

**U.S. Department of Housing and Urban Development
Regulatory Agreement – Rider 1
For Multifamily Projects (Section ___)**

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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 permit, with respect to an application 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");

WHEREAS, the Owner has further requested that HUD allow the Master Tenant to sublease (i) 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) Except as otherwise provided, 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, 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 or 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 uncured default under a Tenant Regulatory Agreement will be an incurable default under the Master Lease, Master Residential Sublease or Master Commercial Sublease, as applicable, with remedies available to Owner, Master Tenant, the FHA-Insured Loan mortgagee (the "Mortgagee") and/or HUD, as a result of such default(s). 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 incurable default 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/or Master Commercial Sublease.

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, including without limitation the estate(s) and rights created thereunder, 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.
- (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. Operating Deficit Escrows.

- (a)** Two initial operating deficit escrows (“IOD(s)”) are being established contemporaneously with the execution of this Amended Regulatory Agreement, pursuant to terms and conditions contained in the Firm Commitment for mortgage insurance, one for the Multifamily Portion and another for the Commercial Portion of the Mortgaged Property. After the commencement of amortization of the FHA-Insured Loan, subject to HUD guidelines, funds from a respective IOD may be used to meet deficits in project income attributable to the portion of the Mortgaged Property covered by that IOD, to satisfy the debt service and operating expense obligations allocable to that portion of the Mortgaged Property.
- (b)** An IOD will be maintained for the longer of 24 months after final endorsement or three (3) months after the income from the applicable portion of the Mortgaged Property is sufficient to meet all of its allocated debt service obligations and operating expenses. The Owner will be entitled to receive funds that remain in an IOD upon written request to HUD and (i) after HUD’s receipt and satisfactory review of certified operating statements prorated between Residential Portion and Commercial Portion that evidence that the conditions for the release of the IOD have been satisfied, and (ii) provided no default exists under the FHA-Insured Loan, or will exist thereunder with the giving of notice or passage of time, or both, and the Mortgaged Property has received a score of 60 or above on its most recent REAC PASS inspection. In the event that the Mortgaged Property has not achieved a 60 or above, but the IOD would

otherwise be released, the funds remaining in that IOD will be transferred to the reserve for replacement account for the Mortgaged Property and used to address the physical needs of the Mortgaged Property. Subject to the terms and conditions of this Rider, the Owner hereby grants to the Mortgagee a security interest in the IODs as additional security for the repayment of the FHA-Insured Loan.

6. Surplus Cash. 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. Surplus Cash will be determined as if the Mortgaged Property is owned and operated by one single purpose entity, by consolidating all income derived from the Mortgaged Property by the Owner, Master Tenant, Commercial Tenant and Residential Tenant (collectively, "All Parties"),

(a) and, then determining and excluding therefrom the reasonable expenses incident to the operation and maintenance of the Mortgaged Property, the expenditure and accounting of which shall be governed by HUD regulations, handbooks, guides, directives and the FASS-MF system guides. The cost of oversight by tax credit agencies, including asset management fee, are entity expenses and may not be deemed to be an expense of the Mortgaged Property.

(b) Distributions of Surplus Cash are permitted subject to the full compliance by All Parties (i) of each party's undertakings and obligations under their respective Regulatory Agreement, as amended, and (ii) with all other applicable statutory and regulatory provisions and obligations to and/or contracts with HUD, including applicable

(c) When available as a Distribution, Surplus Cash may be shared among All Parties in the amounts and manner determined by such parties.

7. 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.

8. 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]