

**Rider/Amendment to  
Restrictive Covenants -  
Multifamily**

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

OMB Approval No.  
(Exp. //)

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**{Use as a “Rider” when the Restrictive Covenants are first executed and recorded with a new insured multifamily loan closing; use as an “Amendment” for existing Restrictive Covenants that are already recorded. Use Option 1 of the Recitals and Section 4 when the lien of the Security Instrument is superior to the Restrictive Covenants; use Option 2 of the Recitals and Section 4 when the Restrictive Covenants are superior to the lien of Security Instrument consistent with Program Obligations (requires prior written HUD approval consistent with Program Obligations); strikethrough the option not used.}**

Project Name: \_\_\_\_\_  
HUD Project No: \_\_\_\_\_

This [RIDER] [AMENDMENT] TO RESTRICTIVE COVENANTS [“Rider”]  
[“Amendment”] is made as of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_  
[“Borrower”] and \_\_\_\_\_ (“Agency”).

**{Option 1} [Recitals**

**WHEREAS**, Borrower has obtained financing from \_\_\_\_\_  
[“Lender”] for the benefit of the project known as \_\_\_\_\_ (“Project”),  
which loan is secured by a [name of security instrument] (“Security Instrument”) dated  
as of \_\_\_\_\_, and recorded in the [recorder’s office or other land records office]  
of \_\_\_\_\_ County, \_\_\_\_\_ (“Records”) [on \_\_\_\_\_ as [Document]  
[File][other-insert appropriate term] Number \_\_\_\_\_] [contemporaneously  
herewith], and is insured by the United States Department of Housing and Urban  
Development (“HUD”), covering the property described in Exhibit A attached hereto;

**WHEREAS**, Borrower [is receiving][has received] [a loan] [an allocation of Low  
Income Housing Tax Credits] [tax-exempt bond financing] [other- describe] from the  
Agency, which Agency [is requiring] [has required] certain restrictions be recorded  
against the Project [\_\_\_\_\_ Insert name of restrictive covenants document]  
[“Restrictive Covenants”] in the Records];

**WHEREAS**, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Mortgage Loan Documents; and

**WHEREAS**, the Agency has agreed to subordinate the Restrictive Covenants to the lien, covenants, and enforcement of the Mortgage Loan Documents in accordance with the terms of this [Rider] [Amendment].]

**{Option 2} [Recitals**

**WHEREAS**, Borrower has obtained financing from \_\_\_\_\_ ("Lender") for the benefit of the project known as \_\_\_\_\_ ("Project"), which loan is secured by a [name of security instrument] ("**Security Instrument**") dated as of \_\_\_\_\_, and recorded in the [recorder's office or other land records office] of \_\_\_\_\_ County, \_\_\_\_\_ ("**Records**") on \_\_\_\_\_ as [Document] [File][other-insert appropriate term] \_\_\_\_\_, and is insured by the United States Department of Housing and Urban Development ("**HUD**"), covering the property described in Exhibit A attached hereto;

[**WHEREAS**, Borrower [is receiving] [has received] [*HOME funds*] [*describe other HOME-like program or other financing that has received prior written HUD approval to have use restrictions senior to the lien of the Security Instrument*] from the Agency, which Agency [is requiring] [has required] certain restrictions be recorded against the Project [\_\_\_\_\_*Insert name of restrictive covenants document*] ("**Restrictive Covenants**") in the Records]; and

**WHEREAS**, HUD requires as a condition of its insuring Lender's financing to the Project, that the Agency agree to the terms in this [Rider] [Amendment]; and

**WHEREAS**, the Agency has agreed to such terms of this [Rider] [Amendment].]

**NOW, THEREFORE**, in consideration of the foregoing and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. In addition to the terms defined in the introduction and Recitals to this [Rider] [Amendment], for purposes of this [Rider][Amendment] the following terms have the meanings set forth below:
  - a) "**Code**" means the Internal Revenue Code of 1986, as amended.
  - b) "**HUD Regulatory Agreement**" means the Regulatory Agreement for Multifamily Projects (HUD-92466M) entered into between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.
  - c) "**HUD Requirements**" means the Mortgage Loan Documents and Program Obligations.

- d) **“Mortgage Loan”** means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.
  - e) **“Mortgage Loan Documents”** means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.
  - f) **“National Housing Act”** means the National Housing Act, as amended.
  - g) **“Program Obligations”** has the meaning specified in the Security Instrument.
  - h) **“Residual Receipts”** has the meaning specified in the HUD Regulatory Agreement.
  - i) **“Surplus Cash”** has the meaning specified in the HUD Regulatory Agreement.
2. In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this [Rider] [Amendment], the provision contained in this [Rider] [Amendment] shall govern and be controlling in all respects as set forth more fully herein.
  3. Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the related regulations. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.
  4. **{Option 1}** [Notwithstanding anything in the Restrictive Covenants to the contrary, *[use for tax credit transactions only: except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable,]* the provisions hereof are expressly subordinate to the HUD Requirements. *[Use for tax credit transactions only: In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in]* In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, *[use for tax credit transactions only: with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.]*
  4. **{Option 2}** [Intentionally Omitted.]

5. Borrower and the Agency acknowledge that Borrower's failure to comply with the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.
6. [Except for the Agency's reporting requirement,] in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the Project other than a claim against:
  - a) available Surplus Cash, if the Borrower is not subject to Residual Receipts restrictions;
  - b) available Residual Receipts authorized for release by HUD, if the Borrower is subject to Residual Receipts restrictions[.] ;or
  - c) a HUD-approved collateral assignment of any HAP contract.
7. For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical, without HUD's prior written consent.
8. Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available Surplus Cash or Residual Receipts of the Borrower.
9. [*Use only with Low-Income Housing Tax Credits:* Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine

that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants. [*Use only with tax-exempt bonds:* No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.]

{The following statement must be included above each party’s signature and appear on the same page as the signature.}

The signatory below certifies that all of the information provided in this [Rider] [Amendment] and in any accompanying documentation is true, accurate, and complete, has been made, presented, and delivered for the purpose of influencing an official action of HUD, and may be relied upon by HUD as a true statement of the facts contained therein. The signatory acknowledges that the submission of any false, fictitious, or fraudulent statement, representation, or certification in this [Rider] [Amendment] or on any accompanying documents may result in criminal, civil, and/or administrative sanctions, including fines, penalties, and/or imprisonment under applicable federal law.

**IN WITNESS WHEREOF**, the parties hereto have executed this [Rider] [Amendment] as of the day and year first written above.

BORROWER:

AGENCY:

By:

By:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

[Jurats to be added]

[Attach Exhibit A – Legal Description]