

JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

B. Assessors and Other Public Officials

1. "Assessment Valuation of Privately Owned,
Government Subsidized Housing", to the North
Central Region of Assessment Officers,
Springfield, IL. May 7, 1977

Assessment Valuation of Privately Owned, Government Subsidized
Housing Northcentral Region of Assessment Officers
Springfield, Illinois
Saturday, May 7, 1977
James A. Graaskamp

- I. A variety of housing projects including detached single family, townhouses and multi-family units for family and elderly are being developed throughout the midwest under federal, state, and local project subsidy formulas.
 - A. Included are 221 (d) (3), Section 236, and Section 8 developments (in these programs the subsidy goes to the property owner subject to significant conditions constituting a long term encumbrance).
 - B. The programs in "A" impact the assessment value while programs which subsidize the tenant or occupants do not.
 - C. The number of these projects will continue to increase over the next three years because the lead time from congressional budgeting to completed unit occupancy is about three years.
 - D. Many assessors are applying fair market value sales of conventional projects as their benchmark for subsidized projects when in fact, the market comparison approach is inapplicable and has been recognized as such in several states.
 - E. The objective this morning is to first establish why the market comparison approach is inapplicable, then to establish why the income approach is the appropriate method, and three, to suggest two income methods which would be appropriate.
- II. Subsidized housing projects seldom are sold by the original owner because:
 - A. The primary incentive for investment is the accelerated 200% declining balance depreciation on the component method which is available only to the original owner, i.e., the owners of record when the first dollar was collected.
 1. A second owner would receive only 125% declining balance, and the IRS would raise the land value component, thus reducing the depreciable base.
 2. The seller would be taxed on all excess depreciation for the first 100 months in excess of straight line and forgiven 1% per month of excess depreciation thereafter, forcing a holding period of at least 200 months. The seller's other option is to sell to the tenants and immediately invest in another subsidized unit.
 3. The federal subsidy contract prohibits resale for 20 years and the state housing authorities prohibit resale for 40 years; moreover the change in estate tax laws in 1976 which requires the estate or heirs to maintain the same tax base as the deceased discourages the wealthy individual from any sale at that time.

4. Since cash dividends to the investor are limited to 6% on a make-believe 10% equity, the primary incentive is not cash income but rather tax shelter in the short run and possible inflationary increases in value when the subsidy program lapses 20-40 years hence. The general partner enjoys a lucrative property management contract on the elderly units.
 5. Federal and state agencies have been forcing sponsors or developers to combine family housing on scattered sites with elderly on a central site under a single loan. Family housing is a management headache while elderly housing is a stable and satisfying investment. The assessor must be able to distinguish among these projects and site types.
 6. By and large, state housing finance agency projects are better located, better built, and better managed than federal projects. Nevertheless, many subsidized housing projects have poor materials, shoddy construction, and poor maintenance because:
 - a. Developers derive construction budget from rent standard imposed by the federal government. Once the budget is known, the builders must build for that number or invest their own money.
 - b. Annual cash flows are diverted to certain required reserves and escrows which can only be released to repair with a long appeal process to the agency.
 - c. For many years, the government required that rents include utility costs so that utility budgets have far exceeded original estimates, diverting cash from maintenance.
 - d. A condition of the loan is rent control by the federal government which will permit an increase in base rents only after historical costs have run the project into the red so that rental increases always lag expenses.
 - e. Several states have already taken official positions that a government subsidized loan is a long term encumbrance on the property which impairs a fee simple title.
1. See state of California in Appendix.
 2. See State of Washington in Appendix.
 3. See "Appraisal of Low Income Housing", James P. Landry, CAA, Assessors Journal, July 1975.
 4. See "A Non-Market Income Approach to Value for HUD Subsidized Co-ops", R. Terry Harrison, ASA, The Real Estate Appraiser, April 1977.

III. The income approach requires a definition of affected gross revenue, operating expenses, debt service, and returned equity. Unlike many income properties, this information is available from public sources on an annual audited basis.

- A. Effective gross revenue equals actual dollars collected from tenants plus actual subsidy minus required escrows minus cash in excess of limited dividend of 6% on equity.

- B. Actual operating expenses for the previous fiscal year are available to the assessor from the District Office of FMA or the appropriate state office for the State Housing Finance Agency. These are available under the Public Information Act.
- C. Determining the debt service is related to the nature of the subsidy.
1. Early programs, primarily 221D3, provided mortgages at non-market interest rates rather than a direct cash payment. In that case, there would be no subsidy for effective gross, but the interest rate would be at $3 \frac{1}{2}$ - $4 \frac{1}{2}\%$ on a 40 year mortgage.
 2. More recently, the interest rate is pegged by FMA or specifically set for each project where the State Housing Finance Authority passes through the tax exempt interest rate on its moral obligation bonds and adds a loading not to exceed $\frac{3}{4}$ of 1%. The mortgage permits interest rate adjustments because the mortgage is for 40 years, but the bonds are of differing maturity dates depending on what the bond underwriter's would sell at a given point in time.
- D. The forecast period for capitalizing the income stream should not exceed 5 years.
1. Assume no change in resell price for elderly housing.
 2. Assume family housing will decline in value 1% a year because of more intense use and less maintenance.
- IV. There are 3 levels of sophistication for valuing the project. A manual mortgage equity approach, a simple computer version of Elwood, and an after tax version.

Actual rents collected from tenants	-	\$60,000
Actual subsidy dollars collected	-	40,000
Total effective gross income	-	<u>\$100,000</u>
Operating expenses including utilities	-	42,000
Required reserves for replacement increment	-	<u>8,000</u>
Net operating income before real estate taxes		<u>\$50,000</u>



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

TEL: (916)445-4982

GEORGE R. REILL
First District, San Francisco

IRIS SANKEY
Second District, San Diego

WILLIAM M. BENNETT
Third District, San Rafael

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

W. W. DUNLOP
Executive Secretary

#76/157

September 24, 1976

TO COUNTY ASSESSORS:

VALUATION OF SECTION 236 HOUSING

Housing projects constructed pursuant to Section 236 of the National Housing Act are subject to an enforceable restriction that must be considered by appraisers when valuing the project for property tax purposes (see Attorney General Opinion No. CV 75/267, April 21, 1976). The appraiser's goal is to estimate the market value of the property subject to existing controls and regulations imposed by FHA.

The comparative sales approach will have little application in the appraisal because open-market sales of 236 housing projects are rare, and data from sales of unrestricted properties cannot be used (see Revenue and Taxation Code Section 402.5). However, the sales comparison approach will become more meaningful when open-market transactions of 236 projects take place.

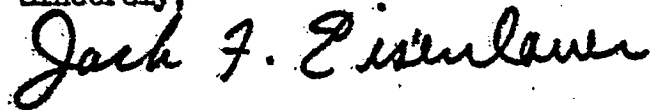
The income approach should be considered the preferred approach. The gross income to be processed and converted to a value indicator should include both the basic rental received by the landlord and the interest subsidy payments made by the government to a lending institution on behalf of the landlord. Any rent paid by "high income" tenants in excess of the base rental established by FHA should not be included in the income stream; this excess rent, if any, is refunded to FHA to assist in making interest subsidy payments.

Since sales data from 236 projects are not available, capitalization rates should be developed by the band-of-investment method. The equity yield portion of the investment should not be confused with the six percent maximum return on annual cash flow allowed limited-dividend ownerships; equity yield resulting from cash flow and equity build-up may well exceed six percent. The debt interest portion of the rate should reflect the full mortgage interest rate required for the original loan. Capitalization rates derived from unrestricted properties are inapplicable. However, mortgage-equity overall rates developed from a refined band-of-investment technique are well suited for these properties.

September 24, 1976

However, there may be occasions when the replacement cost approach will be a reliable check against the capitalized earnings approach. FHA regulations do not restrict the use for which the improvements were designed: multiple-family residences. Also, the regulations may not restrict a project's economic earnings since the interest subsidy can offset economic rental loss. If the economic income is not substantially restricted, and the land value used in the Cost approach reflects multiple-family residential use, then the cost approach can be used to gauge the accuracy of the income approach.

Sincerely,

A handwritten signature in cursive script that reads "Jack F. Eisenlauer".

Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE:gm

STATE OF WASHINGTON
Board of Tax Appeals

Robert Gustav)
)
Appellant)
vs.)
)
Harley H. Hoppe)
King County-Assessor)
)
Respondent)
)

8 p.m.
Re: Petition for Rehearing
Docket Nos. 10912, 10913,
12330, 12331

This matter came before the Board April 20, 1976 as a petition for rehearing pursuant to WAC 456-08-540 timely filed by the respondent King County Assessor. The Board reviewed the evidence before it at the hearing, its order and decision and analyzed the relevancy of the issues raised in the petition.

It appears to the Board that the thrust of the respondents' objection relates more to the formula used by the Board rather than to the actual valuation results. The Board has always taken the position that each appeal stands on its own merits. The two Board decisions cited in respondent's petition are not considered as establishing a precedent regarding the use of actual rent as opposed to economic rent in the valuation process.

The Panorama House appeal (Docket Nos. 12681, 12664) was considered in an entirely different light than the subject appeals. It was clearly a luxury type development warranting the use of economic rent rather than actual rent. The same was true of the appeal under Docket Number 7926 (The Newport Apartments) which sold for \$355,625 in 1975 according to respondent's petition for rehearing.

The Board also notes, as reflected on Page 2 of the Henry House decision, that it reacted to respondent's statement that the income approach was not very reliable in the subject appeals since there was a dearth of evidence in this area of valuation.

The Board concludes that the issues raised by the appellant were adequately met in its Final Order and finds no substantive basis for changing its Order. Therefore, it finds no good purposes would be served by hearing further oral arguments on the matter.

The petition for rehearing is denied and the Final Order is affirmed.

DATED at Olympia, Washington
this 21 day of April, 1976

STATE OF WASHINGTON BOARD OF TAX APPEALS

Robert D. J. [Signature] CHAIRMAN
Alan E. [Signature] MEMBER
Carroll H. Thomas MEMBER

[Signature] EXECUTIVE SECRETARY

STATE OF WASHINGTON
Board of Tax Appeals

Robert Gustav
(Henry House)

Appellant

vs.

Harley H. Hoppe
King County Assessor

Respondent

Docket Nos. 10912, 10913, 12330, 12331

Re: Property Tax Appeals

O R D E R

FINAL DECISION

This matter came on before the Board of Tax Appeals for hearing on December 16, 1975, the appellant being represented by James K. Treadwell, Attorney and Earl L. Stay, Appraiser, and the respondent being represented by Jim Miller and W. R. Hueckstedt, Deputy Assessors. The Board having heard testimony in support of the appellant's appeal and of the respondent's answer and having heard and considered the arguments made on behalf of both parties, now makes its order as follows:

VALUATIONS IN CONTROVERSY

Docket No.	Assessment Year	Description of Property	County Board Valuation		Board of Tax Appeals Valuation	
			Land	Improvements	Land	Improvements
		Parcel:				
10912	1973	No. 012603-9061	\$49,260	\$259,720	\$49,260	\$288,230
10913	1973	No. 012603-9468	\$31,500	\$257,380	\$31,500	\$288,230
12330	1974	No. 012603-9061	\$59,700	\$319,400	\$59,700	\$281,920
12331	1974	No. 012603-9468	\$37,800	\$319,100	\$37,809	\$281,920

OPINION AND STATEMENT OF FACTS

These appeals concern a low income apartment housing complex, known as "Henry House", and located on the Richmond Beach Road, King County. "Henry House" consists of 2 three-story frame and marblecrete exterior buildings, built in 1968 and containing 54 units (12 one-bedroom, 36 two-bedroom and 6 three-bedroom units). The one-bedroom units contain 729 square feet; the two-bedroom units contain 847 square feet; and the three-bedroom units contain 1,066 square feet, making a total building area of 50,250 square feet. The total site or land area is 230 by 300 feet or a total of 69,696 square feet contained in two unequal parcels. It is assumed each of the two parcel numbers contain the same number of apartment units (27 each).

Henry House is a HUD section 221 (d) (3) (BMIR) project. This program is similar to a Sec. 236 project with low controlled rentals resulting from an FHA rent subsidy. This program provides for monthly payments from the government directly to the mortgage lender, on behalf of the project owner; the owner is required to pass the benefits of this subsidy along to the eligible residents in the form of lower rents. The amount of the monthly government payment to the lender is equal to the difference between the payment that would be required for principal, interest and mortgage insurance premium on the market rate mortgage (currently limited by HUD to 7 percent) and the amount that would be required for principal and interest if the mortgage carried an interest rate of 3 percent.

Am't Pd by Gov. to Lender = (Prin + Int @ 7%) - Same @ 3%

The appellant has had two HUD approved rent increases, the original rents (1968) being \$108 for the one-bedroom units, \$128 for the two-bedroom units and \$146 for the three-bedroom units. The current rents (which include utilities) are \$123 for the one-bedroom units, \$147 for the two-bedroom units and \$169 for the three-bedroom units.

The respondent-assessor has utilized all three approaches to value, the assessor's cost approach to value for assessment year 1973 and 1974, was adopted by the board of equalization and these values are as follows:

Assessment Year 1973

	Docket No. 10912 Parcel No. 012603-9061	Docket No. 10913 Parcel No. 012603-9468	TOTAL
Land	\$ 49,260	\$ 31,500	\$ 80,760
Improvement	\$ 259,720	\$ 257,380	\$ 517,100
TOTAL	\$ 308,980	\$ 288,880	\$ 597,860

Ass. Inc. Appr. 672,000

Assessment Year 1974

	Docket No. 12330 Parcel No. 012603-9061	Docket No. 12331 Parcel No. 012603-9468	TOTAL
Land	\$ 59,700	\$ 37,800	\$ 97,500
Improvement	\$ 319,400	\$ 319,100	\$ 638,500
TOTAL	\$ 379,100	\$ 356,900	\$ 736,000

Ass. Inc. Appr. 751,800

*using
same
5.2%
disc. rate*

In the above cost approach analysis in estimating the value of the improvement, the respondent-assessor used a replacement cost (Marshall Swift indices) which was adjusted for depreciation for each assessment year and added to this \$16,654 for accessory improvements or a total of \$517,100 for 1973 and \$638,500 for 1974. Added to this is the land appraisal of \$80,760 for 1973 (based on \$1.15 per square foot) and \$97,500 for 1974 (based on \$1.40 per square foot). In his income approach to value of the improvements, the respondent-assessor used an economic rent of 16 cents per square foot per month for 1973 or a total income of \$100,608 and 17.5 cents per square foot per month for 1974 or a total rental income of \$110,088. The assessor then allowed a 5 percent vacancy factor, a 25 percent expense deduction, an estimated life of 45 years and a 10.78 overall capitalization rate of 10.78 percent for 1973 and 10.72 percent for 1974, arriving at a total value of \$682,000 for 1973 and \$751,800 for 1974. The assessor stressed these income approach values as being non-reliable. The respondent-assessor also presented some evidence relating to the market approach to value, arriving at an estimate of \$660,520 (\$12,230 per unit) for 1973 and \$729,000 (\$13,500 per unit) for 1974.

Appellant contends that pursuant to RCW 84.40.030, the income approach to value should be used and in the use of such an appraisal technique it is mandatory that the property be valued with all of its burdens as well as the benefits:

p. 5

RCW 84.40.030 and .030(1)(b) read in pertinent part:

RCW 84.40.030:

"The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

"(1)(a) Any sales for the property being appraised or similar property with respect to sales made within the past five years. The appraisal shall take into consideration political restrictions such as zoning as well as physical and environmental influences . . ." (emphasis added)

RCW 84.40.030(1)(b):

"In addition to sales as defined in subsection (1)(a), consideration may be given to cost, cost less depreciation, reconstruction costs less depreciation, or capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (1)(b) shall be the dominant factor in valuation."

Appellant further contends that political restrictions necessarily assumed under HUD restricted housing do constitute limitations upon full market value and are not present in ordinary residential rental property. The appellant assigns the following as pertinent in this respect:

"The Federal Housing Commissioner must give prior written approval in order for the owner to:

- "(a) convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property;
- "(b) assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds, other than surplus cash, except for reasonable operating expenses and necessary repairs;
- "(c) convey, assign, or assign any beneficial interests in any trust holding title to the mortgaged property, or the interest of any general partner in a partnership owning the mortgaged property, or any right to manage or receive the rents and profits from the mortgaged property;
- "(d) remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
- "(e) make, or receive and retain any distribution of any assets or any income of any kind of the project except from surplus cash and except on the following conditions:
 - (1) All distributions shall be made only as or after the end of a semi-annual fiscal period, and only as permitted by the law of the applicable jurisdiction; all such distributions in any one fiscal year shall be limited to six per cent (sic) of the initial

"equity investment, which shall be determined by the Commissioner; the right to such distribution shall be cumulative;

- "(2) No distribution shall be made from borrowed funds or prior to the completion of the project, or when there is any default under the agreement or under the note or mortgage;
- "(3) Any distribution of any funds of the project, which the party receiving such funds is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds;
- "(4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.
- "(f) engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project;
- "(g) require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants or the lease. Any funds collected as security deposit shall be kept separate and apart from all other funds of the project in a trust account, the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account;
- "(h) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Commissioner;
- "(i) incur any liability, direct or contingent, other than for current operating expenses, exclusive of the indebtedness secured by the mortgage necessarily incident to the execution and delivery thereof;
- "(j) pay any compensation, including wages or salaries, or incur any obligations, to himself or any officers, director, stockholders, trustees, partners, beneficiaries under a trust, or to any of their nominees;
- "(k) enter into a contract or contracts for supervisory or managerial services."

In the determination of land value, the Board deems the \$1.15 per square foot for 1973 and the \$1.40 per square foot to be proper and reasonable. We note that Mr. Stay, Appraiser for appellant has assigned a value of \$1.50 per square foot for both assessment years, which adequately corroborates the assessor's land values. We deem the assessor's land values which were sustained by the Board of Equalization, to represent market value of the land for the two assessment years.

175

(The Board deems the cost approach to improvement value as presented by the respondent-assessor, and confirmed by the Board of Equalization as a proper appraisal method; however, we believe this technique does tend to establish the upper limits of value. This is perhaps the result of the fact that under federal housing programs it is evident that governmental regulations do tend to burden acquisition and construction costs. Moreover, the Board is of the opinion that the cost approach, standing alone, does not take into consideration the unique and income restricted nature of apartment house ownership as required under Sec. 221(d)(3) (BMIR) projects. The governmental restrictions imposed should be taken into account since these restrictions do reflect what a willing buyer would pay for the property. The Board was only mildly impressed with the comparable sales presented in the assessor's market data approach to value. (We agree with appellant that in the instant case the utilization of the income approach is not only appropriate but does generate the most credible evidence relating to market value; particularly is this true since the subject property is an apartment house complex which generates restricted income, and the net income so generated does involve some economic uncertainties that might result from unpredictable inflationary influences. The Board is of the further opinion that in the capitalization of income approach, the present actual or contract rents are proper since these rents do take into account the lack of freedom to adjust rents and the 6 percent dividend limitation. On the other hand, the Board is wholly cognizant; and, recognizes such in its ultimate determination of market value, that consideration should be given to the fact that the imposition of the HUD restrictions are, indeed, self-imposed and that the disadvantages of the rental-freeze and the six percent dividend limitation are to some degree offset by the advantages of a no risk, nonrecourse financing arrangement. We believe that an income approach, used by appellant's Mr. Stay, and which utilized actual rentals, a 5 percent vacancy factor, an economic life of 33 years and a 11.5 overall cap rate to have validity. However, we do note that the 1975 actual rentals of \$123 for the one-bedroom units, \$147 for the two-bedroom units and \$169 for the three-bedroom units, (even for assessment years 1973 and 1974) are more realistic and accurate. These rentals appear to be a mean between the actual 1973 rentals and the economic rent arrived at by the assessor, and, by Mr. Stay, appraiser for appellant. Likewise, we deem the administration costs of \$6,000 and the inclusion of taxes as an expense (when added to the overall capitalization rate) to be invalid. Recognizing there are some added management duties resulting from a HUD regulated project, we believe a 7 percent management fee merited. We deem a 33-1/3 economic life to be appropriate in this type of investment, and a three percent recapture rate in determining the capitalized value of the improvements to be merited, which results in an overall rate of 11.5 percent. We find the values that result from the use of contract rent realistically represent market value of these "locked in" politically restricted, income producing properties.

Using these factors, our computation of capitalization of income approach for both assessment years is as follows:

ORDER - Continued
FINAL DECISION

- 6 -

Re: Property Tax Appeals
Docket Nos. 10912, 10913,
12330, 12331

HENRY HOUSE 1973
(Both Parcels)

12 - 1 Bedroom Units @ \$123 per month (1975 Rental Rates) \$ 17,712
36 - 2 Bedroom Units @ \$147 per month \$ 63,504
6 - 3 Bedroom Units @ \$169 per month \$ 12,168

GROSS INCOME \$ 93,384
Less 5% vacancy and credit 4,669
EFFECTIVE GROSS \$ 88,714

LESS EXPENSES
Advertising \$ 197
Operating Expenses (Utilities) 7,520
Management (7%) 5,717
Insurance 2,103
\$ 15,537

NET INCOME BEFORE RECAPTURE AND TAXES \$ 73,177

Land Value @ \$1.15 x 69,696 square feet
\$80,150 x 8.5 = net income attributable to land 6,813

INCOME ATTRIBUTABLE TO IMPROVEMENTS \$ 66,364

CAPITALIZED VALUE OF IMPROVEMENTS 11.5% \$ 577,078
PLUS VALUE OF LAND \$ 80,150

INDICATED LAND AND BUILDING VALUE (1973) \$ 657,228

Note: The Board attributes the improvements rounded to \$ 657,220
equally to each parcel

HENRY HOUSE 1974
(Both Parcels)

12 - 1 Bedroom Units @ \$123 per month \$ 17,712
36 - 2 Bedroom Units @ \$147 per month \$ 63,504
6 - 3 Bedroom Units @ \$169 per month \$ 12,168

GROSS INCOME \$ 93,384
Less 5% vacancy and credit 4,669
EFFECTIVE GROSS \$ 88,714

LESS EXPENSES
Advertising \$ 197
Operating Expenses (Utilities) 7,520
Management (7%) 5,717
Insurance 2,103
\$ 15,537

NET INCOME BEFORE RECAPTURE AND TAXES \$ 73,177

Land value @ \$1.40 x 69,696 feet
\$97,574 x 8.5 = net income attributable to land \$ 8,294

INCOME ATTRIBUTABLE TO IMPROVEMENTS \$ 64,883

CAPITALIZED VALUE OF IMPROVEMENTS 11.5% \$ 563,770
PLUS VALUE OF LAND \$ 97,574

INDICATED LAND AND BUILDING VALUE (1974) \$ 661,344

Note: The Board attributes the improvements
equally to each parcel

P. 7

The Board concludes that the values resulting from the preceding actual income and expense analysis realistically reflect the fair market value of the above described politically restricted "Henry House" complex.

DECISION

The land values determined by the Board of Equalization are sustained, and the improvement values as shown on the above schedule are so ordered. The combined land and building value for assessment year 1973 is \$657,220 and for assessment year 1974 is \$661,340.

HELD at Olympia, Washington
is 8 day of April, 1976

STATE OF WASHINGTON BOARD OF TAX APPEALS

Robert J. Stacey CHAIRMAN

Sam E. Corra MEMBER

John K. Thomas MEMBER

S. Cady EXECUTIVE SECRETARY

**MORTGAGE INSURANCE FOR MODERATE-COST RENTAL
AND COOPERATIVE HOUSING: SECTION 221(d) (3)**

Section 221(d) (3) of the National Housing Act, legislated in 1961, has been one of the most important of the Federal Housing Administration's (FHA) programs for moderate-income families in the Council District. This program has been widely used in the Council District to provide housing for families whose incomes are too high for public housing, but too low to readily obtain new or rehabilitated standard housing in the private market. Accounting for the program's success are the below-market interest rates and the provisions allowing limited dividend sponsors to qualify for mortgage insurance.

Mortgage insurance under Section 221(d) (3) is available for newly constructed or rehabilitated projects. Each project must consist of at least five units of detached, semi-detached, row or multi-family design. Projects may include community and commercial facilities adequate for the occupants and which are, where applicable, consistent with the urban renewal program for the area. There are two components of the 221(d) (3) program: a below-market interest rate, and a market interest rate program.

Below-Market Interest Rate: One of the most important aspects of the 221(d) (3) program is that it provides mortgage insurance for mortgages with below-market interest rates. Eligible for the Section 221(d) (3) below-market interest rate (BMIR) program are nonprofit, limited dividend, cooperative, or public sponsors of rental or cooperative housing projects. The Housing and Urban Development Act of 1968 permits the conversion of rental 221(d) (3) BMIR projects to condominium or cooperative ownership, retaining the below-market interest rates. While most of the projects developed in the Council District have been rental housing, this new provision may increase the use of cooperative and condominium forms of ownership.

Market Rate: In addition to the below-market interest rate aspects of this program, mortgage insurance is also available for projects developed under Section 221(d) (3) with market interest rates. Profit-motivated housing sponsors are eligible for market rate (d) (3) and greater profits are permitted than under 221(d) (3) BMIR. Detailed certification is not required, and the market rate (d) (3) project need not be located in a community with a Workable

Program for Community Improvement.

Housing built under the market rate program in the Council District has generally been used in conjunction with the rent supplement program. While rents in the market rate projects are higher than in the BMIR projects, the use of rent supplements can bring this housing within the means of low-income families.

Administration

Federal Role: The Section 221(d)(3) programs are administered by FHA in HUD. The administration of all the phases of the (d)(3) programs are similar. The Commissioner of FHA and the national office establish regulations concerning project, sponsor, and tenant eligibility. The Commissioner delegates immediate responsibility for the program to the local FHA insuring offices, but retains the right of final approval of potential sponsors and projects.

Local Role: The FHA insuring offices accept applications from potential sponsors, and issue commitments of insurance to acceptable sponsors. The insuring office is responsible for handling negotiations between the mortgagors and the FHA, as well as supervising and regulating the (d)(3) projects for the length of the mortgage term. FHA claims certain insurance premiums and fees in order to maintain the agency's self-sufficiency. Eligibility requirements for project, sponsor, and tenants are established in BMIR projects to assure the continued moderate rental characteristics of the project.

Sponsor's Role: Several types of mortgagors or sponsors are eligible for mortgage insurance under Section 221(d)(3) BMIR. Included among these types are the nonprofit and builder-seller mortgagors. A nonprofit mortgagor is an association organized for purposes other than making a gain for itself or anyone connected with it. The builder-seller mortgagor, approved by the Commissioner, is organized to construct or rehabilitate a multifamily project and sell it to a nonprofit association at a price not to exceed the actual cost of the project. The builder-seller mortgagor operates the project under all 221 regulations until its purchase. If the purchase of the project is delayed, the builder-seller mortgagor must operate the project as would a limited dividend mortgagor. These mortgagors are all regulated by federal or state law as to rents, charges, and methods of operation.

Public mortgagors make up the second category of mortgagor-sponsors eligible for 221(d)(3) BMIR financing. Public mortgagors, which include federal or state instrumentalities other than public housing authorities, are regulated as to rents and methods of operation.

A third type of mortgagor eligible for BMIR financing is the limited dividend mortgagor. These are limited by state law as to their distribution of income, and are formed exclusively for the purpose of providing housing for moderate-income families.

A final type of mortgagor eligible for BMIR financing are nonprofit cooperative ownership housing corporations, approved by the Commissioner. Cooperative corporations restrict project occupancy to members of the corporation and membership regulations must be approved by FHA. Cooperative housing may be built or rehabilitated by an investor-sponsor mortgagor, who intends to sell the project to a cooperative mortgagor within two years of its completion. The investor-sponsor is limited as to rate of return on investment and is subject to regulations concerning sales and charges.

All of these mortgagor-sponsor types are eligible for the special (d)(3) below-market interest rate, which is currently three percent. BMIR projects carry an initial interest rate of up to 7½ percent, which is lowered to three percent upon final endorsement of the project.

General mortgagors are eligible only for market-rate (d)(3) financing. These mortgagors must be approved and regulated by the Commissioner. Market rate projects carry a market rate interest, up to 7½ percent, throughout the term of the mortgage.

Once the mortgagor has satisfactorily completed all the conditions necessary for the initial closing, the initial closing is held and the FHA endorses the Secured Note for mortgage insurance. At this point the first advance of mortgage funds may be made and project construction begun. At the completion of construction the mortgagor submits cost certification statements to the FHA.

Final closing, or full endorsement of the loan is made by the FHA. If the mortgage is to carry the below-market interest rate, the mortgage is purchased by the Government National Mortgage Association (GNMA), and the interest rate reduced from 7½ to three percent. Prior to 1968 these mortgages were purchased by the Federal National Mortgage Association.

GNMA purchases 221(d)(3) BMIR mortgages with funds appropriated by Congress for its Special Assistance Program. Because these funds are limited, certain criteria are established which projects must follow if they are to be eligible for the special interest rate. Basically, these criteria require that the project serve moderate-income or displaced families, do not duplicate other local housing programs, and are sponsored by persons capable of handling the paperwork and of managing the completed project.

Financing: Public, profit, and nonprofit sponsors subject to state or FHA regulations are eligible for financing under the 221(d)(3) programs. The amount of the mortgage varies with sponsor type and certain statutory, unit, replacement, and debt service cost limits.

The maximum mortgage amount available for a (d)(3) project is \$12.5 million. Within this amount, the project must be built or rehabilitated within certain construction cost limits. These may be raised by up to 45 percent in high cost areas.

Table 2: Construction Cost Limits for 221(d)(3) Housing

<u>Number of Bedrooms</u>	<u>Without Elevator</u>	<u>With Elevator</u>
0	\$ 8,000	\$ 9,500
1	11,250	13,500
2	13,500	16,000
3	17,000	20,000
4 or more	19,250	22,750

Public and nonprofit sponsors are eligible for a mortgage covering 100 percent of the FHA estimate of the project replacement cost. A limited dividend or a general mortgagor may receive a mortgage covering 90 percent of the project replacement cost. All sponsors are further limited in the amount of the mortgage they may receive by the debt service that the project is capable of carrying.

The maximum mortgage term is 40 years, or three-fourths of the remaining economic life of the property. Market rate 221(d)(3) projects pay a maximum mortgage interest rate of 7½ percent. BMIR projects carry an interest rate of three percent. For projects with the low rate, the insurance premium of one-half percent is waived. The sponsor is responsible for the usual application.

commitment, and inspection fees paid to the FHA. These total up to \$3.00 per \$1,000 of the amount of the mortgage for application and commitment processing, and up to \$5.00 per \$1,000 for inspection fees.

General mortgagors and limited dividend mortgagors are permitted to receive a profit on their projects. A limited dividend mortgagor may distribute annually from surplus cash approximately six percent of his equity in the project. Project architects, builders, and managers are allowed certain fees, based on the amount of the mortgage.

Section 221(d) (3) Housing in the Council District

Use: The 221(d) (3) BMIR rental housing program has been the most widely used of the FHA programs for moderate-income families. There are approximately 3,400 completed units and 5,500 units in construction or planning in the Council District. Most completed and planned units are in the City of Boston. Of the completed units, about half are located in urban renewal project areas. Approximately 2,700 of the units in construction are being rehabilitated.

Only three BMIR projects are being, or have been, developed as cooperatives. Two of these projects with 355 units are in Boston. The third project with 115 units is located in Brookline.

The market rate (d) (3) program has been used in conjunction with the rent supplement program since the latter's inception. The use of rent supplements brings the costs of these units within the income means of low-income families. There are 769 units of rent supplemented market rate (d) (3) housing completed or soon to be completed in the Council District. All are located in Boston, and all but 38 are rehabilitated units.

The following three tables list the type, location and number of units of 221(d) (3) housing in the Council District which are completed or have received initial or final approval by the FHA.

FHA FORM NO. 3136
Rev. 9-69
(Previous edition obsolete)U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATIONREGULATORY AGREEMENT FOR LIMITED DISTRIBUTION MORTGAGORS
UNDER SECTION 236 OF THE NATIONAL HOUSING ACT, AS AMENDED

Project No.

Mortgagee

Amount of Mortgage Note

Date

Mortgage Recorded:

State

County

Date

Book

Page

This Agreement entered into this

day of

19

between

whose address is

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner).

In consideration of the endorsement for insurance by the Commissioner of the above described note or in consideration of the consent of the Commissioner to the transfer of the mortgaged property, and in order to comply with the requirements of Section 236 of the National Housing Act, as amended, and the Regulations adopted by the Commissioner pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

1. Owners, except as limited by paragraph 47 hereof, shall promptly make all payments due under the note and mortgage, provided, however, that the Commissioner shall make payments to the mortgagee on behalf of the Owners in accordance with the interest reduction contract between the mortgagee and the Commissioner.
2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Commissioner of an amount equal to \$ _____ per month unless a different date or amount is approved in writing by the Commissioner. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Commissioner. In the event of a default in the terms of the Mortgage, pursuant to which the loan has been accelerated, the Commissioner may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.
- (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved or required in writing by the Commissioner.
- (c) Owners shall establish and maintain, in addition to the reserve fund for replacements, a residual receipts fund by depositing thereto, with the mortgagee, the residual receipts, as defined herein, within 60 days after the end of the semiannual or annual fiscal period within which such receipts are realized. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purpose as he may determine.
3. Real property covered by the mortgage and this Agreement is described in Schedule A attached hereto.
4. The Owners covenant and agree that:
 - (a) with the prior approval of the Commissioner, they will establish for each dwelling unit (1) a basic rental charge determined on the basis of operating the project with payments of principal and interest under a mortgage bearing interest at one percent and (2) a fair market rental charge determined on the basis of operating the project with payments of principal, interest and mortgage insurance premiums due under the insured mortgage on the project;

ACCEPTANCE OF AGREEMENT

101 E 2

- 2 -

- (b) the rental charged for each unit, which will include all utilities except telephone, will be equal to 25% of the tenant's income or the basic rental, whichever is greater, but in no event shall the rental charged exceed the fair market rental;
 - (c) they shall limit admission to the project to those families whose incomes do not exceed the limits prescribed by the Commissioner, with the exception of those tenants who agree to pay fair market rental;
 - (d) preference for occupancy shall be given to those families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster, and to those families whose incomes are within the lowest practicable limits for obtaining rental units in the project;
 - (e) on forms approved by the Commissioner they will obtain from each prospective tenant, prior to admission to the project, a certification of income, and a recertification of income from all tenants who are not paying fair market rental at intervals as required by the Commissioner;
 - (f) if any recertification reveals a change in income whereby the tenant becomes eligible for a lower or higher rental, such adjustment in rental charged shall be made, provided that rental shall never be less than basic rental and shall never exceed fair market rental;
 - (g) in a manner prescribed by the Commissioner, they will obtain written evidence substantiating the information given on the tenants' certifications and recertifications of income and shall retain the evidence in their files for three years;
 - (h) they shall require all tenants who do not pay the fair market rental to execute a lease in the form prescribed by the Commissioner, and shall not rent any unit in the project for less than 30 days nor more than one year;
 - (i) they shall remit to the Commissioner on or before the tenth day of each month the amount by which the total rentals collected on the dwelling units exceeds the sum of the approved basic rentals for all occupied units, which remittance shall be accompanied by a monthly report on a form approved by the Commissioner, provided that a monthly report must be filed even if no remittance is required;
 - (j) they shall not restrict occupancy by reason of the fact that there are children in the family, except in those projects that are designed primarily for elderly persons;
 - (k) they will rent commercial facilities, if any, at not less than the rental approved by the Commissioner;
 - (l) no change will be made in the basic rental or fair market rental unless approved by the Commissioner;
 - (m) no tenant shall be permitted to rent more than one unit at any given time without the prior written approval of the Commissioner;
 - (n) if there are rent supplement units in the project, the determination as to the eligibility of tenants for admission to such units and the conditions of continued occupancy shall be in accordance with the Rent Supplement Contract executed by the Owners and the Commissioner which is incorporated in and made a part of this Agreement.
5. Upon prior written approval of the Commissioner, the Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owner or others to such tenant upon his request, in addition to the facilities and services included in the approved Rental Schedule.
6. Owners shall not without the prior written approval of the Commissioner:
- (a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property;
 - (b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds, other than from surplus cash, except for reasonable operating expenses and necessary repairs;
 - (c) Convey, assign, or transfer any beneficial interest in any trust holding title to the mortgaged property, or the interest of any general partner in a partnership owning the mortgaged property, or any right to manage or receive the rents and profits from the mortgaged property;
 - (d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
 - (e) Make, or receive and retain, any distribution of assets or any income of any kind of the project, except from surplus cash and except on the following conditions:
 - (1) All distributions shall be made only as of or after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction; all such distributions in any one fiscal year shall be limited to six per centum on the initial equity investment, as determined by the Commissioner; and the right to such distribution shall be cumulative;

APPENDIX A

EXHIBIT 7

- 3 -

- (2) No distribution shall be made from borrowed funds or prior to the completion of the project or when there is any default under this Agreement or under the note or mortgage;
 - (3) Any distribution of any funds of the project, which the party receiving such funds, is not entitled to retain hereunder, shall be held in trust separate and apart from any other funds;
 - (4) There shall have been compliance with all outstanding notices of requirements for proper maintenance of the project.
 - (f) Engage, except for natural persons, in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project;
 - (g) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any fund collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account;
 - (h) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Commissioner;
 - (i) Incur any liability, direct or contingent, other than for current operating expenses, exclusive of the indebtedness secured by the mortgage and necessarily incident to the execution and delivery thereof;
 - (j) Pay any compensation, including wages or salaries, or incur any obligations, to themselves, or any officers, directors, stockholders, trustees, partners, beneficiaries under a trust, or to any of their nominees;
 - (k) Enter into any contract or contracts for supervisory or managerial services.
7. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the insured mortgage.
8. Owners shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five days.
9. (a) Owners shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by Owners, or any of them, involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Commissioner addressed to the Owners. Upon receipt of such request Owners shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.
- (b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
- (c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his duly authorized agents.
- (d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Commissioner.
- (e) Within sixty days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner certified to by an officer or responsible Owner and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.
- (f) At the request of the Commissioner, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.

- 4 -

- (g) All rents and other receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project, remittances to the Commissioner as required under Paragraph 4(i) above, or for distributions of surplus cash as limited by Paragraph 6(e) above. Any owner receiving funds of the project other than by such distribution of surplus cash shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any owner receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.
10. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part 1) issued pursuant to that title, and regulations issued pursuant to Executive Order 11063.
11. Upon a violation of any of the above provisions of this Agreement by Owners, the Commissioner may give written notice thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Commissioner, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Commissioner within thirty days after the date such notice is mailed or within such further time as the Commissioner reasonably determines is necessary to correct the violation, without further notice the Commissioner may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Commissioner may:
- (a)(1) If the Commissioner holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;
 - (2) If said note is not held by the Commissioner - notify the holder of the note of such default and request holder to declare a default under the note and mortgage, and the holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations;
 - (b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the mortgagee's obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project;
 - (c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Commissioner in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage;
 - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;
 - (e) Terminate the interest reduction payments to the mortgagee made pursuant to Paragraph 1 hereinabove.
12. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Commissioner because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Commissioner their rights to the rents, profits, income and charges of whatever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.
13. As used in this Agreement the term:
- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the note identified herein, and endorsed for insurance or held by the Commissioner;
 - (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
 - (c) "Mortgagor" means the original borrower under the mortgage and its successors and assigns;
 - (d) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors and assigns;

APPENDIX A

EXHIBIT 7

- 5 -

- (e) "Mortgaged Property" includes all property, real, personal, or mixed covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Commissioner;
- (f) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is to provide housing and other such activities as are incidental thereto;
- (g) "Surplus Cash" means any cash remaining after:
- (1) the payment of:
 - (i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Federal Housing Commissioner;
 - (ii) All amounts required to be deposited in the reserve fund for replacements;
 - (iii) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner;
 - (iv) Remittances due to the Commissioner as required by Paragraph 4(i), and
 - (2) the segregation of:
 - (i) An amount equal to the aggregate of all special funds required to be maintained by the project;
 - (ii) All tenant security deposits held;
 - (iii) That portion of rentals which must be remitted to the Commissioner in accordance with Paragraph 4(i), but not yet due.
- (h) "Residual Receipts" means any cash remaining at the end of a semiannual or annual fiscal period after deducting from surplus cash the amount of all distributions as that term is defined below and as limited by Paragraph 6(e) hereof;
- (i) "Family" means (1) two or more persons related by blood, marriage, or operation of law, who occupy the same unit; (2) a handicapped person who has a physical impairment which is expected to be of long continued and indefinite duration, substantially impedes his ability to live independently, and is of such a nature that his ability to live independently could be improved by more suitable housing conditions; (3) a single person, 62 years of age or older; or (4) a single person less than 62 years of age provided that occupancy by such persons is limited to 10% of the dwelling units in the project;
- (j) "Distribution" means any withdrawal or taking of cash or any assets of the project, including the segregation of cash or assets for subsequent withdrawal within the limitations of Paragraph 6(e) hereof, and excluding payment for reasonable expenses incident to the operation and maintenance of the project;
- (k) "Income" means the gross annual income of the family from all sources before taxes and withholding, after giving effect to exclusions allowed by the Commissioner;
- (l) "Default" means a default declared by the Commissioner when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Commissioner after written notice.
14. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Commissioner and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.
15. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.
16. The invalidity of any clause, part or provision of this Agreement shall not effect the validity of the remaining portions thereof.
17. The following Owners:
- do not assume personal liability for payments due under the note and mortgage, to the reserve for replacements, or for matters not under their control, except:
 - (a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and
 - (b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

ELLWOOD 12:37CDT 05/04/77

REVISED 6/17/75

1 EQ YLD? .06
2 PROJ PD? 5
MORTGAGE 1 DATA
4 MTG INTR? .082
5 MTG PD? 40
7 PMT PDS/YR? 12
10 M?
11 M\$? 500000
MORTGAGE 2 DATA
14 MTG INTR?
52 XDEPR(-APPR)? 0
55 INC? 50000
53 % INCR INCOME? .055
58 EF.R.E.TX.R.? .032
-.0217019 = MTG 1 C
.0766303 = BASIC RATE
.1064251 = OVERALL RATE
469813 = VALUATION
MODE?

MORTGAGE1	*106%	500000	AT .0852	42621
EQUITY	-5%	-30186	AT .2536	-7655
			R.E.TAXES	15034
TOTAL		469813		50000 INCOME

469813 ORIGINAL PRICE
0 LESS 0% DEPRECIATION

469813 PROPERTY REVERSION, DEFERRED 5 YEARS
500000 MORTGAGE 1
490018 9982 LESS 5 YEAR AMORTIZATION; (1.99644E-2)

-20204 EQUITY REVERSION, DEFERRED 5 YEARS

PRESENT VALUE OF EQUITY INCOME AND REVERSION AT 6.2%
[INCOME INCLUDES PRESENT VALUE
OF 5.5 % INCREASE OVER 5 YEARS]

-27885 INCOME, -6619.82 X 4.21236
-15097 REVERSION, -20204.1 X 0.747258

-42982 TOTAL

MORTGAGE1	82%	400000	AT .0852	34097
EQUITY	18%	87890	AT .0033	290
			R.E.TAXES	15612
TOTAL		487890		50000 INCOME

487890 ORIGINAL PRICE
 0 LESS 0% DEPRECIATION

 487890 PROPERTY REVERSION, DEFERRED 5 YEARS
 400000 MORTGAGE 1
 392014 7986 LESS 5 YEAR AMORTIZATION; (1.99644E-2)

 95876 EQUITY REVERSION, DEFERRED 5 YEARS

PRESENT VALUE OF EQUITY INCOME AND REVERSION AT 6.2%
 [INCOME INCLUDES PRESENT VALUE
 OF 5.5 % INCREASE OVER 5 YEARS]

5585 INCOME, 1326.08 X 4.21236
 71644 REVERSION, 95876.5 X 0.747258

 77230 TOTAL

MORTGAGE1	94%	450000	AT .0852	38359
EQUITY	6%	28925	AT *-.1274	-3685
			R.E.TAXES	15325
TOTAL		478925		50000 INCOME

478925 ORIGINAL PRICE
 0 LESS 0% DEPRECIATION

 478925 PROPERTY REVERSION, DEFERRED 5 YEARS
 450000 MORTGAGE 1
 441016 8984 LESS 5 YEAR AMORTIZATION; (1.99644E-2)

 37909 EQUITY REVERSION, DEFERRED 5 YEARS

PRESENT VALUE OF EQUITY INCOME AND REVERSION AT 6.2%
 [INCOME INCLUDES PRESENT VALUE
 OF 5.5 % INCREASE OVER 5 YEARS]

-11159 INCOME, -2649.21 X 4.21236
 28328 REVERSION, 37909.4 X 0.747258

 7168 TOTAL