
 REGULATORY AGREEMENT FOR MULTIFAMILY HOUSING PROJECTS COINSURED BY HUD

Project Name: _____ Project No.: _____
 Mortgagee: _____ NP LD PM (Circle one)
 Mortgage Note: \$ _____ Dated: _____
 Mortgage Recorded: _____ Dated: _____
 County: _____ State: _____
 Book: _____ Page: _____ Date: _____

This Agreement entered into this _____ day of _____, 19____,
 between _____
 herein called "Owner") and the undersigned Mortgagee and the Mortgage's
 successors or designates (herein called "Mortgagee"). This Agreement and
 the Mortgage cover the real property described in Attachment A.

In return for the Secretary's endorsement for mortgage insurance of the
 Note identified above and to comply with the requirements of the National
 Housing Act and the regulations and administrative requirements adopted by
 the Secretary pursuant thereto, the Owner agrees to abide by the provisions
 of this Agreement. This Agreement will continue so long as the contract of
 coinsurance remains in force. The Owner agrees that this Agreement shall
 be binding on its successors, heirs or assigns. Breach of this Agreement
 may be a basis for denial of additional participation in the Secretary's
 programs. The Owner's willingness and ability to prevent or cure
 violations of this Agreement may have a bearing on the Secretary's review
 of any Owner request for additional participation in the Secretary's
 programs.

A. DEFINITIONS

1. "Default" means any violation of this Agreement.
2. "Distribution" means the withdrawal of any cash or asset of the
 project excluding outlays for:
 - a. mortgage payments;
 - b. reasonable expenses necessary for the proper operation and
 maintenance of the project; and
 - c. repayment of owner advances authorized by HUD's administrative
 procedures.

3. "Identity-of-interest" means any relationship which would give the Owner or its Management Agent control or influence over the price paid to an individual or business supplying goods and/or services to the project. Usually, the relationship would be created by the Owner or Management Agent having a financial interest in the contractor or supplier, but it could be by other means, such as a family relationship. An identity-of-interest could be construed to exist under any of the following conditions:
 - a. When the Project Owner or Management Agent or any officer, director or partner of the Project Owner or its Management Agent, has a financial interest in the contractor, subcontractor or supplier;
 - b. When the Project Owner or Management Agent or any officer, director or partner of such Project Owner or Management Agent is also an officer, director or partner of the contractor, subcontractor or supplier;
 - c. When the Project Owner or any officer, director or partner of the Project Owner has a financial interest in the Management Agent;
 - d. When the Project Owner or any officer, director or partner of the Project Owner is also an officer, director or partner of the Management Agent.
 4. "Mortgage" includes "Deed of Trust," "Uniform Commercial Code Security Instrument," and any other security for the note identified herein that is endorsed for mortgage insurance by the Secretary.
 5. "Mortgaged Property" includes all real and personal property covered by the mortgage or mortgages securing the note endorsed for insurance by the Secretary.
 6. "Note" means the note which is secured by the Mortgage and which is endorsed for mortgage insurance by the Secretary.
 7. "Project" includes the mortgaged property and all of its assets.
 8. "Secretary" refers to the Secretary of the Department of Housing and Urban Development.
 9. "Surplus Cash" means any unrestricted cash remaining after:
 - a. the payment of:
 - (1) All sums due or currently required to be paid under the terms of any mortgage or note coinsured by the Secretary;
 - (2) All amounts required to be deposited in the Reserve for Replacements; and
-

-
- (3) All obligations of the project other than the coinsured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Mortgagee; and
- b. the segregation and recording of:
- (1) An amount equal to the aggregate of all special funds required to be maintained by the project;
 - (2) An amount equal to the project's total liability for tenant security deposits.

In computing Surplus Cash as defined above, the Mortgagor must follow the administrative requirements prescribed by the Secretary.

B. OBLIGATIONS OF OWNER

The Owner agrees to do the following.

1. Establish and maintain a Reserve for Replacements to cover the cost of major replacements which are not provided for in the project's operating budget and rental schedule.
 - a. Owner has made, or agrees to make, an initial deposit of \$ _____ on _____. Thereafter, Owner agrees to make monthly deposits to the Reserve in the amount of \$ _____, unless the Mortgagee establishes a different amount accordance with the administrative requirements of the Secretary.
 - b. The Reserve for Replacements will be held by the Mortgagee or by a safe and responsible depository designated by the Mortgagee. Such Reserve shall at all times remain under the control of the Mortgagee.
 - c. Owner acknowledges that, in order to cure a default, the Mortgagee may, in accordance with the Secretary's administrative procedures, use Reserve Funds to pay amounts due under the Mortgage. If the Mortgage debt is accelerated pursuant to a default under the Mortgage, the Owner agrees that the Mortgagee may apply the balance in such Reserve to the amount due on the mortgage debt, as accelerated.
 - d. Owner agrees to analyze the adequacy of the Reserve for Replacements when and as required by the Mortgagee. If the Mortgagee determines, in accordance with the administrative requirements of the Secretary, that a higher monthly deposit is needed to ensure the future adequacy of the Reserve, Owner agrees to increase the monthly deposit as directed by the Mortgagee.

- e. Owner agrees to direct the Mortgagee to invest the Reserve for Replacements in accordance with the administrative requirements of the Secretary. All earnings received from investments of the

4566.1 REV-1
APPENDIX 33

-
- of the Reserve shall accrue to the benefit of the project. At the option of the Owner, such earnings may be deposited in either the Reserve for Replacements or in the project operating account. Amounts earned on investments are not a substitute for the regular monthly deposits required by Paragraph B.2.a. of this Agreement.
- 2. a. Make dwelling units, facilities and services of the project available to residents for rents or other fees not in excess of those approved in writing by the Mortgagee in accordance with the administrative requirements of the Secretary.
 - b. Request and implement rental increases only in accordance with the Secretary's regulations and administrative procedures.
 - c. Not permit any part of the project to be rented for transient or hotel purposes. For the duration of the regulatory agreement, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days; or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service.
 - d. Rent commercial facilities only in accordance with applicable regulations and other administrative requirements of the Secretary and upon such terms as approved by the Mortgagee.
 - e. If the Mortgagee has approved rents based on a cost approach, notify the Mortgagee when State or local government action causes a reduction in property taxes, utilities or other project expenses. If the Mortgagee determines that the reduction in those expenses is not offset by an increase in other expenses or by an increase in deposits to the Reserve for Replacements, the owner agrees to reduce rents accordingly. The Owner agrees to provide the Mortgagee sufficient information to make the determination discussed in this paragraph. The Owner agrees to reduce the rents within sixty days of the date of the Mortgagee's directive to do so.
 - f. Obtain the Mortgagee's written approval before leasing the project or any part of it for other than individual apartment units.
- 3. a. Deposit all rents and other receipts of the project in the name of the project in accounts which are fully insured as to principal by an agency of the Federal government. Project funds in excess

of those needed to meet short-term project operating expenses may be invested in accordance with the administrative requirements of the Secretary.

- b. Use project funds only for:
 - (1) payment of mortgage obligations;

-
- (2) payment of reasonable expenses necessary to the proper operation and maintenance of the project;
 - (3) distributions of surplus cash permitted by Paragraph B.4.a of this Agreement; and
 - (4) repayment of owner advances authorized by the Secretary's administrative procedures.

Project funds may not be used to liquidate liabilities related to the construction of the project, other than the mortgage, unless the Mortgagee authorizes such use.

- c. Any Owner receiving funds of the project other than through distributions permitted by Paragraph B.4.a. of this Agreement must immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any Owner receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust. At such time as the Owners shall have lost control and/or possession of the project, all funds held in trust shall be delivered to the mortgagee to the extent that the mortgage indebtedness has not been satisfied.
 - d. Deposit and maintain residents' security deposits in a trust account separate and apart from all other funds of the project. This trust account must be held in the name of the project and the balance in the account must at all times equal or exceed the project's liability for residents' security deposits. The Owner must comply with any state or local laws regarding investment of security deposits and distribution of any interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the project or the project residents.
4. a. Make, or receive and retain, distributions of cash or other assets of the project only as authorized by this Agreement.
- (1) Distributions may be paid only from surplus cash which existed as of the end of a semi-annual or annual fiscal period. The Owner must compute distributions in accordance with the Secretary's administrative requirements. The first

fiscal period's distribution may not be paid until any required cost certification has been received by the Mortgagee.

- (2) Distributions may be paid only after the end of the fiscal period in which the surplus cash is generated.
- (3) No distribution may be paid from borrowed funds, prior to completion of the project, or when payments due under the Note, Mortgage or this Agreement have not been made.

4566.1 REV-1

APPENDIX 33

If any of the conditions listed below apply, the Owner may distribute surplus cash only after obtaining the Mortgagee's written approval to do so.

- (a) the Owner has not satisfactorily responded to any Mortgagee Management Review, Physical Inspection Report, annual financial statement correspondence or any other correspondence which requires corrective action and which was received at least 45 days prior to the end of the fiscal period for which the surplus cash computation is made;
 - (b) the project has significant uncorrected physical deficiencies; or
 - (c) there is a default under this Agreement.
- b. Limit distributions in any one fiscal period to the amount specified below and calculate distributions in accordance with the administrative requirements of the Secretary.
- (1) No distributions are permitted on projects owned by non-profit entities.
 - (2) On projects owned by limited dividend entities, distributions may not exceed the lesser of surplus cash available at the end of the fiscal period or the distributions earned and unpaid as of the end of the prior fiscal period. Distributions shall be earned annually at the rate of ___% of the initial equity investment. Distributions shall be cumulative and shall be computed in accordance with the administrative requirements of the Secretary.
 - (3) On projects owned by profit-motivated entities not covered by paragraph B.4.b.(2), distributions may be paid up to the amount of surplus cash generated during the prior fiscal period and distributions shall not be cumulative.
5. a. To deposit the following amounts with the Mortgagee within sixty

days after the end of each annual or semi-annual fiscal period in which surplus cash is generated. The funds deposited pursuant to this paragraph shall be referred to as Residual Receipts. The Residual Receipts, shall at all times remain under the control of the Secretary, who shall have the power and authority to direct that the Residual Receipts or any part thereof, be used for such purposes as he/she may determine.

- (1) On projects owned by non-profit entities, all surplus cash.
- (2) On projects owned by Limited Dividend entities, any surplus cash remaining after payment of distributions authorized by Paragraph B.4. of this Agreement.

- (3) No deposit is required on projects owned by other profit-motivated entities.
- b. Use Residual Receipts only for the purposes for which the Secretary authorized the withdrawal.
 - c. Invest the Residual Receipts in accordance with the administrative requirements of the Secretary and add all earnings on such investments to the Residual Receipts Account.
6. Maintain the mortgaged property in good repair and condition and promptly complete necessary repairs and maintenance as required by the mortgagee.
 7.
 - a. Comply with the Secretary's administrative requirements regarding payment and reasonableness of management fees and allocation of management costs between the management fee and the project account.
 - b. Assure that all project expenses are reasonable in amount and necessary to the operation of the project.
 - c. Purchase goods and services from identity-of-interest individuals or companies only if the charges levied by those individuals or companies are not in excess of the costs that would be incurred in making arms-length purchases on the open market.
 - d. Exert reasonable effort to take advantage of available discounts and credit the project with all discounts, rebates or commissions received with respect to purchases, service contracts and other transactions made on behalf of the project.
 - e. Obtain contracts, materials, supplies and services, including the preparation of the annual audit, on terms most advantageous to the project and at costs not in excess of amounts ordinarily paid for such contracts, materials, supplies and services in the area in which such services are rendered or supplies and materials

furnished.

- f. Solicit oral or written cost estimates as necessary to assure compliance with the provisions of this paragraph and document the reasons for selecting other than the lowest bid. Maintain copies of such documentation and make such documentation available for inspection during normal business hours.
8. Require any purchaser to assume all of the obligations under this Agreement.
 9. Comply with the Secretary's administrative procedures for Previous Participation Clearance and Transfers of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.
-
- Page 7
- 1/84
-
- 4566.1 REV-1
APPENDIX 33
-
10. Obtain the Secretary's and the Mortgagee's written approval before:
 - a. Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project including rents and security deposits.
 - b. Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.
 11. Obtain the Mortgagee's written approval before:
 - a. Remodeling, adding to, reconstructing, or demolishing of any part of the project.
 - b. Undertaking self-management, contracting for management services or paying, or incurring any obligation to pay, fees for management services.
 - c. Paying, or incurring any obligation to pay, compensation (including wages, supervisory fees or salaries) to themselves, or to any officers, directors, stockholders, trustees, partners, beneficiaries under any trust, or to any of their nominees.
 - d. Collecting deposits, fees or charges in addition to, or in amounts in excess of, those permitted by the Secretary's administrative requirements.
 - e. Permitting the use of the dwelling accommodations for any purposes except the use which was originally intended, or permitting commercial use greater than that originally approved by the Mortgagee.
 12. Resign or withdraw from the project only after the Mortgagee has

approved a substitute Owner. Resignation or withdrawal from the project prior to the Mortgagee approving a substitute Owner shall be considered abandonment and shall place such Owner in default under this Agreement.

13. Provide for management satisfactory to the Mortgagee, execute a management agreement as required by the Mortgagee, and deliver to the Mortgagee such information and certifications regarding project management as the Secretary may require.
 - a. The Owner agrees to include in any management contract entered into on behalf of the project a provision that the Mortgagee may terminate the contract effective thirty days after the notice of the Mortgagee's or Secretary's desire to terminate is mailed or otherwise delivered to the contractor. The Owner agrees to mail such notice within seven days of receipt of the Mortgagee's or Secretary's request to do so. Owner also agrees to immediately make arrangements for providing new management satisfactory to the Mortgagee and the Secretary.

1/84

Page 8

4566.1 REV-1
APPENDIX 33

-
- b. The Owner agrees that the following clause will be included in any contract entered into with an identity-of-interest individual or business for the provision of goods or services to the project: "Upon request of the Mortgagee or (Name of Owner or Management Agent), (name of Management Agent, Contractor or Supplier) will make available to the Mortgagee, at a reasonable time and place, its records and records of identity-of-interest companies, which relate to goods and services charged to the project. Records and information will be sufficient to permit the Mortgagee to determine the services performed, the dates performed, the location, the time consumed in providing the service, the charges made for materials, and the per unit and total charges levied for said service." The Owner agrees to request such records within seven days of receipt of the Mortgagee's or HUD's request to do so.
 14. Establish and maintain the books and accounts of the mortgaged property in accordance with the requirements of the Secretary and the Mortgagee. Such books and accounts shall be kept current and in such form as to permit a speedy and effective audit. Such books and accounts shall be maintained for such periods of time as may be prescribed by the Secretary and the Mortgagee.
 15. Permit the Secretary, the Inspector General of HUD, the Comptroller General of the United States, the Mortgagee and their authorized agents to inspect the project's property, equipment, buildings, plans, offices, apparatus, and devices, books, accounting records, contracts, documents and papers during reasonable business hours.
 16.
 - a. Within 60 days following the end of each fiscal year, furnish the Mortgagee with a financial report on the project's operations

unless the Mortgagee authorizes the Owner to submit the report on a later date. The Owner agrees that the report will be prepared, signed and certified in accordance with the requirements of the Secretary and the Mortgagee.

- b. If the Owner fails to submit its annual financial report within sixty days of the due date or any other date as may be established in writing by the Mortgagee, the Owner agrees that the Mortgagee may retain a certified public accountant to prepare the report on behalf of the Owner and that the cost of such report will be a project expense. The Mortgagee may do so only after giving the Owner thirty days written notice of its intent to do so.
17. Upon request, the Owner shall furnish the Mortgagee with operating budgets, occupancy, accounting and other reports; properly certified copies of minutes of meetings of the directors, officers, stockholders, or beneficiaries of the mortgagor entity; and specific answers to questions raised from time to time by the Mortgagee relative to income, assets, liabilities, contracts, operations, actual cost of repairs and improvements, disposition of mortgage funds, conditions of the project and the status of the mortgage. The Owner

4566.1 REV-1

APPENDIX 33

shall furnish a response to the Mortgagee's management review reports, physical inspection reports and written inquiries regarding annual or monthly financial statements no later than 60 days after receipt of the Mortgagee's report or inquiries.

18. Notify the Mortgagee in writing within five days after instituting litigation seeking recovery, equitable relief, or defense to litigation, excluding litigation related to individual resident evictions. The Owner may use project funds to pay for such litigation only if the Mortgagee authorizes, or a court directs, the Owner to do so.
19.
 - a. Refrain from utilizing criteria or tenant selection practices that discriminate against any family because of the sex of the household head, or because there are children in the family, unless the project was designed primarily for occupancy by the elderly.
 - b. Comply with the provisions of Title VIII of the Civil Rights Act of 1968, as amended, and any regulations or administrative procedures issued pursuant thereto. These laws and regulations prohibit discrimination in the rental or financing of housing on the basis of race, color, national origin, religion (creed), or sex. Owner agrees to administer the project and related activities in a manner to affirmatively further fair housing. The Owner also agrees to comply with similar State and local fair housing laws and ordinances.

- c. Comply with the provisions of Executive Order 11063 on Equal Opportunity in Housing and all regulations issued pursuant thereto. This order and related regulations prohibit discrimination on the basis of race, color, religion (creed), national origin, or sex in housing and related facilities provided through Federal financial assistance.
 - d. Not discriminate on the basis of race, color, religion (creed), national origin, or sex against any employee or applicant for employment. Owner agrees to include a provision to this effect in any contract or subcontract executed for project repairs and improvements, and to comply with the provisions of Executive Order 11246 and Title 41 CFR Chapter 60, when applicable to such contracts.
20. Issue shares of capital stock or beneficial certificates of interest, as applicable, only in a number and form approved by the Mortgagee.
21. Whether or not the individuals comprising the ownership entity assume personal liability for payments due under the Note and Mortgage or for payments to the Reserve for Replacements, these individuals shall remain liable under this Agreement with respect to these matters:
- a. For funds or property of the project which come into their hands and which they are not entitled to retain; and

- b. For their own acts and deeds or acts and deeds of their authorized agents that are in violation of the provisions of this Agreement.
22. Refrain from executing any document which contains provisions that contradict or oppose the provisions of this Agreement unless the Mortgagee approves that document. If the Owner executes such a document without the prior written approval of the Mortgagee, this Agreement will be controlling as to the rights and obligations which it sets forth.
23. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- C. RIGHTS OF THE MORTGAGEE AND SECRETARY

- 1. If the Owner violates any provisions of this Agreement, the Mortgagee or Secretary may send the Owner written notice of such violation by registered or certified mail. If such violation is not corrected to the satisfaction of the Mortgagee or Secretary (whichever party issued the notice of violation) within 30 days after the date such notice is mailed or within such further time as the Mortgagee or Secretary, as applicable, establishes in writing, without further notice the Mortgagee or Secretary, as applicable, may initiate any of the following actions.

- a. With the prior written approval of the Secretary, declare the whole indebtedness due and thereupon proceed with foreclosure of the mortgage.
- b. Collect all rents and other operating receipts of the project and use such collections to pay the Owner's obligations under this Agreement and under the Note and Mortgage and the necessary expenses of maintaining and operating the project.
- c. Take possession of the project, bring any action necessary to enforce any rights of the Owner related to operation of the project, and operate the project in accordance with the terms of this Agreement until such time as it determines that the Owner is again in a position to operate the project in accordance with the terms of this Agreement, the Note and the Mortgage.
- d. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violations of this Agreement, for the appointment of a Receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, given the nature of the default and the damage resulting from the default.
- e. With the prior written approval of the Secretary, assess the Owner for the cost of reasonable attorney, audit and other fees incurred in enforcing compliance with this Agreement. The Owner agrees to

4566.1 REV-1

APPENDIX 33

pay such fees within 45 days of receipt of the Mortgagee's billing, or within such longer payment period as the Mortgagee approves.

2. The damage to the project as a result of Owner's breach of its duties and obligations under this Agreement shall include, but not limited to, those amounts specified below. Any damages collected or recovered by the Mortgagee or the Secretary shall be payable to the project account established under Paragraph B.3.a. above.
 - a. In the case of unauthorized distributions of project funds or project assets, the damages shall be the amount of the unauthorized distributions plus interest from the date the distribution was made.
 - b. In the case of failure to provide adequate management services, the damage shall be the cost to the project resulting from such failure.

- c. In the case of willful or negligent failures to maintain the project in appropriate physical condition, the damage shall be the cost of the repairs required to return the project to decent, safe, and sanitary condition.
- d. In the case of incurring costs significantly in excess of amounts ordinarily paid, the damage shall be such excess costs.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

12 U.S.C. 1715z-4 provides in part: "Whoever, as an owner of a property which is security for a mortgage (covering multifamily housing, as defined in the regulations of the Secretary) or as a stockholder... beneficial owner...trust ...or as an officer, director or agent of any such owner (1) willfully uses or authorizes the use of any part of the rents or other funds derived from the property covered by such mortgage in violation of a regulation... (2) willfully and knowingly uses or authorizes the use, while such mortgage is in default, or any part of the rents or expense...shall be fined not more than \$5,000 or imprisoned not more than three years or both."

OWNER

___/___/___ Seal _____

BY _____ ___/___/___

WITNESS

_____ BY _____ ___/___/___

_____ MORTGAGEE

BY _____ ___/___/___

ACKNOWLEDGEMENT OF MORTGAGOR

(In accordance with Form in State where property is located)

Page 13

1/84

4566.1 REV-1

APPENDIX 33

ATTACHMENT A

Project Name: _____

Project No.: _____

Provide legal description of the project.

1/84

Page 14

*U.S. GOVERNMENT PRINTING OFFICE :1988-201-923:60339