



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

August 15, 2011

MORTGAGEE LETTER 2011-27

TO: ALL FHA-APPROVED MULTI-FAMILY MORTGAGEES

SUBJECT: HUD Amendment to the American Institute of Architects (AIA) Document B108 (formerly B181-1994), Standard Form Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project (Amendment)

Purpose

The purpose of this Mortgagee Letter is to transmit the new Amendment to AIA Document B108 (Form HUD-92408-M). The American Institute of Architects (AIA) has published a new Owner/Architect Agreement, B108-2009 *Standard Form of Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project* (Agreement), and has retired the B181-1994 *Standard Form of Agreement Between Owner and Architect for Housing Services* on May 31, 2011.

The Amendment to the AIA Document B108 has been updated and will replace the version found in the Multifamily Accelerated Processing (MAP) Guide, Appendix 12B.2, Handbook 4460.1 REV-2, Appendix 2 and other handbook citations. The new Amendment (Form HUD-92408-M) is a required submission document as part of the Multifamily closing in connection with Firm Commitments issued or reissued. The Amendment is required for Firm Commitment applications submitted for FHA's multifamily housing insurance that require licensed professional services. This Mortgagee Letter is not applicable to health care programs administered by the Office of Healthcare Programs.

Background

The AIA Document B108 contain terms and conditions that are unique to Federally Funded or Federally Insured Projects, reflects current industry practice, and provides greater transparency about services provided while still protecting HUD's interest. While the Agreement is structured so that either the owner or the architect may provide construction cost estimates to the government, for FHA purposes, only the owner can provide cost estimates to FHA. The Amendment to the AIA Document B108 contains language and provisions specifically required by HUD that modify, complete, or supersede provisions of the AIA Document B108.

This Mortgagee Letter supersedes the MAP Guide and Handbook references to the AIA Document B181 Standard Form and specifically the *Amendment to AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services* in Appendix 12B.2, MAP

Guide and Handbook 4460.1 REV-2, Appendix 2.

The information collection requirements contained in this Amendment has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) on July 8, 2011. The valid OMB Control Number for the Amendment is 2502-0029. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

If you have any questions concerning this Mortgagee Letter, please contact Joseph Sealey, Director, Technical Support Division at (202) 402-2559.. “Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.”

Carol J. Galante
Acting Assistant Secretary for Housing –
Federal Housing Commissioner

[Attachment](#)
Amendment – Form HUD-92408-M

**HUD AMENDMENT TO
AIA DOCUMENT B108**

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

OMB Approval No. 2502-0029
(Exp. 07/31/2014)

Public Reporting Burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0029), Washington, DC 20503. Do not send this completed form to either of the above addresses.

**HUD AMENDMENT TO
AIA DOCUMENT B108 STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ARCHITECT FOR A FEDERALLY FUNDED OR
FEDERALLY INSURED PROJECT
for HUD PROJECT NO. _____**

1. Definition of terms used in this Amendment. If not defined in this Amendment, capitalized terms shall have the meaning given them in the Agreement, the Regulatory Agreement between Borrower and the U.S. Department of Housing and Urban Development (HUD), the Note, and/or the Security Instrument.

- a. **“Agreement”** means the AIA Document B108, Standard Form of Agreement Between Owner and Architect for a Federally Funded or Federally Insured Project, to which this Amendment is attached.
- b. **“Owner”** means Borrower, as defined in the HUD Regulatory Agreement applicable to this transaction.
- c. **“Subcontractor”** means any material supplier, equipment lessor, industrialized housing (or housing component) manufacturer/supplier, or any person or entity providing services that has either a direct or indirect (in the case of sub-subcontractors) contractual relationship with the Contractor responsible for construction of the Project.

2. The provisions of this Amendment supersede any provisions inconsistent between this Amendment and the Agreement.

3. Owner and Architect represent that they are familiar with HUD’s architectural requirements as set forth in Program Obligations and will comply with these instructions in accordance with said Program Obligations, including, but not limited to, review for compliance with HUD Minimum Property Standards; the accessible design, construction and alteration requirements of Section 504 of the Rehabilitation Act of 1973 (see 24 C.F.R. Part 8); the Uniform Federal Accessibility Standards; the accessible design and construction requirements of the Fair Housing Act (see 24 C.F.R. § 100.205); and the Americans with Disabilities Act Guidelines, 37 C.F.R. Part 1191.

4. This Agreement shall not be assigned in whole or in part to anyone, without the written consent of HUD. Neither Owner nor Architect shall contract with anyone currently listed by the General Services Administration as a firm that is debarred, suspended, proposed for debarment, or declared ineligible by federal agencies or by the General Accounting Office. Owner and Architect shall each require from their contractors, consultants and agents similar agreements prohibiting contracts with such persons or entities.

5. In the event the Owner, Lender, the surety under the performance bond, or HUD takes control of the Project or takes responsibility for completion of the Project construction pursuant to said parties' legal rights under the agreements concerning the Project, and notwithstanding the provisions of Article 7 of this Agreement, the party taking control or taking responsibility for completion of construction, and any substitute contractor hired by said party, shall have the right to use the Drawings and Specifications, and other documents, including those in electronic form, prepared by Architect and Architect's consultants. Such use shall be to the same extent and with the same limitations as Owner under this Agreement or as Contractor under the AIA Document A201, General Conditions of the Contract for Construction, provided Owner has paid Architect in accordance with this Agreement and is not in breach or default thereunder. Architect's execution of this Amendment shall represent consent by Architect and Architect's consultants to such use.

6. Owner shall provide information to or obtain approval from Lender and HUD regarding any action or observation by either Owner or Architect that significantly increases the Project's cost or time of construction or decreases the quality of construction.

7. The certificates for payment and the Certificate of Substantial Completion shall be in forms as prescribed by HUD.

8. This Agreement shall not be terminated without seven days prior written Notice to Lender and HUD.

9. Owner and Architect recognize the interest of Lender and HUD and that any action or determination by either Owner or Architect is subject to acceptance or rejection by Lender and HUD.

10. In addition to any other rights or remedies Owner may have under this Agreement, if a duly authorized representative of HUD requests that Architect be replaced due to Architect's inadequate performance, unjustified delay or misrepresentation of material facts, Owner may terminate this Agreement after giving Architect at least seven days' written notice and having given an opportunity to correct the performance or other issues to HUD's satisfaction.

11. The Architect designing the Project may have an identity of interest with Owner, Contractor, and/or any Project subcontractor, except however, any Architect

administering the Construction Contract shall not have any identity of interest with Owner, Contractor, and/or any Project. An identity of interest is construed to exist where:

- a. Architect has any financial interest in the Project other than the stipulated compensation set forth in Article 11 and any compensation that may arise pursuant to Article 9 of the Agreement.
- b. Architect advances any funds to Owner, Contractor and/or any subcontractor; and/or Contractor and/or any subcontractor advance any funds to Architect.
- c. Architect has any financial interest in Owner, Contractor and/or any subcontractor; or Owner, Contractor and/or any subcontractor has any financial interest in Architect.
- d. Any officer, director, stockholder, partner, manager or member of Architect has any financial interest in Owner, Contractor and/or any subcontractor; or any officer, director, stockholder, partner, manager or member of Owner, Contractor and/or any subcontractor has any financial interest in Architect.
- e. Any officer, director, stockholder, partner, manager or member of Architect is also an officer, director, stockholder, partner, manager or member of Owner, Contractor, and/or any subcontractor.
- f. Owner, Contractor and/or any subcontractor, or any officer, director, stockholder, partner, manager or member of Owner, Contractor and/or subcontractor provides any of the required architectural services or, while not directly providing an architectural service, acts as a consultant to Architect.
- g. Any family relationships exist between the officers, directors, stockholders, partners, managers or members of Architect and officers, directors, stockholders, partners, managers or members of Owner, Contractor, and/or any subcontractor that could cause or result in control of or influence over prices paid to Architect or could result in control of or influence over performance by Architect.
- h. Any side deal, agreement, contract or undertaking, that is inconsistent with related requirements for the relationship between Owner and Architect as stipulated in the closing documents, except as approved by HUD.

12. All identities of interest known to exist between the Architect designing the Project and Owner, Contractor and/or any subcontractor are listed herein. The Architect designing the Project and Owner shall each inform HUD in writing within 5 working days of its first knowledge of any identity of interest that develops after execution of this

Agreement. Upon the discovery of an undisclosed identity of interest, or any identity of interest prohibited under paragraph 11, HUD may require the termination of this Agreement in accordance with paragraph 10, above.

List All Identities of Interest:

13. The funds for this Project, including Architect's funds under this Agreement, will be provided, as the case may be, from the proceeds of a Loan from a Lender who in turn obtained a commitment for mortgage insurance from HUD, in accordance with the National Housing Act, as amended, or from a capital advance from the US Treasury pursuant to Section 202 of the Housing Act of 1959 or Section 811 of the Cranston-Gonzalez National Affordable Housing Act. Said Lender, pursuant to the terms of a Building Loan Agreement, or said US Treasury, pursuant to a Capital Advance Agreement, in accordance with HUD's rules and regulations, will agree to advance the proceeds of the Loan or capital advance to Owner for completion of the work, but only to the extent that charges accrued and only to the extent and for the purposes specified in the Building Loan Agreement or Capital Advance Agreement. However, neither the Security Instrument or capital advance, nor the Building Loan Agreement or Capital Advance Agreement, provide funds for Reimbursable Expenses pursuant to Section 11.5 of the Agreement, Termination Expenses pursuant to Section 9.7 of the Agreement, or Additional Service Compensation pursuant to Section 11.2 of the Agreement. Although Architect may agree to provide a greater degree of services for additional compensation, require compensation for reimbursable expenses or termination expenses, or require basic compensation in excess of that provided by the Building Loan Agreement or Capital Advance Agreement for such services, the obligation to compensate Architect for the greater degree of services or the aforesaid expenses shall not be enforceable against Owner, Lender, US Treasury, HUD or the Project; provided, however, that any entity or individual other than Owner may agree to be responsible to Architect for payment thereof and, in such case, shall be identified below.

Provider of additional payment pursuant to paragraph 13 of this Amendment, if any.

14. In the event of any dispute that is not resolved through mediation in accordance with section 8.2 of the Agreement, the Owner and Architect (and any successors of either) each agree that the method of binding dispute resolution shall be litigation in a court of competent jurisdiction. The checkboxes under Section 8.2.4, reading

“Arbitration pursuant to Section 8.3 of this Agreement” and “Other: (*Specify*)” are hereby deleted in their entirety; Section 8.3 is also deleted in its entirety. **[THE “ARBITRATION” AND “OTHER” CHECKBOXES, IN ADDITION TO SECTION 8.3, MUST BE PHYSICALLY STRICKEN FROM THE AGREEMENT].**

15. The Owner and Architect (and any successors of either) further agree that if for any reason HUD becomes a party to a dispute arising from this Agreement, HUD shall not be bound in any manner to binding arbitration; nor shall HUD be bound by any other means of binding dispute resolution, other than litigation in a court of competent jurisdiction.

Executed as of the _____ day of _____, 2____.

OWNER:

ARCHITECT:

By _____

By _____

Name and Title

Name and Title

[Remainder of this page intentionally left blank.]

CERTIFICATION

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.