

Of Counsel:

LAWYERS FOR EQUAL JUSTICE

GAVIN K. THORNTON
P.O. Box 37952
Honolulu, Hawai'i 96837-0952
Telephone: (808) 542-5203
Facsimile: (808) 262-4727
Email: gavinthornton@verizon.net

ALSTON HUNT FLOYD & ING
Attorneys At Law
A Law Corporation

SHELBY ANNE FLOYD
THOMAS E. BUSH
PAUL ALSTON
65-1230 Mamalahoa Hwy., Suite C21
Kamuela, Hawai'i 96743
Telephone: (808) 885-6762
Facsimile: (808) 885-8065
Email: sfloyd@ahfi.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

MARA AMONE individually, and on)
behalf of all persons similarly)
situated,)

Plaintiffs,

v.

STEPHANIE AVEIRO, in her)
official capacity as the)
Executive Director of the)
Housing and Community)
Development Corporation of)
Hawaii; HOUSING AND COMMUNITY)
DEVELOPMENT CORPORATION OF)
HAWAII, a duly organized and)
recognized agency of the State)
of Hawaii.)

Defendants.)

CIVIL NO. CV04-00508 ACK/BMK
Class Action

) SEPARATE AND CONCISE STATEMENT OF
) FACTS IN SUPPORT OF PLAINTIFFS'
) MOTION FOR PARTIAL SUMMARY
) JUDGMENT; DECLARATION OF THOMAS
) E. BUSH; EXHIBITS 1-4;
) CERTIFICATE OF SERVICE

) HEARING:

) DATE: May 31, 2005

) TIME: 9:30 a.m.

) JUDGE: Hon. Alan C. Kay

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

APR 08 2005

at 8 o'clock and 50 min M.
WALTER A.Y.H. CHINN, CLERK

**SEPARATE AND CONCISE STATEMENT OF FACTS IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

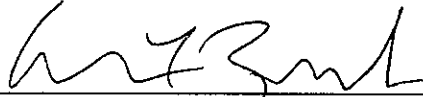
Pursuant to Rule 56.1 of the Rules of the United States District Court for the District of Hawai'i ("Local Rules"), Plaintiffs MARA AMONE individually, and on behalf of all persons similarly situated, hereby submits her Separate and Concise Statement of Facts in Support of Plaintiffs' Motion for Partial Summary Judgment.

FACTS	EVIDENTIARY SUPPORT
1. Defendant Housing and Community Development Corporation of Hawaii ("HCDCH") is a duly organized and recognized agency of the state of Hawaii with the power to sue and be sued.	Paragraph 4 of Defendant's Answer to Compliant. Paragraph 20 of Complaint.
2. Defendant Stephanie Aveiro is the Executive Director of HCDCH.	Paragraph 4 of Defendant's Answer to Compliant. Paragraph 20 of Complaint.
3. Defendant Housing and Community Development Corporation of Hawaii ("HCDCH") is subject to the requirements of the U.S. Housing Act and its supporting regulations.	Admission 13 of HCDCH's Answers to Plaintiffs' First Request for Admissions attached hereto as Exhibit 1.
4. HCDCH entered into a Annual Contributions Contract with HUD to manage and operate HCDCH's federally subsidized public housing projects.	Admission 8 of Exhibit 1.
5. As of the date that Plaintiffs' complaint was filed, Defendants were not in compliance with the requirements of 24 C.F.R § 965.508.	Transcript of Hearing on Plaintiff's Motion for Class Certification at 25 (attached hereto as Exhibit 2).

FACTS	EVIDENTIARY SUPPORT
6. Rate adjustments for disabled tenants were not in place prior to the filing of the Plaintiffs' complaint.	Exhibit 2 at 25; Letter from Thornton to Hall (Acting Executive Director of HCDCH) of 9/30/03 at ¶¶ 10-12 attached hereto as Exhibit 3; Letter from Hall to Thornton of 11/5/03 at ¶¶ 10-12 attached hereto as Exhibit 4.
7. Prior to the filing of Plaintiffs' complaint, Defendants had not provided residents with any notice of the availability of adjustments to the utility allowance for disabled residents.	¶¶ 10-12 of Exhibit 3; ¶¶ 10-12 of Exhibit 4.
8. Prior to the filing of Plaintiffs' complaint, Defendants had not made any individual adjustments to the utility allowance for disabled residents whose special needs required them to consume utilities in excess of the amounts provided for in the standard utility allowances	¶¶ 10-12 of Exhibit 3; ¶¶ 10-12 of Exhibit 4.
9. In a review of its records for disabled tenants in public housing, HCDCH identified at least 30 public housing tenants that required the use of an air conditioner because of their disability, but who were not provided with adjustments to their utility allowances.	Exhibit 2 at 25; Aff. Of Patti Y. Miyamoto submitted in support of Defendant's Opposition to Motion for Class Certification at 3-4.
10. Not until after the lawsuit was filed did Defendants develop a schedule of utility allowance adjustments for disabled residents requiring medically prescribed equipment.	Exhibit 2 at 20.

FACTS	EVIDENTIARY SUPPORT
<p>11. In December 2004, Defendants purportedly sent current public housing residents notices regarding the availability of adjustments to the utility allowances for disabled residents requiring the use of medically prescribed equipment, though no such notice was provided to individuals no longer residing in public housing.</p>	<p>Aff. Of Patti Y. Miyamoto submitted in support of Defendant's Opposition to Motion for Class Certification at 3-4.</p>

DATED: Honolulu, Hawaii, April 8, 2005.



SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN THORNTON
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

MARA AMONE individually, and on) CIVIL NO. CV04-00508 ACK/BMK
behalf of all persons similarly) Class Action
situated,)
)
Plaintiff,)
)
v.)
)
STEPHANIE AVEIRO, in her)
official capacity as the)
Executive Director of the)
Housing and Community)
Development Corporation of)
Hawaii; HOUSING AND COMMUNITY)
DEVELOPMENT CORPORATION OF)
HAWAII, a duly organized and)
recognized agency of the State)
of Hawaii.)
)
Defendants.)
)

DECLARATION OF THOMAS E. BUSH

I, Thomas E. Bush, do hereby declare and state under penalty of perjury that the following facts are true and correct:

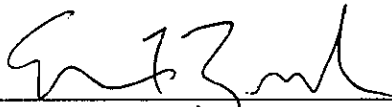
1. I am an attorney with the law firm of Alston Hunt Floyd & Ing, counsel for Plaintiffs.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. Attached hereto as Exhibit 1 is a true and correct copy of Defendant Housing and Community Development Corporation of Hawaii's Answers to Plaintiff's First Request for Admissions received from Defendants' counsel.
4. Attached hereto as Exhibit 2 is a copy of the Transcript of Hearing on Plaintiffs' Motion for Class Certification.

5. Attached hereto as Exhibit 3 is a letter dated September 30, 2003 from Gavin Thornton to Robert Hall.

6. Attached hereto as Exhibit 4 is a letter dated November 5, 2003 from Robert Hall to Gavin Thornton.

I declare under the penalty of perjury the foregoing is true and correct.

Executed in Honolulu, Hawai'i on April 8, 2005.



Thomas E. Bush

MARK J. BENNETT 2672
Attorney General
State of Hawaii

JOHN C. WONG 2804
MARGARET A. LEONG 5737
Deputy Attorneys General
Department of the Attorney
General, State of Hawaii
Kekuanao'a Building, Room B-2
465 South King Street
Honolulu, Hawaii 96813
Telephone: (808) 587-3080
Facsimile: (808) 587-2938
E-mail: Margaret.A.Leong@Hawaii.gov

Attorneys for Defendant
HOUSING AND COMMUNITY DEVELOPMENT
CORPORATION OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA) CIVIL NO. 04-1-0069K
TOBIAS, BARBARA BARAWIS, and) (CLASS ACTION)
LEWIS GLASER individually,)
and on behalf of all persons) DEFENDANT HOUSING AND
similarly situated,) COMMUNITY DEVELOPMENT
) CORPORATION OF HAWAII'S
Plaintiffs,) ANSWERS TO PLAINTIFF'S FIRST
) REQUEST FOR ADMISSIONS;
vs.) EXHIBIT "A" DATED JANURARY 13,
) 2005
HOUSING AND COMMUNITY)
DEVELOPMENT CORPORATION OF)
HAWAII, a duly organized and)
recognized agency of the)
State of Hawaii,)
)
Defendant.)
)
) (No trial date set)

EXHIBIT 1

DEFENDANT HOUSING AND COMMUNITY DEVELOPMENT
CORPORATION OF HAWAII'S ANSWERS TO PLAINTIFF'S FIRST
REQUEST FOR ADMISSIONS; EXHIBIT "A" DATED JANUARY 13, 2005

Defendant HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII ("HCDCH"), by and through the Attorney General, State of Hawaii, and John C. Wong and Margaret A. Leong, Deputy Attorneys General, admits, denies and objects to PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS TO DEFENDANT HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII ("HCDCH") as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS:

These responses are made solely for the purposes of this action. Each response is made subject to all objections as stated hereto in the event that any such response or information contained is sought to be used in court. HCDCH expressly reserve all such objections.

HCDCH objects to all Requests to the extent that they seek information that is not "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action," the scope of discovery allowed by rule 26(b) of the Hawai'i Rules of Civil Procedure ("HRCP").

HCDCH objects to all Requests to the extent that they seek information not subject to discovery, such as attorney-client communications, work product, trial preparation materials or experts' materials, or deliberative process communications and material.

HCDCH objects to all Requests to the extent that they are unreasonably burdensome, oppressive or vexatious, in that the information requested would be of little or no relevance to the claims or defenses in this action or would place an unreasonable or oppressive burden on HCDCH in expenditure of time and money to gather or produce.

HCDCH objects to the Requests to the extent that they are vague, ambiguous, uncertain, unintelligible, overbroad and imprecise, such that HCDCH cannot determine the nature of the information sought, and to which Defendant is therefore unable to respond.

HCDCH objects to the Requests to the extent that they request information for which the required good cause or substantial need, as dictated by applicable federal and state statutes, regulations, and rules, Court rules, and case law, has not been shown.

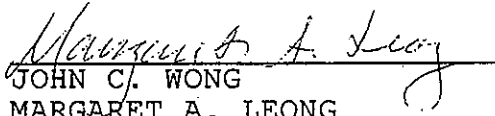
HCDCH's discovery and investigation are continuing, and the responses set forth herein do not preclude the further discovery and development of evidence, nor the presentation thereof at

trial. HCDCH also reserve their right to supplement their responses to these Requests.

HCDCH objects to the Requests herein for further objections which are noted for each such Request in accordance with HRCP 36(a).

DATED: Honolulu, Hawai`i, February 11, 2005.

MARK J. BENNETT
Attorney General


JOHN C. WONG
MARGARET A. LEONG
Deputy Attorneys General

Attorneys for
HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION
OF HAWAII

REQUEST FOR ADMISSIONS

ADMISSION NO. 1:

Admit that from May 17, 1998 to present, the utility allowances for federally subsidized HCDCH projects (hereinafter "HCDCH projects") where residents pay for their utility service directly to the utility provider were not reviewed for changes in circumstances that might indicate probability of a significant change in the reasonable utility consumption requirements for public housing residents since the most recent review of the allowances. In this request for admission and the requests that follow, "HCDCH" refers to the Housing and Community Development Corporation of Hawaii and its predecessors.

OBJECTION:

The request for admission is vague and ambiguous and overly broad as to terms and phrases that are undefined or are subject to a variety of interpretations such that the phrase "...were not reviewed for changes in circumstances that might indicate probability of a significant change in the reasonable utility consumption requirements...". HCDCH further objects because this request is compound, confusing and misleading and unintelligible and is not an appropriate request for admissions.

RESPONSE: Notwithstanding and without waiving these objections,

HCDCH states that it can neither admit nor deny the request as phrased, due to its improper, vague, ambiguous, undefined, confusing, misleading, and improper predicate.

ADMIT _____

DENY _____

If the answer to the foregoing admission is not an unqualified "yes", answer the following interrogatories:

1. Identify each project for which utility allowances were reviewed during the period from May 17, 1998 to present, including:
 - a. The date the review took place;
 - b. The factors considered in the review;
 - c. The adjustments made to the utility allowances as a result of the review, or if no such adjustments were made, the reason why such adjustments were not made;
 - d. The date of all notices given to tenants of the applicable project concerning the review and adjustment of the utility allowances.

ADMISSION NO. 2:

Admit that from May 17, 1998 to September 30, 2004, the utility allowances for HCDCH projects where residents pay for their utility service directly to the utility provider were not revised to account for changes in gas and/or electric utility

rates since the most recent revision of the allowances.

ADMIT √

DENY _____

If the answer to the foregoing admission is not an unqualified "yes", answer the following interrogatories:

1. Identify each project for which utility allowances were revised during the period from May 17, 1998 to September 30, 2004, including:
 - a. The utility whose allowance was revised;
 - b. The date the allowance was revised;
 - c. The process by which it was revised;
 - d. The amount of the allowance provided immediately before and immediately after the revision;
 - e. The date of all notices given to tenants of that project concerning the revision of the allowance.

ADMISSION NO. 3:

Admit that residential electric utility rates in the State of Hawaii have increased since the utility allowances were last adjusted (excluding adjustments to the utility allowances made subsequent to September 30, 2004).

ADMIT √

DENY _____

ADMISSION NO. 4:

Admit that residential gas utility rates in the State of Hawaii have increased since the utility allowances were last adjusted (excluding adjustments to the utility allowances made subsequent to September 30, 2004).

ADMIT _____

DENY _____

HCDCH has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to admit or deny this request for admission.

ADMISSION NO. 5:

Admit that residential electric utility rates in the State of Hawaii have increased by over 10% since the utility allowances were last adjusted (excluding adjustments to the utility allowances made subsequent to September 30, 2004).

ADMIT _____

DENY _____

ADMISSION NO. 6:

Admit that residential gas utility rates in the State of Hawaii have increased by over 10% since the utility allowances were last adjusted (excluding adjustments to the utility allowances made subsequent to September 30, 2004).

ADMIT _____

DENY _____

HCDCH has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to admit or deny this request for admission.

ADMISSION NO. 7:

Admit that the document attached hereto as Exhibit "A" is a true and correct copy of the Annual Contributions Contract between the U.S. Department of Housing and Urban Development (HUD) and HCDCH that has been in force from July 1, 1998 to present.

ADMIT _____

DENY _____

ADMISSION NO. 8:

Admit that since May 17, 1998, an agreement between HUD and HCDCH known as the Annual Contributions Contract has been in full force and effect and has required that HCDCH comply with HUD requirements for the development and operation of public housing.

ADMIT _____

DENY _____

ADMISSION NO. 9:

Admit that HCDCH's failure to update the utility allowances during the period from May 17, 1998 to September 30, 2004 where utility rates increased in excess of 10% since the utility

allowances were last adjusted breached the Annual Contributions Contract between HCDCH and HUD.

OBJECTION: The request for admission is vague and ambiguous and overly broad as to terms and phrases that are undefined or are subject to a variety of interpretations and the request for admission calls for a legal determination and/or conclusion of whether a "breach" occurred.

RESPONSE: Notwithstanding and without waiving these objections, HCDCH states that it can neither admit nor deny the request as phrased, due to its improper, vague, ambiguous, undefined, confusing, misleading, and improper predicate. Further, HCDCH has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to admit or deny this request for admission.

ADMIT _____

DENY _____

If the answer to the foregoing admission is not an unqualified "yes", answer the following interrogatories:

1. Identify each project for which utility allowances were reviewed during the period from May 17, 1998 to present, including:
 - a. The date the review took place;
 - b. The factors considered in the review;
 - c. The adjustments made to the utility allowances as

a result of the review, or if no such adjustments were made, the reason why such adjustments were not made;

d. The date of all notices given to tenants of the applicable project concerning the review and adjustment of the utility allowances.

ADMISSION NO. 10:

Admit that at all times since May 17, 1998, the rental agreement between HCDCH and public housing residents at the projects where utility allowances are or were received has provided as follows:

"For Management-furnished utilities, Management shall pay for and furnish to Tenant water, gas and electricity in accordance with the applicable schedule of utility allowances. For Tenant-purchased utilities, Management shall provide an allowance in dollars for water, gas and electricity in accordance with the applicable schedules. Said schedules shall be posted in the Project Office."

ADMIT √

DENY

If the answer to the foregoing admission is not an unqualified "yes", answer the following interrogatories:

1. Identify all rental agreement provisions in all rental agreements provided to residents of projects where utility allowances were received since May 17, 1998, that pertain to the

utility service and/or utility allowances.

ADMISSION NO. 11:

Admit that at all times since May 17, 1998 a utility allowance promulgated by HCDCH in terms of kilowatt hours and cubic feet of gas (hereinafter "consumption allowance") has been applicable to all HCDCH housing projects where utility allowances are or were provided.

ADMIT √

DENY

If the answer to the foregoing admission is not an unqualified "yes", answer the following interrogatories:

1. Identify all public housing projects where utility allowances are or were provided for which the consumption allowance did not apply.

ADMISSION NO. 12:

Admit that HCDCH's failure to update the utility allowances during the period from May 17, 1998 to September 30, 2004 where utility rates increased in excess of 10% since the utility allowances were last adjusted breached the rental agreements between HCDCH and public housing residents.

ADMIT

DENY

OBJECTION: The request for admission is vague and ambiguous

and overly broad as to terms and phrases that are undefined or are subject to a variety of interpretations and the request for admission calls for a legal determination and/or conclusion of whether a "breach" occurred.

RESPONSE: Notwithstanding and without waiving these objections, HCDCH states that it can neither admit nor deny the request as phrased, due to its improper, vague, ambiguous, undefined, confusing, misleading, and improper predicate. Further, HCDCH has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable it to admit or deny this request for admission.

ADMISSION NO. 13

Admit that at all times since May 17, 1998, with respect to the management and operation of federally subsidized HCDCH public housing projects, HCDCH has been required to comply with the terms of the U.S. Housing Act and its supporting regulations, including 42 U.S.C. § 1437(a)(1); 42 U.S.C. § 1437c and g; 24 C.F.R. §§ 965.501-965.508; and 24 C.F.R. § 964.7.

ADMIT √

DENY _____

VERIFICATION

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

PATTI Y. MIYAMOTO, being first duly sworn on oath, deposes and says: That the foregoing answers to requests for admissions are true and accurate to the best of his /her knowledge and belief.

Patti Y. Miyamoto

HOUSING AND COMMUNITY DEVELOPMENT
CORPORATION OF HAWAII

By: Chief Compliance Officer

Subscribed and sworn before me
this 9th day of February, 2005

Elaine Madrid

Name of Notary:
Notary Public, State of Hawaii

Elaine Madrid
(Print Name)

My commission expires: 9/29/2005

EXHIBIT "A"

U.S. Department of Housing
and Urban Development

Terms and Conditions

Constituting Part A of a
Consolidated Annual Contributions Contract
Between Housing Authority and
the United States of America

Forms HUD-53010 and
HUD-53011 are obsolete

Form HUD-53012A
(7/95)

TABLE OF CONTENTS

- Part A -

Section		Page
Section 1	Consolidation of Annual Contributions Contract.	1
Section 2	Definitions.	1
Section 3	Mission of HUD.	2
Section 4	Mission of the HA.	2
Section 5	Covenant to Develop and Operate.	3
Section 6	Cooperation Agreement(s).	3
Section 7	Covenant Against Disposition and Encumbrances.	3
Section 8	Declaration of Trust.	3
Section 9	Depository Agreement and General Fund.	4
Section 10	Pooling of Funds.	4
Section 11	Operating Budget.	5
Section 12	Civil Rights Requirements.	5
Section 13	Insurance Requirements.	6
Section 14	Employer Requirements.	7
Section 15	Books of Account, Records, and Government Access.	7
Section 16	Termination of a Project Under Management.	7

Section		Page
Section 17	Notices, Defaults, Remedies.	7
Section 18	Rights and Obligations of HUD While in Possession of Project(s).	9
Section 19	Conflict of Interest.	9
Section 20	Interest of a Member or Delegate to Congress.	11
Section 21	Rights of Third Parties.	11
Section 22	Performance of Conditions Precedent to the Validity of this ACC.	11
Section 23	Waiver or Amendment.	11

This Annual Contributions Contract ("ACC"), No. SF-181, is entered into as of this 1st day of July, 199⁹⁸ by and between the United States of America, acting by and through the Secretary of Housing and Urban Development, ("HUD") and Housing and Community Development Corporation of Hawaii (the "HA"). The parties to this ACC may have previously entered into Consolidated ACCs whose terms and conditions have become obsolete through the subsequent passage of legislation or the promulgation of regulations by HUD. The parties wish to resolve this obsolescence by entering into this ACC, which shall supersede the most recent Consolidated ACC entered into between the HA and HUD bearing the same ACC number as this Consolidated ACC, and which incorporates by reference into this ACC those regulations issued by HUD for the development, modernization, and operation of public and Indian housing projects contained in Title 24 of the Code of Federal Regulations, as said Title shall be amended from time to time. Nothing herein shall release the HA from compliance with all applicable laws, executive orders, and regulations that are not specifically incorporated herein by reference.

This ACC covers all project(s) listed under the most recent Consolidated ACC entered into between HUD and the HA bearing the same ACC number as this ACC, and any amendments thereto, as well as any additional project(s) that may be added as a result of future amendments to this ACC. This ACC shall remain in effect with respect to such projects for the maximum period required by law, or as may be established by HUD. If this ACC consolidates previous ACCs executed by the parties, it shall remain in effect for the maximum period remaining under such previously executed ACCs, including any extension of the original ACC term based upon the HA's receipt of modernization and operating subsidies.

Section 1 - Consolidation of Annual Contributions Contract.

This ACC supersedes the most recent Consolidated ACC entered into between HUD and the HA bearing the same ACC number as this ACC (including both Parts I and II), and any amendments thereto, provided that this novation shall in no way affect obligations outstanding, accounts due, or other actions taken pursuant to such previous ACCs, all of which matters shall be administered pursuant to and under this ACC.

Section 2 - Definitions.

ACC - Consolidated Annual Contributions Contract between HUD and the HA, as may be amended herein, consisting of Part A (which sets forth requirements applicable to all projects) and Part B (which sets forth additional requirements that apply only to certain types of projects).

Act - the United States Housing Act of 1957, as amended.

Cooperation Agreement - agreement(s) prescribed by HUD for execution by the HA and the local governing body relative to the cooperation of the local governing body in the development and operation of the project(s) and the obligation of the HA for payments in lieu of taxes, due to the exemption of the project from all real and personal property taxes.

HA - a public housing agency as defined in the Act, including an Indian housing authority.

HUD approval - prior written approval from HUD.

"Operating receipts" and "Operating expenditures" - Operating receipts shall mean all rents, revenues, income, and receipts accruing from, out of, or in connection with the ownership or operation of such project. Operating receipts shall not include any funds received for development or modernization of a project, annual contributions pledged for payment of bonds or notes, or proceeds from the disposition of real property. Operating expenditures shall mean all costs incurred by the HA for administration, maintenance and other costs and charges that are necessary for the operation of the project. Operating expenditures shall not include any costs incurred as part of the development or modernization cost, or payment of principal or interest of bonds or notes.

Project - public and Indian housing developed, acquired, or assisted by HUD under the Act, other than under section 8 of the Act, and the improvement of such housing. The term shall include all real and personal property, tangible and intangible, which is acquired or held by a HA in connection with a project covered under this ACC.

Section 3 - Mission of HUD.

HUD shall administer the Federal public and Indian housing program for the provision of decent, safe, and sanitary housing to eligible families in accordance with this ACC and all applicable statutes, executive orders, and regulations. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions to the HA in accordance with all applicable statutes, executive orders, regulations, and this ACC.

Section 4 - Mission of the HA.

The HA shall at all times develop and operate each project solely for the purpose of providing decent, safe, and sanitary housing for eligible families in a manner that promotes serviceability, economy, efficiency, and stability of the projects, and the economic and social well-being of the tenants.

Section 5 - Covenant to Develop and Operate.

The HA shall develop and operate all projects covered by this ACC in compliance with all the provisions of this ACC and all applicable statutes, executive orders, and regulations issued by HUD, as they shall be amended from time to time, including but not limited to those regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, which are hereby incorporated into this ACC by reference as if fully set forth herein, and as such regulations shall be amended from time to time. The HA shall also ensure compliance with such requirements by any contractor or subcontractor engaged in the development or operation of a project covered under this ACC.

Section 6 - Cooperation Agreement(s).

During the development and operation of the project(s), the HA shall perform and comply with all applicable provisions of the Cooperation Agreement(s), in the form prescribed by HUD, including the making of payments in lieu of taxes provided therein (or such lesser amount as may be prescribed by State law or agreed to by the local governing body), shall at all times preserve and enforce its rights thereunder, and shall not terminate or amend the Cooperation Agreement(s) without the written approval of HUD.

Section 7 - Covenant Against Disposition and Encumbrances.

The HA shall not demolish or dispose of any project, or portion thereof, other than in accordance with the terms of this ACC and applicable HUD requirements. With the exception of entering into dwelling leases with eligible families for dwelling units in the projects covered by this ACC, and normal uses associated with the operation of the project(s), the HA shall not in any way encumber any such project, or portion thereof, without the prior approval of HUD. In addition, the HA shall not pledge as collateral for a loan the assets of any project covered under this ACC.

Section 8 - Declaration of Trust.

Promptly upon the acquisition of the site of any project, the HA shall execute and deliver an instrument (which may be in the form of a declaration of trust, a trust indenture, or such other document as may be approved by HUD), confirming and further evidencing, among other things, the covenant of the HA not to convey or encumber the project except as expressly authorized in this ACC. Such instrument and all amendments shall be duly recorded or filed for record wherever necessary to give public notice of their contents and to protect the rights and interests of HUD and of any bondholders. The HA shall furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired by the HA in connection with the projects, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended.

Section 9 - Depository Agreement and General Fund.

(A) The HA shall deposit and invest all funds and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of the projects under an ACC with HUD in accordance with the terms of the General Depository Agreement(s). The General Depository Agreement shall be in the form prescribed by HUD and must be executed by the HA and the depository. Immediately upon the execution of any Depository Agreement, the HA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A Depository Agreement shall not be terminated except after 30 days notice to HUD.

(B) All monies and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of projects in accordance with an ACC with HUD shall constitute the "General Fund."

(C) The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with each specific program regulation and requirement. The HA may withdraw funds from the General Fund only for: (1) the payment of the costs of development and operation of the projects under ACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Program funds are not fungible; withdrawals shall not be made for a specific program in excess of the funds available on deposit for that program.

Section 10 - Pooling of Funds.

(A) The HA may deposit into an account covered by the terms of the General Depository Agreement any funds received or held by the HA in connection with any project operated by the HA under the provisions of this ACC.

(B) The HA may also deposit into an account covered by the General Depository Agreement, by lump-sum transfers of funds from the depositories of other projects or enterprises of the HA in which HUD has no financial interest, amounts necessary for current expenditures of items chargeable to all projects and enterprises of the HA.

(C) The HA shall not withdraw from any of the funds or accounts authorized under this section amounts for the projects under ACC, or for the other projects or enterprises, in excess of the amount then on deposit in respect thereto.

Section 11 - Operating Budget.

(A) The HA shall prepare and have approved by its Board of Commissioners an operating budget for each of its fiscal years in a manner, and using such forms, as prescribed by HUD. The HA shall submit a calculation of operating subsidy eligibility in the manner prescribed by HUD in regulations in Title 24 of the Code of Federal Regulations. HUD shall review the calculation and, if correct, and subject to the availability of funds, take action within 45 days of submission to obligate the funds and approve a payment schedule, unless the HA is notified that it must submit an operating budget as provided in (B) below. HUD may revise or amend the subsidy calculation to bring it into conformity with regulatory requirements. The HA shall submit revised calculations in support of mandatory or other adjustments based on procedures and deadlines prescribed by HUD.

(B) If HUD directs the HA to submit an operating budget because it has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination require it, HUD shall, within 45 days of receipt of the complete operating budget, review and approve the operating budget if the plan of operation and the amounts included therein are reasonable. If HUD disapproves any proposed operating budget, or approves such budget with modifications, the HA shall be notified in writing and be furnished with an explanation of the reasons for such disapproval or modified approval. Any HA that is required to submit an operating budget may, at any time prior to thirty days before the end of the HA fiscal year, submit to HUD a proposed revision of any approved operating budget.

(C) HUD shall not in any Federal fiscal year approve any estimate or revision of a HA's operating budget in an amount which, together with the amount of all operating subsidies then contracted for by HUD, would exceed the amount as determined by HUD of contracting authorization for operating subsidies under the Act. HUD shall not be obligated to make any payments on account of operating subsidies in an amount in excess of the amount specifically approved by HUD.

(D) The HA shall not incur any operating expenditures except pursuant to an approved operating budget. If unbudgeted expenditures are incurred in emergencies to eliminate serious hazards to life, health and safety, the operating budget shall be amended accordingly.

Section 12 - Civil Rights Requirements.

(A) The HA shall comply with all statutory, regulatory, and executive order requirements pertaining to civil rights, equal opportunity, and nondiscrimination, as those requirements now exist, or as they may be enacted, promulgated, or amended from time to time. These requirements include, but shall not be limited to, compliance with at least the following authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601-3619; 24 CFR part 100); section 504 of the Rehabilitation Act of

1973 (29 U.S.C. 794; 24 CFR part 8); (the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107; 24 CFR part 146); the Americans with Disabilities Act (Pub. L. 101-536, approved July 26, 1990; 28 CFR part 35); Executive Order 11063 on Equal Opportunity in Housing (24 CFR part 107); Executive Order 11246 on Equal Employment Opportunity, as amended by Executive Order 11375 (41 CFR part 60); and Executive Order 12892 on Affirmatively Furthering Fair Housing. An Indian Housing Authority established pursuant to tribal law shall comply with applicable civil rights requirements, as set forth in Title 24 of the Code of Federal Regulations.

(B) In connection with the development or operation of any project, the HA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The HA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The HA shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its contracts in connection with the development or operation of any project, except contracts for standard commercial supplies or raw materials and contracts referred to in subsection (C) of this section, and shall require all contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The HA shall post at the projects, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

(C) The HA shall incorporate the language required by Executive Order 11246, codified at 41 CFR §60-1.4(b) (or any successor provision), into any contract for construction work, or any modification thereof, which is paid for in whole or in part with funds obtained under this ACC. In addition, the HA agrees that it will be bound by the equal employment opportunity provisions set forth at 41 CFR §60-1.4(b) (or any successor provision) with respect to its own employment practices when it uses its own staff (force account) to carry out Federally assisted construction work.

Section 13 - Insurance Requirements.

(A) Except as otherwise provided by HUD, the HA shall procure adequate insurance to protect the HA from financial loss resulting from various hazards if the HA determines that exposure to certain hazards exists. The types of insurance required, or that should be purchased, and other requirements with respect to insurance coverage are listed in Part B, Attachment VII, of this ACC.

(B) The HA shall, to the extent that insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval

of HUD to the contrary.

Section 14 - Employer Requirements.

(A) The HA shall comply with all tribal, State and Federal laws applicable to employee benefit plans and other conditions of employment.

(B) No funds of any project may be used to pay any compensation for the services of members of the HA Board of Commissioners.

Section 15 - Books of Account, Records, and Government Access.

(A) The HA must maintain complete and accurate books of account for the projects of the HA in such a manner as to permit the preparation of statements and reports in accordance with HUD requirements, and to permit timely and effective audit.

(B) The HA must furnish HUD such financial and project reports, records, statements, and documents at such times, in such form, and accompanied by such reporting data as required by HUD.

(C) The United States Government, including HUD and the Comptroller General, and its duly authorized representatives, shall have full and free access to all HA offices and facilities, and to all books, documents, and records of the HA relevant to the administration of the projects under this ACC, including the right to audit and make copies.

Section 16 - Termination of a Project Under Management.

If any project under management under this ACC is terminated, all project reserves shall become part of another project administered by the HA in accordance with the terms of this ACC. If no other project(s) under management exists, the remaining project reserves shall be distributed as directed by HUD.

Section 17 - Notices, Defaults, Remedies.

(A) Any notice required or permitted to be given under this ACC shall be in writing, signed by a duly authorized official, and addressed, if to the HA, to the principal office of the HA, and if to HUD, to the HUD office with jurisdiction over the HA, unless otherwise directed by regulation or other requirement of HUD.

(B) Upon the occurrence of a substantial default by the HA, as determined by HUD in accordance with this ACC, HUD shall be entitled to any or all of the remedies set forth in paragraphs (E), (F), and (H) below. A substantial default is a serious and material violation of

any one or more of the covenants contained in this ACC. Events of substantial default shall include, but shall not be limited to, any of the following occurrences: (1) failure to maintain and operate the project(s) under this ACC in a decent, safe, and sanitary manner; (2) the disposition or encumbrance of any project or portion thereof without HUD approval; (3) failure of the HA to comply with any civil rights requirements applicable to the HA and the project(s); (4) abandonment of any project by the HA, or if the powers of the HA to operate the project(s) in accordance with the provisions of this ACC are curtailed or limited to an extent that will prevent the accomplishment of the objectives of this ACC; (5) failure to carry out modernization or development in a timely, efficient and effective manner; and (6) termination of tax exemption (either real or personal property) on behalf of a project covered under this ACC.

(C) Delivery of a notice of substantial default shall be required before the exercise of any remedy permitted under this ACC. Such notice shall: (1) identify the specific covenants, statutes, executive orders, or regulations alleged to have been violated; (2) identify the specific events, actions, failure to act, or conditions that constitute the alleged substantial default; and (3) provide a specific timeframe for the HA to cure the substantial default, taking into consideration the nature of the default.

(D) Except in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, the HA shall have the right to appeal any such notice received from the HUD office with jurisdiction over the HA. Such informal appeals shall be in writing and shall be submitted within ten (10) working days from the date of the HA's receipt of such notice. Appeals of the action of a HUD Office shall be made to the Assistant Secretary for Public and Indian Housing, or such other official as shall be a successor thereto.

(E) Upon the occurrence of a substantial default, or the expiration of any applicable cure period provided by HUD, the HA shall: (1) convey to HUD title to the project(s) as demanded by HUD if, in the determination of HUD (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) deliver possession and control of the project(s) to HUD.

(F) Nothing contained in this ACC shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under this ACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

(G) If HUD shall acquire title to, or possession of the project(s), HUD shall reconvey or redeliver possession of the project(s) to the HA, or to any successor recognized by HUD: (1) upon a determination by HUD that the substantial default has been cured and that the project(s) will thereafter be operated in accordance with the terms of this ACC; or (2) after the termination of HUD's obligation to make annual contributions available, unless there

are any obligations or covenants of the HA to HUD that are then in default.

(H) HUD may at any time by notice to the HA declare this ACC terminated with respect to any project that at such time has not been permanently financed if: (1) the HA has made any fraudulent or willful misrepresentation of any material fact in any document or data submitted to HUD as a basis for this ACC or as an inducement to HUD to enter into this ACC; or (2) a substantial default exists in connection with any of the projects; provided, that no such termination shall affect any obligation of HUD to make annual contributions pursuant to section 12 of Attachment VI, Part B, of this ACC.

Section 18 - Rights and Obligations of HUD While in Possession of Project(s).

(A) During any period in which HUD holds title to or possession of the projects after a substantial default by the HA, HUD shall develop and/or operate such project(s) as nearly as practicable in accordance with the provisions of this ACC.

(B) During any such period, HUD may, in the name and on behalf of the HA, or in its own name and on its own behalf (as HUD shall solely determine), exercise any and all rights of the HA under this ACC, and perform any and all obligations of the HA under this ACC. Nothing herein shall be deemed to make the action(s) or omission(s) of the HA attributable to HUD.

Section 19 - Conflict of Interest.

(A)(1) In addition to any other applicable conflict of interest requirements, neither the HA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under this ACC in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

(i) Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a business entity.

(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

(iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) Any member of these classes of persons must disclose the member's interest or prospective interest to the HA and HUD.

(3) The requirements of this subsection (A)(1) may be waived by HUD for good cause, if permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver pertains.

(4) The provisions of this subsection (A) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

(5) Nothing in this section shall prohibit a tenant of the HA from serving on the governing body of the HA.

(B)(1) The HA may not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

(i) Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the HA.

(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s).

(iii) Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) The prohibition referred to in subsection (B)(1) shall remain in effect throughout the class member's tenure and for one year thereafter.

(3) The class member shall disclose to the HA and HUD the member's familial relationship to the prospective employee.

(4) The requirements of this subsection (B) may be waived by the HA Board of Commissioners for good cause, provided that such waiver is permitted by State and local law.

(C) The requirements of subsections (A) and (B) of this section do not apply to contracts entered into by an Indian Housing Authority, its contractors or subcontractors, although such contracts

remain subject to other applicable conflict of interest requirements.

(D) For purposes of this section, the term "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g., a half-brother or stepchild).

Section 20 - Interest of a Member or Delegate to Congress.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term "resident commissioner" refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)

Section 21 - Rights of Third Parties.

Except as to bondholders, as stated in Part B (Attachment VI) of this ACC, nothing in this ACC shall be construed as creating any right of any third party to enforce any provision of the ACC or to assert any claim against HUD or the HA.

Section 22 - Performance of Conditions Precedent to the Validity of this ACC.

The HA certifies that all conditions precedent to the valid execution and delivery of this ACC on its part have been complied with, that all things necessary to constitute this ACC its valid, binding, and legal agreement on the terms and conditions and for the purposes herein set forth have been done and have occurred and that the execution and delivery of the ACC on its part have been and are in all respects duly authorized in accordance with law. HUD similarly certifies with reference to its execution and delivery of this ACC.

Section 23 - Waiver or Amendment.

Any right or remedy that HUD may have under this ACC may be waived in writing by HUD without the execution of a new or supplemental agreement; or by mutual agreement of the parties to this ACC, this contract may be amended in writing: Provided, That none of the provisions of this ACC may be modified or amended so as to impair in any way HUD's obligation to pay any annual contributions that have been pledged as security for any obligations of the HA.

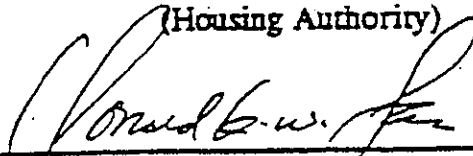
In witness whereof, the HA and HUD have caused this ACC to be executed and the HA has caused its seal to be hereunto affixed and attested all as of the date first above written.

(SEAL)

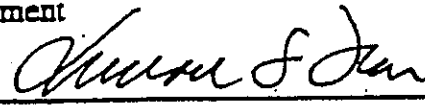
ATTEST:

Housing & Community Development Corporation of Hawai

(Housing Authority)

By 
(Executive Director) Donald K.W. Lau

UNITED STATES OF AMERICA
Secretary of Housing and Urban
Development

By 
Acting Director, Office of Public Housing
(Official Title)

State of Hawaii)
)
City & County of Honolulu) SS'

On this 10th day of November, 1998, before me personally appeared Donald K.W. Lau, who is personally known to me to be the signer of the above instrument, and he acknowledged that he signed it.

Elaine Madrid ^{LS}

Elaine Madrid
Notary Public, State of Hawaii

My Commission Expires: 9-29-2001

**U.S. Department of Housing
and Urban Development**

**Additional Terms and
Conditions**

**Constituting Part B of a
Consolidated Annual Contributions Contract
Between Housing Authority and
the United States of America**

TABLE OF CONTENTS

- Part B -

Heading	Page
Applicability of Additional Requirements Pursuant to Part B of this ACC.	i
Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects.	I-1
Special Requirements for Section 23 and Section 10(c) Projects.	II-1 to II-3
Special Requirements for Turnkey III Homeownership Opportunities Projects.	III-1
Special Requirements for Mutual Help Projects.	IV-1 to IV-2
Special Interim Requirements for Development Projects.	V-1 to V-10
Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank.	VI-1 to VI-12
Insurance Requirements	VII-1 to VII-2

Applicability of Additional Requirements Pursuant to Part B of this ACC

The HA shall comply with all additional requirements set forth in any applicable attachments contained in this Part B to the ACC. The HA is responsible for determining whether the following attachment(s) apply to the HA's project(s), and for determining the extent to which they apply to a HA's projects. The HA shall not be relieved of its obligation to comply with these requirements because of its failure to make an appropriate determination of applicability.

- (A) **Attachment I:** Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects. (Applicable to all projects, except those financed by the HA's issuance of tax-exempt bonds or by the sale of notes to the Federal Financing Bank.)
- (B) **Attachment II:** Special Requirements for Section 23 and Section 10(c) projects. (Applicable to all projects developed pursuant to sections 23 or 10(c) of the Act.)
- (C) **Attachment III:** Special Requirements for Turnkey III Homeownership Opportunities Projects. (Applicable to all projects operating pursuant to the Turnkey III Homeownership Opportunities program.)
- (D) **Attachment IV:** Special Requirements for Mutual Help Homeownership Projects. (Applicable to all projects operating pursuant to the Mutual Help Homeownership program.)
- (E) **Attachment V:** Special Interim Requirements for Development Projects. (Applicable, on an interim basis, to all projects being developed, or proposed to be developed, by a public housing authority under the Act.)
- (F) **Attachment VI:** Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank. (Applicable to all projects financed through the issuance of tax-exempt bonds or through notes sold to the Federal Financing Bank.)
- (G) **Attachment VII:** Insurance Requirements. (Applicable to all projects.)

ATTACHMENT I

Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects

Section	Page
Section 1 Limitations on Forgiveness of Debt.	I-1
Section 2 Maximum Amount That May Be Forgiven.	I-1

Section 1 - Limitations on Forgiveness of Debt.

(A) Section 4(a) of the Act authorizes HUD to make loans to HAs to help finance the development or modernization of low income housing projects by such agencies. Section 5(a) of the Act authorizes HUD to make annual contributions to HAs, which may in no case exceed the annual debt service payable by such HAs to finance the development or modernization cost of the project involved.

(B) Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 added section 4(c) to the Act to provide that each loan made by HUD under section 4(a) that has any principal amount outstanding or any interest amount outstanding or accrued that is repayable from debt service annual contributions shall be forgiven and any promise to repay principal and interest in a loan contract shall be cancelled. Section 4(c) further provides that such cancellation of a promise to repay principal and interest shall not affect any other terms and conditions of the ACC, which shall remain in effect as if the cancellation had not occurred.

(C) The forgiveness provided under section 4(c) is limited to loans held by HUD, repayment of which was to be made using annual contributions and does not extend to indebtedness of HAs to holders of bonds or notes sold to the Federal Financing Bank or otherwise, or under indebtedness to HUD not to be paid from annual contributions.

Section 2 - Maximum Amount That May Be Forgiven.

The outstanding principal balance and interest due on loans held by HUD made under section 4 of the Act for the development or modernization of such project, shall be forgiven, not to exceed a maximum principal amount equal to the Actual Development Cost (or Actual Modernization Cost) for such project, and interest thereon. Excess financing, with interest thereon until paid, shall not be forgiven.

ATTACHMENT II

Special Requirements for Section 23 and Section 10(c) Projects

Section		Page
Section 1	General Requirements Applicable to Section 23 and Section 10(c) Projects.	II-1
Section 2	Special requirements Applicable Only to Section 23 Projects	II-2

Section 1 - General Requirements Applicable to Section 23 and Section 10(c) Projects.

(A) Subject to reduction as herein provided, HUD shall pay Basic Annual Contributions to the HA with respect to each dwelling unit in a Section 23 or Section 10(c) project in the amount allocable to dwelling units of its size for each fiscal year in which the dwelling unit is under lease to the HA.

(B) Provided that the total estimated number of dwelling units of all sizes is not exceeded, the HA may lease any combination of the various sizes of dwelling units but shall not lease more than 125% of the estimated number of dwelling units of any specified size without the prior approval of HUD. Notwithstanding the number and size of dwelling units leased by the HA, HUD shall not be obligated to make Basic Annual Contributions with respect to the project for any period in excess of the amount of the Basic Annual Contributions established in this ACC.

(C) Following the end of each fiscal year, the HA shall promptly pay to HUD (unless HUD approves an alternative disposition), the amount of Basic Annual Contributions paid to the HA for such fiscal year with respect to any dwelling unit (1) which the HA did not place under lease; or (2) which may be attributable to: (i) a period prior to the effective date of the lease covering the dwelling unit, or (ii) subsequent to the date of termination of the lease covering any dwelling unit, or (iii) for which the HA is not obligated to pay rent under the lease covering any dwelling unit. Amounts in relation to item (2) above, shall be determined on the basis of 1/365th of the annual amount allocable to the dwelling unit for each day.

(D) The HA shall proceed expeditiously with the leasing of the maximum number of units authorized for use and occupancy by eligible families. If the HA does not proceed expeditiously with the leasing of dwelling units in the project, HUD may, by notice to the

HA, reduce its obligation to pay annual contributions with respect only to the number and sizes of dwelling units under lease to the HA at the date of the HA's receipt of such notice.

(E) The HA shall promptly commence and conduct a continuing survey and listing of available dwelling units that will provide decent, safe, and sanitary dwelling accommodations and related facilities and that are, or may be made, suitable for use as low-rent housing. The HA shall inspect each dwelling unit and shall maintain a current list of approved dwelling units for the project consistent with the need and demand of eligible families for such units.

(F) The initial term of any lease shall be for not less than twelve months nor more than one hundred and twenty (120) months. Each lease may contain a provision for renewal, provided that no such renewal shall result in a total term exceeding one hundred and eighty (180) months for an existing structure or two hundred and forty (240) months for a new structure.

(G) The HA shall not lease more than one dwelling unit in a structure containing ten or less dwelling units or more than 10% of the dwelling units (counting any fraction as one dwelling unit) in a larger structure except to the extent that the HA determines that such limit should not be applied.

(H) The books of account and records of the HA shall be maintained in such manner as will at all times show the operating receipts, operating expenditures, and reserves for the project separate and distinct from all other projects under this ACC. All annual contributions received by the HA in connection with the project shall constitute operating receipts of the project.

(I) The HA hereby pledges the Basic Annual Contributions payable with respect to a Section 23 or Section 10(c) project to the payment of its obligations incurred under this ACC in connection with such project(s).

(J) Upon the occurrence of a substantial default with respect to the project, the HA shall, if HUD so requires, assign to HUD all of its rights and interests in and to the project, or such part thereof as HUD may specify. HUD shall continue to pay the Basic Annual Contributions with respect to the dwelling units and for the terms of the leases so assigned to HUD, and to otherwise operate such units in accordance with the terms of this ACC until reassigned to the HA. After HUD is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of this ACC, HUD shall reassign to the HA all of HUD's rights and interests in and to the project, as such rights and interests exist at the time of such reassignment.

Section 2 - Special Requirements Applicable Only to Section 23 Projects.

(A) A HA with a Section 23 tax-exempt bond-financed project must also comply with the additional requirements set forth in Attachment VI to this ACC.

(B) In addition to project reserves remaining at the end of the lease term, funds returned to the HA by a bond trustee at the end of the bond term, or returned to a leased housing corporation created by an HA for the purpose of developing a Section 23 tax-exempt bond-financed project, shall be disbursed as directed by HUD.

(C) Section 23 private-owner financed projects are not subject to the requirements of section 6, Part A, of the ACC ("Cooperation Agreement(s)"), including the making of payments in lieu of taxes provided therein.

ATTACHMENT III

Special Requirements for Turnkey III Homeownership Opportunities Projects

Section		Page
Section 1	Homebuyers' Ownership Opportunity Agreement.	III-1
Section 2	Books of Account.	III-1
Section 3	Application of Purchase Payments.	III-1

Section 1 - Homebuyers' Ownership Opportunity Agreement.

(A) The HA agrees to operate its Turnkey III project(s) in accordance with the regulations and guidelines for the Turnkey III Homeownership Opportunities Program for Low-Income Families, as prescribed by HUD. The HA shall enter into a Homebuyers' Ownership Opportunity Agreement (HOOA), in the form prescribed by HUD, with the occupant of each dwelling in the project. The HOOA shall provide for the ultimate ownership of the dwelling by the occupant who has performed all the obligations and conditions required by the HOOA.

(B) Failure of the HA to enter into such HOOA at the time and in the form prescribed by HUD, failure to perform any obligation imposed under such agreement, or failure to meet any other obligation under this ACC shall constitute a substantial default under the ACC.

Section 2 - Books of Account.

The books of account and records of the HA shall be maintained in accordance with the HOOA as well as other provisions of this ACC and in such manner as will at all times show the operating receipts, operating expenditures, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

Section 3 - Application of Purchase Payments.

All funds held or received by the HA that are applied to payment of the purchase price of a home by a Homebuyer shall be used or disposed of by the HA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.

ATTACHMENT IV

Special Requirements for Mutual Help Homeownership Projects

Section		Page
Section 1	Annual Contributions Contract.	IV-1
Section 2	MHO Agreement.	IV-1
Section 3	Books of Account.	IV-2
Section 4	Application of Purchase Payments.	IV-2

Section 1 - Annual Contributions Contract.

The IHA agrees to develop and operate its Mutual Help project(s) in compliance with any applicable HUD regulations and guidelines for the Mutual Help (MH) Homeownership Opportunity Program, and in accordance with all contractual obligations imposed upon the IHA by the Mutual Help and Occupancy Agreement (MHO Agreement).

Section 2 - MHO Agreement.

- (A) The MH Program provides low income families with an opportunity to become homeowners in return for the families' agreement to make a minimum contribution toward the development cost of a project, to maintain the home, and to perform all duties of a homebuyer under a MHO Agreement.
- (B) As units become available, the IHA shall execute a MHO Agreement, in the form prescribed by HUD, with each eligible family. The IHA shall ensure the homebuyer's compliance with all applicable provisions of the MHO Agreement, and shall be responsible for ensuring that the Mutual Help unit is maintained in a decent, safe and sanitary condition, notwithstanding the homebuyer's failure to meet his or her obligation for maintenance under the MHO Agreement.
- (C) The IHA shall ensure that each home in a MH project is used, unless otherwise approved by HUD, solely in accordance with a MHO Agreement executed with an eligible homebuyer.
- (D) The IHA's failure to enter into a MHO Agreement with an eligible family for an available home in a Mutual Help project at the times required by HUD, constitutes a substantial default under this ACC.

Section 3 - Books of Account.

The IHA shall maintain books of account and records in accordance with the requirements of the MHO Agreement and any HUD requirements. The books of account and records shall be maintained in such manner as will at all times show the operating receipts, operating expenses, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

Section 4 - Application of Purchase Payments.

All funds held or received by the IHA from a homebuyer for the purchase of a MH unit shall be used or disposed of by the IHA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.

ATTACHMENT V

Special Interim Requirements for Development Projects

Section		Page
Section 1	Acquisition of Project Sites.	V-1
Section 2	Architectural and Engineering Services.	V-2
Section 3	Main Construction Contract and Other Contracts.	V-3
Section 4	Taking of Bids.	V-3
Section 5	Liquidated Damages.	V-4
Section 6	Subcontracts and Assignments.	V-4
Section 7	Prevailing Salaries or Wages During Development.	V-4
Section 8	Copeland Act; Contract Work Hours Standards Act.	V-5
Section 9	Wage Claims and Adjustments.	V-6
Section 10	Payrolls and Related Reports.	V-6
Section 11	Other Labor Provisions.	V-7
Section 12	Retention of Contract Rights and Change Orders.	V-7
Section 13	Payment to Contractors.	V-8
Section 14	Acceptance of Contract Work and Completion of Contracts.	V-8
Section 15	Development Cost.	V-9
Section 16	Development Cost Budgets.	V-9
Section 17	Actual Development Cost.	V-10

In addition to the requirements codified at 24 CFR part 941, this attachment lists interim requirements applicable to projects being developed, or proposed to be developed, by a public housing agency. The provisions of this attachment shall expire upon HUD's issuance, for effect, of an interim or final regulation to replace the rule promulgated at 45 FR 60838 (September 12, 1980; 24 CFR part 941, and all subsequent amendments to that rule). This attachment does not apply to Indian housing development, which is governed by regulations codified at Title 24 of the Code of Federal Regulations.

Section 1 - Acquisition of Project Sites.

(A) The HA, unless HUD otherwise approves, shall provide by contract for necessary services of experts in their respective fields for land surveys, title information, and legal services for land

acquisition, appraisals and option negotiations, in accordance with HUD requirements. Approval of such contracts by HUD shall be required if the fees provided therein exceed the maximum amounts then prescribed by HUD. Such contracts shall not be entered into with respect to any project site prior to tentative approval by HUD of such site. The HA shall not undertake to acquire real property unless HUD has approved the acquisition thereof for a project.

(B) The HA, unless HUD otherwise approves, shall obtain a formal appraisal(s), as required by HUD, on each parcel and obtain HUD approval before taking an option, instituting condemnation proceedings, or acquiring title thereto, and shall conduct all negotiations for the acquisition of real property in accordance with regulations and requirements prescribed by the United States Government. In no case shall persons who have made such appraisals be employed to negotiate options.

(C) The HA shall not accept any option for, institute, accept awards under (except as required by applicable law), or appeal any condemnation proceedings for, or otherwise acquire any portion of the site for any project until it has submitted such data with respect thereto as HUD may require, and has obtained the approval of HUD of such action. The HA shall appeal any condemnation award if requested to do so by HUD.

(D) The HA shall acquire good and valid title to the site of each project free and clear of any mortgage, lease, lien, or encumbrance of any nature whatsoever, other than such leases, use restrictions, zoning ordinances, building restrictions, easements, or rights-of-way as will not, in the determination of the HA approved by HUD, adversely affect the value or usefulness of such site for the project.

(E) Upon the vesting of title to the site of each project in the HA and the due recording of deeds or other documents required to be recorded in order to protect such title, the HA shall furnish to HUD a final report on completed land acquisition, together with two copies of: (1) title insurance policies; or (2) title certificates; or (3) attorneys' opinions, showing that the HA has good and valid title, as described in subsection (D) hereof; to the entire site of such project, and that such deeds or other documents have been duly recorded or filed for record wherever necessary to protect such title.

Section 2 - Architectural and Engineering Services.

The HA shall furnish HUD, at such time(s) as HUD may require, and in any event prior to the release of any document for the taking of bids, evidence satisfactory to HUD, showing that the plans, drawings, specifications, and related documents are in accordance with the provisions of this ACC and with all applicable laws, ordinances, and regulations, except to the extent that valid waivers have been obtained from the appropriate authorities. The HA shall obtain all necessary permits or approvals of State and local housing, planning, zoning, building, and other boards, bodies, or officers having jurisdiction, and shall furnish to HUD a certificate listing such

approvals before any Main Construction Contract is let.

Section 3 - Main Construction Contract and Other Contracts.

(A) "Main Construction Work" for any project shall mean all physical construction work, materials, and equipment in connection with such project except demolition, lawns and planting, and the furnishing of movable equipment. "Main Construction Contract" shall mean any contract covering all or any part of the Main Construction Work. "Construction or Equipment Contract" shall mean any contract covering all or any part of the Main Construction Work, or covering demolition, lawn and planting, or the furnishing of movable equipment.

(B) Unless otherwise required by applicable State laws, the Main Construction Work for each project shall be performed under one contract, except that HUD, upon submission of evidence satisfactory to it that such action is in the best interest of the development of the project, may approve: (1) separate contracts for foundations or for any or all elements of site improvements, to be entered into prior to the execution of contracts for the remainder of the Main Construction Work; (2) separate contracts for any or all of the mechanical trades, to be entered into at the same time as the contracts for the remainder of the Main Construction Work; or (3) separate contracts for specific buildings or groups of buildings to be developed concurrently or consecutively.

(C) Demolition, lawns and planting, and the furnishing of movable equipment may be performed under separate contracts or may be included in the same contract(s) as the Main Construction Work.

(D) All Main Construction Work and demolition, lawns and planting, and the furnishing of movable equipment shall be performed under lump-sum contracts, and no part of such work shall, unless approved in advance by HUD, be performed by force account.

Section 4 - Taking of Bids.

(A) The HA shall not request alternate bids (e.g., two different structural systems). Instead, the HA may specify the most expensive system as the base bid and list deductive alternates in inverse priority order so that in the case of a budget overrun, they may be taken in numerical order as listed until the award can be made within available funds.

(B) Each bidder for any of the Construction or Equipment Contracts (except demolition contracts) shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in accordance with requirements set forth in Title 24 of the Code of Federal Regulations. Bidders for demolition contracts shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in an amount not less than ten percent of the cost of labor, materials, hauling, and all other incidental expenses, as estimated by the HA, necessary

to perform the work under the demolition contract; without regard to the value of salvage.

Section 5 - Liquidated Damages.

Each Construction or Equipment Contract shall include provisions, in form and substance satisfactory to HUD, for liquidated damages in the event of delay in the performance of such Construction or Equipment Contract, unless HUD approves the omission of such provisions.

Section 6 - Subcontracts and Assignments.

(A) The HA shall ensure that no subcontractor proposed to carry out work under this ACC is subject to debarment, suspension, or is otherwise ineligible to participate in a Federal assistance program, pursuant to Title 24 of the Code of Federal Regulations.

(B) Each Construction or Equipment Contract shall provide that: (1) the contractor shall make no assignment thereof (other than an assignment of the monies due or to become due thereunder to a bank or financial institution) without the prior approval of the HA, which approval may be given only with respect to a responsible assignee who shall furnish performance and payment bonds in accordance with Title 24 of the Code of Federal Regulations; and (2) such Construction or Equipment Contract may be assigned by the HA to any corporation, agency, or instrumentality authorized to accept such assignment.

Section 7 - Prevailing Salaries or Wages During Development.

(A) Each contract entered into by the HA in connection with the development of any project under which any architects, technical engineers, or technicians are employed shall provide that the HA will not make any payment under such contract unless and until the HA has received a signed statement from the contractor that such contractor and each of his or her subcontractors has made payment to each class of employees in compliance with the applicable prevailing wages, as set forth in Title 24 of the Code of Federal Regulations. The HA shall not make any such payment unless and until it has received such signed statement.

(B) Each contract referred to in subsection (A) entered into by the HA shall require that if the contractor or any of his or her subcontractors finds it necessary or desirable to exceed the prevailing salary or wage rates specified in his or her contract, any expense incurred by the contractor or subcontractors because of the payment of salaries or wages in excess of such amounts shall not be cause for any increase in the amount payable under the contract. The HA shall not consider or allow any claim for additional compensation made by the contractor or subcontractors because of such payments.

Section 8 - Copeland Act; Contract Work Hours Standards Act.

(A) The HA shall incorporate in each contract entered into by it in connection with the construction, prosecution, completion or repair of the projects the following:

"Compliance with Copeland Regulations. The contractor shall comply with the Copeland Regulations (29 CFR Part 3, or any successor provision) of the Secretary of Labor which are herein incorporated by reference."

(B) The HA shall incorporate in each contract entered into by it that may require the employment of laborers or mechanics the following:

"Contract Work Hours Standards Act - Overtime Compensation.

As used in these paragraphs, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work that may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his or her basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

(2) Violations; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subsection (B)(1), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his or her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subsection (B)(1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard forty hours without payment of the overtime wages required by the clause set forth in subsection (B)(1).

(3) Withholding for liquidated damages. The HA may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for

liquidated damages as provided in the clause set forth in subsection (B)(2).

(4) **Subcontracts.** The contractor shall insert in any subcontracts the clauses set forth in subsections (B)(1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

Section 9 - Wage Claims and Adjustments.

Each contract entered into by the HA shall provide that in cases of underpayment of salaries or wages to any architects, technical engineers, draftsmen, technicians, laborers, or mechanics by the contractor or any of his subcontractors, the HA may withhold from such contractor out of payments due, an amount sufficient to pay persons employed on the work covered by the contract the difference between the salaries or wages required to be paid under the contract and the salaries or wages actually paid such employees for the total number of hours worked, and shall further provide that the amounts withheld may be disbursed by the HA for and on account of the contractor or the subcontractor to the respective employees to whom they are due. The HA shall in cases of such underpayment withhold such monies and any amounts of liquidated damages due the United States in connection with violations of overtime compensation requirements of the Contract Work Hours Standards Act: provided, That the HA shall not be considered in default under this sentence if it has in good faith made payments to the contractor in reliance upon a signed statement of the contractor that the salaries and wages required under this contract have actually been paid.

Section 10 - Payrolls and Related Reports.

(A) Each contract identified in subsection (A) of section 7 of this Attachment V shall also require that payrolls and basic records relating thereto will be maintained during the course of the work and preserved by the contractor and his or her subcontractors for a period of three years thereafter for all laborers and mechanics employed in the development of the project. Such records shall contain the name and address of each such employee, his or her correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act, or any successor provision), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under the Contract Work Hours and Safety Standards Act that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act (or any successor provision), the contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records that show the costs anticipated or the actual cost incurred in

providing such benefits.

(B) The contractor shall be required to submit weekly to the HA such copies and summaries (on forms prescribed by HUD and furnished by the HA) of all of his or her payrolls and those of each of his or her subcontractors, as the HA or HUD may require. Each such payroll and summary shall be accompanied by a statement signed by the employer or his or her agent indicating that: (1) such payroll is correct and complete; (2) the wage rates contained therein are not less than those determined by the Secretary of Labor; and (3) the classifications set forth for each laborer or mechanic conform with the work performed. The contractor shall be required to make his or her employment records available for inspection by authorized representatives of the HA, HUD, and the Department of Labor and to permit such representatives to interview employees during working hours on the job.

Section 11 - Other Labor Provisions.

(A) All disputes concerning the payment of prevailing wage rates or classifications arising under this ACC or under any contract entered into by the HA involving: (1) significant sums of money; (2) large groups of employees; or (3) novel or unusual situations, shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor. The decision of HUD or the Secretary of Labor, as the case may be, shall be final. Each contract entered into by the HA shall embody the provisions of this paragraph.

(B) All questions arising under this ACC or under any contract relating to the application or interpretation of the Copeland Act or the Contract Work Hours Standards Act shall be referred to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final. Each contract entered into by the HA shall embody the provisions of this subsection.

Section 12 - Retention of Contract Rights and Change Orders.

(A) With respect to all contracts entered into by the HA in connection with the development of any project, the HA: (1) except in an emergency endangering life or property, shall not, without HUD approval, amend, modify, or consent to any change in any such contract or contractual provision that is required by this ACC to be approved by HUD; (2) shall at all times retain, preserve, and enforce all its rights under all such contracts; and (3) shall not, without the prior approval of HUD, waive, release, or compromise any right or claim that it may have under any such contract.

(B) Each Construction or Equipment Contract shall contain the following provision:

"Except in any emergency endangering life or property, no change shall be made by the contractor unless he or she has received a prior written order from HUD approved on its face by HUD authorizing the change, and no claim for an adjustment of the contract price

or time shall be valid unless so ordered."

Section 13 - Payment to Contractors.

(A) Each Construction or Equipment contract may provide for partial payments by the HA to the contractor. In such event, the Construction or Equipment Contract shall provide that the contractor shall supply to the HA, in a form satisfactory to HUD, a detailed estimate showing a complete breakdown of the contract price. Partial payment shall be made in accordance with periodic estimates based upon said detailed breakdown and with appropriate supporting data. The periodic estimates shall cover work performed (including materials delivered to and properly stored on the site with the approval of the HA) during the preceding period, and shall be duly certified and approved by persons designated by the HA. In making periodic partial payments, the HA shall retain at least 10 percent of the amount of each periodic estimate until final completion and acceptance of all work covered by the particular contract: Provided, That after one-half of the work has been completed, and if the work is progressing satisfactorily and continues to so progress, the HA may make the remaining partial payments in full for the work subsequently completed.

(B) Each Construction or Equipment Contract shall provide that final payment to the contractor by the HA of amounts retained under subsection (A) shall not be made until: (1) the contractor has furnished a release, in a form approved by HUD, of all claims against the HA arising under and by virtue of such Construction or Equipment Contract, or other than such claims, if any (the basis, scope, and amount of each of which are clearly defined and stated) as may be specifically excepted by the contractor from the operation of such release; and (2) the contractor has furnished evidence satisfactory to the HA that the contractor has paid, and that his or her subcontractors have paid, all sums due to laborers, mechanics, and materialmen.

Section 14 - Acceptance of Contract Work and Completion of Contracts.

(A) Each Construction or Equipment Contract shall require that the work covered thereby shall be completed within the time specified therein and such extensions as may be granted by the HA. The HA shall grant no such extension without approval thereof by HUD.

(B) With respect to each Construction or Equipment Contract, the HA may accept the work thereunder in parts or in its entirety. Such acceptance may be acceptance of the work involved either as: (1) fully complete and satisfactory; or (2) completed but with an adjustment in price for noncompliances; or (3) completed subject to the correction of specific minor items. No work shall be so accepted by the HA unless such acceptance is approved by HUD, or HUD has waived such approval: provided, That the HA may accept work required in the correction of specific minor items without the approval of HUD.

(C) After acceptance of all work (including the correction of any specific minor items) under

each Construction or Equipment Contract, the HA shall submit for approval by HUD a certificate of: (1) full completion; or (2) full completion but with an adjustment in price for noncompliances, and shall include in such certificate a statement of the final amount due and payable to the contractor.

Section 15 - Development Cost.

(A) "Date of Full Availability" with respect to each project shall mean the last day of the month in which substantially all dwelling units in such project became available for occupancy.

(B) "Initial Operating Deficit" of any project as of the end of the Initial Operating Period thereof shall mean the amount, if any, by which the Operating Expenditures thereof to such date exceeded the Operating Receipts.

Section 16 - Development Cost Budgets.

(A) Until such time as a budget of Development Cost (herein called "Development Cost Budget") is approved by HUD for any project, the breakdown of the Maximum Development Cost set forth in the applicable Development Program shall constitute the approved Development Cost Budget for such project.

(B) At the time the HA requests HUD approval of the award of contracts for the Main Construction Work of any project, it shall submit for HUD approval a Development Cost Budget for such project that shall be based upon: (1) the amount of the proposed award(s); (2) costs and obligations incurred to such date; (3) the estimated amount of costs and obligations not yet incurred; and (4) an allowance for contingencies in such amount as HUD may approve.

(C) In the event that in the judgment of the HA it appears necessary with respect to any project to incur Development Cost in excess of the total amount shown in the last previously approved Development Cost Budget for such project, or that it appears necessary with respect to any of the main classifications of Development Cost to incur costs in excess of the amount shown therefor in the last previously approved Development Cost Budget for such project plus the share of the allowance for contingencies allocated to such main classifications, or if for any other reason the HA deems it advisable, it may prepare and submit to HUD for its approval a revised Development Cost Budget for such project.

(D) Not earlier than six months nor later than twenty-four months after the Date of Full Availability of each project, the HA shall submit for HUD approval a final Development Cost Budget for such project which shall be based upon: (1) costs and obligations incurred to such date including a reasonable allowance for disputed, contingent, or unliquidated liabilities, and for legal and other costs and expenses in connection with the settlement of such liabilities; and (2) the estimated amount of costs and obligations not yet incurred for work, equipment, and

services deemed necessary for the completion of such project. No other allowance for contingencies shall be included in such final Development Cost Budget.

(E) HUD shall promptly review each proposed Development Cost Budget and notify the HA of its approval or disapproval thereof. If HUD disapproves any proposed Development Cost Budget, the HA shall be so notified in writing and be furnished with a detailed explanation of the reasons for such disapproval. Upon approval by HUD of any Development Cost Budget for any project, such budget shall supersede all previously approved budgets for such project, and the total of such budget shall thereafter and for all purposes of this ACC be the Maximum Development Cost of such project, and shall for all purposes of this ACC correspondingly revise the aggregate Maximum Development Cost of all the projects.

(F) The HA shall not with respect to any project incur costs in excess of the amounts shown in the last previously approved Development Cost budget for such controlled accounts as may be specified by HUD.

Section 17 - Actual Development Cost.

(A) The HA shall, as promptly as possible consistent with the maintenance of its rights against its contractors, settle and pay all disputed, contingent, or unliquidated items of Development Cost on all projects.

(B) Whenever the HA shall be satisfied that all the development work on each project has been properly completed, and that the entire Development Cost on such project (including all items that may have theretofore been disputed, contingent, or unliquidated) has been fully paid, the HA shall submit to HUD for its approval a certificate setting forth the total amount of the Development Cost of such project (herein called the "Actual Development Cost"), stating that: (1) all such development work has been completed; (2) the entire Development Cost or liabilities therefor incurred by the HA have been fully paid; (3) there are no undischarged mechanics', laborers', contractors', or material-men's liens on such project on file in any public office where the same should be filed in order to be valid liens against such project; and (4) the time in which such liens could be filed has expired. Upon approval by HUD, such certificate shall be known as the "Actual Development Cost Certificate." The determination of the amount of the Actual Development Cost contained in such Actual Development Cost Certificate so approved by HUD shall be final and conclusive for all purposes of this ACC, and upon the determination of Actual Development Cost, a copy of the approved Actual Development Cost Certificate shall be attached to this ACC and shall be deemed to further amend the ACC to state the Actual Development Cost.

(C) If the HA shall unduly delay in the submission of the Actual Development Cost Certificate for any project, HUD may give notice to the HA that the amount of the Development Cost of such project incurred to the date of such notice shall be considered to be the Actual Development

Cost of such project, and such notice shall constitute the Actual Development Cost Certificate for such project for all the purposes of this ACC, and shall be deemed to amend the ACC to state the Actual Development Cost.

(D) Promptly after the issuance of the Actual Development Cost Certificate for any project the HA shall: (1) if such project is then permanently financed, deposit any remaining balance of the monies theretofore received for the purpose of the development of such project in the Advance Amortization Fund; or (2) if such project is not then permanently financed, apply any such remaining balance to the payment of outstanding Advance Notes or Temporary Notes issued in connection with such project.

(E) Subsequent to the issuance of the Actual Development Cost Certificate for any project, no cost for additional development work shall be incurred by the HA without the approval of HUD. In the event that the HA and HUD agree that additional development work is necessary, the Actual Development Cost Certificate shall be amended to include the cost of such additional development work.

ATTACHMENT VI

Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank

Section		Page
Section 1	Reconstruction and Restoration.	VI-1
Section 2	Advances by HUD; Mortgage.	VI-2
Section 3	Bond Resolutions and Fiscal Agent.	VI-2
Section 4	Delivery of Bonds.	VI-3
Section 5	Annual Contributions.	VI-4
Section 6	Debt Service Fund.	VI-7
Section 7	Advance Amortization Fund.	VI-8
Section 8	General Limitations on Annual Contributions.	VI-9
Section 9	Pledge of Annual Contributions.	VI-9
Section 10	Refunding of Bonds.	VI-10
Section 11	Faith of the United States Pledged to Payment of Annual Contributions.	VI-10
Section 12	Continuance of Annual Contributions.	VI-11
Section 13	Rights and Obligations of HUD During Tenure Under Section 18, Part A, of the ACC.	VI-11

This attachment lists special requirements applicable to projects financed by tax-exempt bonds or notes sold to the Federal Financing Bank. These requirements shall expire when all such bonds and notes associated with a particular project are paid off.

Section 1 - Reconstruction and Restoration.

(A) If a project, or any portion of a project, is damaged or destroyed, the HA shall establish promptly (by settlement approved by the HA and HUD, or by litigation) and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. In addition, the HA shall reconstruct, restore or repair the project, except as otherwise provided in this section.

(B) The HA shall deposit into the General Fund the proceeds of any claims and any other monies provided for the reconstruction, restoration, or repair of a project and shall reserve such funds for these purpose(s). Unless otherwise approved by HUD, the HA shall use these funds to pay for the cost of reconstructing, restoring, or repairing the project. Any funds that remain after completing the work and paying off all costs associated with the work are to be applied as follows: (1) to pay off any indebtedness that the HA may have incurred to provide such funds; (2) to reimburse any other reserve or other account that may have been used to provide the funds; and (3) as unreserved Operating Receipts.

(C) If the reconstruction, restoration, or repair of the project can be accomplished substantially as one operation, is not to be performed by the HA's regular staff, and the estimated cost is in excess of \$10,000, the HA shall ensure that the work is done in compliance with the requirements of section 5, Part A, of the ACC.

(D) Upon approval by HUD, the HA may determine that all or part of the damage to or destruction of a project shall not be reconstructed, restored, or repaired. In such event, the HA shall deposit into the Advance Amortization Fund the proceeds of any claims against insurers or others as a result of the damage or destruction, to the extent these proceeds are not used to reconstruct, restore, or repair the project.

Section 2 - Advances by HUD; Mortgage.

(A) Each advance provided by HUD to a HA for the development of a project shall be evidenced by an obligation duly issued and delivered by the HA, in a form satisfactory to HUD, which obligation shall bear interest at the applicable Loan Interest Rate from the date the advance is made, and shall otherwise conform to the following:

(1) Each obligation (herein called a "Project Loan Note") evidencing an advance made for the Development Cost of any project not permanently financed, together with interest on such note, shall be due and payable on demand.

(2) Each obligation (herein called a "Permanent Note"), evidencing an advance made for the development cost of any permanently financed project, together with interest on the Note, shall (subject to the HA's right to prepay some or all of this amount) be payable on the first day of the month following each Annual Contribution Date. Such amount is payable in annual installments (applicable first to interest and then to principal) equal to the portion of the Debt Service Annual Contribution allocable to the Note, in accordance with section 5(C) of this Attachment. Each Permanent Note issued to refund or renew other Permanent Notes, in whole or in part, shall be payable in installments equal to the installments payable upon the Notes so refunded or renewed. Each Permanent Note shall further provide that the holder of the Note may declare the Note to be due and payable in full at any time: (1) when there is any default in the payment of any installment of principal or interest; or (2) when the HA is in substantial

default; or (3) upon the termination of this ACC.

(B) HUD shall not demand payment of, nor pledge, sell, or otherwise dispose of any Project Loan Note unless: (1) the HA is in substantial default; or (2) HUD has given notice of the termination of this ACC in accordance with section 17(H), Part A, of this ACC.

(C) Each Project Loan Note or Permanent Note issued in connection with a project shall be secured, to the extent authorized or permitted by law, by a mortgage, deed of trust, or other equivalent lien upon the project.

Section 3 - Bond Resolutions and Fiscal Agent.

(A) Before the delivery of the first issue of bonds, the HA shall enter into, and thereafter maintain, a fiscal agency agreement, in substantially the form prescribed by HUD. Immediately upon executing the agreement, the HA shall furnish HUD with executed or conformed copies of the agreement as may be required by HUD.

(B) The Fiscal Agent named in the Bond Resolutions in connection with the first issue of Bonds shall also be named as Fiscal Agent in all subsequent Bond Resolutions, and shall administer the Debt Service Fund and the Advance Amortization Fund. The HA shall require the Fiscal Agent to furnish HUD with such reports and other data relating to accounts under this ACC as may reasonably be required by HUD.

Section 4 - Delivery of Bonds.

(A) Delivery of (including payment for) each issue of Bonds shall be made at the time and place established in the terms of the offering.

(B) At such time all amounts paid by purchasers of the bonds on account of accrued interest shall be paid to the Fiscal Agent for deposit in the Debt Service Fund, and all amounts paid on account of premiums shall be paid to the Fiscal Agent for deposit in the Advance Amortization Fund or, with the approval of HUD, be used for the repurchase of bonds.

(C) At such time, and as a condition precedent to the delivery of such bonds, the HA shall deposit or cause to be deposited with the Fiscal Agent in the Debt Service Fund from the bond proceeds (or from any other monies of the HA, including monies available for such purpose under section 5(C)(6) of this Attachment) an amount equal to: (1) the interest on the issue of bonds becoming due and payable six months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest, and less (3) any amount which may then be on deposit in the Debt Service Fund for such purpose.

(D) At such time, and as a condition precedent to the delivery of such bonds, the HA shall advance or cause to be advanced from the bond proceeds (or from any other monies of the HA) to the Fiscal Agent for deposit in the Debt Service Fund an amount equal to: (1) the interest on such issue of Bonds becoming due and payable twelve months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest. At a later date, the HA shall be reimbursed by the Fiscal Agent for such advance in accordance with section 6(E) of this Attachment.

(E) At such time the HA shall pay or cause to be paid from the bond proceeds (or from other monies of the HA) the principal of and interest on all outstanding Project Loan Notes, Permanent Notes, and Project Notes to the extent that the principal of such Notes includes an amount for any part of the Development Cost financed by such issue of Bonds.

(F) Upon delivery of the first issue of Bonds to finance any part of the Development Cost of a Project, such Project shall be considered to be "Permanently Financed."

(G) If, at the time of the delivery of an issue of Bonds, the HA does not have available the amount set forth in subsection (D) of this section to advance to the Fiscal Agent for deposit in the Debt Service Fund, HUD shall advance on account of the loan herein provided an amount equal to such deficiency. Such advance shall be made and deposited in the manner described in subsection (D) of this section, but shall not be included in the amount of the Minimum Development Cost of any project. The Fiscal Agent shall, on behalf of the HA, reimburse HUD for such advance at the time and in the manner provided for reimbursement of similar advances to the HA, in accordance with section 6(E) of this Attachment. Such advance shall bear interest at the Loan Interest Rate and the interest shall be paid from Operating Receipts as an Operating Expenditure.

Section 5 - Annual Contributions.

(A) HUD shall make annual contributions to the HA for each project. Such annual contributions shall include Debt Service Annual Contributions (or Basic Annual Contributions in respect to Leased Housing projects) and Additional Annual Contributions pursuant to section 11, Part A, of the ACC. HUD (1) shall make Debt Service Annual Contributions to the HA for each permanently financed project; and (2) may, in its determination, make Debt Service Annual Contributions to the HA for each project that is not permanently financed. The date upon which each Debt Service Annual Contribution is payable (except the first Debt Service Annual Contribution with respect to a project not permanently financed, which may be made available as of the Date of Full Availability of such project) shall be known as the "Annual Contribution Date." If the Annual Contribution Date is not specifically set forth in this ACC, it shall be deemed to be the fifteenth day of the fourth, fifth or sixth month of the fiscal year, as determined by HUD.

(B) The first Debt Service Annual Contribution with respect to each permanently financed project shall be due and payable on the Annual Contribution Date which is seventeen months and fourteen days after the Bond Date of the first issue of bonds issued to finance any part of the development cost of the project. For projects that are not permanently financed, the first Debt Service Annual Contribution may be made available as of the Date of Full Availability of the project and shall be determined in accordance with subsection (C)(1)(d) of this section 5. If the first Debt Service Annual Contribution for a project is made available as of the Date of Full Availability of the project, the second Debt Service Annual Contribution with respect to the project may be made on the Annual Contribution Date that occurs not less than twelve months subsequent to the Date of Full Availability. Subsequent annual contributions shall be due and payable on each Annual Contribution Date thereafter.

C) On each Annual Contribution Date, HUD shall pay (subject to reduction as provided in this section 5) Debt Service Annual Contributions for each project for which any Debt Service Annual Contributions are then payable.

(1) The amount of the Debt Service Annual Contribution shall be equal to the sum of the level debt services of all unmatured issues of bonds, bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, as specified in the applicable Bond Resolution, plus an amount or amounts allocable to Permanent (or Project Loan Notes, as follows:

(a) For each project that is permanently financed by an issue of bonds equal to the minimum development cost first established for the project, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project which exceeded as of the last day of such fiscal year the principal amount of such issue of bonds would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for such project; and

(b) For each project that is permanently financed by an issue of bonds in an amount less than the amount of the minimum development cost first established for the project, an amount equal to (i) the applicable minimum loan interest rate times the amount by which the minimum development cost as first established for the project exceeds the principal amount of such issue of bonds, plus (ii) an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the portion of the minimum development cost of the project which exceeds, as of the last day of the fiscal year, the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and (iii) commencing on the Annual Contribution Date next following

the last maturity date of such issue of bonds, the amount of the level debt service of such issue of bonds; and

(c) For each project that is financed by a permanent note in lieu of bonds, an amount, as determined by HUD, which, if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project that exceeded (as of the last day of such fiscal year) the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and

(d) For each project that is not permanently financed, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of that figure determined by HUD to be that below which the development cost of the project shall in no event fall would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project.

Upon delivery of any issue of bonds to refund Permanent or Project Loan Notes, the amount of the level debt service of such issue of bonds shall be in lieu of the portion of the Debt Service Annual Contribution allocable to such Notes whether pursuant to clause (a), (b), (c), or (d) above.

(2) On each Annual Contribution Date, the actual amount of the Debt Service Annual Contribution to be paid (herein called the "Accruing Annual Contribution") shall be an amount equal to the Debt Service Annual Contribution less (1) the amount then on deposit in the Debt Service Fund for the reduction of annual contributions pursuant to subsection (B) of section 6 of this Attachment, and (2) any amount then on deposit in the Debt Service Fund, pursuant to subsection (B) of section 4 of this Attachment, on account of interest accrued on any issue of Bonds after a date that is six months after the Bond Date of such issue.

(3) Notwithstanding any other provision of this ACC, HUD may make payment of any Accruing Annual Contribution in semi-annual installments as follows: (a) the first installment shall be paid on the Annual Contribution Date in the amount, if any, by which (i) the Accruing Annual Contribution exceeds (ii) the amount of principal and interest that shall become due and payable on the next following anniversary of the Bond Date on all bonds outstanding at the end of the preceding fiscal year and that bears a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date; (b) the balance of such Accruing Annual Contribution shall be paid on the date six months after such Annual Contribution Date.

(4) At least thirty days prior to each Annual Contribution Date, the Fiscal Agent shall file with HUD a report showing the amount of each deposit made into the Debt Service Fund since the

next preceding Annual Contribution Date and the balance in the Debt Service Fund as of the date of such report.

(5) Except as otherwise provided in subsections (C)(6) and (7) of this section 5, HUD shall pay each Accruing Annual Contribution, or installment thereof, to the Fiscal Agent for deposit in the Debt Service Fund. At the time of such payment, HUD shall furnish to the HA and to the Fiscal Agent a statement showing (in detail and with appropriate explanations) the amount of the Accruing Annual Contribution, and the method by which the Accruing Annual Contribution shall be paid. Each such statement shall include a schedule showing, on the basis of information available to HUD, the distribution of the funds in the Debt Service Fund to be made pursuant to section 6 of this Attachment.

(6) On each Annual Contribution Date on which any Permanent, Project Loan, or Project Notes issued in connection with any project with respect to which an annual contribution is then payable remain outstanding and until full repayment, with interest at the applicable Loan Interest Rate, of all expenditures, if any, made by HUD in connection with any such Project pursuant to section 13 of this Attachment, such portion of the Accruing Annual Contribution, which if deposited in the Debt Service Fund would (together with the monies then on deposit in said Fund for the reduction of annual contributions pursuant to this ACC plus the amount of the second installment, if any, of such Accruing Annual Contribution) exceed the sum of: (a) an amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, plus (b) an amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date, may be withheld by HUD, and applied to the full extent thereof. Such amount shall be applied, first, to reimburse the HA for any advance made pursuant to section 4(D) of this Attachment. Thereafter, such amounts shall be used pay the interest and principal of such Notes and to repay such expenditures in proportion, with respect to each such project, to the applicable portion of the Debt Service Annual Contribution determined pursuant to clauses (a), (b), (c), or (d) of section 5(C)(1) of this Attachment. However, any amounts that would otherwise be applied to the payment of principal under the second order of preference may be withheld for not more than twelve months and be used for the payment of interest on any bonds that may be subsequently issued to refund such Notes and expenditures.

(7) When monies sufficient for the payment and discharge of all bonds have been deposited in trust for such purpose with the Fiscal Agent, Accruing Annual Contributions, and monies otherwise payable to the Debt Service Fund shall be applied, as approved by HUD, to the payment of the Notes and expenditures and in the proportions as prescribed in subsection (C)(6) of this section 5. Monies so applied by the HA during the twelve month period preceding each Annual Contribution Date which, except for the provisions of this subsection (C)(7), would have been on deposit on such Annual Contribution Date in the Debt Service Fund for the reduction

of annual contributions, shall be deemed to have been on deposit in the Debt Service Fund on such Annual Contribution Date for the purpose of subsection (2) of this section 5(C).

(8) HUD shall not pay or make available any Accruing Annual Contribution pursuant to this ACC in excess of an amount which, together with all monies then on deposit in the Debt Service Fund, shall be sufficient to fully pay and retire the outstanding Bonds, Permanent Notes, Project Loan Notes, and Project Notes issued in connection with all projects for which annual contributions become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment. The obligation of HUD to pay or make available Debt Service Annual Contributions pursuant to this ACC with respect to any such project shall terminate when: (a) all such Bonds and Notes issued in connection with the project have been fully paid and retired, or when monies sufficient for their payment and retirement have been deposited in trust for such purpose in accordance with the terms of such bonds and notes; and (b) all such expenditures, with interest thereon, by HUD in connection with such project are fully repaid.

Section 6 - Debt Service Fund.

(A) Upon the delivery of any issue of bonds, there shall be deposited in the Debt Service Fund the amounts required pursuant to subsections (B), (C), and (D) of section 4 of this Attachment.

(B) Within sixty calendar days after the end of each fiscal year, the HA shall deposit with HUD for the reduction of debt service annual contributions:

(1) The amount of the interest on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, which accrued during such fiscal year after (i) the date that is six months after the Bond Date of each such issue of Bonds; or (ii) the date of delivery of such issue, whichever is later, up to (i) the Date of Full Availability of the project financed by such issue or (ii) the end of such fiscal year, whichever is earlier; and

(2) The amount of any unpaid interest, on Permanent Notes and Project Notes issued in connection with any project that was permanently financed on or before the last day of such fiscal year by an issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, up to (i) the Date of Full Availability of such project or (ii) the end of such fiscal year, whichever is earlier.

(C) Upon receipt from HUD of each Accruing Annual Contribution or installment thereof, such amount shall be deposited in the Debt Service Fund.

(D) On each interest payment date of the bonds, the Fiscal Agent shall, out of the Debt Service Fund, pay the principal and interest maturing on the bonds.

(E) On the first day of the month following each Annual Contribution Date the Fiscal Agent shall, out of the Debt Service Fund, reimburse the HA for any advance made pursuant to subsection (D) of section 4 of this Attachment on account of interest on issues of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date.

(F) On the first day of the month following each Annual Contribution Date, the Fiscal Agent, after (1) paying all bonds and bond interest that have then become due and payable, or that will become due and payable on the next succeeding anniversary of the Bond Date, (2) making provision for the Bond Service Carry-Over, shall, unless otherwise approved by HUD, apply the balance in the Debt Service Fund in the following order: First, to the payment of interest and principal of the notes and repayment of the expenditures in the same manner, and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; and, Second, to transfer to the Advance Amortization Fund. In making provision for the payment of the bonds and bond interest that shall become due on the next succeeding anniversary of the Bond Date and for the Bond Service Carry-over, the Fiscal Agent shall consider the second installment, if any, of the Accruing Annual Contribution as if it had actually been paid on the Annual Contribution Date.

Section 7 - Advance Amortization Fund.

(A) There shall be deposited in the Advance Amortization Fund the following: (1) bond premiums as provided in subsection (B) of section 4 of this Attachment; (2) amounts transferred from the Debt Service Fund, as provided in subsection (F) of section 6 of this Attachment, and (3) proceeds of claims against insurers and others arising out of damage to or destruction of any project to the extent provided in subsection (D) of section 1 of this Attachment.

(B) The Fiscal Agent shall as rapidly as possible apply all monies deposited in the Advance Amortization Fund, as directed by the HA with the approval of HUD: (1) to the payment of interest of the notes and the repayment of expenditures in the same manner and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; (2) to the purchase, at not more than the cost of redemption, of any outstanding bonds; and (3) to the redemption of any outstanding bonds on the terms provided in the Bond Resolutions. All bonds purchased or redeemed by or on behalf of the HA shall be immediately cancelled and shall not be reissued.

(C) In the event that, sixty-one days after the end of any fiscal year, it appears that the balance then on deposit in the Advance Amortization Fund, together with all monies then on deposit in the Debt Service Fund together with a Debt Service Annual Contribution, would be sufficient to fully pay and retire the outstanding bonds, permanent notes, project loan notes, and project

notes issued in connection with projects for which annual contributions have then become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment, the Fiscal Agent shall on such date deposit in the Debt Service Fund for the reduction of annual contributions the balance then remaining in the Advance Amortization Fund, and any deposits that would, except for this subsection (C), be made to the Advance Amortization Fund shall be made to the Debt Service Fund for the reduction of annual contributions.

Section 8 - General Limitations on Annual Contributions.

(A) Notwithstanding any other provision of this ACC, not more than one annual contribution for each year of the Maximum Contribution Period of any project shall be paid or made available by HUD for such project; nor shall any such annual contribution be paid or made available for any such project subsequent to the end of the Maximum Contribution Period of such project.

(B) No annual contribution shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) unless such project is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political supervision.

(C) No annual contributions shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) in the event of the acquisition of such project by a third party in any manner including a bona fide foreclosure under a mortgage or other lien.

Section 9 - Pledge of Annual Contributions.

(A) The amounts required by subsections (B), (C), and (D) of section 4 of this Attachment to be deposited in the Debt Service Fund upon delivery of each issue of Bonds on account of the interest on such issues of bonds that becomes due and payable six months and twelve months, respectively, from the Bond Date of such issue shall be pledged to the payment of such interest.

(B) The Accruing Annual Contribution that is due and payable on each Annual Contribution Date (including the second installment thereof if any) together with (1) the aggregate Bond Service Carry-Over, if any, required to be on deposit in the Debt Service Fund on such Annual Contribution Date, and (2) all other amounts required to be deposited in the Debt Service Fund for the reduction of annual contributions during the twelve month period ending with such Annual Contribution Date, shall be pledged as follows:

(1) An amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual

Contribution Date shall be pledged for the payment of such principal and interest;

(2) An amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date shall be pledged for the purpose of providing such Carry-Over; and

(3) An amount equal to the sum of the portions of the Debt Service Annual Contributions as determined pursuant to clauses (a), (b), (c), and (d) of section 5(C)(1) of this Attachment shall be pledged for the payment of the interest and principal of the Permanent Notes, Project Loan Notes and Project Notes and repayment of expenditures made by HUD pursuant to section 13 of this Attachment in connection with Projects with respect to which annual contributions have become payable.

(C) The annual contributions to be made available by HUD hereunder shall not, without the approval of HUD, be pledged for any purpose other than as specifically provided in this ACC.

Section 10 - Refunding of Bonds.

The HA may, with the approval of HUD, refund any outstanding issue of Bonds upon such terms and conditions as may be mutually agreed upon between the HA and HUD.

Section 11 - Faith of the United States Pledged to Payment of Annual Contributions.

As set forth in the Act, the faith of the United States is solemnly pledged to the payment of all annual contributions contracted for in this ACC, and by the provisions of the Act there is authorized to be appropriated in each Federal fiscal year, out of any money in the Treasury of the United States not otherwise appropriated, the amounts necessary to provide for such payment.

Section 12 - Continuance of Annual Contributions.

(A) HUD hereby determines that sections 17 and 18, Part A, of the ACC include provisions that are in accordance with section 6(g)(2) of the Act.

(B) Whenever the annual contributions, pursuant to this ACC, have been pledged by the HA as security for the payment of the principal and interest on the Bonds or other obligations issued pursuant to this ACC, HUD (notwithstanding any other provisions of this ACC) shall continue to make the annual contributions provided in this ACC available for the projects so long as any of such Bonds or obligations remain outstanding; and, in any event, such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the projects for the purpose at the time such annual contribution

is made, shall suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the Bonds or other obligations for which the annual contributions provided for in this ACC have been pledged as security: provided, That in no case shall such annual contributions be in excess of the maximum sum specified in this ACC, nor for longer than the remainder of the maximum period fixed by this ACC.

**Section 13 - Rights and Obligations of HUD During Tenure Under
Section 18, Part A, of the ACC.**

Neither the conveyance of title to or the delivery of possession of the projects by the HA pursuant to section 18, Part A, of the ACC, nor the acceptance of such title or possession by HUD, shall abrogate or affect in any way any indebtedness of the HA to HUD arising under this ACC, and in no event shall any such conveyance or delivery or any such acceptance be deemed to constitute payment or cancellation of any such indebtedness.

ATTACHMENT VII

Insurance Requirements

Section		Page
Section 1	Mandatory and Optional Insurance Coverage.	VII-1
Section 2	Authorized Insurance Companies.	VII-2
Section 3	Certificates of Insurance.	VII-2
Section 4	Waivers and Self-Insurance Funds.	VII-2

Section 1 - Mandatory and Optional Insurance Coverage.

The following types of insurance are either required or should be purchased if the HA determines that exposure exists.

- (A) **Commercial Property.** Mandatory. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.
- (B) **Commercial General Liability.** Mandatory.
- (C) **Workers Compensation and Employers Liability.** Mandatory.
- (D) **Owned and Non-Owned Automobile Liability.** Mandatory.
- (E) **Theft, Disappearance, and Destruction.** Mandatory only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.
- (F) **Employee Dishonesty.** Mandatory.
- (G) **Boiler and Machinery.** Mandatory only if steam boilers have been installed. However, coverage is recommended if there is extensive central air conditioning, electrical transformers, or similar equipment.
- (H) **Flood.** Mandatory only for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.

(I) **Directors and Officers or Public Officials Liability.** Optional coverage, but highly recommended.

(J) **Lead-Based Paint Liability.** Mandatory for HAs undergoing lead-based paint testing and abatement.

(K) **Law Enforcement Liability.** Optional, but highly recommended where the exposure exists, and the Commercial General Liability insurer has excluded coverage.

Section 2 - Authorized Insurance Companies.

Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

Section 3 - Certificates of Insurance.

At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

Section 4 - Waivers and Self-Insurance Funds.

Requests for waivers not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted to HUD for approval with a justification as to why the request should be approved.

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3)
 4 MARA AMONE, individually, and) CV 04-00508 ACK-BMK
 5 on behalf of all persons)
 6 similarly situated,) Honolulu, Hawaii
 7) February 28, 2005
 8 Plaintiff,) 9:30 A.M.
 9 vs.)
 10) Plaintiff's Motion for
 11 STEPHANIE AVEIRO, etc.,) Class Certification
 12 et al.,)
 13)
 14 Defendants.)
 15)

16 TRANSCRIPT OF PROCEEDINGS
 17 BEFORE THE HONORABLE ALAN C. KAY
 18 SENIOR UNITED STATES DISTRICT JUDGE

19 APPEARANCES:

20 For the Plaintiff: SHELBY A. FLOYD, ESQ.
 21 Alston Hunt Floyd & Ing
 22 Haina Cottage
 23 65-1235A Opelo Rd., Ste.5
 24 Kamuela, HI 96743

GAVIN K. THORNTON, ESQ.
 Lawyers for Equal Justice
 P. O. Box 37952
 Honolulu, HI 96837

25 For the Defendants: JOHN C. WONG, ESQ.
 MARGARET A. LEONG, ESQ.
 Dept. of the Attorney General
 465 S. King St., Rm. B-2
 Honolulu, HI 96813

Official Court Reporter: Debra Kekuna Chun, RPR, CRR
 United States District Court
 300 Ala Moana Blvd. Ste. C285
 Honolulu, HI 96850
 (808) 534-0667

Proceedings recorded by machine shorthand, transcript
 produced with computer-aided transcription (CAT).

1 MONDAY, FEBRUARY 28, 2005 9:41 O'CLOCK A.M.

2 THE CLERK: Civil Number 04-00508 ACK, Mara
3 Amone, individually, and on behalf of all persons
4 similarly situated, versus Stephanie Aveiro, et al. This
5 case is called for hearing on Plaintiff's Motion for Class
6 Certification.

7 MS. FLOYD: Good morning, Your Honor. Shelby
8 Anne Floyd on behalf of the plaintiff Mara Amone.

9 THE COURT: Good morning.

10 MS. FLOYD: And with me is Gavin Thornton.

11 MR. WONG: Good morning, Your Honor. John Wong
12 and Margaret Leong for defendants. And, if I may, Your
13 Honor, in the audience is Miss Patti Miyamoto, who is with
14 the defendant HCDCH.

15 THE COURT: Good morning. Please proceed.

16 MS. FLOYD: Your Honor, would you like me to
17 speak from the podium?

18 THE COURT: Please.

19 MS. FLOYD: If I might, Your Honor, I'll give
20 you a brief background of this action and some related
21 cases. In May of 2004 on behalf of three public housing
22 tenants a lawsuit was filed, a putative class action,
23 alleging that the defendant HCDCH had failed to adjust
24 utility allowances for all public housing tenants.

25 THE COURT: You say "a lawsuit." You mean this

1 lawsuit?

2 MS. FLOYD: No. This was a separate lawsuit.
3 It's a related lawsuit just to give you some background.

4 That for all public housing tenants in units in
5 which utility allowances are provided to public housing
6 tenants HCDCH had failed to adjust these utility
7 allowances, as required by law, for a number of years.
8 That was an action for declaratory and injunctive
9 relief.

10 THE COURT: That was filed when?

11 MS. FLOYD: That was filed in May of 2004. Then
12 this action was filed in August 2004. And this is a
13 separate action, but the tenants who make up the proposed
14 class in this action are a subgroup of the larger public
15 housing tenants who receive utility allowances as part of
16 their public housing units.

17 The Housing Act -- the U.S. Housing Act --

18 THE COURT: When you say it's a subgroup --

19 MS. FLOYD: It's a separate group. They're
20 separate claims. But they are, in fact -- they are also
21 members of the bigger class of all public housing tenants
22 who receive utility allowances.

23 THE COURT: Well --

24 MS. FLOYD: This group is entitled to
25 different -- additional allowances.

1 THE COURT: This subgroup is a disabled --

2 MS. FLOYD: Yes, yes.

3 THE COURT: Okay.

4 MS. FLOYD: So the United States Housing Act
5 requires those public housing authorities receiving
6 federal funds to limit the rents in public housing to 30
7 percent of a tenant's income.

8 THE COURT: What court was this other action
9 filed in?

10 MS. FLOYD: It was filed in this court.

11 THE COURT: And what judge is that before?

12 MS. FLOYD: I think it's Judge Ezra. Judge
13 Ezra.

14 The -- section 504 of the Rehabilitation Act
15 prohibits discrimination, and its regulations require that
16 criteria and procedures for granting relief to disabled
17 people be provided. The tenants must be notified of their
18 rights and procedures, and, as alleged in the complaint,
19 HCDCH failed to establish the criteria for additional
20 utility allowances for disabled people who need medical
21 devices that use electricity.

22 THE COURT: Failed as of when?

23 MS. FLOYD: As of ever. They've never had
24 criteria.

25 THE COURT: This law goes back to about the

1 '70s?

2 MS. FLOYD: I believe that's correct, Your
3 Honor. And the regulations, I believe, stem from the '80s
4 at some point.

5 Anyway, failed to establish the criteria and to
6 notify the tenants, the disabled tenants, of their rights
7 to have utility adjustments made because of their medical
8 needs.

9 THE COURT: You know, in your motion you asked
10 for a class going back within the last two years, but then
11 in your reply memo you ask for a class going back six
12 years.

13 MS. FLOYD: That's an error, Your Honor. I
14 apologize. It was two years in the complaint that we've
15 alleged, and that is what we're asking the court to
16 certify.

17 The relief requested is declaratory and
18 injunctive relief, requiring that the criteria be
19 established, that notice be given, and that adjustments be
20 made as required under the law.

21 The facts relating to the named plaintiff, the
22 particular facts of her situation, are set forth in
23 paragraphs 25 to 31 of the complaint.

24 THE COURT: I have -- in this other action has a
25 class been certified?

1 MS. FLOYD: It has not yet been certified. The
2 motion hasn't yet been file.

3 THE COURT: Who's the attorney in that class?

4 MS. FLOYD: Mr. Thornton and I are, on behalf of
5 the plaintiff. And, of course, Mr. Wong on behalf of
6 HCDCH.

7 In the rule 23(b)(2) class certification
8 analysis we are seeking that a class of disabled people
9 residing in public housing in those units receiving
10 utility allowances in the last two years whose disability
11 requires them to consume utilities in excess of the amount
12 in the standard utility allowances be certified.

13 THE COURT: Let me interrupt you again.

14 MS. FLOYD: Yes.

15 THE COURT: Why are you proceeding with the
16 class certification in this action before you proceeded
17 with the class certification in the other action?

18 MS. FLOYD: Your Honor, we have been working --
19 at times effectively -- with HCDCH about changes to be
20 made. The timing just happened. This is a smaller class
21 because it is a subset of the -- all the public housing
22 tenants who receive utility allowances. We just --
23 because of limited time and so forth -- decided to file
24 this one first. We are in the process and expect the
25 other one to be filed shortly.

1 THE COURT: So this class you guesstimate is
2 about 300 in size?

3 MS. FLOYD: No, actually --

4 THE COURT: 1300?

5 MS. FLOYD: The disabled people living in public
6 housing, who would then be entitled to notice of the
7 criteria and the opportunity to have their utility
8 allowances adjusted, HCDCH says is about 1400 people.
9 That is the big group of disabled people who should have
10 received notice and did not.

11 THE COURT: But they're not really the class
12 that you're seeking to have certified, are they?

13 MS. FLOYD: We're seeking to have certified the
14 class of those people within that group who had the need
15 for medical devices and --

16 THE COURT: Right. And how large do you
17 guesstimate that class is?

18 MS. FLOYD: Well, again HCDCH estimated that
19 there were 300 people who requested accommodations.
20 Those --

21 THE COURT: And their estimate is the class
22 would be about 30.

23 MS. FLOYD: But there's no basis for that
24 estimate.

25 THE COURT: All right. What are you estimating?

1 MS. FLOYD: Well, again of the people who
2 requested accommodations 300. That's current -- as I
3 understand HCDCH's memorandum, those are current tenants.
4 We also have possible former tenants, which they have not
5 identified in number. There are people whose --

6 THE COURT: How many former tenants do you
7 estimate within the last two years? Is there that much of
8 a turnover there?

9 MS. FLOYD: There is not a huge turnover, but
10 it's not insignificant either. Mr. Wong and I have
11 discussed the amount of people who have turned over. I
12 think the number was in the neighborhood of 200.
13 Although, he can correct me if I'm wrong.

14 Disabled people make up a very large percentage
15 of public housing tenants, not surprisingly, because their
16 income is low. And perhaps I don't know their preferences
17 for disabled people in public housing, but because they
18 receive -- in many cases they can't work, they're
19 receiving social security benefits, their income is within
20 the maximum of the regulations, and, therefore, there is a
21 large percentage of public housing tenants.

22 THE COURT: You know, I don't recall any
23 discussion by either party about this other class action
24 that's before Judge Ezra.

25 MS. FLOYD: No, we didn't, Your Honor.

1 THE COURT: Did either of you even bother to
2 mention it?

3 MS. FLOYD: I don't believe we did, Your Honor.

4 THE COURT: But what's the justification for
5 having two different class actions?

6 MS. FLOYD: You know, it was really one for
7 convenience in the sense of identifying class and
8 proceeding without having too many variables. And I
9 believe that, when we filed this action, we did identify
10 as a related case on the cover sheet Judge Ezra's action.
11 That's to the best of my recollection. But we didn't have
12 control then over the assignment, obviously, of the
13 judges.

14 But the underlying federal Housing Act claims
15 are similar, if not identical, but there are other legal
16 bases for relief in this action that are not a basis for
17 relief in that action, such as section 504 of the Rehab
18 Act. So to sort of take away the unnecessary variables we
19 decided to file separately rather than have subclasses or
20 seek subclasses.

21 The court -- as the court has just raised, the
22 issue of numerosity is not merely a numbers issue. It is
23 really an issue of the ability -- the difficulty or
24 inconvenience of identifying all the class members. The
25 defendants argue that the class is small and that -- but

1 it goes on to say that we do have almost 1400 disabled
2 people, of which 300 we know are in a condition that need
3 accommodations of one sort or another.

4 THE COURT: Excuse me a minute.

5 (Discussion off the record.)

6 THE COURT: Excuse the interruption.

7 MS. FLOYD: You raise the issue about 30 people.
8 The defendants say that 30 people have asked for
9 air-conditioning. Now, you recognize these are people who
10 asked to have air-conditioning installed in their units.
11 They were never given notice that they might be entitled
12 to utility allowances. We don't know how many of those
13 1400 disabled people, had they known they could have had
14 their utility allowance and, therefore, their rent
15 adjusted, would have asked for things like an air
16 conditioner or other medical devices that would have used
17 electricity.

18 THE COURT: Well, according to the defendant,
19 they did give notice in December and only one person
20 responded?

21 MS. FLOYD: You know, the motion was filed in
22 January, I believe it was. I think there is clearly a
23 timing issue. But, more importantly --

24 THE COURT: What do you mean?

25 MS. FLOYD: Well, as far as people's notice

1 --actual notice and understanding of what their rights
2 might be. If you've got 30 people, who as disabled people
3 asked permission to put in an air conditioner, there's an
4 indication that there is a significant number out there
5 who may be entitled to an increased utility allowance.

6 I don't think we can draw any conclusions from
7 the statements of the defendants about what has happened
8 very recently. I think the court needs to look for the
9 purposes of determining the criteria under rule 23(b) what
10 the allegations are in the complaint, which is, for
11 example, that Mrs. Amone was never told that she had the
12 right to ask for an adjustment of her utility allowance;
13 although, she went in with a doctor's note saying she
14 needed to have an air conditioner.

15 THE COURT: Did she respond to the notice in
16 December?

17 MS. FLOYD: No. We have been working separately
18 on that. She did not respond.

19 When we look at impracticability of identifying
20 all the class members, the relevant considerations include
21 the financial resources of the class members, the size of
22 their individual claims, and the inefficiency or
23 inconvenience of filing separate claims. You know,
24 again --

25 THE COURT: Excuse me again one minute.

1 (Discussion off the record.)

2 THE COURT: I apologize for all the
3 interruptions.

4 MS. FLOYD: Your Honor, with respect to the
5 second criteria, the commonality, you know, here there
6 clearly is commonality in the allegations relating to the
7 lack of procedures, the lack of notice, and the lack of
8 adjustments. In fact, the defendants concede commonality
9 as to a question of law. However, their actions or their
10 lack of actions with respect to notice, criteria, and
11 adjustments is also common. There's really no question
12 about that. There was no notice, there were no
13 procedures, and there were no adjustments. So I think all
14 those, when you add that plus the law, satisfies the
15 commonality provision.

16 The typicality issue, whether the plaintiff's
17 claims are typical, again she's been a tenant, she's
18 disabled, she required a medical device, all of which is
19 alleged in the complaint, and she paid in excess of 30
20 percent of her income as a result of the amount of
21 electricity that she had to use. Therefore, she's exactly
22 the same as everybody else who may have those claims.

23 The defendants argue their claims aren't typical
24 and that she offered no facts as to how her disability
25 impacted her utility usage, but, in fact, we've got

1 exactly that alleged in paragraphs 25 through 31 of the
2 complaint.

3 With respect to the 23(b) (2) requirements
4 defendants acted on grounds generally applicable to the
5 class. This is classic pattern and practice violation of
6 federal statute class action litigation. It was --
7 nothing that the plaintiffs did impacted the defendants'
8 stance. They just didn't follow the regulations and
9 didn't have these procedures and criteria in place.

10 With respect to notice I would just make a note
11 that while notice is discretionary it's easy in this case.
12 Notice goes out to all public housing tenants because of
13 their -- their rent is based on their income; so they get
14 notice every month as to what their rent is going to be.
15 It's no burden on anybody to have notice letting them know
16 that they may be entitled to adjustments.

17 THE COURT: You're only referring to the current
18 tenants now.

19 MS. FLOYD: As to the current tenants, yes. And
20 the defendants do have addresses for the former tenants.

21 THE COURT: You represented the class in the
22 Burns-Vidlak --

23 MS. FLOYD: Yes, I did, Your Honor.

24 THE COURT: You recall how the court certified
25 in part?

1 MS. FLOYD: Yes. I did. And, in fact, I think
2 that's very much aligned with what we're asking the court
3 to do here.

4 We have not alleged damage claims in this
5 action. What we have asked for in the complaint is that
6 there be adjustments required by law. I believe that
7 equitably the court has the power to order adjustments
8 retroactively to, you know, within the two-year time
9 period. However, if that is not the case -- and we
10 certainly know that there are some conflicting cases as to
11 what really falls under this equitable relief power --
12 then we would amend to allege damages. But we would not
13 ask the court to certify a class as to damages.
14 Obviously, what somebody is entitled to individually
15 depends on what their medical need was -- first of all,
16 whether they had a medical need and then what type it was.
17 And as a result of the type, that would determine how much
18 of a utility allowance adjustment they would be entitled
19 to.

20 THE COURT: Well, when you say you will ask the
21 court to make adjustments, what sort of adjustments are
22 you referring to?

23 MS. FLOYD: Well, adjustments --

24 THE COURT: Credit on rent or something?

25 MS. FLOYD: Yes, yes.

1 THE COURT: But again you're only talking about
2 current.

3 MS. FLOYD: Current. And then for past, yes, it
4 would be damages.

5 THE COURT: But you're not asking for damages.

6 MS. FLOYD: We are not in this -- under the
7 complaint as determined we are not asking for damages.
8 And we are certainly not asking that the court certify a
9 class for damage purposes. But we're asking the court to
10 certify that these people, whether they're current tenants
11 or were former tenants, are entitled -- were entitled to
12 have adjustments made to their rents based on their
13 medical needs.

14 That's pretty much it, Your Honor. The
15 defendants argue that they're starting to look at things,
16 they're starting to do things, but again the court
17 measures the issue of the class certification as of the
18 time of the filing of the complaint and the allegations in
19 the complaint. And, furthermore, there's not enough in
20 the defendant's opposition for this court to make any
21 determination that this issue has been resolved with
22 respect to even the current tenants of the public housing
23 projects who are disabled, not to mention the former
24 ones.

25 THE COURT: Thank you.

1 Mr. Wong.

2 MR. WONG: Thank you, Your Honor.

3 Just to be clear, Your Honor, Miss Floyd
4 actually filed three related complaints. This case called
5 Amone versus Aveiro. She filed what we call the Smith
6 federal case, which is Smith versus Aveiro and HCDCH. And
7 that's the case before Judge Ezra. And then at the same
8 time they also filed a state court case in Third Circuit
9 Court, State of Hawai'i, called Smith versus HCDCH. And
10 there in that case that's how they've split their 1983
11 action in the Smith federal case because in the state case
12 they are asking for damages which they know under section
13 1983 they're not able to get. They can only get
14 prospective injunctive relief.

15 That's just a housekeeping matter. And I
16 apologize for the court for in our brief not, you know,
17 detailing the three cases for the court.

18 But let me begin. Obviously, we do not believe
19 that the plaintiff has met her burden under the rules.
20 And before I begin my analysis for the court, which I will
21 keep brief, I want to give the court some context and make
22 a few preliminary remarks, if I may.

23 First, as this court is well aware from the Daly
24 versus Harris case, courts oftentimes repeat that the
25 purpose of a class-action certification is the

1 avoidance -- is for judicial economy and the avoidance of
2 multiplicity of lawsuits as well as the protection of the
3 rights of persons who might not be able to assert those
4 claims individually. Given this, we acknowledge that in
5 deciding the merits of this motion the court must accept
6 the allegations in the complaint as true; however, we do
7 not believe that means the court is constrained from
8 applying any analysis to that test. That is why the
9 standard by the courts says that the court has to apply a
10 rigorous analysis -- this court cited as such in the Daly
11 case -- whether all of the requirements under 23(a) and
12 (b) are met. To this end, therefore, we submit that this
13 court can consider other material, such as what we
14 provided in our opposition memorandum, to form that
15 reasonable judgment in order to make that determination on
16 the merits of the motion.

17 Second, we believe that, given the present
18 facts, the circumstances, the status of the litigation --
19 and I won't go into it, but this timing issue -- all of
20 these facts were given to plaintiff's counsel at the
21 December 14th. I know it might not be relevant to the
22 court, but in terms of our remedial actions we presented
23 those facts and the numbers before Magistrate Kurren on
24 December 14th. This motion was filed in January. So take
25 it for what you will.

1 And, lastly, I'm glad that Miss Floyd has
2 acknowledged the statute of limitations in this case as
3 two years. But for the court's benefit, if you need a
4 citation, we have asserted two years under 661-5 of the
5 Hawai'i Revised Statutes.

6 With that being said, I want to start off -- I
7 intend to try to highlight all of the points under the
8 rule, but let me start off by just addressing their
9 response in their reply only because it was treated with
10 such brevity. And that is whether they met the
11 requirements of rule 23(b), which, as the court knows,
12 it's an alternative scenario. It's disjunctive. They
13 have to fall under one of the three or four categories.

14 In the memorandum in their reply they almost --
15 with regards to 23(b) almost ipso facto tell the court,
16 well, if you make a finding that we meet 23(a), then all
17 the requirements of 23(b) are met. In their main motion,
18 the memorandum, they seem to indicate reliance on 23(b)(2)
19 for satisfaction of the rule. However, in their reply
20 they don't rebut or present any arguments against what we
21 provided in our opposition memorandum.

22 We believe the relevant facts that this court
23 may consider is what is contained not only in the exhibits
24 but in the affidavit of Miss Miyamoto in our opposition
25 memorandum that, as to the notice requirement, which they

1 say in the gravamen of the complaint -- the gravamen of
2 the plaintiff's claim is this failure of notice under 24
3 C.F.R. 965-508. That's the regulation that relates
4 specifically to this supplemental utility allowance only
5 for disabled residents in federal public housing.

6 And in our view the relevant fact is pursuant to
7 the notice -- again, Your Honor, which counsel for the
8 plaintiffs reviewed before we sent it out. This was sent
9 out to all public housing residents. Not only disabled
10 residents but all to cover the entire -- what's the word?
11 I'm sorry. Enrollment, if you will. Almost 4,000 federal
12 public housing residents.

13 In response to that notice, Your Honor, the
14 agency received, excuse me, one application for the
15 supplemental allowance. And this goes to the gravamen of
16 what we consider -- what actually the plaintiffs have
17 cited as the gravamen of their whole claim and especially
18 for purposes of this class action motion. If, as
19 plaintiffs claim, HCDCH -- and we're not conceding that
20 residents never received notice, but, if, as they claim,
21 residents disabled received no notice prior to December
22 2004 --

23 THE COURT: Are you contesting that?

24 MR. WONG: What's that? I'm sorry.

25 THE COURT: Whether or not they received notice



1 prior to December of 2004.

2 MR. WONG: Well, if this was a motion for
3 summary judgment, Your Honor, we would have provided
4 testimony from the client and witnesses that, you know, we
5 have almost 50 or so managers of our public housing. They
6 are all instructed to give residents, disabled or healthy,
7 the appropriate notices regarding their benefits,
8 entitlements, et cetera. So indeed, if this was a motion
9 for summary judgment, I would present facts to challenge
10 their assertion that residents never received notice.
11 Else, if that was the case --

12 THE COURT: You're claiming that you've been in
13 compliance with the law all along?

14 MR. WONG: No, I won't go so far as to say that.
15 Not in compliance because the rates indeed were never
16 adjusted. I'm not going to lie to the court. The rates
17 were not adjusted.

18 THE COURT: What does that mean?

19 MR. WONG: Well, the rates, as shown in exhibit
20 2 to Miss Miyamoto's affidavit, were only derived after
21 the filing of this lawsuit and HCDCH's retention of a
22 consultant.

23 THE COURT: Doesn't that mean you were never in
24 compliance?

25 MR. WONG: With giving the supplemental

1 allowance, Your Honor?

2 THE COURT: That's what we're here for, isn't
3 it?

4 MR. WONG: Well, I probably would not concede
5 that at this time.

6 THE COURT: Why not?

7 MR. WONG: Never --

8 THE COURT: What's your basis for not conceding?

9 MR. WONG: Well, just by the fact that, if that
10 were true, Your Honor, why didn't we receive a landslide
11 of applications from residents after the December 4th
12 mailing? Why did we receive only one application? And,
13 in truth, we didn't even receive one from Miss Amone, the
14 named plaintiff in this case.

15 THE COURT: But you know their rates were never
16 adjusted, whether or not they applied or not.

17 MR. WONG: Yes, Your Honor. But they are
18 being -- the rates that are in exhibit 2 are in place now;
19 so --

20 THE COURT: But as of the date that this
21 complaint was filed in August of last year, you apparently
22 were not in compliance; isn't that right?

23 MR. WONG: That's correct, Your Honor. Yes,
24 I'll admit that.

25 But following up again on this notice issue,

1 Your Honor, the relief that the plaintiffs are asking now
2 is now a second notice, and we just ask, well, how many
3 notices will it take? As of December '04 we gave people
4 notice, a new notice, one that they -- counsel approved
5 of, saying, "If you have special needs, come in. We'll
6 take care of it. We'll see if you're eligible."

7 And on that note the regulations don't say it's
8 automatic. That is why on the schedule, if the court will
9 look at exhibit 2, it's for only the excess consumption
10 where residents might be entitled to this supplemental
11 allowance, and it's prioritized based on our consultant's
12 report. If a person has chronic bronchitis or
13 pneumocystis or whatever and is a resident and requires an
14 air-conditioning unit that runs 24-7, but that is very
15 different from somebody who just needs a nebulizer. If
16 the court knows, you know, when your asthma or bronchitis
17 acts up, you take a puff every now and then and you can
18 get the albuterol into your lungs, and five minutes later
19 it's gone. That's not going to tip the scales, if you
20 will, or cause quite an impact as some other of the
21 medical --

22 THE COURT: I guess that depends on the severity
23 of the asthma of each tenant.

24 MR. WONG: That's true, Your Honor. But I'm
25 just using this as a reference for the court's benefit.

1 Now, on this notice --

2 THE COURT: It must be that the managers were
3 not adequately instructed, or, if they were adequately
4 instructed, they didn't adequately carry out their duties.

5 MR. WONG: That could very well be part of the
6 claim by or the order of proof by the plaintiffs, Your
7 Honor. I acknowledge that.

8 THE COURT: You acknowledge it's their order of
9 proof or you acknowledge the fact?

10 MR. WONG: I don't acknowledge the fact. I
11 acknowledge that, you know, in determining whether that
12 might be the case --

13 THE COURT: You admit it's the case, don't
14 you.

15 MR. WONG: What's that?

16 THE COURT: Don't you admit it's the case that
17 the managers did not do what they were meant to do?

18 MR. WONG: All of them?

19 THE COURT: At least some of them.

20 MR. WONG: Well, some of them I would concede to
21 the court, yes.

22 But on that point, Your Honor, let me just say
23 this. I think what the court is raising is, you know,
24 what I'd like to respond to is, you know, that entails
25 part of our other argument and -- in terms of the hardship

1 or impracticability of doing an individual review of the
2 cases. And I'd like to cite the court to one of the cases
3 cited by plaintiffs in their brief. Although, they cited
4 it as Ham versus Dericks. It's actually Hum versus
5 Dericks.

6 They cited it actually for the definition of
7 impracticability by Judge Ezra, but the holding actually
8 in that case was Judge Ezra denied class certification.
9 This was a products liability case against Dr. Dericks.

10 And significant in his denial, I think, are the
11 statements that he made for the basis of denial of
12 commonality and implicitly under numerosity -- the
13 numerosity requirement where he found that what was
14 relevant was in terms of the notice in that case -- and
15 again I'm arguing by way of analogy. The notice in that
16 case was the patient's informed consent form. Plaintiff
17 came in for class certification, saying there's about 200
18 other people that had the same kind of hip surgery, or I
19 forget the -- leg surgery with the implant. And Judge
20 Ezra in denying the motion said, you know, what each
21 patient was told, what they understood, their emotional
22 state, the factual issues of each -- of plaintiff in terms
23 of this notice is relevant, and that's why -- one of the
24 reasons why he denied class certification.

25 The other case I would also like to cite, which

1 is contained in their brief on this note, is -- it's a
2 long title. I shortened it to the Coordinated Pretrial
3 Litigation versus Standard Oil case, which the plaintiffs
4 cited. I forget at what page, but it's at 691 F.2d 1335.
5 And in that case the Ninth Circuit in an antitrust case
6 denied class certification and held the individual
7 questions involving the pricing by some 35,000 retail
8 automotive dealers would predominate and preclude class
9 treatment. That quote is at 691 F.2d 1344 for the court's
10 benefit.

11 . Lastly, Your Honor -- I'm winding down --
12 numerosity -- the numbers that counsel has been throwing
13 off, quite frankly, with all due respect to her they're
14 misleading. It's not 1388. That's --

15 THE COURT: You concede it's at least 30.

16 MR. WONG: Quite frankly, I do, Your Honor.

17 THE COURT: And you cite cases that say at least
18 15 is sufficient.

19 MR. WONG: That's correct. I can't ignore those
20 case laws, Your Honor. The Supreme Court in that one case
21 said 15 is too little, but, you know, certainly, the
22 spread is that.

23 But I think just by looking at the numbers to us
24 is not the scope, purpose, or clear -- or the intent of
25 rule 23. I mean, if that were the case, then, if the

1 court were just required to look at the bare allegations
2 of the complaint, any plaintiff could come into court and
3 say, "Judge, I've been injured. They injured me. I have
4 other people injured the same way. Give me a class
5 certification." Simplistic as it sounds, that is not what
6 we think are the standards that this court as well as
7 other courts have set in reviewing this kind of motion for
8 class certification.

9 And, lastly, I just wanted to cover the
10 typicality requirement, Your Honor, in just asserting what
11 we've said in our brief that Mrs. Amone we feel does not
12 represent factually the other plaintiffs in her case.
13 There's -- I guess there's a factual dispute. It is clear
14 to us that her resident file contains no documentation why
15 she was entitled or whether she would be entitled to the
16 supplemental allowance, let alone what her disability was.
17 And, surely, they must have some -- the court must apply
18 some common sense, you know, reasoning to analyzing some
19 of this stuff and not just take bare allegations from
20 either party at face value.

21 But, clearly, Your Honor, in closing, going
22 through the cases and looking at the requirements of the
23 rule, what is required, that all of the requirements of 23
24 must first be met and then 23(b). We don't feel that this
25 is that case. Thank you, Your Honor.

1 THE COURT: Thank you.

2 Anything more, Miss Floyd?

3 MS. FLOYD: Not really, Your Honor. I think we
4 covered it initially, unless you have some questions.

5 THE COURT: No, I don't.

6 I am going to grant the motion because I find
7 that the proposed class meets the criteria contained in
8 Federal Rules of Civil Procedure 23(a) and 23(b)(2) and
9 for the reasons that will further be elaborated in the
10 order that the court will file. So the motion is granted.

11 MR. WONG: Thank you, Your Honor.

12 (Court recessed at 10:21 A.M.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT REPORTER'S CERTIFICATE

I, Debra Kekuna Chun, Official Court Reporter,
United States District Court, District of Hawaii, do
hereby certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

DATED at Honolulu, Hawaii, March 2, 2005.

Debra Kekuna Chun

DEBRA KEKUNA CHUN

RPR, CRR

Legal Aid Society



- of Hawaii -

Telephone: (808) 329-3910 • Fax: (808) 334-9650
Address: Kona Branch, 75-5656 Kuakini Highway, Suite 202
Kailua-Kona, Hawaii 96740

David J. Reber, Esq.
President, Board of Directors

M. Victor Geminiani, Esq.
Executive Director

September 30, 2003

Mr. Robert J. Hall
Executive Director
Housing and Community Development Corporation of Hawai'i
677 Queen Street, Suite 300
Honolulu, Hawai'i 96813

Re: Freedom of Information Request

Dear Mr. Hall:

Under the provisions of the Uniform Information Practices Act, Haw. Rev. Stat. § 92F-11, I am requesting copies of the following government records:

- (1) Records that indicate the type of housing program (e.g. conventional federal public housing, Section 221, Section 8, state public housing, etc.) for each of the housing projects that are in or have been in the Housing and Community Development Corporation of Hawaii (HCDCH) inventory since 1997.¹
- (2) Records indicating the type of utility metering systems used (i.e. master-metered, check-metered, or individually metered) for each housing project in the HCDCH inventory since 1997.
- (3) Records indicating which utilities are paid for by the residents (e.g. basic electric (light), basic plus cooking, basic and cooking plus electric water heater, etc.) for each housing project in the HCDCH inventory since 1997.
- (4) Utility allowance and surcharge schedules used from 1997 to present, for rent determination purposes by each housing project in the HCDCH inventory since

¹All references to HCDCH are meant to include HCDCH's predecessors (i.e. State of Hawaii government agencies responsible for the administration of public housing) and agents (e.g. management companies responsible for managing projects in the HCDCH inventory).

1997.²

- (5) Utility allowance and surcharge schedules used from 1997 to present, for Section 8 programs administered by HCDCH since 1997.
- (6) Any other utility allowance and surcharge schedules promulgated by HCDCH since 1997, as well as schedules current as of 1997.
- (7) Records from 1997 to present, maintained by HCDCH as required by 24 C.F.R. § 965.502(b) which document the basis on which utility allowance and surcharge schedules and revisions thereof were established for each project in the HCDCH inventory since 1997.³ This should include documentation of the basis of the utility allowance and surcharge schedules for each instance where the schedules have been revised in accordance with 24 C.F.R. § 965.507(a),⁴ 24 C.F.R. § 965.507(b),⁵ or otherwise.
- (8) Records from 1997 to present, regarding the annual and interim reviews of utility allowances required by 24 C.F.R. § 965.507,⁶ indicating: (1) the dates the reviews were conducted; (2) the effect of each review on the utility allowances (i.e.

²The utility allowance schedules may be required to be posted in the project office of each project pursuant to the residents' rental agreements. For example, the posting of the schedules is required by paragraphs 5(a) and 10(g) of Form HCDCH4110(02/2003) Federal, titled "Rental Agreement"; and paragraphs 5 and 10(h) of Form DHS4110(12/2001), titled "Rental Agreement."

³ 24 C.F.R. § 965.502(b) provides as follows: "The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents."

⁴24 C.F.R. § 965.507(a) provides as follows: "The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 965.505, shall establish revised allowances. The review shall include all changes in circumstances...indicating probability of a significant change in reasonable consumption requirements and changes in utility rates."

⁵24 C.F.R. § 965.507(b) provides in part: "The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change...and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based."

⁶See *supra* notes 2 and 3.

whether the utility allowance increased, decreased, or remained the same); and (3) the basis for the revision or lack of revision to the utility allowances for each review.

- (9) Notices of proposed utility allowance and surcharge schedules and revisions thereof given to public housing residents since 1997 as required by 24 C.F.R. § 965.502(c).⁷
- (10) Records for each project in the HCDCH inventory since 1997 indicating the criteria and procedures required to be adopted by HCDCH pursuant to 24 C.F.R. § 965.508 for making adjustments in the utility allowance for residents with special needs (e.g. illness, disability, etc.) who use greater than normal amounts of utilities because of their special need.⁸
- (11) Notices required by 24 C.F.R. § 965.508 given to residents of HCDCH projects since 1997, indicating the criteria and procedures for making adjustments in the utility allowance for residents with special needs.
- (12) Records indicating the number of residents in HCDCH projects that have received an adjustment in their utility allowance based on special needs since 1997, along with the amounts of such adjustments.
- (13) Copies of the following forms completed by HCDCH since 1997:
 - (a) HUD-51466-A, "Electricity Data";
 - (b) HUD-51466-B, "Water and Sewerage Disposal Data";
 - (c) HUD-51466-C, "Gas Data";
 - (d) HUD-52667, "Allowances for Tenant-Furnished Utilities and Other

⁷24 C.F.R. § 965.502(c) provides as follows: "The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall...describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges..."

⁸24 C.F.R. § 965.508 provides as follows: "Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate...Notice of the availability of such procedures ...and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 965.502(c) and in the information given to new residents upon admission.

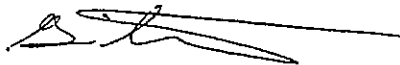
September 30, 2003
Page Four

- Services" (along with required supporting documentation);
- (e) HUD-52722-A, "Calculation of Allowable Utilities Expense Level";
 - (f) HUD-52722-B, "Adjustment for Utility Consumption and Rates"; and
 - (g) HUD-51994, "Life Cycle Costs Analysis of Utility Combinations."

If all or any part of this request is denied, please cite the specific exemption(s) which you think justifies your refusal to release the information.

I would appreciate your response to this request within ten business days as required by Hawai'i Administrative Rule § 2-71-13. If you have any questions or concerns regarding this request, please feel free to contact me at the Legal Aid Society of Hawaii, 329-3910, ext. 21. Thank you very much for your time.

Sincerely,



Gavin Thornton
AmeriCorps Attorney

LINDA LINGLE
GOVERNOR



ROBERT J. HALL
ACTING EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF HUMAN SERVICES
HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII
677 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

03:PM/845

November 5, 2003

Mr. Gayin Thornton
AmeriCorps Attorney
75-5656 Kuakini Highway, Suite 202
Kailua-Kona, Hawaii 96740

Dear Mr. Thornton:

Thank you for the extension verbally granted to the Housing and Community Development Corporation of Hawaii (HCDCH) to respond to your request for information of September 30, 2003.

Enclosed are the records requested as follows:

- 1) Records that indicate the type of housing program for each of the housing projects that are in or have been in the HCDCH inventory since 1997 can be found in Attachment A.
- 2) Records indicating the type of utility metering systems used for each housing project in the HCDCH inventory since 1997 can be found in Attachments B and C.
- 3) Records indicating which utilities are paid for by the residents for each housing project in the HCDCH inventory since 1997 can be found in Attachment C.
- 4) Utility allowance and surcharge schedules used from 1997 to present for rent determination purposes for each housing project in the HCDCH inventory since 1997 can be found in Attachment D.
- 5) Utility allowance and surcharge schedules used from 1997 to present for Section 8 programs administered by HCDCH since 1997 can be found in Attachment E.
- 6) Utility allowance and surcharge schedules promulgated by HCDCH since 1997 and the current schedules as of 1997 can be found in Attachment F.

EXHIBIT 4

Mr. Gavin Thornton
November 5, 2003
Page 2

- 7) Records from 1997 to present which document the basis on which the utility allowance were revised for HCDCH projects can be found in Attachment G.
- 8) HCDCH has not reviewed utility allowances for public housing projects since 1997.
- 9) No notices were given.
- 10) No adjustments were made.
- 11) No adjustments were promulgated.
- 12) No adjustments were made.
- 13) HUD 52722-A and HUD 52722-B

If you should have any questions, please contact Mr. Michael Hee at (808) 832-5970.

Sincerely,



Robert J. Hall
Acting Executive Director

Enclosures

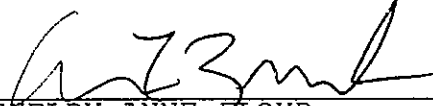
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was duly served upon the following party on this date, by depositing said copy, postage prepaid, first class, in the United States Post Office, at Honolulu, Hawaii, addressed as set forth below:

MARK BENNETT
Attorney General
JOHN WONG, ESQ.
MARGARET LEONG, ESQ.
Office of the Attorney General
Kekuanao'a Building, Room B-2
465 South King St.
Honolulu, Hawai'i 96824

Attorneys for Defendants

DATED: Honolulu, Hawai'i, April 8, 2005.



SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN THORNTON
Attorneys for Plaintiffs