

DELEGATED PROCESSING AGREEMENT

by and between

**The Deputy Assistant Secretary for Multifamily Housing Programs
and**

The Delegated Processing Agency

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Delegated Processing AGREEMENT

THIS DELEGATED PROCESSING AGREEMENT (the "Agreement") dated and effective as of _____, _____ ("Effective Date") between the Deputy Assistant Secretary ("DAS") for Multifamily Housing Programs, and/or the DAS's successor(s) and/or assignee(s) (collectively, the "DAS") and _____, a(n) _____ formed under the laws of _____ with its principal place of business at _____ ("Delegated Processing Agency" or "DPA").

PREAMBLE

WHEREAS, Section 2835(b) of the Housing and Economic Recovery Act of 2008, approved July 30, 2008, directs the Department to delegate review and processing of certain Section 202 Supportive Housing for the Elderly projects to selected State or local housing agencies;

WHEREAS, the delegated processing procedure provides that HUD may provide qualified Delegated Processing Agencies ("DPAs") with the opportunity to perform certain responsibilities to assist in the development of affordable housing projects that use additional sources of funds besides the capital advance to develop a project for supportive housing for the elderly under the Section 202 Program;

WHEREAS, HUD has developed guidance for the Section 202 Program in the form of the regulations, notices, handbooks, forms and other directives (as amended from time to time and incorporated herein by reference, the "Guide");

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below and for other good and valuable consideration, the sufficiency of which is acknowledged by the parties hereto, the DAS and the DPA agree as follows:

ARTICLE 1 -- DEFINITIONS

When used in the Agreement, the following terms and phrases shall have the meanings identified below:

Acceptance: The date the DPA signs a "Schedule of Projects" (Exhibit 1 to the Agreement) is the date of Acceptance with respect to the Projects (defined below) listed therein.

Affiliate: When used with respect to a specified Person, an affiliate is:

- (a) An immediate family member of the specified Person (for purposes hereof, the members of a Person's immediate family shall be such Person's parents, grandparents, spouse, children, grandchildren, siblings and children of siblings);
- (b) A Person that controls, directly or indirectly through one or more intermediaries, is controlled by, or is under common control with such specified Person;
- (c) A director, officer, employee, trustee or general partner of, or an owner of an equity interest of ten percent (10%) or more or a beneficiary of a trust owning an equity interest of ten percent (10%) or more in the specified Person or any specified Person in clause (b) above; or
- (d) A member of the immediate family of the specified Person in clause (b) or (c) above or of any Investor or of any Direct Owner.

For purposes of this definition, the term "control" (and any derivative thereof) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting stock, by contract or otherwise.

Agreement: This Delegated Processing Agreement and all attachments and exhibits which are attached hereto and made a part hereof.

Anticipatory Breach: A determination in the judgment of the DAS that the actions or inactions of the DPA will result in a default under the Agreement.

Base Fee: The payments earned by the DPA for completion of Required Work (defined below), as set forth in the Agreement.

Closing: Execution of all required documents necessary to implement the Firm Commitment and as further described in the Guide.

Completion: The conclusion of the DPA's work on a Project in accordance with the Guide.

Conflict of Interest: An officer or Director of the DPA, its principal staff or contract employees or subcontractors working on a particular application cannot have any financial interest in any contract with any officer, Director or partner of the Sponsor, the Owner, principals of the Owner, seller of the land or property, or a member of the development team including but not limited to the general contractor, housing consultant etc.

DPA Counsel: An individual counsel or law firm hired by the DPA to perform legal tasks pursuant to the Agreement.

DAS: The Deputy Assistant Secretary for Multifamily Housing Programs, and staff acting for the DAS in accordance with delegated authority. In the event the DAS no longer has authority to administer the Section 202 Supportive Housing for the Elderly Program, references to the DAS shall mean the Secretary of the Department of Housing and Urban Development or the Secretary's designee.

Day: Business day.

Director: The local Multifamily Program Center Director, and staff acting for the Director in accordance with delegated authority.

Due Diligence: The DPA's Due Diligence is completed when the Owner accepts the firm commitment for the release of capital advance during construction and proceeds to initial closing or accepts a firm commitment for the release of capital advance upon completion of the project and proceeds to construction of the project.

Effective Date: (Insert date of the Notice).

Eligible Project or Project: Supportive Housing Project for the elderly that uses a combination of a capital advance and other additional sources of funds, excluding the Owner's contribution, to develop the project.

Expiration: The end of the Term, including any Extension, if any, of the Agreement as a result of the passage of time, but not including the DAS's Termination of the Agreement under Article 15.

Extension: As defined in Section 3.3.

Fees: As described in Articles 8, 9, 10, and 12, and Exhibit 4 (including, Base Fees, Incentive Fees (defined below) and reimbursable payments, if any.)

HUD: HUD means the DAS or a HUD official authorized to act in lieu of the DAS, in accordance with delegated authority when used in reference to provisions of Section 202 Supportive Housing for the Elderly Program, and otherwise means the Department of Housing and Urban Development.

HUD Counsel: HUD's Office of General Counsel.

Identity of Interest: No financial or family relationship is permitted between an officer of the DPA, its principal staff or contract employees or subcontractors working on a particular application and an officer or partner of the Sponsor, the Owner, principals of the Owner, seller of the land or property, or a member of the development team including but not limited to the general contractor, housing consultant etc.

Incentive Fee: Fees that may be earned by the DPA upon compliance with the terms and conditions for such Fees.

Litigation Costs: As defined in Section 10.2.3.

Nonpublic Information: As defined in Section 12.1.1.

Operating Procedures Guide: The administrative procedures guidance, commonly referred to as the Guide, as defined in the Preamble to the Agreement and as amended from time to time in accordance with Section 5.10.3. The Guide is incorporated herein by reference, as contained in Exhibit 2.

Other Parties: As defined in Section 6.3.1.

Penalty Fee: Fees that may be charged against the DPA for failing to meet the delegated processing 12-month timeframe.

Person: Any individual, corporation, association, partnership, business trust, limited liability company, joint stock company, joint venture, trust, estate or other entity or organization of whatever nature.

Portfolio: As defined in Section 4.1.

Records: As defined in Section 13.1.1.a.

Required Work: As specified in the Agreement or the Guide, including but not limited to Appendix V of the Guide.

Secretary: Secretary of the Department of Housing and Urban Development and staff acting for the Secretary in accordance with delegated authority. Reference to the Secretary may also mean the DAS and the DAS's staff, when applicable, if the DAS is authorized to act on behalf of the Secretary.

Services: As defined in Article 2.

Subcontractor: A Person or Entity with which the DPA contracts to carry out portions of the provisions of the Agreement, including, but not limited to, appraisers and inspectors providing reports to fulfill Due Diligence requirements.

Term: As defined in Sections 3.1 and 3.3. The initial term of the Agreement is three years.

Termination: The ending of the Agreement and any Extension hereof by the DAS or the DPA pursuant to Article 14.

ARTICLE 2 -- APPOINTMENT OF THE DPA AND SCOPE OF SERVICES

The DAS hereby retains the DPA as an independent contractor for the sole purpose of performing the services, duties and obligations described in the Agreement, and the DPA hereby agrees to perform such services, duties and obligations (collectively referred to as the "Services") on the terms and conditions set forth below in accordance with the Statute, Regulations, HUD Notices and Handbooks. The recitals are incorporated herein and made a part of the Agreement.

ARTICLE 3 -- TERM OF AGREEMENT

- 3.1 Initial Term.** Subject to Article 14, the Agreement shall have a term that commences on the Effective Date and expires at 11:59 p.m. Eastern Time on _____ (the "Term").
- 3.2 Renewal.** The Agreement shall be renewed for one year periods, commencing the Day after the end of the Term, and ending one (1) year thereafter for each such renewed Term, unless the DAS or the DPA provides written notice to the other, not less than sixty days prior to the end of the Term, that it does not wish to renew the Agreement. In the event the DAS or the DPA elects not to renew the Agreement, the Agreement will expire on the earlier of (i) the last day of the Term as it may have been extended from time to time, or (ii) the effective date of a Termination pursuant to Article 14. Upon Expiration or Termination, the right to complete work under the Agreement shall end immediately, and the responsibility for all assigned Projects shall revert immediately back to HUD, except as otherwise provided in the Agreement or as may be determined by mutual agreement of the parties and evidenced in writing.
- 3.3 Extension.** The Term may be extended by mutual agreement of the parties, for such period as the parties shall agree upon (the "Extension"). Except where specifically indicated otherwise, reference to the Term shall include any Renewal or Extension.

ARTICLE 4 -- PROJECTS SUBJECT TO AGREEMENT

- 4.1 Portfolio of Projects.** The Projects subject to the Agreement will be identified on Exhibit 1, which may be amended from time to time to reflect the addition or withdrawal of Projects to the coverage of the Agreement as provided below. All of the Projects subject to the Agreement at any given time constitute the Portfolio (the "Portfolio").
- 4.2 Addition or Withdrawal of Projects.** The addition or withdrawal of Projects described below shall not be effective unless accompanied by an amendment to Exhibit 1 or other written notice from the DAS or the Director to the DPA.

- 4.2.1 Addition of Projects.** From time to time, the DAS or Director may offer one or more Projects under the Agreement and the DPA may accept or reject a project on a case-by-case basis.
- (a) Right to Withdraw.** The Director may withdraw one or more Projects from the coverage of the Agreement upon occurrence of any of the following:
- (i) the Director at any time finds that there is a conflict of interest or identity of interest between the DPA and the Project,
 - (ii) the Project is involved in litigation,
 - (iii) the Owner withdraws from the Section 202 Program,
 - (iv) there are substantial deficiencies in processing,
 - (v) the DAS's convenience pursuant to Section 14.3,
 - (vi) other good cause affecting the ability or eligibility of a Project or Owner to undergo delegated processing pursuant to the Agreement, and
 - (vii) any reason specified in Article 14.1.
- (b) Procedure for Withdrawal.** The Director shall withdraw a Project by notifying the DPA, in writing, of its decision to withdraw such Project and the reasons for withdrawal and the withdrawal shall be effective immediately, unless the Director provides otherwise. The DPA shall, within seven (7) Days following notice, unless sooner or otherwise specified by the Director, transmit all Records relating to such Project to the Director, or to an entity or person identified by the Director, and shall cooperate with the Director to effect an efficient and smooth transition of responsibility with respect to such Project. Alternatively, at the Director's discretion, staff acting for the Director may, upon forty-eight (48) hours notice, enter upon the DPA's place of business during business hours to retrieve the Records.
- (c) Payment to the DPA Upon Withdrawal.** The DPA will be compensated for withdrawn Projects in accordance with Article 9.

ARTICLE 5 – THE DPA'S DUTIES

- 5.1 General Scope of Duties.** The DPA shall perform the Required Work and such other related tasks as agreed to by the Director and the DPA with respect to the Portfolio. The DPA may subcontract its technical processing duties under the Agreement pursuant to Article 6 below but may not delegate to any other entity the underwriting duties under the Agreement without the prior written approval of the Director. Under all such circumstances, the DPA retains the responsibility for the performance of its duties. The DPA's duties are more fully described in Operating Procedures Guide.
- 5.2 Engagement of Contractors by the DPA, and Prohibition Against Transactions with Affiliates of the DPA.**
- 5.2.1** The DPA may subcontract with, pursuant to Article 6, subcontractors in its sole name and at its sole cost and expense to assist in or undertake activities as may be necessary and appropriate under the Agreement.
- 5.2.2** Any duties under the Agreement required to be undertaken by third parties must be undertaken pursuant to arms-length agreements with Persons that are not Affiliates of the DPA, except with the prior written approval of the Director.
- 5.2.3** The DPA is responsible for the overall underwriting decision and the issuance of the firm commitment. These function cannot be contracted out by the DPA.
- 5.3 DPA Financings.** The DPA or an Affiliate of the DPA may provide financing in connection with a Project. If financing is provided, the Director may subject the Project to such additional review as the Director deems necessary. The DPA shall provide such other information and documents as requested by the Director regarding the DPA-proposed financing.

- 5.4 Training Through Technical Assistance Briefings.** The DPA and its Subcontractors must attend such technical assistance briefings as required by HUD at no cost to HUD.
- 5.5 DPA Standards of Performance.** The DPA shall at all times act in good faith and in the best interests of the Director and shall carry out its duties with all deliberate speed. The DPA shall use its best efforts and exercise all due care and sound business judgment in performing its duties under the Agreement, and shall act to avoid conflicts of interest or the appearance of conflicts of interest in the performance of its duties. The DPA shall at all times comply with all applicable statutes, the regulations, notices and handbooks.
- 5.5.1** The DPA shall perform its duties and responsibilities within the following timelines. All activity deadlines pertaining to a Project will be calculated from the date of Acceptance of the Project. The DPA must complete issuance of a firm commitment within 12 months. Within these 12 months the following tasks must be completed after the date of Acceptance:
- Planning Conference held within 30 days of Acceptance.
 - Accessibility requirements are met by the Owner.
 - Review of the Owner’s underwriting developed under the Guide.
 - Issuance of a firm commitment or rejection of the Owner’s firm commitment application.
- 5.5.2** Without limiting any term or condition of the Agreement, failure by the DPA to meet the deadline specified in Section 5.5.1 constitutes a default under the Agreement. Time is of the essence with respect to the DPA’s compliance with these deadlines.
- 5.6 Preparation of a Firm Commitment.** The DPA shall prepare and issue, a firm commitment, which incorporates the rents and development costs approved by the Director.
- 5.7 DPA Administrative Duties**
- 5.7.1 The DPA’s Key Personnel.** Exhibit 3 identifies certain employees and Subcontractors of the DPA as important to the proper performance of the DPA’s duties under the Agreement (“Key Personnel”). HUD relies on the DPA’s representation as to Key Personnel in the award of the Agreement and Projects. The DPA agrees to identify in Exhibit 3 a primary contact person, including telephone number and e-mail address, who is responsible for day-to-day activities of the DPA under the Agreement. The DPA also agrees to notify the Director of and obtain the Director’s written approval for any change in Subcontractors listed in Exhibit 3, and will provide the Director with a summary of the qualifications of any substituted Key Personnel. Substitution of Key Personnel with equally qualified personnel as determined by the Director will result in approval of the change.
- 5.7.2** The DPA has a continuing obligation to update Exhibit 3 with the names of Key Personnel and Subcontractors so that it will be true and correct at all times.
- 5.7.3 Delivery of and Modification to the Guide.** From time to time the DAS, at his/her sole discretion, may modify and make changes to the Guide. The DPA shall be responsible for keeping current with the modifications to the Guide. Modifications to the Guide shall be made available by the DAS to the DPA either in hard-copy or in electronic forms, including posting on HUDCLIPS at <http://www.hud.gov/offices/adm/hudclips/>. The DPA will be notified by mail and electronically of the availability of modifications to the Guide, and shall implement the changes in the Guide upon receipt of such notice, unless otherwise specified by the DAS. If the DAS imposes a change to the Guide which causes a substantial impact on the DPA’s costs and expenses or time limits for performance of its restructuring duties, the DAS and/or the Director will take such change into account if the DPA requests a waiver in related fee limits or time limits.
- 5.8 Advertising and Publicity.** The DPA shall not issue or sponsor and it will require its Subcontractors, if any, not to issue or sponsor, any advertising or publicity that states or implies, either directly or indirectly, that HUD endorses, recommends or prefers the Services of the DPA, and/or those of any Subcontractor. The DPA shall not use, and shall require that its Subcontractors not use, the HUD or FHA logo in any fashion without DAS’s prior written approval.

ARTICLE 6 – THE DPA’S CONTRACTS WITH SUBCONTRACTORS

6.1 Subcontractor Notification.

6.1.1 To the extent that there are in effect on the Effective Date of the Agreement, or thereafter, contracts with subcontractors proposed to be used under the Agreement covering any of the Services, the DPA shall inform the Director of the extent to which the DPA proposes to use such subcontractors.

6.1.2 The DPA shall inform the Director of the Services being performed by the subcontractors.

6.1.3 The DPA has an ongoing obligation to inform the Director of any changes in the use of subcontractors during the Term.

6.2 DPA’s Responsibility. Notwithstanding the DPA’s right to enter into subcontracts, the DPA shall remain solely responsible and liable for the proper and timely performance of the services and management and timely performance of its duties and the duties of its subcontractors in the performance of the Agreement.

6.3 Contracts with Subcontractors. The DPA shall ensure that all subcontracts shall be consistent with the terms of the Agreement and the DPA’s duties hereunder. Among other provisions, each subcontract shall provide that:

6.3.1 Such subcontractor agrees to seek damages or other remedies solely against the DPA and not against the Director, the DAS, the Secretary, HUD, the Owner and their respective officers, directors or employees, for any claim arising under the subcontract. (Collectively, the Director, the DAS, the Secretary, HUD, the Owner or their respective officers, directors or employees shall be referred to as “Other Parties.”) Upon request that may be made from time to time, the subcontractors will acknowledge that it has no claims against the Other Parties or will waive any such claims it believes it may have against the Other Parties;

6.3.2 The subcontractors shall maintain its Records and agrees to make them available for inspection by the DPA, HUD’s Inspector General, the DAS, and any of their designees, and any other Government agency upon reasonable notice by or on behalf of HUD or the DPA, such inspection to be in a manner consistent with the requirements placed upon the DPA under Article 14 and Article 15 of the Agreement;

6.3.3 The subcontractor shall treat non-public information in a manner consistent with the requirements of Article 12 of the Agreement;

6.3.4 The subcontractor shall obtain such insurance coverage as may be reasonably directed by the DPA;

6.3.5 The subcontractor may not assign its contract with the DPA without the DPA’s prior written approval; and

6.3.6 The subcontractor shall meet the same conflict of interest standards as required of the DPA.

6.4 Supervision of Subcontractors. The DPA shall monitor and supervise diligently the subcontractors’ performance of their duties under the subcontracts, including the subcontractors’ supervision of their subcontracts, if any.

ARTICLE 7 -- DUTIES OF THE DAS

7.1 Duties and Authority of the DAS. The DAS has the duty to administer, on behalf of the Secretary, the delegation of underwriting for eligible Section 202 Supportive Housing for the Elderly.

7.2 Provision of Project Files and Information to the DPA.

7.2.1 Project Files.

- (a) **Delivery of Files.** The Director shall endeavor to either give copies of the Project files to the DPA or provide to the DPA access to available Project files and shall endeavor to make such materials available to the DPA or its Subcontractor in the appropriate Field Office location where the DPA may photocopy such files as needed.
- (b) **Custodial Relationship.** In holding the Project files or copies thereof, the DPA shall act as custodian for, and for the benefit of, the DAS.

7.2.2 Information. The Director shall furnish the DPA with information determined by the Director to be required for the orderly performance of the DPA's duties under the Agreement, including information regarding changes in the DAS's policies and procedures affecting any matter relevant to the DPA's performance of the Agreement, although nothing herein limits the DPA's responsibility for keeping current with modifications to the regulation, notices, handbooks and other guidance in accordance with Paragraph 5.7.3 of the Agreement.

7.3 Approval and Execution of Documents. The Director shall have the sole right and authority in each Transaction to approve the proposed rents and development costs prior to the DPA issuing a Firm Commitment. The Director has 15 Days to approve the proposed rents and development costs. The Director may take more than 15 Days to approve the proposed rents and development costs where a regulatory waiver is required, the excess time will not be included in the total amount of time it takes the DPA to complete underwriting and issuance of a firm commitment when calculating the satisfaction of the deadline requirements in Section 5.7.1 or for Incentive Fee purposes.

The Director, however, may elect not to approve the proposed rents and development costs recommendations. The Director shall inform the DPA of the reasons for not approving the proposed rent and development cost recommendations. The DPA will either (a) revise and resubmit to the Director the proposed rents and development cost recommendations for approval; or (b) appeal the Director's recommendations or (c) consent to the Director's withdrawal of the Project and receive compensation based on the Director's determination of the value of the services performed with regard to the Project. If there is either a resubmission or an appeal the processing clock is stopped until there is resolution. The additional days will not count towards the timeline requirements in Section 5.5.1 or for Incentive Fee purposes.

7.4 Compensation of the DPA. The DAS shall compensate the DPA for its Services under the Agreement in accordance with the provisions of Articles 8 and 9 and Exhibit 4 of the Agreement. The DAS shall comply with the applicable provisions of the Prompt Payment Act, 31 U.S.C. 3901, et seq., as amended, when reimbursing the DPA.

ARTICLE 8 -- COSTS ASSOCIATED WITH PERFORMANCE OF CONTRACT; REIMBURSEMENT OF SPECIFIC SUBCONTRACTOR COSTS

8.1 General. The DPA is responsible for advancing to its Subcontractors funds that may be needed to complete their work, with reimbursement to the DPA for such advanced funds occurring in accordance with the provisions below. Reimbursement to the DPA will occur only when authorized, and payments will be made only to the DPA and not directly to such Subcontractors as may be utilized.

8.2 General Reimbursement Requirements. The DAS shall reimburse the DPA up to the limits specified above upon the DPA's presentation to HUD of an invoice from the DPA which must include, if required, the calculation of Incentive Fees or Penalty Fees.

ARTICLE 9 – THE DPA'S COMPENSATION

9.1. General. In exchange for the Services rendered pursuant to the terms of the Agreement, the Regulations and the Guide, the DPA will receive the applicable Base Fee as set forth in Exhibit 4, and will be eligible to receive Incentive Fees for achieving the goals established in Exhibit 4 or Penalty Fees for not meeting the goals established in Exhibit 4. All Fees properly invoiced to the Deputy Assistant Secretary for Multifamily Housing Programs shall be paid within 30 days of receipt of the invoice subject to a 10 percent holdback.

9.2. Base Fees. Base Fees will be paid to the DPA as shown in Exhibit 4.

9.3 Incentive and Penalty Fees. The DPA may earn fees in addition to the Base Fee if the DPA accomplishes certain goals as described in Exhibit 4 or may have the Base Fee reduced if the DPA fails to accomplish certain goals described in Exhibit 4.

9.4. Holdback. The Director shall withhold 10 percent of the Base Fee until:

- For the issuance of a firm commitment for the release of capital advance proceeds during construction until the project reached initial closing.
- For the issuance of a firm commitment for the release of capital advance proceeds upon project completion until the project starts construction.

9.5. Payment to the DPA Upon Withdrawal. In the event the DAS withdraws a Project due to the DPA's failure to perform in accordance with the Agreement, or in the event that the DPA terminates the Agreement in accordance with Section 14.3.2, the DPA will be paid at the point of withdrawal an amount that the Director determines is equal to the value of the Services performed by the DPA with respect to such Project based on the Fees set forth in Exhibit 4. In the event the Director withdraws a Project for any reason other than for the reasons specified in Section 14.1, the DAS shall pay the DPA for its services an amount equal to the Base Fee in Exhibit 4. The aforesaid payments are paid subject to the Director's right of set-off or recoupment. Payment to the DPA will be withheld until all records pertaining to the subject Project are returned to the DAS.

ARTICLE 10 – LEGAL REPRESENTATION

10.1 DPA Counsel. The DPA may retain counsel or use staff counsel to advise the DPA regarding its rights and obligations under the Agreement. The DPA shall bear its own expenses incurred in connection with any such legal services. Legal fees incurred by the DPA and its Subcontractors in carrying out its duties hereunder shall be the responsibility of the DPA and shall not be reimbursed by the Secretary. A legal interpretation of the delegated processors statutory authority and the Section 202 Program Regulations published in the Federal Register shall be made only by HUD Counsel after reasonable consideration of the DPA's position.

10.2 Notice of Claims; Control of Litigation and Claims.

10.2.1 Notice of Claims. The DPA shall promptly notify the Director, the DAS and the Secretary, and the Director, the DAS or the Secretary shall promptly notify the DPA in writing of any and all litigation and claims which to their knowledge have been made or threatened against the Projects, Secretary, the DAS, Director, HUD, the DPA or any Subcontractor, or any officer, director, partner, employee or agent of any of them in connection with the Agreement or otherwise in connection with the Section 202 Program.

10.2.2 Control of Litigation and Claims.

- (a) The Secretary shall control all litigation and claims made or threatened against the Projects, the Secretary, the DAS, the Director, HUD, and the DPA or any officer, director, partner, employee or agent of any of them in connection with the performance of the Agreement or otherwise in connection with the Section 202 Program, provided that the Secretary shall consult with the DPA to the extent that the defenses or claims it asserts in such litigation (or in connection with such claims) affect or have a reasonable likelihood of affecting the rights of the DPA, and the DPA shall cooperate with the Secretary to the extent necessary to permit the Secretary to defend or prosecute such litigation. If the DPA believes that the Secretary's position in the litigation is directly adverse to its position, the DPA may pursue its own defense separate and apart from the Secretary's. In this event, the DPA shall be responsible for its legal expenses.
- (b) The DPA Counsel shall control all litigation or claims made or threatened solely against the DPA or any officer, director, partner, employee or agent of the DPA, in connection with the performance of the Agreement or otherwise in connection with the Section 202 Program, provided that the DPA shall immediately provide written notice of any such litigation or claims. If the Secretary, or the Secretary's legal representative, determines that there is a federal interest, the Secretary, through the Department of Justice, may elect to participate, in which case the matter shall be handled in accordance with Section

10.2.2(a). In any event, the DPA shall consult with the Secretary to the extent that the defenses or claims it asserts in such litigation (or in connection with such claims) affect or have a reasonable likelihood of affecting the rights of the Secretary, the DAS, the Director, or HUD, and the Secretary shall cooperate with the DPA to the extent necessary to permit the DPA to defend or prosecute such litigation.

- (c) Nothing in this section 10.2.2. shall prevent either the DPA or the Secretary from taking action available to it under Federal or State law to implead or otherwise join the Secretary or the DPA in the action brought against it.

10.2.3. Reimbursement of Legal Expenses.

Should the DPA, or any officer, director, partner, employee or agent thereof, become directly or indirectly involved with litigation or a claim as the result of performing its duties under the authority of the Agreement, whether as a joint or sole defendant, the Secretary may reimburse the DPA for any reasonable legal costs and expenses, including but not limited to, reasonable attorney's fees (including fees for DPA Counsel) the DPA incurs by participating in such litigation or claim ("Litigation Costs") provided that the Secretary determines that the Litigation Costs are reasonable and appropriate for the litigation services rendered. The Secretary may reimburse the DPA for legal expenses through regular billing pursuant to Section 8.2. If the DPA is required by the court to post a bond pending appeal, the Secretary may reimburse the DPA for the cost of the bond. Notwithstanding anything to the contrary above, the Secretary shall not be obligated to pay Litigation Costs and shall be entitled to reimbursement of any funds paid to the DPA for Litigation Costs if the Secretary makes a determination that the DPA's actions, which are the subject of the litigation or claim, were not performed pursuant to the authority of the Agreement. Subject to the DAS's prior written approval, the DPA may be reimbursed for reasonable legal fees associated with the settlement of threatened litigation or penalty assessments that the DAS and HUD deem to be valid and imminent.

10.3 Representation of Owners. DPA Counsel retained in connection with the Agreement or the Section 202 Delegated Processing Program may not, during the period which counsel is so retained, provide legal services to any Owner or any other party, except the DAS, HUD or another delegated processing agency, with regard to any Project under the Section 202 Delegated Processing Program or with regard to any party or entity in any enforcement proceeding with HUD. After the DPA Counsel's employment under the Agreement has been terminated, DPA Counsel may not represent an Owner or any other party in any Section 202 matter relating to those Projects assigned to the DPA under the Agreement during the period counsel was retained by the DPA.

10.3.1 Limitations. In connection with the Agreement, without the prior written consent of the HUD Counsel, the DPA has no authority to do the following: (i) initiate litigation, (ii) make or accept settlement offers or (iii) undertake an appeal from an adverse judgment.

ARTICLE 11 -- REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Representations and Warranties of the DAS. The DAS represents and warrants as follows:

- 11.1.1** The DAS has the power and authority required to execute, deliver and perform the Agreement.
- 11.1.2** The DAS's execution, delivery and performance of the Agreement have been duly authorized by all necessary official action.
- 11.1.3** The Agreement constitutes a legal, valid and binding agreement of the DAS, enforceable against the DAS in accordance with its terms.

11.2 Representations, Warranties and Covenants of the DPA.

11.2.1 Representations and Warranties. The DPA represents and warrants as follows, that as of the date hereof and through the period of this contract and its extensions:

- (a) It has full power and authority to execute, deliver and perform the Agreement; it is an entity duly organized,

validly existing and in good standing under the laws of the State or locality of its formation and with full power and authority to execute, deliver and perform the Agreement;

- (b) The execution, delivery and performance of the Agreement have been duly authorized by all necessary corporate action of the DPA;
- (c) The Agreement constitutes a legal, valid and binding agreement of the DPA, enforceable against the DPA in accordance with its terms, except as limited by bankruptcy, insolvency, receivership and similar laws from time to time in effect;
- (d) The DPA possesses all necessary licenses, permits and approvals required to execute, deliver and perform the Services and its duties under the Agreement and is qualified to do business in all jurisdictions where such qualification is required for the DPA's performance of its duties under the Agreement;
- (e) To the best of the DPA's knowledge, there is no litigation pending or threatened which would adversely impede or prevent the DPA's execution and performance of the Agreement, or which poses a conflict of interest in which the DPA is taking an adverse position in litigation, an administrative proceeding or other contested matter with HUD or an Owner whose Project is covered by the Agreement; and
- (f) The representations and warranties made in the documents submitted as part of the DPA's response to the Request for Qualifications, as may have been updated by the DPA and approved by the DAS, are true and correct.
- (g) The computer hardware and software to be used by the DPA in performing under the Agreement currently is compatible with the standards listed in Attachment 2 hereto.

11.2.2 DPA Covenants. The DPA covenants that it will comply with, and will cause each Subcontractor to agree in its agreement or subcontract with the DPA to comply with, all applicable Federal and State laws and regulations, including the Guide, in performing its and their respective responsibilities under the Agreement and the subcontracts.

11.3 Opinion of Counsel. If deemed necessary in the sole discretion of the Director, the DPA shall provide the DAS with an opinion of counsel confirming the matters set forth in 11.2.1(a)-(e) above.

11.4 Notifications to the DAS. The DPA shall promptly provide the DAS with notice of any anticipated development or event that would adversely and materially affect the DPA's financial condition or its ability to perform its obligations under the Agreement.

11.5 Conflicts. The DPA shall promptly notify the DAS of any conflicts between the Regulations, the Agreement and the Guide.

ARTICLE 12 -- CONFIDENTIAL INFORMATION

12.1 Confidentiality of Nonpublic Information.

12.1.1 Definition of Nonpublic Information. For purposes of the Agreement, all information that the DAS provides or causes to be provided to the DPA, or information that the DPA otherwise may obtain, in connection with its duties under the Agreement shall be deemed to be nonpublic ("Nonpublic Information"), unless such information is otherwise available to the public or made subject to disclosure under the Agreement. Subject to the foregoing, Nonpublic Information also shall include: (a) any specifications, knowledge, strategies or technical data, processes, business documents or information, marketing research and other data, customer or client lists or sources of information which are owned, possessed or

used exclusively by or for the benefit of the DAS; and (b) confidential information or materials obtained by the DPA from a third party in connection with the DPA's performance under the Agreement. Nonpublic Information shall be treated subject to the provisions of this Article 12.

12.1.2 Duty to Maintain Confidentiality of Nonpublic Information. The DPA shall strictly comply with the requirements of all applicable laws and HUD in dealing with all Nonpublic Information it obtains in connection with its performance under the Agreement, and, except as required by any law, court order, subpoena or by the DAS, or as required to perform the DPA's duties under the Agreement, neither DPA shall disclose Nonpublic Information to anyone, nor shall they use or allow the use of any Nonpublic Information to further any private interest other than as contemplated by the Agreement. The DPA shall take appropriate measures in accordance with the requirements of Federal law and HUD to ensure the confidentiality of all Nonpublic Information and to prevent its inadvertent or unintentional disclosure or its inappropriate use by the DPA or its subcontractors, by its or their employees or Affiliates. The duties described under this Section 12.1.2. shall survive the Expiration or Termination of the Agreement. At all times such information shall remain the sole property of the Department of Housing and Urban Development.

12.2 Notice of Orders Requiring Disclosure of Nonpublic Information. The DPA shall immediately notify the DAS and the DAS or Secretary shall immediately notify the DPA in writing of any subpoena or court order requiring disclosure of Nonpublic Information in accordance with State and Federal law. The DPA, at the DAS's direction, shall appeal or challenge such subpoena or court order before disclosure, and shall cooperate fully with the DAS in challenging any subpoena or order requiring the disclosure of Nonpublic Information. The DPA shall have no authority to disclose Nonpublic Information except in conformity with this Article 12.

ARTICLE 13 -- BOOKS, RECORDS AND DPA OVERSIGHT

13.1 Recordkeeping and Reporting Requirements.

13.1.1. General.

(a) Maintenance of Substantiating Documentation. At all times during the Term of the Agreement and for 3 years following Expiration or Termination, the DPA shall maintain a complete and accurate set of files, books, documents, papers, reports and records of all business activities and operations conducted by the DPA, and all photocopies or reproductions thereof, relevant to each delegated processing transaction attempted or completed under the Section 202 Delegated Processing Program or to the DPA's performance under the Agreement (all of which shall collectively constitute the "Records"). The DPA shall require its Subcontractors to maintain a complete and accurate set of files, books, documents, papers, reports and records of all business activities and operations conducted by the Subcontractor, and all photocopies or reproductions thereof, relevant to each restructure transaction attempted or completed by the Subcontractor under the Program or to Subcontractor's performance of the requirements of the Agreement. The DPA shall maintain at its principal place of business, or a convenient, secure location off-site, the final reports or other final work product and Records prepared by the DPA and its Subcontractors. All Records stored off-site shall be available to the DAS upon 48 hours notice to the DPA. All Records collected or prepared by the DPA or Subcontractors, or related to a Project, or related to the DPA's performance under the Agreement shall be the property of the DAS and shall not, in any manner, be construed to be the property of the DPA.

(b) Production of Records to the DAS or Director. The DPA shall promptly forward such Records as the DAS shall require in writing, with reasonable costs to be reimbursable.

13.1.2 Generally Accepted Accounting Principles. The DPA shall maintain all accounts and prepare the related financial statements and reports required under the Agreement in accordance with generally accepted accounting principles applied on a consistent basis and formatted in a manner acceptable to HUD.

13.1.3 Retention of Records. Retention and disposition of Records shall be governed by Section 14.4.3.

13.1.4 The DAS's Right to Examine Books and Records and to Audit.

(a) Access to Books and Records. At all times during the Term of the Agreement and at all times during the three (3) year period following the Expiration or Termination of the Agreement, the DAS and his/her duly authorized agents, representatives, employees, or other Government agency may, upon forty-eight (48) hours notice, enter upon the DPA's place of business and, during business hours, inspect, audit, and copy: (i) any Records held by the DPA relevant to the DPA's performance under the Agreement; and (ii) any Records held by the Subcontractor relevant to the DPA's performance under the Agreement. The DPA shall not require unreasonable prior notice or otherwise limit the access of the DAS or its duly authorized agents, representatives or employees when they seek to perform such examination of the Records held by the DPA or any Subcontractors. The DPA shall also make available to the DAS the appropriate staff for purposes of conducting a Records review or for other reasonable purposes. The limitations in this Section 13.1.4(a) regarding access to inspect shall not apply to HUD's Inspector General or the General Accounting Office.

(b) Subcontracting and Books and Records Access. The DPA agrees to include in subcontracts under the Agreement a clause to the effect that the DAS or his/her duly authorized agents, representatives or employees, or other Government agency may, until three years after final payment under the subcontract, at such reasonable times as the DAS may determine, inspect, audit and copy any of Subcontractor's Records relevant to their performance related to the Agreement. Such clause shall provide that Subcontractor may require up to 48 hours notice and will not otherwise limit the access of the DAS or his/her duly authorized agents, representatives or employees when they seek to perform such examination of the Records of the Subcontractor.

(c) Period of Examination. The periods of access and examination in subsections (a) and (b) above for Records relating to (1) litigation or settlement of claims arising from the performance of the Agreement, or (2) costs and expenses of the Agreement shall continue until such appeals, litigation, claims, or exceptions are disposed of.

13.1.5 Reports.

- a) Subject to 11.2.1(g) and 13.2.2, the DPA shall have computer software and Internet access which is compatible with HUD's and able to generate the reports required by HUD.
- b) The DPA shall, in a timely manner, provide to the DAS all information and documentation requested by the DAs from time to time.
- c) The DAS may require the DPA to meet with, submit additional reports, and/or participate in telephone conference calls with the DAS to determine the status of each assigned asset.
- d) Within thirty (30) Days after the Termination or Expiration of the Agreement, the DPA shall prepare and deliver to the DAS a final report that sets forth, among other things, a summary of the DPA's experience under the Agreement and the DPA's evaluation and recommendations based on its participation in the Delegate Processing Program.

13.2. Computer Systems.

13.2.1 Systems and Services Provided by the DPA. The DPA shall provide and maintain in good working order all computer equipment necessary to perform the duties required by the Agreement. The DPA shall provide the hardware, software and Internet capability to successfully electronically transmit information regarding the status of assigned projects and relevant data for each project to the Director. To the extent that the DAS's requirements change, to the extent reasonable the DAS will cooperate with the DPA to provide sufficient time and support to ensure that the DPA's hardware, software and Internet capability are sufficiently compatible to assure the successful transmission of restructuring data, and to remedy any technological difficulties. In the event that, due to technical difficulties, it becomes temporarily impossible to successfully electronically transmit restructuring data, the DPA may submit such data or documents via overnight courier and shall submit such data electronically as soon as practicable.

13.2.2 Proprietary Interest and License in Software and Systems. The DAS shall have (a) the exclusive and absolute right, title and interest in and to all accounting and reporting systems and

software owned by the DAS or Secretary, or otherwise obtained or developed by the DAS or Secretary at the Director's or Secretary's expense, and furnished to the DPA for use in the performance of the DPA's services under the Agreement, and (b) the right during the Term and for a period of three years after the Expiration or Termination of the Agreement, and without additional cost to the Director, to use, for Delegated Processing Program purposes, solely on its own behalf, any and all accounting or reporting systems or software owned by the DPA, or otherwise obtained or developed by the DPA at the DPA's expense for use in the performance of the DPA's services under the Agreement, subject, however, to any restrictions, limitations or prohibitions in the contracts between the DPA and the Subcontractors which provide such systems or software. The DPA will provide and maintain, at its expense, a computer system that is compatible to the computer system currently used by the Multifamily Housing Programs. The DAS will provide, at his/her expense, any hardware or software that is more advanced than or is in addition to the hardware or software required by Attachment 2 hereto. The limitations relating to the three year period shall not apply to HUD's Inspector General.

ARTICLE 14 -- TERMINATION OF AGREEMENT; PROCEDURES UPON TERMINATION OR EXPIRATION OF AGREEMENT

14.1 Termination by the DAS for Cause. A default shall exist under the Agreement and the DAS may terminate the Agreement for cause upon written notice to the DPA if the DAS determines that any of the following events of default have occurred:

14.1.1 The DPA has made a false claim for reimbursement of costs under the Agreement or has made a statement to the DAS or Secretary that contains an untrue material fact or fails to contain a material fact necessary to make the statements made not misleading, whether or not the DPA has made such a statement to the DAS or Secretary prior to the Effective Date or during the Term of the Agreement;

14.1.2 A material adverse change has occurred in the financial condition of the DPA that affects or is likely to adversely affect the DPA's performance under the Agreement;

14.1.3 A material adverse change has occurred in the DPA's ability or capacity to perform the Agreement;

14.1.4

- a) The DPA files a petition for bankruptcy, reorganization or arrangement under any Federal or State statute, or makes an assignment for the benefit of creditors or takes advantage of any insolvency statute or similar statute.
- b) If a receiver or trustee is appointed for the property and assets of the DPA and such receivership is not discharged within sixty (60) Days of such appointment;

14.1.5 The DPA or a principal thereof becomes ineligible to contract with the DAS under applicable laws and regulations, or is the subject of any Federal or State debarment or suspension proceeding or similar administrative sanction or is indicted or convicted of any criminal offense.

14.1.6 The DPA fails to perform any of its duties pursuant to and in accordance with Article 5 hereof or any other term, condition or obligation pursuant to and in accordance with the Agreement or fails to comply with the Section 202 Regulations.

14.1.7 The DPA, or those acting on its behalf (including Subcontractors), takes any action:

- (i) which is not within the scope of the DPA's duties under the Agreement;
- (ii) which is not within the DPA's authority under the Agreement;
- (iii) which amends any document which is a part of the Agreement or incorporated in the Agreement without the DAS's approval;
- (iv) which fails to comply with HUD's statutes and Regulations; or which would constitute a violation of any Federal, State or local law.

14.1.8 The DPA has committed an act or acts of negligence or willful misconduct in the performance of its duties under

the Agreement.

14.1.9 An Anticipatory Breach has occurred under the Agreement.

14.1.10 The DPA is in default in the performance of its obligations under the Agreement.

14.2 Payment Upon Termination for Cause. In the event of Termination due to an uncured default, the DPA shall be paid an amount the DAS determines is equal to the value of the Services performed by the DPA, for each Project, as of the date of DAS's notice of an event of default and the expiration of any cure period that may be contained in such notice. Such amount shall be based on the Fees set forth in Exhibit 4. Notwithstanding the previous sentence or any other provision of the Agreement, the DAS may, in such event, at the DAS's option, withhold any Fee accrued but not yet paid. In no event shall the amount of any sum retained by the DAS under this Article 14 limit the amount that the DAS may claim and recover against the DPA in connection with any claim the DAS may assert against the DPA for damages due under the Agreement. The DAS also retains the right of set-off and recoupment.

14.3 Termination for Convenience

14.3.1 Right of DAS to Terminate for Convenience. The DAS may, at his/her option and at any time, terminate the Agreement regardless of whether the DPA is in default in the performance of any of its obligations under the Agreement if such Termination is in the best interests of the Federal government. In the event the DAS terminates the Agreement for convenience, the DAS shall pay the DPA for its Services an amount equal to the percentage of the Base Fee next due pursuant to the provisions of Article 9.

14.3.2 Right of the DPA to Terminate for Convenience. The DPA may, at its option and at any time in accordance with applicable law, terminate this Agreement regardless of whether the DAS is in default in the performance of any of its obligations under this Agreement if such Termination is in the best interests of the DPA. In the event the DPA terminates this Agreement for convenience, the DAS shall pay the DPA for its Services, pursuant to the provisions of Article 9.

14.4 Procedures for Termination.

14.4.1 Notice for Termination for Cause. The DAS shall notify the DPA in writing of a default of the Agreement under Section 14.1. The DAS shall provide the DPA with ten (10) Days to cure the default. If, at the end of the cure period, the DAS determines that the violation has not been cured, the Termination of the Agreement shall be effective immediately, without further notice.

14.4.2 Notice for Termination for Convenience.

- a) In the event the DAS wishes to terminate the Agreement for reasons of convenience, the DAS shall provide the DPA with twenty (20) Days advance written notice of the Termination. The Termination will be effective at the end of the twenty (20) Day period.
- b) In the event the DPA wishes to terminate the Agreement for reasons of convenience, the DPA shall provide the DAS with twenty (20) Days advance written notice of the Termination. The Termination will be effective at the end of the twenty (20) Day period.

14.4.3. Books and Records. Upon the Expiration or upon receipt of notice of Termination of the Agreement, the DPA, as directed by the DAS, either will immediately deliver all Records to the control of the DAS or the DAS's authorized agent at the DAS's sole expense or will hold the Records for up to a three (3) year period. During this period, the DPA shall continue to maintain Records relevant to its performance under the Agreement at its principal place of business, or a convenient, secure location offsite, which shall be accessible to the DAS upon 48 hours notice to the DPA. The DAS shall have the right to enter upon the DPA's place of business or off-site location to take physical possession and control of the Records, and the DAS may restrain any breach of the provisions of this

Section 14.4.3 by injunction. The DPA may, at its own expense, make and maintain copies of the Records for its files for the period up to three (3) years following Expiration or Termination of the Agreement, subject to the DPA's obligation to maintain the confidentiality of all Nonpublic Information in such materials in accordance with Federal law, HUD regulations and State law. In all events, the DPA shall at the end of the three (3) year period following Expiration or Termination of the Agreement deliver the Records to the DAS or the DAS's authorized agent at Director's sole expense, unless it has previously done so at the DAS's request. The DPA expressly waives all right to any statutory or possessory lien on the Records. The DPA may request the DAS to return to the DPA copies of any Records that have been previously delivered to the DAS under this section and have not been destroyed, for a limited period of time, as necessary for the DPA to satisfy state law audit and other governmental requirements. The DPA's request shall identify the Records and the governmental requirement for which the Records are sought.

14.4.4 Duty of Cooperation. Upon the Expiration or Termination of the Agreement, the DPA will cooperate with the DAS to effect an efficient, smooth, and timely transition of responsibility with respect to the Projects.

14.5 Effect of Termination. Upon the Termination of the Agreement for any reason, the DAS's appointment of the DPA shall terminate, but the Termination of the Agreement shall not affect any right, obligation or liability that has accrued under the Agreement. Upon Termination, the DAS shall take over all responsibility for underwriting of any Project under the Agreement as of the date of Termination. The DPA is responsible for releasing all records to the DAS upon Termination in accordance with Section 13.1.

14.6 Further Assurances. The DPA shall cooperate with the DAS after Termination of the Agreement to execute and deliver such documents as the DAS may request to carry out the terms and provisions of the Agreement, provided that such documents shall not increase the DPA's liabilities or diminish the DPA's rights under the Agreement.

ARTICLE 15 -- MISCELLANEOUS PROVISIONS

15.1 Assignment; Binding Effect. The DPA may not assign or transfer the Agreement or any rights or benefits under the Agreement to any person or entity without the prior written approval of the DAS, which approval may be withheld or conditioned as the DAS may determine. Any assignment made without receiving prior written approval of the DAS shall be void. All of the covenants, conditions and obligations contained in the Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of DAS and the DPA.

15.2 Notices. All notices, requests, demands and other communications which are required or permitted to be given under the Agreement shall, unless otherwise specified herein, be in writing and sent by hand delivery, overnight courier, registered or certified mail, return receipt requested, postage prepaid or facsimile (with the original sent within twenty-four (24) hours of such facsimile by hand delivery, overnight courier or by registered or certified mail, return receipt requested and postage prepaid):

15.2.1 If to the DAS, to:

Deputy Assist Secretary for Multifamily Housing Programs
451 Seventh Street, S.W.
Room 6106
Washington, D.C. 20410
Facsimile 202 708-2583

with a copy in the case of disputes or legal matters to:

Associate General Counsel for Assisted Housing and Community Development
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Room 8158
Washington, D.C. 20410
Facsimile 202 401-2115

15.2.2 If to the DPA to:

E:mail address: _____

All such notices, requests, demands and other communications shall be effective upon the actual delivery thereof to the address identified pursuant to this Section (or the refusal thereof by the addressee at the address identified pursuant to this Section). Either party may change its address for purposes of this Section by sending to the other party to the Agreement written notice of the new address in the manner specified in this Section. Each party shall be responsible for notifying the other of any change of address.

15.3 Nondiscrimination. The DPA agrees that during the performance of the Agreement:

15.3.1 The DPA shall not violate Federal or state laws that prohibit discrimination against any employee or applicant for employment because of race, color, religion, sex, age, mental or physical disability or national origin.

15.3.2 The DPA shall take affirmative action to comply with all Federal and state laws to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, mental or physical disability or national origin. Such action shall include, but not be limited to: (i) employment; (ii) upgrading; (iii) demotion; (iv) transfer; (v) recruitment or recruitment advertising; (vi) layoff or Terminations; (vii) rates of pay or other forms of compensation; and (viii) selection for training, including apprenticeship.

15.3.3 The DPA shall include the terms and conditions of Sections 15.3.1 and 15.3.2 in every Subcontract so that these terms and conditions will be binding upon each Subcontractor.

15.4 Severability. If any provision of the Agreement shall be determined to be invalid or unenforceable, the remaining provisions of the Agreement shall not be affected thereby, and every provision of the Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

15.5 Headings. The headings appearing in the Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any article or Section of the Agreement.

15.6 Survival. The provisions contained in the Agreement, including but not limited to the express obligations contained in Article 10, which, by their terms, require their performance after the Expiration or Termination of the Agreement, shall be enforceable notwithstanding the Expiration or other Termination of the Agreement.

15.7 Waiver. Neither party's waiver of the other's breach of any term, covenant or condition contained in the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in the Agreement.

15.8 The DAS's and the DPA's Remedies Not Exclusive. The rights and remedies of the DAS and the DPA provided in the Agreement are cumulative and not exclusive and are in addition to any other legal and administrative rights and remedies now or hereafter provided by law.

15.9 Notice of Claims under the Agreement. The DAS and the DPA each agree that it will provide the other with written notice of any claim for legal relief or equitable relief it may have against the other arising under or in connection with the Agreement, that it will refrain from filing suit with respect to any such dispute for a period of sixty (60) Days following the other's receipt of such notice and that it will promptly meet with the other after providing such notice in a good faith effort to resolve the dispute.

15.10 Counterparts. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.11 Governing Law. The Agreement shall be governed by and construed in accordance with all applicable Federal laws and regulations.

15.12 Communications with the Media. Neither the DPA nor its employees shall communicate with, or provide

information to, members of the press or other media regarding its agreement with, or work for, the DAS without the DAS's prior approval, which will not be unreasonably withheld. The DAS and the DPA will establish procedures to expedite compliance with this Section 15.12. Any requests from press or media personnel which are requests for the production of documents shall be handled pursuant to Article 12. Nothing here shall preclude a the DPA from attending and participating in a public meeting that is also being attended and/or reported on by members of the press or other media.

15.13 Force Majeure. The DAS and the DPA shall be excused for the period of any delay in the performance of any obligations under the Agreement when prevented from performing such obligations by cause or causes beyond their reasonable control, including, without limitation, civil commotion, war, invasion, rebellion, hostilities, military or usurped power, sabotage, pestilence, riots, fire or other casualty or acts of God.

15.14 Multiple Contracts or Engagements. If, at any time during the Term of the Agreement, the DPA is performing services for the DAS pursuant to another contract or agreement, the DPA shall separately maintain Records and Operating Accounts for each such agreement and shall otherwise segregate matters pertaining to its performance under each such agreement.

15.15 Third Party Beneficiaries. The DPA and the DAS agree that there are no parties which are third party beneficiaries to the Agreement.

15.16 Entire Agreement; Modification. The Agreement and the Exhibits and Attachments hereto, which are hereby incorporated by reference, constitute the entire agreement between the parties. If there is any inconsistency between the terms of the Agreement and any attachments or exhibits hereto, the terms of the Agreement shall govern. There are no promises or other agreements, oral or written, express or implied, between them other than as set forth in the Agreement. No change or modification of, or waiver under, the Agreement shall be valid unless it is in writing and signed by a duly authorized representative of the party against which it is to be enforced.

IN WITNESS WHEREOF, each party has caused this instrument to be signed on its behalf by its duly authorized agent.

Witness: The Deputy Assistant Secretary for Multifamily Housing Programs acting on behalf of the Secretary of Housing and Urban Development

By: _____

Date: _____

Witness: _____ By: _____

Title: _____ Date: _____

The Delegated Processing Agency

Name: _____

Address: _____

By: _____

Date: _____

Witness: _____ By: _____

Title: _____

Date: _____

Warning: U.S. Criminal Code, Section 1001, Title 18 U.S.C., "Whoever, in any matter the jurisdiction of any department or agency of the United States knowingly and willfully makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

Exhibit 1
SCHEDULE OF PROJECTS

All Projects assigned from and after August 15, 2009. Hereafter, all Projects assigned to the DPA by the local Hub/Program Center Director will be identified using Appendix 1 of HUD **Notice 09-10**.

Exhibit 2 Operating Procedures Guide

The Guide consists of program regulations, the applicable NOFA, notices, handbooks, forms and other directives. The material is published online at

HUDCLIPS: <http://www.hud.gov/offices/adm/hudclips/>.

Code of Federal Regulations: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

Federal Register Main Page: <http://www.gpoaccess.gov/fr/index.html>

Exhibit 3
Key Personnel of the DPA

**Exhibit 4
Fees**

The DPA may assess a reasonable fee which shall be paid out of the capital advance appropriated funds. The maximum DPA fees HUD will reimburse will be computed on a percentage basis of the amount of the original capital advance award.

<u>New Construction or Rehabilitation</u>		
1	Issue the firm commitment within 12 months of the delegation or issue a rejection letter resulting in the termination of the funding.	100 basis points
2	A sliding scale bonus for a firm commitment issued before the 12 month deadline.	8.3 basis points per month
3	A sliding scale penalty for every month beyond the original 12 month deadline for issuing the firm commitment.	8.3 basis points per month

<u>Acquisition of Existing Project with or without Repairs</u>		
1	Issue of the firm commitment within 12 months of the delegation or issue a rejection letter resulting in the termination of the funding.	75 basis points
2	A sliding scale bonus for a firm commitment issued before the 12 month deadline.	8.3 basis points per month
3	A sliding scale penalty for every month beyond the original 12 month deadline for issuing the firm commitment.	8.3 basis points per month

b. Other fees paid to the DPA.

- 1) The DPA cannot be paid twice for the same services. For example the DPA also underwrites a construction loan in a mixed-finance transaction. Any underwriting fees charged the Owner must be reduced by the amount HUD is paying.
- 2) In the case of a mixed-finance transaction with additional non-assisted units, the DPA may charge reasonable additional fees based on increased work load of the additional non-assisted units. The amount of these fees is to be negotiated between the Owner and the DPA.

Note: These fees are not to be paid using HUD funds.

- c. The DPA is responsible for any reprocessing of the firm commitment before initial closing at no additional charge to HUD.
- a. To assure compliance with this requirement HUD will withhold 10 percent of the DPA's Base Fee. The holdback will be released:

For the issuance of a firm commitment for the release of capital advance proceeds during construction, when the project reaches initial closing.

- For the issuance of a firm commitment for the release of capital advance upon project completion, when the project starts construction.
- b. Failure to comply with this requirement will result in forfeiture of the holdback.

ATTACHMENT 1: The DPA's Full Review Procedure

To be attached by the DPA.

ATTACHMENT 2:

DPA-Furnished Computer Equipment

Hardware:

- Minimum processor = 133 MHz or higher Pentium-compatible CPU
- Min. hard drive size = 2 GB with a minimum of 650 MB of free space
- Min. RAM = 64 MB
- Video / Screen Resolution = 800x600 w/ 256 colors
- Internet Service Provider (ISP) connection with min. speed of 28.8 bps

Software:

- Operating System = Microsoft Windows XP is recommended
- Word Processor = Microsoft Office Word 2007 (or ability to read/write/save as MS Office Word 2007 files)
- Spreadsheet = Microsoft Office Excel 2007 (or ability to read/write/save as MS Office Excel 2007)
- Web Browser = Netscape 4.0 or higher (incl. forms, java, 128-bit encryption) OR = MS Internet Explorer 4.0 or higher (incl. forms, java, 128-bit encryption)

The DPA must provide facsimile and fax/telephone line for the transmission and receipt of information relating to the delegation.