



Loan No. \_\_\_\_\_

**RIDER TO LENDER'S SECURITY AGREEMENT**  
For Rental Projects With Section 811 or Section 202 Funding

For value received, the undersigned all agree that the following provisions shall be incorporated into that certain Security Agreement ("Security Agreement") of even date executed by

\_\_\_\_\_ ("Borrower"), in favor of \_\_\_\_\_ ("Lender" or "Beneficiary"), as Beneficiary, to which Security Agreement this Rider is attached, as well as the promissory note which said Security Agreement secures (the "Note"). In addition, and to the extent that this Rider, and, consequently the Security Agreement, affect the rights and responsibilities of the United States Department of Housing and Urban Development ("HUD") under the HUD Section 202 Supportive Housing for the Elderly program (12 U.S.C. § 1701q) ("Section 202 program"), or the HUD Section 811 Supportive Housing for Persons with Disabilities program (42 U.S.C. § 8013) ("Section 811 program"), HUD agrees to have a duly authorized official approve this document by execution on the signature line set forth below. To the extent that the provisions of this Rider are inconsistent with the provisions of the Note, Security Agreement, or any other HUD capital advance documentation, including but not limited to Paragraph 21 of the HUD Capital Advance Mixed Finance Program Regulatory Agreement ("HUD Regulatory Agreement"), required to be executed pursuant to the HUD Section 202 or Section 811 programs, the provisions of this Rider shall prevail and shall supersede any such inconsistent provisions of the Note, Security Agreement, or HUD capital advance documentation. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Security Agreement unless otherwise noted.

1. Transfer of the Property or a Beneficial Interest in Borrower. With respect to Paragraph VI of this Security Agreement, such Paragraph is amended as follows:

a. Excluded from the provisions of this Paragraph shall be a transfer to HUD or to a transferee of HUD, provided that in the event of such transfer by Borrower (other than in the event of foreclosure), HUD or such transferee notifies, Lender of its intent to acquire Borrower's interest in the subject Property, and HUD or such transferee expressly agrees to assume Borrower's obligations under the Loan documents, including compliance with the Affordable Housing Program ("AHP") Implementation Plan, AHP policies, procedures, guidelines, and instructions, and the Federal Housing Finance Agency's Affordable Housing Program Regulations (12 CFR Part 1291), as may be amended from time to time (the "AHP Regulations," and collectively, the "AHP Covenants").

b. This Security Agreement is subordinate to a first Mortgage made by Borrower in favor of the Secretary of HUD ("Secretary") to be recorded securing a Capital Advance ("HUD Capital Advance") made by the Secretary pursuant to the Section 202 program, or the Section 811 program ("HUD Mortgage"), and to a HUD Regulatory Agreement and HUD Capital Advance Program Use Agreement ("HUD Use Agreement") between Borrower and the Secretary, and \_\_\_\_\_ with respect to the Property referred to herein.

c. During the period the HUD Mortgage, HUD Regulatory Agreement and HUD Use Agreement are in effect, except as otherwise provided in this Rider, no default under this Security Agreement may be declared without prior written approval of the Secretary, as applicable including, but not limited to, Lender's rights in the event of Borrower's default set forth in Paragraph VI of this Security Agreement (which approval shall not be unreasonably withheld).

d. In the event that during the period the HUD Mortgage, HUD Regulatory Agreement and HUD Use Agreement are in effect, the Secretary acquires title to the Property by foreclosure, the lien of this Security Agreement shall automatically terminate.

e. In the event Borrower defaults under the HUD Mortgage, HUD Regulatory Agreement or HUD Use Agreement, HUD shall give written notice thereof to Lender at the following address:

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The notice shall specify the nature of the violation and the agreement violated.

f. This Security Agreement shall not be modified during the period the HUD Mortgage, HUD Regulatory Agreement, HUD Use Agreement, or other subordinate financing sources, including the Federal Home Loan Bank of New York, are in effect without the prior written approval of the Secretary, the other subordinate sources and the Federal Home Loan Bank of New York, as applicable. The other subordinate financing sources include the following: \_\_\_\_\_

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g. During the period the HUD Mortgage, HUD Regulatory Agreement and HUD Use Agreement are in effect, in the event of any conflict between any provisions of this Security Agreement and 12 U.S.C. § 1701q if a Section 202 project or 42 U.S.C. § 8013 if a Section 811 project, HUD regulations, or the HUD Regulatory Agreement, this Security Agreement shall be deemed amended to comply with said statute, HUD regulations and HUD Regulatory Agreement, except as follows:

(i) Notwithstanding any term or condition to the contrary in this Rider, neither Lender nor Trustee shall declare a default hereunder, or foreclose this Security Agreement, either by judicial action or under the power of sale herein granted, without the prior written approval of the Secretary (which approval shall not be unreasonably withheld) for so long as the HUD Capital Advance evidenced by a first Mortgage remains outstanding; *provided however*, that in the event the Loan secured hereby is not used in compliance with the approved AHP General Fund application (as submitted to and approved by the FHLBNY and, if applicable, subsequently modified, "AHP Application" or the AHP Covenants, due to an action or omission of Borrower, which Borrower has failed to cure, then Lender may, after ten (10) days prior written notice to HUD and Borrower declare all amounts due hereunder due and payable). In such event and pursuant to Paragraph 5(c) of the HUD Regulatory Agreement by and between HUD and Borrower, dated \_\_\_\_\_. HUD shall approve payments to be made by Borrower to Lender from Residual Receipts (as such term is defined in Paragraph 17(g) of the HUD Regulatory Agreement) of the Project, if and to the extent Residual Receipts are available as determined by the HUD Multifamily Hub or Multifamily Program Center Director. As used in Paragraph 17(g)(1)(ii) of the HUD Regulatory Agreement, the term "obligations" shall not include any non-HUD sources of financing.

(ii) Borrower shall comply with the AHP Covenants and all other requirements of the Federal Home Loan Bank of New York and the Federal Housing Finance Agency relating to the AHP, and shall also comply with the requirements of HUD with respect to the development and operation of the Project. Notwithstanding Borrower's compliance with the requirements of HUD, in the event that Borrower's acts or omissions result in noncompliance with the AHP Application or the AHP Covenants, then Borrower shall, to the extent possible, eliminate the circumstances of noncompliance by requesting a modification of the terms of the AHP Application pursuant to 12 C.F.R. § 1291.29. If the circumstances of any noncompliance by Borrower with the AHP Application or the AHP Covenants cannot be, or are not, eliminated by a modification or cured within a reasonable period of time, then the provisions hereof, including notice of noncompliance and repayment of the Loan secured by this Security Agreement, shall apply.

All capitalized terms used in this Paragraph 1 and not defined in this Rider or the Note shall be as defined in the Federal Home Loan Bank of New York Affordable Housing Program Direct Subsidy Commitment by and among the Federal Home Loan Bank of New York and Lender dated \_\_\_\_\_, the Federal Home Loan Bank of New York Affordable Housing Program Direct Subsidy Agreement and Memorandum of Understanding by and among the Federal Home Loan Bank of New York and Lender dated \_\_\_\_\_, and the Memorandum of Understanding by and among the Federal Home Loan Bank of New York and Borrower dated \_\_\_\_\_.

h. Approval by the Secretary of a Transfer of Physical Assets ("TPA") of the Project referred to in the Note secured by this Security Agreement shall constitute approval of the TPA by Lender, provided that prior written notice of the TPA is given to Lender and the transferee expressly assumes all of Borrower's obligations under the Loan documents and AHP Covenants.

2. Retention Agreement. Borrower agrees as follows:

(i) The Property's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP Application for the duration of the AHP 15-year retention period ("Retention Period"), unless otherwise extended in a modification agreement due to unforeseen circumstances, commencing on the date of the completion of the Project.

(ii) Lender will be given notice of any transfer or refinancing of the Property occurring prior to the end of the Retention Period.

(iii) In the case of a sale, transfer, assignment of title or deed, or refinancing of the Project by the Borrower during the Retention Period, the full amount of the Note received by the Borrower shall be repaid to the Federal Home Loan Bank of New York, unless one of the following exceptions applies:

- a. The Project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP Application for the duration of the Retention Period; OR
- b. If authorized by the Federal Home Loan Bank of New York, in its discretion, due to the exercise of eminent domain or for the expansion of housing or services, the households are relocated to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP Application for the remainder of the Retention Period.

(iv) The income-eligibility and affordability restrictions applicable to the Project shall terminate after any foreclosure.

(v) The Federal Home Loan Bank of New York, whose mailing address is 101 Park Avenue, New York, NY 10178, and in its discretion any designee of the Federal Home Loan Bank of New York, shall be given notice of any sale, transfer, assignment of title or deed, or refinancing of the project by the Borrower occurring during the Retention Period.

IN WITNESS WHEREOF, Borrower and Lender (and HUD by indicating its approval) have executed this Rider as follows:

BORROWER

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

LENDER

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved: UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_