

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5004-N-01]

Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces the availability of approximately \$30 million in grant funds to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities that are designated for occupancy by elderly tenants. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget and other project resources, and where the tenants' continued occupancy in the immediate near future would be jeopardized by a delay in initiating the proposed cure.

The notice provides instructions for owners of multifamily projects to request funding and instructions for the HUD field offices to process requests.

DATES: HUD will accept applications on a first-come, first-serve basis upon publication of this notice and will award emergency capital repair grants until available amounts are expended. Applicants should submit emergency capital repair applications as soon as they have prepared an application that complies with the procedures and requirements contained in this notice.

ADDRESSES: Applications must be submitted to the local HUD Field Office for the project covered by the application. Please see Appendix II for a list of the local HUD Field Offices.

FOR FURTHER INFORMATION CONTACT: G. DeWayne Kimbrough, Director, Grant and Housing Assistance Field Support Division, Office of Multifamily Housing, Room 6146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202b of Title II of the Housing Act of 1959 (12 U.S.C. 1701q-2) was amended to provide grants for "substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structures, common areas or individual dwelling units." The Consolidated Appropriations Act, 2005 (Pub. L. 108-447, approved December 8, 2004), provided \$25 million (\$15 million of which was announced in the FY 2005 Assisted Living Conversion Program's Notice of Funding Availability (NOFA) as being set aside for the Emergency Capital Repair Program). In addition, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109-115, approved November 30, 2005) provides \$24.8 million for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q-2) for conversion of eligible projects to assisted living "and for emergency capital repairs as determined by the Secretary" of HUD.

This notice announces the availability of approximately \$30 million in funding, including \$15 million in FY 2006 appropriation funding and \$15 million in carry-over grant funds to make emergency capital repairs to eligible multifamily projects that are owned by private nonprofit entities. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget and other project resources, and where the tenants' continued occupancy in the immediate near future would be jeopardized by a delay in initiating the proposed cure.

II. Definition of "Emergency Capital Repairs"

For purposes of this notice, "emergency capital repairs" is defined as repairs to a project to correct a situation that presents an immediate threat to the life, health and safety of project tenants. Assistance is limited to those projects with emergency problems that are of such a magnitude that:

A. The problem poses an immediate threat to the quality of life of the tenants; and

B. The continuation of the existing problem could potentially result in an evacuation of the tenants or long-term

tenant displacement unless the repairs are made.

III. Eligibility Requirements

Eligibility for emergency capital repair grants under this notice is restricted to: private nonprofit owners of eligible multifamily-assisted housing developments designated for occupancy by elderly tenants, as specified in sections 683(2)(B), (C), (D), (E), (F), or (G) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992). Those projects, as identified below, must have had final closing on or before January 1, 1999. The eligible projects are:

A. Section 202 direct loan projects with or without Section 8 rental assistance;

B. Section 202 capital advance projects receiving rental assistance under their Project Rental Assistance Contract (PRAC);

C. Section 515 rural housing projects receiving Section 8 rental assistance;

D. Projects subsidized with Section 221(d)(3) below-market interest mortgage;

E. Projects assisted under Section 236 of the National Housing Act; and

F. Other projects receiving Section 8 project-based rental assistance.

To be eligible for an emergency capital repair grant under this notice, a project owner must be in compliance with:

1. Its Loan Agreement, Capital Advance Agreement, Regulatory Agreement Housing Assistance Payment contract, Project Rental Assistance contract, Rent Supplement or Loan Management Set Aside (LMSA) contract, or any other HUD grant or contract document, and

2. All applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a), as applicable.

If you, the applicant:

(a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraph (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are

ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of finding taken prior to the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to a letter of finding;

(ii) A HUD-approved conciliation agreement signed by all parties;

(iii) A consent order or consent decree; or

(iv) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

IV. Grant Requirements

A. Conditions for Assistance

The following conditions apply to emergency capital grants awarded under this notice:

1. The request for funding must clearly identify the existing emergency and must contain a detailed justification in support of the emergency designation.

2. Funds awarded may be expended only for approved uses.

3. Repairs must be initiated immediately upon receiving the grant award and must be substantially completed within 6 months of the initial start, with final repairs completed no later than 12 months after receipt of funding. Unless there are safety concerns, tenants must be able to remain in their units while the repairs are being made.

4. The project owner must demonstrate that: (i) The project accounts have been maintained in accordance with all HUD requirements; and (ii) there are insufficient funds in the operating budget and other project resources. Owners must use all residual receipts available and all reserve for replacement funds in excess of \$1,000 per unit to address the emergency.

5. The project owner's most recent management review rating is "satisfactory" or above.

6. The most recent Real Estate Assessment Center (REAC) physical inspection report for the project must have a score of 60 or above. Developments scoring less than 60 are ineligible.

7. The project is well maintained except for the current emergency capital repair needs.

8. The project does not have a recent history of mortgage defaults.

9. The project owner does not have any material-adverse financial or

managerial actions or omissions with regard to any project that is federally assisted or financed with a loan or capital advance from, or mortgage insured by, an agency of the Federal government.

10. Tenants must be notified of the request for the grant and must be informed of the overall plan to complete the capital repairs.

11. The owner's Affirmative Fair Housing Marketing Plan (AFHMP) must meet all applicable HUD requirements. A copy of the approved AFHMP should be attached with the request for funding. If the owner does not have an approved AFHMP, one must be submitted for HUD approval along with the request for funds. A request for funds without either an existing approved AFHMP or a proposed AFHMP will be considered incomplete and will be processed using the procedures set out in Section V B.3 of this notice.

12. The project owner must not have an outstanding Letter of Noncompliance and must not be out of compliance with a voluntary compliance agreement, consent decree, court order, or other Settlement Agreement. If the project owner has an outstanding Letter of Noncompliance or is not in compliance with a voluntary compliance agreement, consent decree, court order, or other Settlement Agreement, the project owner must submit, along with the request for funds, a plan that identifies the compliance problem(s) and the method(s) to be used to correct it (them). A request for funds without a written correction plan under the conditions of this paragraph will be considered incomplete and will be processed using the procedures set out in Section V B.3 of this notice.

B. Funding

The following requirements apply to emergency capital grant amounts awarded under this notice:

1. The maximum amount an individual project owner may apply for is \$500,000. (The grant, along with funds from other sources, must remove the emergency condition's.)

2. All grant requests that are submitted by the Hub Directors will be funded based on the date and time of receipt in the Field Offices. See V B. (2) and (3) below.

3. HUD retains the right to adjust the amount of the grant up (to a maximum grant of \$500,000) or down, based on review of the reasonableness of the costs for completing the repairs.

4. Davis-Bacon prevailing wage rate requirements do not apply to emergency capital repair grants. Davis-Bacon requirements may apply to emergency

repairs if the repairs will also be assisted by another federal program that requires Davis-Bacon wage rates.

C. Eligible Uses of Funds

Grant funds are available only for emergency capital repairs that relate to immediate health/safety needs that impact upon the quality of life of the tenants if the repairs are not made. The project owner must submit a description of the proposed use of the funds and demonstrate how the repairs relate to eliminating the immediate emergency for the tenants. The repair item must have existed prior to submission of the application in order to obtain grant funds. The award is a one-time opportunity for correction of the threat to the tenants. Funds may be used to repair or replace systems including, but not limited to:

1. Existing major building and structural components that are in critical condition; and

2. Repairs or replacements to existing mechanical equipment to the extent that they are necessary for health and safety reasons. The purchase of high efficiency heating and cooling systems (Energy Star) for the approved replacement equipment is encouraged to promote energy conservation.

D. Ineligible Uses of Funds

Emergency capital repair grants may not be used for the following costs:

1. Deferred maintenance items.
2. Lead-based paint abatement.
3. Demolition and reconstruction activities, e.g., conversion of bedroom units.
4. Security systems.

5. Improvements, i.e., installation of sprinkler systems, air conditioning, additional lighting in parking lots, etc.

6. Clearing of mold or mildew unless it is related to a repair of an existing emergency item that poses an immediate threat to the residents.

E. Rental Use Agreement

If there are less than 10 years remaining on the existing mortgage, owners must enter into a Rental Use Agreement (Appendix I of this notice), to extend the remaining affordability of the project for up to 10 years. For example, if the maturity date of the mortgage is 3 years from the execution of the Grant Agreement, the owner must enter into a Rental Use Agreement for 7 years beyond the term of the mortgage. If the maturity date of the mortgage is 15 years, the owner will not need to execute a Rental Use Agreement unless the mortgage is prepaid. All Rental Use Agreements must be recorded.

V. Request Process

A. Owner Submission Requirements

An emergency categorization is critical to qualifying for participation in this program. Requests for grants must be submitted in accordance with the procedures described below:

1. The request must be made in writing and submitted by the project owner to the local field office. The request must clearly identify the basis for the emergency declaration and how it impacts the health and safety of the tenants, as well as what would happen if the emergency repair were not made immediately. The request also must identify the repairs proposed to correct the emergency for which funding is requested. Requests signed by a consultant or management agent on behalf of the owner are not acceptable.

Note: Repair items identified on the REAC physical inspection report are not sufficient to be classified as emergency in nature.

2. The repair and/or replacement items are to be written in a manner that specifically describes the scope of work to be performed, provides an estimate of the cost of the work to be performed, and provides an explanation of the basis for the estimate. The estimate provided for the cost of each action item must be reasonable and current (within 6 months of the application submission).

3. The request must demonstrate that the repairs cannot be corrected at a cost that can be absorbed within the operating budget or by use of the reserve for replacement funds in excess of \$1,000 per unit and/or residual receipts funds.

4. The request must provide a project plan for substantially completing the repairs within 6 months, but no longer than 12 months from the date of the grant award.

5. The project owner must notify the tenants of the plans to apply for this grant. The request must provide evidence that the tenants were notified and given the opportunity to make comments. Any comments received from the tenants must be submitted to the local HUD field office along with the repair request.

6. The request must provide a description of any unsuccessful attempts the owner has made to acquire funds from other sources, including letters of denial from funding sources, to complete the outstanding emergency capital repairs.

7. The request must provide a description of any previous grants or loans received by the project for repairs during the past 3 years from the effective date of this notice.

B. Field Office Processing

1. The Hub Director/Program Center Director is responsible for ensuring that the requests are promptly and thoroughly reviewed and submitted to HUD Headquarters.

2. Upon receipt of an owner's application, the Field Office will notify Headquarters of the date and time of receipt by facsimile, which should be addressed, "Attention: G. DeWayne Kimbrough, Director, Grant and Housing Assistance Field Support Division." His facsimile number is (202) 401-9087. Headquarters will acknowledge the date and time of receipt by return facsimile. Also, Headquarters will advise the Field Office that the application will be placed in the Headquarters funding queue as of the date and time of reported receipt and that the Field Office has 15 working days to review and mail the approved application to Headquarters in accordance with the approval process outlined in C. below.

3. Incomplete applications will not be processed and will be returned to the owner. Owners may revise and re-submit an application. However, the resubmitted application will be processed as a new request in the order in which it is received the second time. The Field Office must also notify Headquarters by facsimile of the date an incomplete application is returned to the owner so that the application can be taken out of the Headquarters funding queue.

4. Each field office has the responsibility for conducting a comprehensive review of the project's files, which may include an on-site review if such action is determined to be necessary to resolve concerns raised by the comprehensive review. The review should consist of completion of the questions in Appendix IV of this notice and may include any other concerns the field office may have about the project. The Office of Fair Housing and Equal Opportunity (FHEO) must be involved in determining fair housing and civil rights compliance.

C. Approval Process

1. All approvable requests along with the Recommendations from the Program Centers (Appendix III of this notice) along with narratives describing the emergency capital repairs at the property are to be sent to the Multifamily Hub Director. Hub Directors will review, sign the certification, and mail the approvable request to the Office of Housing Assistance and Grant Administration in Headquarters, Attention: Willie Spearmon, 451

Seventh Street, SW., Washington, DC 20410.

2. When Headquarters receives the request from the Hub Director, the Office of Housing Assistance and Grant Administration will process the request and award the funds, if approved, in accordance with the funding queue established by the date and time of receipt in the Field Office.

Note: HUD Headquarters reserves the right to deny or reduce any request for funds.

3. Headquarters will notify the Hub Director/Program Center Director by memorandum at the time the assignment of the funds has been approved. The Hub staff will prepare form HUD-718 and send it to the Fort Worth Accounting Center (FWAC) to reserve the funds in the name of the project. After the funds have been reserved, the Field Office can notify the grantee of the award and inform the grantee that execution of the Grant Agreement (Appendix V) and Rental Use Agreement (if appropriate) is necessary to receive the funds.

Catalog of Federal Domestic Assistance (CFDA) Number: 14.315.

VI. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0542. This Notice also contains information collection requirements that have not yet received OMB approval. These information collection requirements have been submitted to OMB for review, and approval is pending. HUD will announce the control numbers once OMB approval is received. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

VII. Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays, in the Office of the General Counsel, Regulations Division, Room

10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule

an appointment to review the FONSI by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Dated: May 16, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

BILLING CODE 4210-67-P

Appendix I

PROJECT NAME: _____

FHA PROJECT NO: _____

CITY, STATE: _____

RENTAL USE AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2006, by and between the Secretary of Housing and Urban Development (HUD) and _____ (Owner).

The Owner has entered into an agreement with HUD to maintain the property as rental housing for the elderly for the remainder of the specified _____-year period;

HUD has determined that continuation of the property as rental housing is clearly necessary to assure adequate rental housing opportunity for low- and moderate-income elderly tenants.

WHEREAS, the Owner has requested an Emergency Capital Repair Program Grant to make emergency capital repairs to the property.

WHEREAS, the Owner is willing to agree to maintain the subject property as an affordable rental property until _____.

WHEREAS, in the event the Owner chooses to sell, prepay, or transfer the property during the period of time this Use Agreement is in effect, it will require as a condition that the purchaser will commit to maintain the property pursuant to the terms of this Rental Use Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the parties agree as follows:

1. The execution and recording of this Agreement shall constitute HUD's approval of the Emergency Capital Repair Grant in the amount of \$_____.

2. The Owner agrees that during the period that it owns the property, it will maintain the property as affordable rental housing until _____. During such period, should the property be sold, the purchaser shall not utilize project dwelling units for any purpose other than as affordable rental housing for the elderly.
3. The provisions of this Agreement shall be binding upon the heirs, successors, and assigns of the Owner and purchaser (if sold).
4. The provisions of this Agreement relating to the rental use of the property shall run with the land and shall be binding for the benefit of, in favor of, and enforceable by the Secretary and his successors in office. The Secretary and his successors in office and/or any third-party beneficiary shall be entitled to: (a) institute legal action to enforce performance and observance of, (b) enjoin any actions which are violative of, and (c) exercise any other legal or equitable right or remedy with respect to such provisions. For the purpose of these covenants, a third-party beneficiary shall be any person eligible for occupancy in the rental project insured pursuant to the provisions of the applicable program for the elderly. These rights and remedies will be exercised separately or in combination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTEST:

OWNER:

TITLE

UNITED STATES OF AMERICA
SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

By: Director, Multifamily
Hub/Program Center

On this _____ day of _____, 2006 before me, the undersigned officer, personally appeared _____, and who acknowledged himself /herself to the _____ of _____, and that as such _____, being authorized to do so, executed the within Agreement for the purpose therein contained by signing the name of said partnership by himself/herself as _____.

WITNESS my hand and Notary seal the day and year aforesaid.

SEAL

Notary Public

My Commission expires _____

COUNTY OF _____

STATE OF _____

FIELD OFFICE CONTACT INFORMATION

<u>HUD - BOSTON HUB</u> HARTFORD OFFICE 20 Church Street Hartford, CT 06103-3220 (860) 240-4800 TTY Number: (860) 240-4665	<u>HUD - BUFFALO HUB</u> BUFFALO OFFICE Lafayette Court Building 465 Main Street, 2 nd Floor Buffalo, NY 14203-1780 (716) 551-5755, ext. 5000 TTY Number: (716) 551-5787
BOSTON OFFICE Thomas P. O'Neill, Jr. Federal Building 10 Causeway Street, Room 301 Boston, MA 02222-1092 (617) 994-8500 TTY Number: (617) 565-5453	<u>HUD - PHILADELPHIA HUB</u> PHILADELPHIA OFFICE The Wanamaker Building 100 Penn Square East Philadelphia, PA 19107-3380 (215) 656-0609 TTY Number: (215) 656-3452
MANCHESTER OFFICE 1000 Elm Street 8 th Floor Manchester, NH 03101 (603) 666-7510 TTY Number: (603) 666-7518	CHARLESTON OFFICE 405 Capitol Street, Suite 708 Charleston, WV 25301-1795 (304) 347-7000 TTY Number: (304) 347-5332
PROVIDENCE OFFICE 121 S. Main Street, Sixth Floor Providence, RI 02903-2808 (401) 528-5230 TTY Number: (401) 528-5403	NEWARK OFFICE Thirteenth Floor 1085 Raymond Boulevard Newark, NJ 07102-5260 (973) 622-7900 TTY Number: (973) 645-3298

<u>HUD - NEW YORK HUB</u> NEW YORK OFFICE 26 Federal Plaza, Room 3200 New York, NY 10278-0068 (212) 264-8000 TTY Number: (212) 264-0927	PITTSBURGH OFFICE 339 Sixth Avenue, Sixth Floor Pittsburgh, PA 15222-2507 (412) 644-6428 TTY Number: (412) 644-5747
<u>HUD - BALTIMORE HUB</u> BALTIMORE OFFICE City Crescent Building 10 South Howard Street, Fifth Floor Baltimore, MD 21201-2505 (410) 962-2520 TTY Number: (410) 962-0106	<u>HUD - ATLANTA HUB</u> ATLANTA OFFICE ATTN: Multifamily Housing 40 Marietta Street, 12 th Floor Five Points Plaza Atlanta, GA 30303-2806 (404) 331-4976 TTY Number: (404) 730-2654
RICHMOND OFFICE 600 East Broad Street Richmond, VA 23219 (804) 771-2100, ext. 3839 TTY Number: (804) 771-2038	SAN JUAN OFFICE Edificio Administracion de Terrenos 235 Federico Costa Street, Suite 200 San Juan, PR 00918-0903 (787) 766-5401 TTY Number: (787) 766-5104
WASHINGTON NE, DC OFFICE 820 First Street, NE, Suite 450 Washington, DC 20002-4205 (202) 275-9200 TTY Number: (202) 275-0772	
<u>HUD - GREENSBORO HUB</u> GREENSBORO OFFICE Asheville Building 1500 Pinecroft Road, Suite 401 Greensboro, NC 27407-3838 (336) 547-4000 TTY Number: (336) 547-4020	LOUISVILLE OFFICE 601 West Broadway Louisville, KY 40202 (502) 582-5251 TTY Number: (866) 800-0289

COLUMBIA OFFICE Strom Thurmond Federal Building 1835-45 Assembly Street, 13th Floor Columbia, SC 29201-2480 (803) 765-5592 TTY Number: (803) 253-3209	KNOXVILLE OFFICE John J. Duncan Federal Building Third Floor, Room 315 710 Locust Street Knoxville, TN 37902-2526 (423) 545-4384 TTY Number: (423) 545-4559
	NASHVILLE OFFICE 235 Cumberland Bend, Suite 200 Nashville, TN 37228-1803 (615) 736-5213 TTY Number: (866) 503-0267
<u>HUD - JACKSONVILLE HUB</u> JACKSONVILLE OFFICE Charles E. Bennett Federal Building 400 W. Bay Street, Suite 1015 Jacksonville, FL 32202-5121 (904) 232-2626 TTY Number: (904) 232-2631	<u>HUD - DETROIT HUB</u> DETROIT OFFICE Patrick V. McNamara Federal Building 477 Michigan Avenue, Suite 1635 Detroit, MI 48226-2592 (313) 226-7900 TTY Number: (313) 226-6899
BIRMINGHAM OFFICE Medical Forum Building 950 22nd Street, North, Suite 900 Birmingham, AL 35203-5301 (205) 731-2630 TTY Number: (205) 731-2624	<u>HUD - COLUMBUS HUB</u> COLUMBUS OFFICE 200 North High Street, 7th Floor Columbus, OH 43215-2499 (614) 469-5737 TTY Number: (614) 469-6694
JACKSON OFFICE Doctor A.H. McCoy Federal Building 100 West Capitol Street, Suite 910 Jackson, MS 39269-1096 (601) 965-4700 TTY Number: (601) 965-4171	CLEVELAND OFFICE U.S. Bank Centre 1350 Euclid Avenue, Suite 500 Cleveland, OH 44115-1815 (216) 522-4058 TTY Number: (216) 522-2261

<u>HUD - CHICAGO HUB</u> CHICAGO OFFICE Ralph H. Metcalfe Federal Building 77 West Jackson Boulevard, 23rd Floor Chicago, IL 60604-3507 (312) 353-5680 TTY Number: (312) 353-5944	<u>HUD - MINNEAPOLIS HUB</u> MINNEAPOLIS OFFICE 920 Second Avenue South, Suite 1300 Minneapolis, MN 55402-4012 (612) 370-3000 TTY Number: (612) 370-3186
INDIANAPOLIS OFFICE 151 North Delaware Street Indianapolis, IN 46204-2526 (317) 226-6482, 6831, or 7183 TTY Number: (317) 226-7081	MILWAUKEE OFFICE Henry S. Reuss Federal Plaza 310 West Wisconsin Avenue, Suite 1380 Milwaukee, WI 53203-2289 (414) 297-3214, ext. 8673 TTY Number: (414) 297-1423
<u>HUD - FORT WORTH HUB</u> LITTLE ROCK OFFICE TCBY Tower 425 West Capitol Avenue, Suite 900 Little Rock, AR 72201-3488 (501) 324-5931 TTY Number: (501) 324-5931	<u>HUD - KANSAS CITY HUB</u> DES MOINES OFFICE Federal Building 210 Walnut Street, Room 239 Des Moines, IA 50309-2155 (515) 284-4583 TTY Number: (515) 284-4728
	KANSAS CITY OFFICE Gateway Tower II 400 State Avenue, Room 200 Kansas City, KS 66101-2406 (913) 551-5462 TTY Number: (913) 551-6972
FORT WORTH OFFICE 801 Cherry Street PO Box 2905 Fort Worth, TX 76113-2905 (817) 978-5965 TTY Number: (817) 978-5595	OMAHA OFFICE Executive Tower Centre 10909 Mill Valley Road, Suite 100 Omaha, NE 68154-3955 (402) 492-3122 TTY Number: (402) 492-3183

HOUSTON OFFICE 1301 Fannin, Suite 2200 Houston, TX 77002 (713) 718-3199 TTY Number: (713) 718-3289	ST. LOUIS OFFICE Third Floor Robert A. Young Federal Building 1222 Spruce Street, Room 3207 St. Louis, MO 63103-2836 (314) 539-6583 TTY Number: (314) 539-6331
SAN ANTONIO OFFICE 106 South St. Mary's, Suite 405 San Antonio, TX 78205 (210) 475-6800 TTY Number: (210) 475-6885	OKLAHOMA CITY OFFICE 301 NW 6 th Street, Suite 200 Oklahoma City, OK 73102 (405) 609-8410 TTY Number: (405) 609-8480
<u>HUD - DENVER HUB</u> DENVER OFFICE UMB Bank Building 1670 Broadway, 23 rd Floor Denver, CO 80202 (303) 672-5343 TTY Number: (303) 672-5113	<u>HUD - LOS ANGELES HUB</u> LOS ANGELES OFFICE 611 West 6th Street Suite 800 Los Angeles, CA 90017-3106 (213) 894-8000 TTY Number: (213) 894-8133
<u>HUD - SAN FRANCISCO HUB</u> PHOENIX OFFICE One North Central #600 Phoenix, AZ 85004 (602) 379-7149 TTY Number: (602) 379-4557	<u>HUD - SEATTLE HUB</u> PORTLAND OFFICE 400 Southwest Sixth Avenue Suite 700 Portland, OR 97204-1632 (503) 326-3228 TTY Number: (503) 326-2568
SAN FRANCISCO OFFICE Philip Burton Federal Building and U.S. Courthouse 600 Harrison Street, 3 rd Floor PO Box 36003 San Francisco, CA 94102-3448 (415) 436-8356 TTY Number: (415) 436-6594	ANCHORAGE OFFICE 3000 C Street, Suite 401 Anchorage, AK 99503 (503) 326-3228 TTY Number: (503) 326-2568

HONOLULU OFFICE

500 Ala Moana Boulevard, Suite 3A
Honolulu, HI 96813
(808) 522-8185
TTY Number: (808) 522-8193

SEATTLE OFFICE

909 First Avenue, Suite 200
Seattle, WA 98104-5254
(503) 326-3228
TTY Number: (503) 326-2568

Appendix III

FIELD OFFICE RECOMMENDATION

Project Name: _____
Project Number: _____
Program Center: _____
Hub: _____
Amount Requested: _____

I recommend that the referenced project be considered for funding. Based upon a review of the application and the project files, the use of Emergency Capital Repair Grant funds for the referenced project falls within the statutory guidance and the assistance is necessary to make emergency capital repairs at the property. Attached is a brief narrative describing the emergency capital repair needs.

Attachment

_____ Project Manager	_____ Date
_____ Program Center Director	_____ Date
_____ Hub Director	_____ Date

Appendix IV

REVIEW CHECK LIST

REVIEW CHECK LIST instructions may be found in Section VB. 4 of the notice.

If the answer to any of the questions in the Table below is “No,” please provide comments in the comments space in the table or in the space available on this page for additional comments.

Project Name: _____

Project Number: _____

Program Center: _____

CATEGORY	YOU ARE LOOKING FOR...	ANSWER	COMMENTS
Analysis of an Emergency Situation	Is this an emergency situation requiring the immediate use of these funds?	Yes ____ No ____	
Project meets the requirement of 24 CFR 50.19(b)(10) and is not subject to National Environmental Policy Act or other laws and authorities specified at 24 CFR 50.4	Is assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety, including those resulting from physical deterioration?	Yes ____ No ____ If no, perform and attach herein appropriate environmental review using form HUD- 4128.	
Flood Insurance Requirements	Are any project structures in Federal Emergency Management Agency-designated special flood hazard areas?	Yes ____ No ____ If yes, flood insurance is required for the life of the proposed project.	
Project Plan	Are the specifications for capital repairs sufficiently detailed?	Yes ____ No ____	
Physical Inspection	Provide the score and the date of the most recent REAC physical inspection.	_____ (score) _____ (date)	

Presence of Flags	Has the owner or the management agent been “flagged” in the Active Partner Performance System (APPS)? If either the owner or agent has a “flag,” the normal form-2530 clearance processes are required. Since time is of the essence, the form-2530 clearance process request should indicate that this information is for the Emergency Capital Repairs Grant program and identify the request as URGENT.	Yes ____ No ____	
Repair Costs	Are the costs for the repairs reasonable and appropriate to the needs identified in the submission and the repairs being made?	Yes ____ No ____	
HUD Agreements	Is the owner in compliance with the Mortgage, Regulatory Agreement, and Assistance contract, if applicable, etc.?	Yes ____ No ____	
Management	Is current management satisfactory to HUD based upon review of financial statements, as well as management and occupancy reviews? When was the last management review conducted?	Yes ____ No ____ _____	

Annual Operating Expenses	Can the repairs be completed with the current funds available in the project? If not, what is the basis for the judgment that the repairs cannot be completed with existing funds and reserves or with other non-HUD/non-project resources? Are the annual operating expenses reasonable?	Yes ____ No ____ Yes ____ No ____	
Age of the Project	What is the date of the final closing?	_____	
Replacement Reserve Requirements	Have deposits been made each month to the project's reserve account? What is the balance in the Reserve for Replacement Account? What is the required balance?	Yes ____ No ____ \$ _____ \$ _____	
Residual Receipts Balance	What is the balance in the Residual Receipts Account?	\$ _____	

Audited Financial Statement	Is the owner current with filing of the audited financial statements? Were all findings, if any, resolved within 30 days?	Yes ___ No ___ Yes ___ No ___	
Excess Income	If the project is a Section 236, is the owner in compliance with the excess income requirements?	Yes ___ No ___	
Tenant Participation	Did the owner notify the tenants?	Yes ___ No ___	
Civil Rights Compliance	Does the owner have an approved Affirmative Fair Housing Marketing Plan that is less than 5 years old?	Yes ___ No ___	

	Has the owner resolved any systemic charge of discrimination, noncompliance findings alleging systemic or ongoing violations under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act; or resolved any pattern and practice fair housing lawsuit filed against it by the Department of Justice with a HUD-approved conciliation agreement, voluntary compliance agreement, or consent decree or order? Is the owner in compliance with the civil rights requirements set forth in Section IV A.12 of the Notice?	Yes ___ No ___ Yes ___ No ___	
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Appendix V

EMERGENCY CAPITAL REPAIRS PROGRAM GRANT AGREEMENT

Grant Number: _____ Grant Amount: _____

Project Name: _____

Project Address: _____

Project Number: _____ Section 8/PRAC Number: _____

Number or Units: _____

Effective Dates: _____ to _____

LOCCS Program Area: ALCP PAS Program Code: ECR

LOCCS 3-Digit Program Identifier: 115

Owner: _____

This Grant Agreement between the Secretary of Housing and Urban Development (HUD) and _____ (Grantee), whose 9-Digit Tax I.D. number is _____, is made pursuant to the Notice providing funding published in the Federal Register on _____.

The assistance, which is the subject of this Grant Agreement, is authorized by Section 202b of the Housing Act of 1959, as amended (P.L. 106-74, approved Oct. 20, 1999, and the Consolidated Appropriations Act, 2005 (Public Law 108-447, approved December 8, 2004), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act,

2006 (Public Law 109-115, approved November 30, 2005). The term “grant” or “grant funds” means the assistance provided under this Grant Agreement. The term “Application” means the application submission on the basis of which this grant was approved by HUD, including the certifications and assurances and any information or documentation required to meet the grant award conditions. The Application is incorporated herein as part of this Agreement; however, in the event of a conflict between any part of the Application and any part of this Agreement, the latter shall control. HUD agrees, subject to the terms and conditions of this Agreement, to provide grant funds in the amount specified for the approved project described in the Application.

HUD’s maximum funds awarded for this project is \$_____ to enable the Grantee to make emergency capital repairs that present an immediate threat to the health, safety, and quality of life of the tenants. Funds will be obligated and made available upon execution of the Grant Agreement. As with all programs, these funds are subject to the availability of appropriations.

ARTICLE I. HUD REQUIREMENTS

A. The grant funds will be used only for activities described in the Application, as approved by HUD. Eligible costs will include the repair or replacement of systems, but not limited to (1) major building and structural components that are in critical condition, and (2) repairs or replacements to mechanical equipment, to the extent they are necessary for health and safety reasons.

B. Grantees are required to expend grant funds according to the approved budget and timetable, unless HUD approves a change.

C. The accounting systems of all grantees must ensure that grant funds are not commingled with any other funds. Where a grantee's accounting system cannot comply with this requirement, it is required that the grantee establish an auditable system to provide adequate accountability for the funds that are awarded.

D. The grantee has the responsibility to assure that there is no duplication of federal funds.

E. The Grantee must provide a Rental Use Agreement, which will be recorded, covering the project and requiring that the project serve low-income or very low-income elderly persons if the mortgage has less than 10 years to run.

F. The emergency capital repairs funded under this agreement must pose a threat to the immediate health and safety needs that have an impact upon the quality of life of the tenants if the repairs are not made.

ARTICLE II. APPLICABLE EQUAL OPPORTUNITY REQUIREMENTS

A. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107.

B. The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.

C. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with

disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

D. The requirements of 24 CFR 5.105(a) regarding equal opportunity, as well as the requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.

E. For those grants funding construction covered by 24 CFR part 135, the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) that require that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons.

F. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise) and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with the grant-funded activities.

G. The grantee, where applicable, shall maintain records of its efforts to comply with requirements cited in paragraphs E and F.

ARTICLE III. OTHER HUD REQUIREMENTS

A. Administrative Requirements of OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."

B. Administrative requirements of 24 CFR part 84, including the procurement requirements of 24 CFR 84.44, and the requirements of OMB Circular A-122 regarding Cost Principles for Non-Profit Institutions.

- C. The regulations at 24 CFR part 87, relating to lobbying, including the requirement that the Grantee obtain certifications and disclosures from all covered persons.
- D. Restrictions on participation by ineligible, debarred, or suspended persons or entities as described in Executive Order 12549 and 24 CFR 5.105(c).
- E. The Grantee will comply with all accessibility requirements under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, where applicable.
- F. Compliance with the Davis-Bacon requirements and the Contract Work Hours and Safety Standards Act as applied to this program.

ARTICLE IV. CONDITIONS PRECEDENT TO DRAWDOWN

- A. The Grantee has received and approved any certifications and disclosures required by 24 CFR 87.100 concerning lobbying and by 24 CFR 24.510(b) regarding ineligibility, suspension, and debarment.
- B. Compliance with any and all conditions precedent to the receipt of grant funds.

ARTICLE V. DRAWDOWNS

- A. A request by the Grantee to draw down grant funds under the Voice Response Access system or any other payment system constitutes a representation by the Grantee that it and all participating parties are complying with the terms of this Grant Agreement.
- B. The Grantee will be paid on an advance basis, provided that the Grantee minimizes the time elapsing between transfer of the grant funds and disbursement for project purposes and otherwise follows the requirements of 24 CFR part 84 and Treasury Circular 1079 (32 CFR part 205).

C. The Grantee, to help ensure completion of the repairs, shall obtain from the contractor a copy of plans and specifications; shall assure that grant funds allocated for repair costs will be at a rate not to exceed the percentage of project completion; shall withhold 10 percent of payments of projects from the contractor pending completion; and shall not permit repairs to begin until all funds needed for completion of the repairs have been committed to the project.

D. Grantees should submit the LOCCS/VRS Payment Voucher form HUD-50080-ECRP each time they draw down funds from LOCCS.

ARTICLE VI. PROGRESS REPORTS

A. The Grantee shall submit a progress report every 6 months after the effective date of the Grant Agreement. Progress reports shall include reports on both performance and financial progress and shall conform with 24 CFR 84.50 and 84.53. Additional information or increased frequency of reporting may be required by HUD.

B. The performance reports must contain the information required under 24 CFR 84.51(a), including a comparison of actual accomplishment to the objectives indicated in the approved application; the reasons for slippage if established objectives were not met; and additional pertinent information.

C. Financial reports shall be submitted on Standard Form 269 (SF-269) and the following: for repair costs, SF-271; for non-construction costs, a breakdown in costs similar to SF-424A.

D. No grant payments will be approved for projects with overdue progress reports.

ARTICLE VII. PROJECT CLOSEOUT

- A. The Grantee shall initiate project closeout within 30 days of project repair completion. At HUD's option, the Grantee may delay initiation of project closeout until the resolution of any HUD monitoring findings. If HUD exercises this option, the Grantee must promptly resolve the findings.
- B. The Grantee recognizes that the closeout process may entail a review by HUD to determine compliance with the Grant Agreement by the Grantee and all participating parties. The Grantee agrees to cooperate with any review in any way possible, including making available records requested by HUD and the project for on-site HUD inspection.
- C. The grant term may not exceed one year (measured from date of obligation to completion of repairs), unless otherwise approved by HUD. Any term extension must be preceded by a written narrative justification acceptable to HUD.
- D. Within 90 days after HUD's approval to initiate closeout, the Grantee shall provide to HUD the following in the format(s) approved by HUD: (1) a certification of project completion; (2) a certification of compliance with all the requirements of the Grant Agreement; (3) a report giving the amount and types of project costs charged to the grant meeting OMB Circular A-122 standards; (4) a certification of the costs charged to the project and sources of other project funds; and (5) a final performance report providing a comparison of actual accomplishment with each of the project objectives, the reasons for any slippage, and additional pertinent information, including explanation of significant cost overruns.

E. The Grantee agrees that the grant funds are allowable only to the extent that the project costs, meeting the standard of OMB Circular A-122, equal the grant amount plus other sources of project funds provided.

F. At closeout, the Grantee shall provide a performance report that contains a comparison of the actual accomplishment to the original scope of the work.

G. When HUD has determined that the grant funds are allowable, the activity was completed as described by the Grant Agreement, and all federal requirements were satisfied, HUD and the Grantee will sign the Closeout Agreement.

H. The Closeout Agreement will include the Grantee's Agreement to abide by any continuing federal requirements.

ARTICLE VIII. DEFAULT

A default under this Grant Agreement shall consist of using grant funds for a purpose other than as authorized by this Agreement and any noncompliance with statutory, regulatory, or other requirements applicable to this Agreement, or any material misrepresentation in the application submission.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement the ____ day of ____, 2006.

United States of America

Secretary of Housing and Urban Development

By _____ Name

Signature _____ Date

_____ Official Title

Grantee

By _____ Name

Signature _____ Date

_____ Official Title