein, regardless of any contractual relationship which may be alleged to exist between the Owner or any subcontractor and such laborers and

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

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

mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Owner at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics subject to the provisions of paragraph c of this Section. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

c. The Owner may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Agreement, only when the Secretary of Labor has found, upon the written request of the Owner, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Owner should request the Secretary of Labor to make such findings before the making of the Agreement. In the case of unfunded plans and programs, the Secretary of Labor may require the Owner to set aside in a separate account assets for the meeting of obligations under the plan or program.

d. The Owner shall comply with the Copeland (Anti-Kickback) Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

e. Any class of laborers or mechanics (including apprentices and trainees) which is not listed in the wage determination and which is to be employed under the Agreement shall be classified or reclassified conformably to the wage determination. In the event that agreement cannot be reached on the proper classification or reclassification of a particular class of laborers and mechanics (including apprentices and trainees) to be used, the question will be referred by HUD to the Secretary of Labor for final determination.

f. Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Owner is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event that agreement cannot be reached upon a cash equivalent of the fringe benefit, the question will be referred by HUD to the Secretary of Labor for final determination.

g. (1) (i) Apprentices will be permitted to work as such only when they are registered individually under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Owner as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subsection (ii) immediately following or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Owner will be required to furnish to the other party to this Agreement written evidence of the registration of his program and apprentices, as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

(ii) Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and where subsection (iii) immediately following is applicable, in accordance with the provisions of paragraph g(2) of this Section.

(iii) On contracts in excess of $10,000 the employment of all laborers and mechanics, including apprentices and trainees, as defined in 29 CFR, Section 5.2(c) shall also be subject to the provisions of paragraph g(2) of this Section. Apprentices and trainees shall be hired in accordance with the provisions of paragraph g(2).

(2) The Owner agrees that:

(i) He will make a diligent effort to hire for the performance of the Agreement a number of apprentices, or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Agreement the applicable ratio as determined by the Secretary of Labor;

(ii) He will assure that 25 percent of such apprentices or trainees in such occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (A) the availability of training opportunities for first year apprentices, (B) the hazardous nature of the work for beginning workers, (C) excessive unemployment of apprentices in their second and subsequent years of training;

(iii) During the performance of the Agreement he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of (i) and (ii) immediately preceding;

(iv) He will maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen; and he will make these records available for inspection upon request of the Department of Labor and HUD;

(v) If he claims compliance based on the criterion stated in 29 CFR, Section 5a.4(b), he will maintain records of employment, as described in the immediately preceding paragraph, on non-Federal and nonfederally assisted construction work done during the performance of the contract in the same labor market area; and he will make these records available for inspection upon request of the Department of Labor and HUD; and

(vi) He will supply one copy of the written notices required in accordance with 29 CFR, Section 5a.4(c) at the request of Government compliance officers, and will supply at three-month intervals during the performance of the Agreement and after completion of Agreement performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to HUD and one to the Secretary of Labor.

2.7 SUBMITTAL OF PAYROLLS AND RELATED REPORTS.

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

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

c. The Owner shall also furnish to the other parties to this Agreement any other information or certifications relating to employees in such form as such other party may request.

2.8 DISPUTES CONCERNING WAGE RATES AND CLASSIFICATIONS OF LABOR.

a. All disputes concerning prevailing wage rates or classifications arising under this Agreement involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situatons shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor of the United States. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Agreement relating to the application or interpretation of the Copeland (Anti-Kickback) Act shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

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

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

a. Neither the Owner nor any subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. In the event of any violation of the clause set forth in paragraph a of this Section, the Owner and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph a of this Section, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a.

c. The Owner shall deposit in escrow such amounts determined by HUD to be necessary to satisfy any liability of the Owner or any subcontractor for liquidated damages as provided in paragraph b of this Section.

2.11 TERMINATION; DEBARMENT; SUBCONTRACTS.

a. A breach of the provisions of the foregoing Sections 2.6, 2.7, 2.8, 2.9, and 2.10 may be grounds for termination of this Agreement and for debarment as provided in 29 CFR, Section 5.6.

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

2.12 DISPUTES.

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

b. The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the Government a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the field office director.

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

2.13 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF HFA, MEMBERS OF STATE OR LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS. No member, officer, or employee of the HFA, no member of the governing body of the State or locality(city and county) in which the project is situated, and no other public official of such State or locality who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any proceeds or benefits arising therefrom. In the case of a project owned by a public housing agency, the foregoing prohibition shall also apply to members of the governing body of the locality (city and county) in which such public housing agency was activated.

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

2.15 NONASSIGNABILITY.

a. The Owner agrees that he has not made and will not make any sale, assignment, or conveyance or transfer in any other form, of this Agreement or the project or any part thereof or any of his interest therein, without the prior consent of the HFA and the Government; Provided, however, that in the case of an assignment as security for the purpose of obtaining financing of the project, the HFA and the Government shall consent in writing if the terms of the financing have been approved by the Government.

b. The Owner agrees that he will not change to a different developer or rehabilitator from the one named in the preamble of this Agreement, except with the prior consent of the HFA and the Government.

c. The Owner agrees that the approved developer or rehabilitator has not made, and will not make, except with the prior consent of the HFA and the Government, any assignment or transfer in any form of the developer's or rehabilitator's contract to construct or rehabilitate the project, or any part thereof, or any of the developer's or rehabilitator's interests therein.

d. The Owner agrees to notify the HFA and the Government promptly of any proposed action covered by paragraph a or b or c of this Section. The Owner further agrees to request the written consent of the HFA and the Government in regard thereto

e. (1) A transfer by the Owner, in whole or in part, or a transfer by a party having a substantial interest in said Owner, or transfers by more than one party of interests aggregating a substantial interest in said Owner, or any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means (e.g., increased capitalization, merger with another corporation or other entity, corporate or other amendments, issuance of new or additional ownership interests or classification of ownership interests or otherwise) shall be deemed an assignment, conveyance, or transfer for purposes of this Section 2.15. An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer.

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

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

(4) The provisions of this Section 2.15 shall also apply to transfers of interest by the developer or rehabilitator, as the case may be, and by persons having interests in said developer or rehabilitator.

Exhibit A-Approved Proposal

The Parties to this Agreement agree to incorporate by reference Proposal No. NJ39-H085-099 approved by HUD on September 2 , 1980 which contains all submissions required pursuant to 24 C.F.R. 883.309 . The original of such proposal is maintained in the files of the Newark Area Office of HUD.