

APPENDIX 4

SPONSOR'S CONFLICT OF INTEREST RESOLUTION

TO: The Secretary of Housing and Urban Development

SUBJECT: Section 202 Program - Application for Fund Reservation

Sponsor:

Project Location:

WHEREAS, Section 202 of the Housing Act of 1959, as amended, authorizes the making of direct loans for housing for the elderly or handicapped to private, nonprofit corporations, no part of the net earnings of which inure to the benefit of any member, founder, contributor or individual;

WHEREAS, HUD has implemented this statutory requirement by promulgating a regulation providing that the Sponsor may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. The regulation also prohibits any officer or director of the Sponsor from having any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings or equipment, construction of the project, procurement of the site or any other matters whatsoever, except with respect to management contracts entered into by the Borrower with the Sponsor or its nonprofit affiliate.

WHEREAS, HUD has determined that assurance of compliance with this prohibition can best be obtained by requiring that all officers and directors of the Sponsor certify that they do not have and will not have during their term of office, or the date of final loan closing, whichever date is later, any prohibited financial interest.

WHEREAS, because of the time constraints imposed under the application process and difficulties in meeting these deadlines caused by such factors as large boards and unavailability of board members, some prospective Sponsors have been unable or experienced hardship in obtaining all of the required certifications for submission with the applications for fund reservation.

WHEREAS, HUD is willing to defer submission of the required Sponsors' Conflict of Interest and Disclosure Certifications until the submission of the conditional commitment applications by those Borrowers for which fund reservations were approved, if such certifications are provided by all officers and directors of the Sponsor duly qualified and serving in these capacities from the date of the Sponsor's loan application to the date on which the certifications are submitted.

NOW, THEREFORE, in order to induce HUD to forego requiring submission of the Conflict of Interest and Disclosure Certifications until after projects have been selected and fund reservations granted, it is hereby resolved and agreed by the Board of Directors of the Sponsor:

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1. That it will submit an Incumbency Certificate, in a form prescribed by HUD, listing all officers and directors of the Sponsor duly qualified and sitting as of the date of submission of its loan application, together with the dates of commencement of their respective terms of office and the length of such terms of office. Additionally, it will provide an updated Incumbency Certificate showing all changes in incumbency for submission with the Borrower's Conditional Commitment Application, at initial loan closing and final loan closing.

2. That no officer or director of the Sponsor has or will be permitted to have any prohibited interest which would prevent him or her from signing the required Conflict of Interest and Disclosure Certification.

3. That the fund reservation will be subject to cancellation by HUD if the officers or directors of either the Sponsor or the Borrower fail to submit Conflict of Interest and Disclosure Certifications duly executed by each and all of their respective officers and board members.

4. That no HUD loan funds or project operating funds will be expended on account of any contract or arrangement where a conflict of interest is determined to exist, and the Sponsor shall be responsible for the payment of any and all obligations involving its officers and board members.

5. That should any contract or arrangement entered into by the Borrower be determined by HUD to involve a conflict of interest, involving either the Sponsor's or Borrower's officers or board members, the Sponsor will exercise its best efforts to cause the Borrower to promptly cancel or terminate such contract or arrangement at HUD's request.

Adopted and approved by \_\_\_\_\_ of the Sponsor on the \_\_\_\_\_ date of \_\_\_\_\_, \_\_\_\_\_.

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CONFLICT OF INTEREST AND DISCLOSURE CERTIFICATION  
(For use by officers, directors and board members  
of the Sponsor and Borrower)

TO: The Secretary of Housing and Urban Development

SUBJECT: Sponsor:  
Borrower:  
Project Name:  
Project No.:

The undersigned, as \_\_ (Position/Title) \_\_ of the above-named Sponsor/

Borrower, hereby certifies that as of the date that this certification is made and except as fully described in the signed statement attached hereto:

1. That I have not had and will not have during my term of office, board membership or date of final closing, whichever date is later, any financial interest in any contract, or in the firm/corporation of any consultant, general contractor, architect, attorney, management agent, seller of the land, accountant, subcontractor, material supplier, equipment lessor, surety, title and recording company, or the insurance agent providing hazard insurance, which has such a contract with the Borrower in connection with the rendition of services, the provisions of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site, or other matters whatsoever relating to this project.
2. That I have not received and will not receive any compensation from the Borrower for my services as an officer, board member, authorized agent or otherwise.
3. If a management contract is entered into by the Borrower and the Sponsor or its nonprofit affiliate, I am aware that, in such cases, only two paid officers, directors, board members or authorized agents of the Sponsor may also serve as nonvoting board members of the Borrower corporation for the primary purpose of executing documents on behalf of the Borrower.
4. That I do not have and am aware that it is impermissible for me to have a family relationship by virtue of blood (i.e., grandparents, parents, brothers, sisters and children), marriage (including common-law marriage, if recognized by the State), or adoption with any officer, director, board member, partner, or authorized agent of the consultant, general contractor,

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- architect, management agent, attorney, seller of the land, subcontractor, material supplier, equipment lessor, surety, accountant, title and recording company, and insurance agent providing hazard insurance which has such a contract with the Borrower in connection with the rendition of services, the provisions of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site, or other matters whatsoever relating to this project.
5. Should I become aware of any relationships described in paragraphs 1 thru 4 of this certification or should any such relationships come into being subsequent to the submission of this certification, I will provide notification to the local HUD Field Office within 10 working days.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Officer/Board Member

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) applies to this certification. (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain 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 no more than \$10,000 or imprisoned for not more than five years, or both).

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IDENTITY OF INTEREST AND DISCLOSURE CERTIFICATION  
(For use by a representative of the Sponsor/Borrower's  
consultant, architect, general contractor, attorney,  
management agent and seller of the land.)

TO: The Secretary of Housing and Urban Development

SUBJECT: Project Name:  
Project No.:

The undersigned who is a representative of \_\_\_\_ (firm/corporation) \_\_\_\_ (the "Firm"), which is serving as the \_\_\_\_\_ for the subject Section 202 project, hereby certifies, to the best of his/her knowledge, as of the date that this certification is made and except as fully described in a signed statement attached hereto, that:

1. For the purposes of this certification "development team member" means an individual, firm or corporation that is under contract with or otherwise providing a service to the Sponsor/Borrower as a consultant, architect, general contractor, attorney, management agent or seller of the land in connection with this project.
2. Neither the Firm nor any officer, board member, partner or authorized agent of the Firm has any financial interest in the Sponsor/Borrower other than the fee for professional services being rendered to this project.
3. Neither the Firm nor any officer, board member, partner or authorized agent of the Firm has advanced any funds or thing of value to the Sponsor/Borrower or accepted any stock or any interest in the Sponsor/Borrower corporation as part of the consideration for payment. This does not preclude the donation of services or development team members working on a contingency basis.

4. Neither the Firm nor any officer, board member, partner or authorized agent of the Firm is also an officer, board member, partner or authorized agent or has any financial interest in another development team member.
5. No officer, board member, partner or authorized agent of the Firm has a family relationship by virtue of blood (i.e., grandparents, parents, brothers, sisters, and children), marriage (including common-law marriage, if recognized by the State), or adoption with any officer, board member, partner or authorized agent of another development team member.

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6. If the Firm is serving as the consultant, that:
  - a. Except for the fee specified in my Contract with the Borrower, neither the Firm nor any officer, director, board member or partner of the Firm has accepted or shared and will neither accept nor share any compensation or remuneration, directly or indirectly, in any form whatsoever, from or with any party interested in the development or operation of this project.
  - b. Neither the Firm nor any officer, director, board member, partner or any person employed by the Firm has accepted compensation or remuneration contrary to the intention of the aforesaid Contract and it is understood that the intent of the Contract is to prohibit the Housing Consultant and its employees from any transaction which would create an identity of interest with other persons or entities participating in the development and operation of the project.
  - c. Neither the Firm nor any officer, director, board member or partner of the Firm is involved as an officer, director, board member or general partner in a business venture with an officer, director, board member or general partner of another development team member.
7. If the Firm is serving as the attorney for the Sponsor/Borrower with respect to this project, it is not also serving as the attorney for any development team member.
8. Should I become aware of any relationships described in paragraphs 2 thru 7 of this certification or should any such relationships come into being subsequent to the submission of this certification and prior to the final closing of this project, I will provide notification to the local HUD Field Office within 10 working days.

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Date

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Representative

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) applies to this certification (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain 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 no more than \$10,000 or imprisoned for not more than five years, or both) .

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