U.S. Department of Housing and Urban Development

Regulatory Agreement for Multifamily Projects -

Rider for Tax Credit Master Lease, Borrower

BORROWER

**THIS RIDER TO REGULATORY AGREEMENT- MULTIFAMILY HOUSING PROJECTS** (“Rider”) is by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Borrower"), and the UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, acting by and through the Secretary, his or her successors, assigns or designates (“HUD”).

**RECITALS:**

**WHEREAS,** Borrower and HUD have entered into that certain U.S. Department of Housing and Urban Development Regulatory Agreement for Multifamily Projects (the “Agreement”) of even date with this Rider, with respect to Mortgaged Property (capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Agreement) owned by the Borrower; and

**WHEREAS,** Borrower intends to make certain Improvements to the Mortgaged Property in a manner that qualifies for federal and state historic rehabilitation tax credits (collectively, “Historic Tax Credits”), and/or utilizes New Markets Tax Credits (“NMTC”); 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”); [change, as appropriate, to address composition of the Project]

**WHEREAS,** to maximize the benefits of the [Historic Tax Credits] [and/or] [NMTC], Borrower has requested that HUD permit, with respect to an application for mortgage insurance, a transaction (the “Transaction”) that will include Borrower entering into a lease of the Mortgaged Property (the “Master Lease”) with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Master Tenant”);

**WHEREAS**, Borrower 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”, which together with the Master Commercial Sublease are referred to as the “Sublease(s)”) to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Residential Tenant”); and [change, as appropriate, consistent with the composition and leasing of the Project]

**WHEREAS,** to finance the Project,Borrower 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 Borrower, Master Tenant, Residential Tenant and Commercial Tenant [adjust as necessary] have each agreed to execute a separate HUD prescribed regulatory agreement with rider attached (respectively, a “Regulatory Agreement”), 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 above premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree the Agreement is amended by this Rider as follows:

**1. Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

**2. Definitions/Applicability**.

1. Borrower is executing this Rider to amend and supplement the Agreement the Agreement and this Rider are sometimes collectively referred to herein as the “Amended Regulatory Agreement”).
2. Except as specifically amended by this Rider, the Agreement remains in full force and effect in accordance with its terms. Except as otherwise provided, capitalized terms defined herein are for the purpose of convenience with respect to this Rider only, and do not change or otherwise affect terms defined or used in the Agreement.

**3.** **Regulatory Agreements with Master Tenant, Residential Tenant and Commercial Tenant. [adjust title and content below based on composition and leasing of the Project]**

1. Contemporaneous with the execution of the Amended Regulatory Agreement by Borrower, the Master Tenant, Residential Tenant and Commercial Tenant are each executing a Regulatory Agreement (a “Tenant Regulatory Agreement(s)”). Borrower acknowledges and consents to the terms and condition of each Tenant Regulatory Agreement, and agrees to ensure that each Tenant Regulatory Agreement will be incorporated by reference into the respective Master Lease, Master Residential Sublease and Master Commercial Sublease.
2. The undertakings and obligations of Borrower 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.
3. Without limiting the above, Borrower acknowledges that an 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 Borrower, Master Tenant, the FHA-Insured Loan lender (the “Lender”) and/or HUD, as a result of such default(s). In addition to any rights and remedies available to HUD and/or the Lender, Borrower 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.
4. Borrower acknowledges and consents to HUD’s right under each Tenant Regulatory Agreement, which includes the right to require, 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 (“FHA-Insured Loan Documents”), the payment to HUD or Lender, as directed by HUD, of all payments otherwise due Borrower 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.** [adjust title and content below based on composition and leasing of the Project]

* 1. Notwithstanding the prohibition contained in section 35 of the Agreement against the conveyance or transfer of any interest in the Mortgaged Property or the Rents therefrom, 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.
  2. 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 FHA-Insured Loan Documents.
  3. Borrower agrees that the Master Lease shall not be modified or amended, without the prior written consent of HUD. Borrower represents and warrants that the Rents to be received by Borrower 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 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 Program Obligations, funds from a respective IOD may be used to meet deficits in Rents 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)** Each IOD will be maintained for the longer of twenty-four (24) months after final endorsement of the Note by HUD or [insert appropriate time, consistent with Program Obligations]\_\_\_\_ (\_\_) months after the Rents from the applicable portion of the Mortgaged Property are sufficient to meet all allocated debt service obligations and operating expenses.

1. The Borrower 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, (ii) provided no default exists under the FHA-Insured Loan Documents, or will exist thereunder with the giving of notice or passage of time, or both, and (iii) the Mortgaged Property has received a score of 60 or above on its most recent HUD PASS physical inspection. In the event that the Mortgaged Property has not achieved a 60 or above, but the IOD would otherwise be released, Borrower agrees that 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 Borrower hereby grants to the Lender a security interest in account(s) which hold the IODs as additional security for the repayment of the FHA-Insured Loan, and agrees to take such actions deemed appropriate from time to time by Lender to perfect such interest.

**6. Surplus Cash.** Without limiting any provision of the Amended Regulatory Agreement,Borrower specifically acknowledges and agrees that HUD requires Borrower, Master Tenant, Residential Tenant and Commercial Tenant (collectively, “All Parties”) 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 and/or Program Obligations.

**(a)** Surplus Cash will be determined as if the Mortgaged Property is owned and operated by one single purpose entity using the income and expenses of All Parties in the aggregate, applying the Surplus Cash calculation set forth in the Amended Regulatory Agreement, except the costs of oversight by tax credit agencies, including the asset management fee, shall not be deducted in calculating Surplus Cash, as these are entity expenses that are not 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, **(ii)** with all contracts with HUD that apply to the Project, and **(iii)** with Program Obligations.

**(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.** Borrower and HUD each agree to execute and deliver all additional instruments and/or documents reasonably required by either party to 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.

**Borrower**

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

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

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

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

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**Secretary of Housing**

**and Urban Development**

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

Authorized Agent

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

[ADD ACKNOWLEDGMENTS FOR RECORDING PURPOSES]