Attachment 11

MEMORANDUM OF UNDERSTANDING

Between

the Department of Housing and Urban Development

and

the Mississippi Home Corporation

INTRODUCTION

WHEREAS, the U.S. Department of Housing and Urban Development hereinafter referred to as "HUD" acting by and through the Federal Housing Administration hereinafter referred to as "FHA" and the Mississippi Home Corporation (MHC) hereinafter referred to as "The Agency," wish to enter into the Memorandum of Understanding (MOU) regarding the Subsidy Layering Review of the sources and uses of funds in developments receiving housing tax credits and HUD Housing Assistance. (HUD Housing Assistance refers to those programs administered by FHA or the Office of Housing.)

WHEREAS, Section 102(d) of the Housing and Community Development Reform Act of 1989 requires the Secretary of HUD to limit assistance granted to a project to:

"*…not be more than is necessary to provide affordable housing after taking account …[Other Government Assistance]*". (A copy of section 102 of the Housing and Community Development Reform Act of 1989 is attached as Exhibit A.)

WHEREAS, Section 911 of the Housing and Community Development Act of 1992 provides that:

The requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 may be satisfied in connection with a project receiving assistance under a program that is within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing. (A copy of section 911 of the Housing and Community Development Act of 1992 is attached as Exhibit B).

WHEREAS, section 42 of the Internal Revenue Code authorizes allocations of Housing Tax Credits (HTC) to be administered by State or local housing credit agencies to encourage the development of housing for low to moderate income tenants.

WHEREAS, section 42 of the Internal Revenue Code requires The Agency to ensure that *"The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period."*

WHEREAS, The Agency allocates housing credits pursuant to a qualified allocation plan which may be revised from time-to-time in accordance with the priorities of the State.

THEREFORE, HUD and The Agency, in acknowledgement of their complementary goals, agrees to cooperate in their efforts to assure that only the assistance necessary to provide affordable housing is provided to a development receiving Housing Tax Credits and HUD Housing assistance.

BOTH PARTIES THEREFORE AGREE AS FOLLOWS:

(a) Subsidy layering analyses will be performed whenever applicant disclosure is required by Section 102(b) and (c) of the Reform Act and prior to issuance of form IRS-8609, indicating the amount of tax credits to be awarded.

(b) HUD and The Agency will share information on development costs for all developments financed with a combination of housing tax credits and HUD Housing assistance.

(c) HUD and The Agency will use the following fee norms which HUD and The Agency have established for subsidy layering analysis purposes:

(1) Builder's Profit: Six percent (6%) of Construction Costs

(2) General Overhead: Two percent (2%) of the Construction Costs Amount

(3) General Requirements: Six percent (6%) of the Construction Costs

(4) Developer's Fee: A base fee of fifteen percent (15%) of the Construction Costs plus builder's profit

(d) The above fee norms will be used in the Agency's analysis of the amount of assistance that is necessary for a development. As allowed by Section 911, fees may exceed the norms when justified by special circumstances. The percentage allowances above for Builder's Profit, General Overhead and General Requirements should not exceed 14% of the construction contract unless otherwise provided for in the State's Qualified Allocation Plan pertaining to the year in which the tax credits will be allocated.

(e) HUD and The Agency agree to the definitions and formulas for the determination of profits, costs and amounts of assistance in the qualified allocation plan for the State, which current year qualified allocation plan is attached to this MOU as Exhibit C.

(f) In cases where the results of The Agency analysis indicate that there will be excess assistance, The Agency will reduce the amount of housing tax credits to eliminate the excess as required by Section 42 of the IRS Code.

(g) The Agency and HUD understand that neither The Agency nor HUD certifies the accuracy of the tax credit applicant's eligibility or certifies to the applicant's compliance with Section 42 of the Internal Revenue Code. The Agency understands that the owner certifies the information to HUD and to The Agency as being true and correct representations.

(h) The Agency and HUD understand that, unless required by law, the general information shared under this MOU is for internal analysis and will not be

disclosed to other than the appropriate HUD and The Agency employees. Further, The Agency and HUD understand that, specific information on a proposal may be shared with the applicant and other providers of funds on the respective proposals as appropriate.

(i) Any modifications to the conditions of this agreement must be reviewed and accepted by both HUD and The Agency. Any revision to this agreement will be added as an amendment.

(j) As provided for by Section 911(c) of the Housing and Community Development Act of 1992, if HUD determines that a housing credit agency has failed to comply with the guidelines for subsidy layering review, the authority to perform the subsidy layering analysis may be withdrawn.

(k) If The Agency determines that HUD has failed to comply with the guidelines for subsidy layering review, in a timely manner, so as to delay the issuance by The Agency of IRS Form 8609 The Agency may withdraw the authority to perform subsidy layering analysis.

HUD AGREES:

To provide to The Agency information on tax credit developments considered for HUD assistance as follows:

(1) a copy of any notification of insurance commitment or subsidy contract issued to applicants;

(2) a copy of any Cost Certification and/or cost analysis provided to, or prepared by HUD.

(3) The results of any analyses on necessary assistance prepared by HUD to the applicant and The Agency.

AGENCY AGREES:

(a) To inform any applicants seeking a combination of both Tax Credits and HUD Housing assistance that the MOU will be applied to the underwriting of the Tax Credit application. A copy of the MOU may be provided to applicants for their information in The Agency Qualified Allocation Plan.

(b) To maintain the following information:

(1) The list of tax credit requests received from applicants that indicate they are seeking a combination of Tax Credits and HUD Housing Assistance.

(2) For each request a copy of the Tax Credit Application with the development cost breakdown used to estimate the amount of tax credits for which the developer would be eligible;

(c) To provide to HUD the following information for developments receiving both Tax Credits and HUD Housing Assistance:

(1) A copy of the applicant's final disclosure(s) of sources and uses of funds as provided to The Agency;

(2) Notification that the development is complete.

ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: Paula B. Carruth Date: 9/17/01

Name: PAULA B. CARRUTH

Title: HUD/Program Center Director

HOUSING FINANCE AGENCY

By: Dianne Bolen Date: 8/30/01

Name: DIANNE BOLEN

Title: Executive Director