

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
LEGAL REQUIREMENTS FOR INITIAL CLOSING  
Section 202 Mixed Finance**

Project Name:

Project Number:

Property Address:

Name of Owner: (Beneficial Interest)  
(Fee Title Owner)

Name of General Partner:

Name of Limited Partner:

Target Funds (post-closing):

Name of Sponsor:

List all Lenders and Sources of funds:      HUD 202 Capital Advance  
HFA Tax-Exempt Bonds  
HPD HOME Loan  
NYSHTF/CIF Loan  
HUD Predevelopment Grant  
Equity

The HUD Attorney will obtain three copies of all of the following documents unless otherwise indicated below. These will be Originals (Or), Executed (E), Certified (C) or Conformed (Cn) as indicated after each document below. N/F means no form. Photocopies of fully executed documents may be submitted for conformed copies.

Along with this checklist: Attendance List (HUD will provide)

	<b><u>HUD CAPITAL ADVANCE AND REGULATORY DOCUMENTS:</u></b>	Responsible Party	Notes/Status	Or=Originals E=Executed C=Certified Cn=Conformed copies
1.	HUD Firm Commitment for Capital Advance Financing (using form HUD-92432-CA until revised) including reissued, revised or amended	HUD		3Or

	firm commitment (DATE)			
2.	Capital Advance/Building Loan Agreement (HUD 90167-CA) (HUD will have copies of this)	HUD		4Or
3.	HUD Mortgage, Deed of Trust or Security Deed (HUD-90165-CA) (between Sponsor, HDFC and LP)	BOR		
4.	Collateral Assignment of Mortgage and 202 Loan Documents	BOR		4Or
5.	HUD Mortgage Note (HUD-93432-CA) (4/92) (HDFC and LP to Sponsor)	BOR		Or, 3Cn
6.	Sponsor Note (Sponsor to HUD)	BOR		
7.	HUD Security Agreement and UCC-1 Financing Statements	BOR		2Or, 2Cn
8.	Regulatory Agreement (HUD-92466-CA)(4/92)	BOR		4Or
9.	Use Agreement (HUD-90163-CA) (4/92)	BOR		4Or
10.	Agreement and Certification (HUD 93566-CA) (4/92)	BOR		Or, 2Cn
11.	Part I of Agreement to Enter into Project Rental Assistance Contract (HUD-90172A-CA), if not previously executed and Part II of Agreement to Enter into Project Rental Assistance Contract (HUD-90172B-CA), if not previously executed	HUD		Or, 2Cn
12.	Title Policy (6/17/06 ALTA Loan Policy with 8.1 Endorsement), [Standard NY Endorsement (Loan Policy) (6/17/06), TIRSA EPL (8.1) (Governmental Agencies) (2/11/02) insert "None" under (b), TIRSA Endorsement 9 (Restrictions, Encroachments, Minerals) NY (Loan Policy) (5/1/07), TIRSA Land Same as Survey Endorsement (5/1/07), TIRSA Waiver of Arbitration Endorsement (Loan Policy) (4/24/01), Separate Tax Lot Endorsement, Contiguity Endorsement]	TITLE		Or, 2Cn
13.	Title Report	TITLE		3Cn
14.	Judgment, Pending Litigation, Tax Lien and UCC searches (Federal, State and County)	TITLE		3Cn
15.	Recording Order letter to title company and Escrow	SYND		Or, 2Cn

	Instruction Letter			
16.	Community Facility Lease	BOR		
17.	Waiver Request	BOR		
	<b><u>HUD PREDEVELOPMENT FUNDS LOAN:</u></b>			
18.	Section 202 Demonstration Predevelopment Grant Agreement for \$_____	HUD		
19.	Promissory Note: LP to Sponsor	BOR		
20.	Mortgage (LP and HDFC to Sponsor)			
	<b><u>PROPERTY CONSTRUCTION DOCUMENTS:</u></b>			
21.	Written Agreement for Construction Coordination and Disbursement with Construction Draw Schedule attached (Special Commitment Condition G.2) (with Sources and Uses)	BOR		3Or
22.	Evidence of Zoning Compliance (If NYC property, request form letter from HUD)	ARCH		3Cn
23.	Building Permit(s)	BOR		3Cn
24.	Surveyor's Report (HUD-92457)	BOR		Or, 2Cn
25.	Survey (with certifications and property description)	BOR		3Or
26.	Construction Contract, Lump Sum (HUD 92442-CA) or Cost Plus (HUD 92442A-CA) (3/94) and, if applicable, Contractor's Requisition (HUD 92448), Attachments: A. Index of Drawings B. Index of Specifications C. Incentive Payment Rider HUD Form 92443-CA (If applicable) D. Supplementary Conditions HUD Form 2554 E. Arbitration Rider (Rider 1 to HUD Form 92442-A-CA) F. Identity of Interest Specifications from Handbook 4430.1, REV 1 G. AIA 201 General Conditions 1997 ed. H. Contractor's Mortgagor's Cost Breakdown Form 2328 I. Davis Bacon Wage Determination (If applicable) J. A joint venture agreement, if applicable.			E, 2Cn

	Off-Site Construction Contract (\$_____ )			
27.	<p>Assurance of Completion: Performance/Payment Bond (Dual Oblige) (HUD-92452-CA) (4/92), Attachments:</p> <p>A. Financials: Assets and Liabilities</p> <p>B. Power of Attorney (Or, 2Cn)</p> <p>C. Surety Company's telegram or facsimile acknowledgment (day of closing)</p> <p>Off-Site Performance/Payment Bond (\$_____ )</p>			Or, 2Cn
28.	<p>Owner-Architect Agreement (AIA Document B181)</p> <p>A. HUD Amendment (form HUD 90169-CA)</p> <p>B. Amendment to AIA Document B181 (from Appendix 2, HUD Handbook 4460.1)</p> <p>C. Design Architect's Certification (set out in Attachment C, Notice H96-102-HUD)</p> <p>D. Delete arbitration and mediation clauses in AIA Document B181</p> <p>E. If not already done so, delete Article 3. Additional Services, Article 7. Resolution of Claims, Disputes or Other Matters (Arbitration and Mediation), Article 8, § 8.7 (Termination Expenses), Article 10, §10.2 Reimbursable Expenses and 10.3 Payments on Account of Additional Services, Article 11.3 Compensation for Additional Services, § 11.4 Reimbursable Expenses, and § 11.5 Additional Provisions.</p> <p>ASSIGNMENT TO LP</p>			E, 2Cn
29.	Assurance of Completion of Off-Site Facilities: a. Escrow Agreement for Off-Site Facilities (HUD 90170-CA) (8/92)	HUD		1Or, 2Cn
30.	Assurance of Utility Services (water, sewer, electricity, gas, heat)	BOR		1Or, 2Cn
31.	Owner's Certificate (HUD 92433-CA) (4/92)	BOR		3Or
32.	Owner's Attorney's Capital Advance Closing Opinion (new long form developed by HUD Office of General Counsel is required including Owner's Certification) (opinion must cover the following entities: Sponsor, LP, GP and HDFC) (Include "Certification of Owner" from the following entities: Sponsor, Beneficial Owner LP, GP, and	BOR		3Or

	HDFC)			
33.	Evidence of Owner's Deposit (minimum capital investment) and ability to provide moveable furnishings and equipment not covered in capital advance (\$_____ )	BOR		3Or
34.	Owner's assurance of funds to cover costs over and above capital advance	BOR		3Or
35.	FHEO Certification in Connection with the Development and Operation of Project and Equal Opportunity form (Obtain form from Multifamily Housing Hub) 915 Form	BOR		3Or
36.	Certificates of Insurance (including Blanket Fidelity Bond) as required by form HUD-90164-CA - Including Property/Builder's Risk/Hazard Insurance, Liability Insurance and Fidelity Insurance with endorsements thereto naming HDC as mortgagee, loss payee and additional insured	BOR		1Or, 2Cn
37.	Flood Insurance or evidence that Improvements are not in Flood Area	BOR		
38.	Phase I Environmental Assessment Reports A. Reliance Letters re: Environmental Assessment Reports B. Type II – Negative Declaration	BOR		
39.	Phase I Update with reliance letter	BOR		
40.	Appraisal	BOR		
41.	Collateral Agreements			N/A
	<b><u>ORGANIZATIONAL DOCUMENTS:</u></b>			
42.	Organizational Chart	BOR		
43.	<u>Limited Partnership/Beneficial Owner</u> Initial Limited Partnership Agreement (LPA) Certificate of Limited Partnership Incumbency/Secretary's Certificate and Resolutions Good Standing Certificate			3Cn 3Cn 3Or 3Cn
44.	<u>First Amended and Restated Agreement of Limited Partnership (LPA with Exhibits)</u> Exhibit A – List of Partners; Percentage Interests; Capital Contribution Commitments Exhibit B – Description of Project Exhibit C – Development Services Agreement Exhibit D – Guaranty Agreement			1Or, 2Cn

	Exhibit E – N/A Exhibit F – Property Management Agreement Exhibit G – N/A Exhibit H – Financial Projections Exhibit I – Investor Services Agreement Exhibit J – Right of First Refusal Agreement Exhibit K – Monthly Construction/Lease-up Status Report Exhibit L – Insurance Requirements Checklist Exhibit M – Transfer Agreement			
45.	<u>General Partner of LP</u> Certificate of Incorporation By-laws (certified) Incumbency/Secretary’s Certificate and Resolutions Good Standing Certificate			3Or 3Or 3Or 3Cn
46.	<u>HDFC</u> HDFC Certificate of Incorporation (HUD-91732-A-CA) (1/2003) HDFC Bylaws Incumbency/Secretary’s Certificate and Resolutions HDFC Good Standing Certificate (must be within 30 days of closing) HDFC’s I.R.S. 501(c)(3) Tax-Exemption Ruling			3Or  3Or 3Or 3Cn  3Cn
47.	<u>Sponsor/Guarantor</u> Certificate of Incorporation By-laws (certified) Incumbency/Secretary’s Certificate and Resolutions Good Standing Certificate IRS 501(c)(3) Tax exemption ruling			3Or 3Or 3Or 3Cn 3Cn
48.	<u>General Contractor</u> Certificate of Incorporation By-laws (certified) Incumbency/Secretary’s Certificate and Resolutions Good Standing Certificate			3Or 3Or 3Or 3Cn
49.	<u>Tax Credit Investor:</u> Certificate of Incorporation By-laws (certified) Incumbency/Secretary’s Certificate and Resolutions Good Standing Certificate			3Or 3Or 3Or 3Cn

	<b><u>DOCUMENTS ON HUD ADDITIONAL COMMITMENT CONDITIONS:</u></b>			
50.	Evidence of Real Estate Tax Exemption/Abatement – City Council Resolution of Article XI (Commitment attachment 11)	HPD		3Cn
	<b><u>DOCUMENTS ON HUD SPECIAL COMMITMENT CONDITIONS:</u></b>			
51.	Certificate of Numerical Accuracy (C.5)	BOR		
52.	Certification identifying all capital contributions (D.4)	BOR		3Or
53.	Certificate listing all current funding sources (F.1.)	BOR		3Or
54.	Certification of No-cross-default provisions in any agreement by LP, GP, HDFC, Sponsor or Enterprise (H.1.)	BOR		3Or
55.	Non-interference Agreement (I.1-4) (See Rider to HUD Regulatory Agreement)	BOR		3Or
56.	Certificate of Compliance with all firm commitment conditions (including additional and special conditions of the commitment as of the closing date) (N.)	BOR		3Or
	<b><u>ACQUISITION/:</u></b>			
57.	(i) Deed by City to Neighborhood Restore; (ii) Deed by NR to Artsbridge HDFC			3Cn
58.	Transfer Tax Forms	TITLE		3Cn
59.	Nominee Agreement	BOR		3Cn
60.	Land Disposition Agreement			
	<b><u>CONSTRUCTION LOAN DOCUMENTS (HFA TAX-EXEMPT BONDS):</u></b>			
61.	Commitment Letter			
62.	Construction Loan Agreement			
63.	Promissory Note			
64.	Deed of Trust			
65.	Security Agreement			
66.	Guaranty Agreement			
67.	Bond Documents: A. Resolution B. Financing Agreement C. Trust Indenture			

	D. Tax Regulatory Agreement E. Collateral Escrow Agreement			
68.	[Other Documents Required by Lender]			
	<b><u>HPD LOAN DOCUMENTS:</u></b>			
69.	HPD Commitment	HPD		
70.	HPD Building Loan Note	HPD		
71.	HPD Building Loan Mortgage	HPD		
72.	Section 577 Affidavit Mortgage Recording Tax Exemption	BOR		
73.	HPD Subordination Agreement re: LDA	HPD		
74.	HPD Building Loan Agreement	HPD		
75.	HOME Written Agreement	HPD		
76.	Regulatory Agreement/Restrictive Covenants			
77.	[Other Documents Required by Lender]			
	<b><u>TAX CREDIT EQUITY LETTERS:</u></b>			
78.	Tax Credit Commitment Letter/Term Sheet (DATE)	SYND		
79.	Copy of volume cap allocation letter – 42(m)(1)/DOCE	HFA		
80.	Section 42(m)(2)(D) letter	HFA		
	<b><u>ADDITIONAL OPINIONS:</u></b>			
81.	HFA Loan Opinion	BOR		3Cn
82.	Equity Opinion	BOR		3Cn
	<b><u>MANAGEMENT DOCUMENTS</u></b>			
83.	Management Agreement	BOR		3Cn
84.	Marketing Plan	BOR		3Cn
85.	Affirmative Fair Housing Marketing Plan	BOR		3Cn
	<b><u>MISCELLANEOUS DOCUMENTS:</u></b>			
86.	Tax Credit Equity Confirmation (Wire Transfer)			3Cn
87.	Mortgagor (s) and Architect (s) Certificate of Payment (HUD 92403.1)	BOR		3Cn
88.	Copies of all checks, including receipt for initial cap adv check given to Owner at closing			1Or, 3Cn
89.	Subordination and Intercreditor Agreement	HUD		1Or, 3Cn



90.	Flow of Funds Chart	BOR		
91.	Human Rights Waiver	BOR		
92.	Subsidy Layering Review	HUD		

**Legal Requirements For Initial Closing Section 202/Section 811  
Notice H-96-102 (HUD), Attachment F  
New York State Addendum**

Initial Closing Document Number:

Capital Advance Agreement, amended pursuant to Section 22 of the Lien Law of the State of New York.

**Document must be filed.** (HUD-Housing will provide)

Firm Commitment (HUD-Housing will provide).

Certificate of Incorporation, Form HUD-92432-CA also applies to forms organizational documents, such as Articles of Organization.

Bylaws, must be Certified by corporate secretary and include an Authentication of Adoption.

Incumbency Certificate, should contain commencement and expiration dates of officers.

Certificate of Existence, in New York State, provide a Certificate of Subsistence dated within thirty (30) days of closing.

Regulatory Agreement, if elevator exists, agreement must include an Elevator Maintenance Contract Rider. **This document must be recorded.**

Corporate Resolution, must be certified by the Secretary, dated the day of closing, and contain the following language: The resolution dated has not been revoked, amended, modified or changed.

Land-Disposition Contract and Deed additionally, in the City of New York a HPD letter regarding reversion is required.

Title Policy, ALTA 9 Endorsement is also required.

Evidence of Zoning, must include (1) Letter from Municipality and in addition may included either (2) Letter from Architect/Engineer, or (3) Opinion of Zoning Counsel. Except in NYC, where the form letter from the Architect is sufficient with an additional paragraph stating the zone district and that the proposed project is a permitted use. Ask HUD Counsel for form letter.

All building permits must be issued by legally recognized entity.

Surveyor's Report, must be dated within one-hundred and twenty (120) days of closing.

Survey, must be dated within one-hundred and twenty (120) days of closing and comply with ALTA/ACSM minimum standards and contain Table A Optional Specifications as described in form HUD-92457.

Mortgage, use current HUDCLIPS form . **This document must be recorded.** Add the following provisions to the Mortgage:

**28. Section 13 of the Lien Law of New York.** The Mortgagor, in compliance with Section 13 of the Lien Law, will receive the advances secured by this Mortgage and will hold the right to receive the advances as a trust fund. The advances will be applied first for the purpose of paying the cost of improvement before using any part of the total advances for any other purpose.

**29. Article 14 of the Real Property Actions and Proceedings Law of New York.** A power of sale has been granted in this Mortgage pursuant to Article 14 of the Real Property Actions and Proceedings Law ("Article 14"). Upon default of the Mortgage, the Mortgagee shall have the right to sell the Mortgaged Property, foreclosed in the manner prescribed by Article 14 for a non-judicial proceedings for foreclosure.

Construction Contract, delete arbitration and mediation clauses in the A201-1997 form.

Assurance of Completion, evidence must show that: (1) Surety Company is listed on the Treasury list, (2) has an ability to provide amount of coverage, and (3) executed a Power of Attorney for the surety representative attending the closing.

Standard Form of Agreement between Owner and Architect for Housing Services

(AIA Document B181) (1994 edition) including:

- a. HUD Amendment (form HUD 90169-CA),
- b. Amendment to AIA Document B181 (from Appendix 2, HUD Handbook 4460.1)
- c. Design Architect's Certification (set out in Attachment C, Notice H96-102-HUD)
- d. Delete arbitration and mediation clauses in AIA Document B181
- e. If not already done so, delete Article 3. Additional Services, Article 7. Resolution of Claims, Disputes or Other Matters (Arbitration and Mediation), Article 8, § 8.7 (Termination Expenses), Article 10, §10.2 Reimbursable Expenses and 10.3 Payments on Account of Additional Services, Article 11.3 Compensation for Additional Services, § 11.4 Reimbursable Expenses, and § 11.5 Additional Provisions.

Owner's Attorney's Opinion, must include additional language regarding Article 9 as adopted in New York State. Note that the proper form is the 1997 attorney's opinion found at 62 Fed. Reg. 8749, 8760-64 (Feb. 26, 1997).

Use Agreement. **This document must be recorded.**

Security Agreement and Financing Statements must include the following attachments: (1) Schedule A (general collateral description) (including accounts receivable), (2) Schedule B (specific property list) (which must be approved by HUD Housing Office), and Exhibit A (legal description of premises).  
**Financing Statements must be filed.**

ADDITIONAL CLOSING DOCUMENTS, IF ANY

ALL ADDITIONAL CONDITIONS REFERENCED IN THE FIRM COMMITMENT.

**NOTE: THE ABOVE DATED HUD FORMS SHOULD BE USED UNLESS A MORE RECENT UPDATED HUD FORM IS AVAILABLE, WHICH MAKES PREVIOUS EDITIONS OBSOLETE.**