

**RIDER TO REGULATORY AGREEMENT MULTIFAMILY HOUSING PROJECTS
HUD-92466 (Section ___)
Owner**

THIS RIDER TO REGULATORY AGREEMENT- MULTIFAMILY HOUSING PROJECTS (“Rider”) is by and between _____, a _____ (the "Owner"), and the SECRETARY OF HOUSING AND URBAN DEVELOPMENT (the "Secretary" or “HUD”).

RECITALS:

WHEREAS, Owner owns the fee interest in certain tracts or parcels of land located in the _____, _____ and more particularly identified on Exhibit A attached hereto and made a part hereof (the “Property”), including the improvements now existing and/or hereafter rehabilitated or constructed located thereon (collectively, the “Improvements,” which together with the Property, sometimes collectively referred to herein as the “Mortgaged Property”); and

WHEREAS, the Owner intends to rehabilitate certain Improvements in a manner that qualifies for federal and state historic rehabilitation tax credits (collectively, “Historic Tax Credits”), and also utilize New Markets Tax Credits (“NMTC”), to facilitate the planned rehabilitation of and construction on the Mortgaged Property (the “Project”); and

WHEREAS, upon completion, the Project will consist of _____ (the “Multifamily Portion”), _____ (“Office Portion”), _____ (“Retail Portion,”), and _____ (the “Parking Garage, which together with the Retail Portion and Office Portion are sometimes collectively referred to as the “Commercial Portion”);

WHEREAS, to maximize the benefits of the Historic Tax Credits and NMTC, the Owner has requested that HUD approve, for mortgage insurance purposes, a transaction (the “Transaction”) that will include Owner entering into a lease of the Mortgaged Property (the “Master Lease”) with _____, a _____ (“Master Tenant”), and further allow the Master Tenant to sublease the Commercial Portion (“Master Commercial Sublease”) to _____, a _____ (the “Commercial Tenant”) and, (ii) the Multifamily Portion (the “Master Residential Sublease” and, together with the Master Commercial Sublease, the “Sublease(s)”) to _____, a _____ (the “Residential Tenant”); and

WHEREAS, to finance the Project the Owner intends to utilize, among other sources, the proceeds from a _____ (\$ _____) loan to be insured under section ___ of the National Housing Act (“FHA-Insured Loan”), and Owner, Master Tenant, Residential Tenant and Commercial Tenant have each agreed to execute a separate HUD prescribed regulatory agreement (respectively, a “Regulatory Agreement”), with a rider attached to provide HUD with additional protection now and

as reasonably may be deemed necessary from time-to-time in the future by HUD, with respect to the FHA-Insured Loan, the Transaction, and the operation of the Mortgaged Property..

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals/Definitions. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

2. Definitions/Applicability.

- (a) Owner is executing this Rider to amend and supplement the Regulatory Agreement (the Regulatory Agreement and this Rider are collectively referred to herein as the “Amended Regulatory Agreement”).
- (b) Capitalized terms defined herein are for the purpose of convenience with respect to this Rider, and do not change or otherwise affect terms defined or used in the Regulatory Agreement.

3. Regulatory Agreements with Master Tenant, Residential Tenant and Commercial Tenant.

- (a) Contemporaneous with the execution of the Amended Regulatory Agreement by Owner and HUD, the Master Tenant, Residential Tenant and Commercial Tenant are each executing a Regulatory Agreement with an amendatory rider attached thereto (the “Tenant Regulatory Agreement(s)”). Owner acknowledges and consents to the terms and condition of each Tenant Regulatory Agreement, and agrees that each Tenant Regulatory Agreement shall be incorporated by reference into the respective Master Lease, Master Residential Sublease or Master Commercial Sublease.
- (b) The undertakings and obligations of Owner under the Amended Regulatory Agreement are not relieved or amended by virtue of any undertaking and obligation of Master Tenant, Residential Tenant or Commercial Tenant under their respective Tenant Regulatory Agreement, or any other agreement related directly or indirectly to the Transaction, including, without limitation, the Master Lease, the Master Residential Sublease and the Commercial Sublease.
- (c) Without limiting the above, Owner acknowledges that a Default under and as defined in a Tenant Regulatory Agreement will be an Event of Default, as defined in and under the Master Lease, Master Residential

Sublease or Master Commercial Sublease, with remedies available to Owner, Master Tenant, the FHA-Insured Loan mortgagee (the "Mortgagee") and/or HUD, as a result of such Default and Event of Default. In addition to any rights and remedies available to HUD and/or the Mortgagee, Owner agrees to immediately terminate the Master Lease, and pursue all available rights and remedies arising as a result of an Event of Default if an Event of Default occurs under the Master Lease.

- (d) Owner acknowledges and consents to HUD's right under each Tenant Regulatory Agreement, upon notification by HUD of the issuance of a notice of Default under the Amended Regulatory Agreement, or under any other document that is executed to evidence, secure or otherwise executed in connection with the FHA-Insured Loan, to require the payment to HUD or Mortgagee, as directed by HUD, of all payments otherwise due Owner or Master Tenant, under the Master Lease, Master Residential Sublease and Commercial Sublease, and to terminate the Master Lease, Master Residential Sublease and Master Commercial Sublease, as Owner's assignee.

4. Master Lease, Master Residential Sublease, Master Commercial Sublease and Further Conveyances.

- (a) Notwithstanding the prohibition contained in paragraph 6(a) of the Regulatory Agreement against the conveyance or transfer of any interest in any of the Mortgaged Property, HUD recognizes the Master Lease, Master Residential Sublease and Master Commercial Sublease, and that Master Tenant, Residential Tenant and Commercial Tenant will be subleasing to (sub)subtenants individual apartments in the Multifamily Portion or space in the Commercial Portion. HUD approves such (sub)subleasing, provided it is accomplished in a commercially reasonable and practical manner.
- (b) The Master Lease, Master Residential Sublease and Master Commercial Sublease are and shall remain fully subordinate to the FHA-Insured Loan and to the documents that are executed to evidence, secure or otherwise executed in connection with the FHA-Insured Loan, including without limitation the estate and rights created under the Master Lease, Master Residential Sublease and Master Commercial Sublease.
- (c) Owner agrees that the Master Lease shall not be modified or amended, without the prior written consent of HUD. Owner represents and warrants that the rental income to be received by Owner under the

Master Lease shall be sufficient at all times to service the FHA-Insured Loan and pay all HUD required payments for escrows and reserves.

5. Surplus Cash/Sustaining Performance/Developers Fee.

- (a) Without limiting any provision of the Amended Regulatory Agreement, Owner specifically acknowledges and agrees that HUD requires the Owner, Master Tenant, Residential Tenant and Commercial Tenant to conform to and be bound by the limitations and controls with respect to Distribution(s) and Surplus Cash contained in their respective Regulatory Agreement, as if the Master Lease, Master Residential Sublease and Master Commercial Sublease do not exist. HUD will determine Surplus Cash by consolidating all income derived from the Mortgaged Property and then determining and excluding therefrom the reasonable expenses incident to the operation and maintenance of the Mortgaged Property, with the operation and maintenance expenses governed by HUD regulations, handbooks, guides, directives and FASS-MF system guides. The cost of oversight by tax credit agencies, including the asset management fee, are entity expenses and may not be deemed to be an expense of the Mortgaged Property.
- (b) Notwithstanding anything to the contrary contained in the Amended Regulatory Agreement, neither Owner nor any other party may make any distribution of Surplus Cash under the Amended Regulatory Agreement, the Owner's Regulatory Agreement, or a Tenant Regulatory Agreement until "Sustaining Performance" has been achieved. Sustaining Performance shall be deemed to have been achieved when (i) construction of the Project is complete and HUD has reviewed and reconciled, to its reasonable satisfaction, the cost certification audit with an audit of the Project's sources and uses of all funds, including the proceeds from the FHA-Insured Loan, and (ii) for a period of two consecutive operating periods (full fiscal years, the "Performance Period") (A) no late payments or default has occurred under the FHA-Insured Loan, (B) HUD has received from Owner, Master Tenant, Residential Tenant and Commercial Tenant monthly accounting reports in form acceptable to HUD detailing the operation and maintenance of the Mortgaged Property, (C) annual financial reports have been filed by the Owner, Master Tenant, Residential Tenant, and the Commercial Tenant before, but not later than the date required under each Regulatory Agreement, (D) the Mortgaged Property equals or exceeds HUD's performance benchmarks for Reserves per Unit (\$800), Occupancy Rate (95%), Quick Ratio (1.6, and Debt Service Coverage Ratio (1.10), as determined by HUD

within thirty (30) days after receipt of all annual financial reports, (E) the HUD REAC PASS score is no less than 85 with the first inspection to occur approximately 24 months after final endorsement of the HUD Insured Mortgage.

(c) Notwithstanding anything to the contrary contained in the Development Agreement between Owner and _____, the Developer Fee to be paid thereunder shall not be paid until Sustaining Performance has been achieved.

6. Further Assurances. Owner and HUD each agree to execute and deliver all additional instruments and/or documents reasonably required by either party to this the Amended Regulatory Agreement to further evidence or confirm the intent of the Amended Regulatory Agreement.

7. Headings. The headings or titles to the sections of this Rider are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provisions hereof.

Owner

By: _____
Name: _____
Title: _____
Date: _____

Secretary of Housing
and Urban Development

By: _____
Authorized Agent
Date: _____

[ADD ACKNOWLEDGMENTS FOR RECORDING PURPOSES]