

**MBA SAMPLE COVID-19 FORBEARANCE AGREEMENT
FOR HUD-INSURED MULTIFAMILY LOANS
(4-09-20)**

[LENDER LETTERHEAD]

[Date], 2020

Borrower
Borrower Address

Re: Borrower Name: _____ (“**Borrower**”)
Project Name: _____
HUD Project No. _____ (“**Project**”)
Lender/Service Loan No. _____

Dear Borrower:

This letter agreement (“**Agreement**”) is delivered pursuant to the provisions of Section 4023 of the Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”).

[Name of Lender], and its successors and assigns (“**Lender**”) is the current owner of the above-referenced loan (“**Loan**”), which is insured by the U.S. Department of Housing and Urban Development (“**HUD**”) under [Section 207 pursuant to Section 223(f)] [Section 220] [Section 221(d)(4)] [Section _____ pursuant to Section 223(a)(7)] of the National Housing Act, as amended. [_____] (“**Servicer**”) services the Loan behalf of Lender.] The Note, Security Instrument and all other documents executed in connection with the Loan are referred to collectively in this Agreement as “**Loan Documents**”. The HUD Regulatory Agreement executed (or assumed) by Borrower is referred to as “**Regulatory Agreement**”. Capitalized terms not otherwise defined in this Agreement will have the respective meanings ascribed to such terms in the Loan Documents or Regulatory Agreement.

The Borrower has made a [verbal] [written] request for forbearance in connection with the impact of the coronavirus (COVID-19) (“**COVID-19 Emergency**”). We understand that the tenants and/or operations at the Project have been significantly affected by this COVID-19 Emergency and that consequently the Borrower has and is affirming that the Borrower is experiencing a financial hardship. We confirm that Borrower was current on its mortgage payment as of February 1, 2020.

So long as the Borrower accepts the terms of this Agreement within five (5) business days of the date or this letter or by _____, 2020, we will agree to a forbearance (“**Forbearance**”) from enforcing the timely collection of one monthly payment of interest and principal (“**Initial Forbearance Period**”) subject to the terms of this Agreement; provided that the Initial

Forbearance Period will be extended for two additional periods of one month each (each, an “**Extension Forbearance Period**”); upon the written request of Borrower received by Lender at least fifteen (15) days prior to the end of the Initial Forbearance Period or the end of the initial Extension Forbearance Period, as applicable. As part of any extension request, Borrower must affirm the financial hardship of the Borrower caused by the COVID-19 Emergency and must include information to document such financial hardship. Each extension request and such information will include (or be deemed to include) a statement that the information submitted by the Borrower is true, accurate and correct.

The only amounts due under the Loan Documents and Regulatory Agreement which Lender agrees do not have to be paid during the Forbearance Period (defined below) are interest and principal. All other amounts due under the Loan Documents and Regulatory Agreement, including without limitation, deposits for taxes, insurance, mortgage insurance premiums, ground rents (if applicable) and deposits into the Reserve Fund for Replacements (unless such deposits are waived in writing by HUD) must be paid in full as and when due.

The Forbearance is effective with the monthly installment due on [_____ 1, 2020], and remains in effect for the Initial Forbearance Period and each applicable Extension Forbearance Period (collectively, and as applicable, “**Forbearance Period**”). For avoidance of doubt, in no event shall the Forbearance Period exceed three (3) months. The total amount for unpaid interest and principal that were deferred during the Forbearance Period is referred to as the “**Forbearance Period Total**”.

The Forbearance Period Total is due to Lender at the end of the Forbearance Period. It will be repaid by the Borrower without late fees, additional interest, prepayment premiums or other charges in no more than 12 equal monthly installments (“**Forbearance Period Repayment Installment**”), remitted together with each regularly scheduled monthly installment, beginning with the first monthly installment due after the end of the Forbearance Period (“**Repayment Period**”). The Forbearance will not change the amortization schedule for the Loan. If the Maturity Date or full Loan repayment occurs before the end of the Repayment Period, then any remaining balance of the Forbearance Period Total will be payable in full on the Maturity Date or when the Loan is paid off. As a condition of granting this Forbearance, Borrower hereby agrees to the following:

1. Borrower shall not take any distributions of Surplus Cash or Residual Receipts until all amounts due to Lender under this Agreement have been repaid in full.
2. The email address provided below may be used, in addition to Borrower’s current mailing address, for written notices in connection with this Agreement.
3. During the Forbearance Period, Borrower may not, (1) evict or initiate the eviction of a tenant from a dwelling unit located in the Project solely for nonpayment of rent or other fees or charges; or (2) charge any late fees, penalties, or other charges to a tenant described in (1) of this paragraph for late payment of rent.

Borrower (1) may not require a tenant to vacate a dwelling unit located in the Project before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate; and (2) may not issue a notice to vacate under (1) of this paragraph until after the expiration of the Forbearance Period.

Nothing in this Agreement shall effect or lessen any obligations of Borrower concerning any limitations on eviction otherwise imposed by the CARES Act or under applicable federal, state or local law.

4. Borrower may repay the full amount of the Forbearance Period Total at any time prior to the end of the Repayment Period.
5. Borrower may terminate the Forbearance Period at any time. Upon five (5) business days' written notice to the Servicer, Borrower must resume making regularly-scheduled monthly installment payments, together with applicable Forbearance Period Repayment Installments, on the next installment due date, which date will also be the first payment date of the Repayment Period.
6. If Borrower fails to stay current with the Forbearance Period Repayment Installments during the Repayment Period ("**Forbearance Payment Default**"), the agreement of the Lender to provide Forbearance will terminate automatically on the fifth (5th) business day following the Forbearance Payment Default and all amounts due from Borrower to Lender under this Agreement shall become immediately due and payable, and if remaining outstanding for thirty (30) days shall constitute a Monetary Event of Default under the Note and Security Instrument. All obligations of Borrower under this Agreement shall continue notwithstanding such termination of the Lender's obligation. All terms of the Loan Documents and Regulatory Agreement will remain in full force and unmodified, including without limitation, the rights and remedies of Lender and HUD under the Loan Documents and Regulatory Agreement, as applicable.
7. If Borrower fails to fully comply with any of the tenant protections of paragraph 3 above, the Lender may terminate the agreement of the Lender to provide Forbearance by giving Borrower ten (10) days' written notice, which will be effective on the tenth day after the date on the notice. All obligations of Borrower under this Agreement shall continue notwithstanding such termination of the Lender's obligation.
8. Release of Claims. Borrower for and on behalf of itself and its representatives, principals, agents, employees, officers, directors, shareholders, members, partners, successors and assigns (jointly and severally, the "**Releasing Parties**"), expressly release and discharge Lender [and Servicer] and their/its representatives, principals, agents, employees, officers, directors, shareholders, successors and assigns (jointly and severally, the "**Released Parties**"), from any and all claims, demands, rights, fees, obligations, damages and expenses of any nature, whether in law or in equity, on any legal theory or basis of any nature, which any Releasing Parties may have had against any Released Parties, solely to the extent they arise out of, or relate to, this Agreement, including specifically the restriction on eviction of tenants during the Forbearance Period. The

Releasing Parties recognize that it/they may be releasing claims of which it/they do not yet have knowledge, but Releasing Parties nevertheless acknowledge that this provision has been specifically bargained for by Lender as a material inducement to the execution of this Agreement.

9. Releasing Parties agree to indemnify and hold harmless the Released Parties from any and all expenses, costs, liability and fees incurred by any such Released Party as a result of any such action or proceeding instituted by Releasing Parties or any third party; provided that such amounts shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the Borrower and (iii) available Surplus Cash of the Borrower.
10. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of [REDACTED], [SAME JURISDICTION AS LOAN DOCUMENTS], subject to the CARES Act.
11. This Agreement may be executed in any number of counterparts, and by each of the parties on separate counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument. Execution and delivery of a counterpart of this Agreement is permitted (i) by portable document format copy bearing the PDF signature of a duly authorized representative of Borrower or Lender, whether delivered by facsimile, e-mail or physical delivery service, or (ii) by electronic signature of a duly authorized representative of Borrower or Lender.

Execution of this Agreement shall not in and of itself affect the right of Lender to assign the Loan in accordance with HUD requirements, including, without limitation, the time periods for making any election to assign the Loan based on the dates on which the Loan went into default.

Except as provided above, delivery of this Agreement may not be deemed a waiver of any of the rights or remedies available to the Lender under the Loan Documents (or HUD under the Loan Documents and Regulatory Agreement) or at law, equity or otherwise. The terms and conditions set forth in this Agreement may not be construed as an agreement by Lender [, Servicer] or HUD to extend or modify the Loan, or to grant any additional forbearance with regard to the Loan. This Agreement may not be amended or altered except by a written instrument executed by Lender and the Borrower.

If Borrower agrees with the terms of this Agreement, please sign and date this Agreement where indicated and return a copy by email to [Lender's email], to be received no later than _____, _____, 2020, followed by delivery of an originally-signed version via hand delivery, U.S. Express Mail, or commercial overnight courier to [Lender's Address].

Sincerely,

Lender Representative

cc: [Lender Asset Management]
[HUD Account Executive]
[Servicer]

THE UNDERSIGNED REPRESENTATIVE OF BORROWER, BEING LAWFULLY AUTHORIZED TO ENTER INTO THIS AGREEMENT AND INTENDING TO BE BOUND THEREBY, HEREBY AGREE TO AND ACCEPT ALL OF THE FOREGOING TERMS AND CONDITIONS AND HEREBY CERTIFIES THAT ALL INFORMATION SUBMITTED TO DATE IS TRUE, ACCURATE AND COMPLETE AND THEY FURTHER CONFIRM THAT THEY HAVE REVIEWED THE EFFECT OF THIS AGREEMENT WITH LEGAL COUNSEL OF THEIR CHOICE, OR HAVE BEEN AFFORDED THE OPPORTUNITY TO DO SO, PRIOR TO EXECUTION OF THIS AGREEMENT.

The person executing this Agreement certifies that they have the authority to execute and deliver this Agreement on behalf of the Borrower.

The Effective Date of this Agreement will be the Execution Date filled in by the Borrower below Borrower's signature.

BORROWER:

By: _____
Name: _____
Its: _____
Execution Date: _____

Borrower Email Address(es) to be used for notices under this Agreement:

