

RIDER TO REGULATORY AGREEMENT MULTIFAMILY HOUSING PROJECTS
HUD-92466 (Section ___)
Master Tenant

THIS RIDER TO REGULATORY AGREEMENT- MULTIFAMILY HOUSING PROJECTS ("Rider") is by and between _____, a _____ (the "Master Tenant"), and the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** (the "Secretary" or "HUD").

RECITALS:

WHEREAS, _____, a _____ ("Owner") owns the fee interest in certain tracts or parcels of land located in _____ and more particularly identified on Exhibit A attached hereto and made a part hereof (the "Property"), including the improvements now existing and/or hereafter rehabilitated or constructed and located thereon (collectively, the "Improvements," which together with the Property are sometimes collectively referred to herein as the "Mortgaged Property"); and

WHEREAS, the Owner intends to rehabilitate certain Improvements in a manner that qualifies for federal and state historic rehabilitation tax credits (collectively, "Historic Tax Credits"), and also utilize New Markets Tax Credits ("NMTC"), to facilitate the planned rehabilitation of and construction on the Mortgaged Property (the "Project");

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");

WHEREAS, to maximize the benefits of the Historic Tax Credits and NMTC, the Owner has requested that HUD approve, for mortgage insurance purposes, a transaction (the "Transaction") that will include Owner entering into a lease of the Mortgaged Property (the "Master Lease") with Master Tenant, and further allow 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" and, together with the Master Commercial Sublease, the "Sublease(s)") to _____, a _____ (the "Residential Tenant"); and

WHEREAS, to finance the Project the Owner 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 Owner, Master Tenant, Residential Tenant and Commercial Tenant have each agreed to execute a separate HUD prescribed regulatory agreement (respectively, a

“Regulatory Agreement”), with a rider attached 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 premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

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

2. Definitions/Applicability.

- (a) Master Tenant is executing this Rider to amend and supplement the Regulatory Agreement (the Regulatory Agreement and this Rider are collectively referred to herein as the “Amended Regulatory Agreement”).
- (b) Capitalized terms defined herein are for the purpose of convenience with respect to this Rider, and do not change or otherwise affect terms defined or used in the Regulatory Agreement.
- (c) The undertakings and obligations stated to be the Owner’s under the Regulatory Agreement are hereby deemed to be obligations of the Master Tenant, substituting Master Tenant for Owner in the Regulatory Agreement except to the extent that Master Tenant is incapable of performing, or otherwise should not be required to perform, such undertaking or obligation. The Master Tenant’s capability or requirement to perform an undertaking or obligation shall be determined by HUD. For example, by way of illustration but not limitation, the Master Tenant is not obligated to make payments due under the note and mortgage, as required under paragraph 1 of the Regulatory Agreement, but Master Tenant is obligated to provide to HUD the annual financial report required under paragraph 9(e) of the Regulatory Agreement.

3. Master Lease and Remedies.

- (a) Master Tenant covenants and agrees to comply with all of the terms and conditions contained in the Master Lease. An Event of Default, as defined in and under the Master Lease, is a Default under the Amended Regulatory Agreement. Such Default does not require notice and an opportunity to cure; provided, however, Master Tenant shall be entitled to forbearance from HUD’s exercise of remedies available under the Amended Regulatory Agreement subject to and consistent

with the provisions for forbearance contained in Section 14 of the Master Lease.

- (b) The Master Tenant agrees that the Master Lease (i) incorporates by reference the obligations and undertakings of the Amended Regulatory Agreement, as additional covenants and agreements under the Master Lease, and (ii) shall not be modified or amended, without the prior written consent of HUD. A Default under the Amended Regulatory Agreement shall be deemed to be an Event of Default, as defined in and under the Master Lease.
- (c) Upon receipt of notification by Master Tenant of the issuance of a notice of a Default under the Regulatory Agreement between HUD and the Owner, or under any other document that is executed to evidence, secure or otherwise executed in connection with the FHA-Insured Loan, Master Tenant agrees to pay all rent due Owner under the Master Lease to HUD or to the FHA-Insured Loan mortgagee ("Mortgagee"), as directed by HUD, as assignee of the Owner, so long as the Master Lease shall be in effect. Moreover, Master Tenant agrees that in the event that the FHA-Insured Loan is assigned to the Secretary, at HUD's election and upon thirty (30) days notice to Master Tenant at any time thereafter the Master Lease shall terminate.
- (d) The Master Lease is and shall remain fully subordinate to the FHA-Insured Loan and to the documents that are executed to evidence, secure or otherwise executed in connection with the FHA-Insured Loan, including without limitation the estate and rights created in the Master Lease.

4. Regulatory Agreement with Commercial Tenant and Master Commercial Sublease.

- (a) The undertakings and obligations of Master Tenant under the Amended Regulatory Agreement are not relieved or amended by virtue of any undertaking and obligation of Commercial Tenant or Residential Tenant under a Regulatory Agreement (a "Tenant Regulatory Agreement"), or any other agreement related directly or indirectly to the Transaction, including, without limitation, the Subleases. Master Tenant acknowledges and consents to the terms and conditions contained in each Tenant Regulatory Agreement.
- (b) Without limiting the above, Master Tenant acknowledges that a Default under and as defined in a Tenant Regulatory Agreement will be an Event of Default, as defined in and under the applicable

Sublease, with remedies available to Owner, Master Tenant, the Mortgagee and/or HUD, as a result of such Default and Event of Default. In addition to any rights and remedies available to HUD and/or the Mortgagee, Master Tenant agrees to immediately terminate the applicable Sublease and pursue all available rights and remedies arising as a result of such Event of Default if an Event of Default occurs under a Sublease.

- (c) Master Tenant agrees that neither Sublease shall be modified or amended, without the prior written consent of HUD

5. Further Conveyance.

- (a) Notwithstanding the prohibition contained in paragraph 6(a) of the Regulatory Agreement against the conveyance or transfer of any interest in any of the Mortgaged Property, HUD recognizes the Subleases, and further, approves the (sub)subleasing by (i) the Commercial Tenant of the Commercial Portion, and (ii) the Residential Tenant of the Residential Portion, subject to such (sub)subleasing being accomplished in a commercially reasonable and practical manner.
- (b) Without limiting any regulatory or administrative controls, or paragraph 6(c) of the Regulatory Agreement, Master Tenant agrees not to permit or suffer a conveyance, transfer or encumbrance of any interest in the Master Tenant, directly or indirectly, without the written consent of HUD. Notwithstanding the foregoing, HUD hereby consents to the consummation of the transactions contemplated in that certain Purchase Option Agreement (Federal Investor Member) and that certain Purchase Option Agreement (State Investor Member), delivered to HUD prior to the execution of this Rider (individually, an "Option Agreement"), provided that (i) at the time of consummation of said transactions a default does not exist under the FHA-Insured Loan or an Event of Default does not exist under the Master Lease, or an event exists which with the passage of time and/or giving of notice would become a default under the FHA-Insured Loan or an Event of Default under the Master Lease, and (ii) upon the consummation of said transactions, (A) 100% of the member interests in the Master Tenant shall be held by one or more of the parties with an ownership interest in the Owner, and (B) they will have been accomplished in accordance with and subject to the respective Option Agreement, without encumbering directly or indirectly the Mortgaged Property, including without limitation any personal property related to or derived from the Mortgaged Property.

6. Surplus Cash/Sustaining Performance.

- (a) Without limiting any provision of the Amended Regulatory Agreement, Master Tenant specifically acknowledges and agrees that HUD requires the Owner, Master Tenant, Residential Tenant and Commercial Tenant 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. HUD will determine Surplus Cash by consolidating all income derived from the Mortgaged Property and then determining and excluding therefrom the reasonable expenses incident to the operation and maintenance of the Mortgaged Property, with the operation and maintenance expenses governed by HUD regulations, handbooks, guides, directives and FASS-MF system guides. The cost of oversight by tax credit agencies, including the any asset management fees, are entity expenses and may not be deemed to be an expense of the Mortgaged Property.
- (b) Notwithstanding anything to the contrary contained in the Amended Regulatory Agreement, neither Master Tenant nor any other party may make any distribution of Surplus Cash under the Amended Regulatory Agreement, the Owner's Regulatory Agreement, or a Tenant Regulatory Agreement until "Sustaining Performance" has been achieved. Sustaining Performance shall be deemed to have been achieved when (i) construction of the Project is complete and HUD has reviewed and reconciled, to its reasonable satisfaction, the cost certification audit with an audit of the Project's sources and uses of all funds, including the proceeds from the FHA-Insured Loan, and (ii) for a period of two consecutive operating periods (full fiscal years, the "Performance Period") (A) no late payments or default has occurred under the FHA-Insured Loan, (B) HUD has received from Owner, Master Tenant, Residential Tenant and Commercial Tenant monthly accounting reports in form acceptable to HUD detailing the operation and maintenance of the Mortgaged Property, (C) annual financial reports have been filed by the Owner, Master Tenant, Residential Tenant, and the Commercial Tenant before, but not later than the date required under each Regulatory Agreement, (D) the Mortgaged Property equals or exceeds HUD's performance benchmarks for Reserves per Unit (\$800), Occupancy Rate (95%), Quick Ratio (1.6, and Debt Service Coverage Ratio (1.10), as determined by HUD within thirty (30) days after receipt of all annual financial reports, (E) the HUD REAC PASS score is no less than 85 with the first inspection

to occur approximately 24 months after final endorsement of the HUD Insured Mortgage.

7. Additional Compliance.

- (a) Master Tenant covenants and agrees to comply with all HUD statutes regulations, and directives with respect to the FHA-Insured Loan, to the extent HUD deems applicable, consistent with section 2. (c) above, as if Master Tenant is the mortgagor thereunder.
- (b) Without limiting the foregoing, there shall be full compliance with the provisions of (i) any State or local laws prohibiting discrimination in housing on the basis of race, color, creed, or national origin; and (ii) with the Regulations of the Federal Housing Administration providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for HUD to take any corrective action deemed necessary including, but not limited to, the refusal to consent to a further renewal of the Master Lease, and the refusal to enter into future contracts of any kind with which the Master Tenant is identified; and further, if the Master Tenant is a corporation or any other type of business association or organization which may fail or refuse to comply with the aforementioned provisions, HUD shall have a similar right of corrective action (iii) with respect to any individuals who are officers, directors, trustees, managers, partners, members, associates or principal stockholders of the Master Tenant; and (iv) with respect to any other type of business association, or organization with which the officers, directors, trustees, managers, partners, members, associates or principal stockholders of the Master Tenant may be identified.
- (c) Master Tenant recognizes that annual financial reports required under paragraph 9(e) of the Regulatory Agreement cannot, at this time, be filed electronically in HUD's FASS-MF system. Master Tenant agrees to submit such reports to HUD on paper, but otherwise in conformance with the electronic filing requirements of the FASS-MF system. Upon direction from HUD, Master Tenant agrees to utilize the FASS-MF system to file annual financial reports.

7. Security Interest. Contemporaneous with the execution of the Amended Regulatory Agreement and the funding of the FHA-Insured Loan, Master Tenant is executing the Master Lease which contains a security agreement that encumbers all personal property owned by the Master Tenant and used in the operation or maintenance

of the Mortgaged Property, to secure its performance under the Master Lease, which Master Lease (including the security agreement contained therein) is being collaterally assigned to secure further the Mortgagee. Further, the Residential Tenant and Commercial Tenant are each executing a Sublease which contains a security agreement that encumbers all personal property owned by the Commercial Tenant or Residential Tenant, respectively, to be used in the operation or maintenance of the Mortgaged Property, to secure its performance under the applicable Sublease, which Sublease (including the security agreement contained therein) is being collaterally assigned to secure further the Mortgagee.

8. Statutory Penalties. Notwithstanding that Master Tenant is not the mortgagor or owner of record, for purposes of establishing liability for Master Tenant's actions, Master Tenant agrees to be treated as an "owner" or a "mortgagor" under the double damages provision at 12 U.S.C. § 1715z-4a, the equity skimming penalty under 12 U.S.C. §1715z-19, or the civil money penalty under Section 537 of the National Housing Act, 12 U.S.C. § 1735f-15.

9. Further Assurances. The Master Tenant and HUD each agree to execute and deliver all additional instruments and/or documents reasonably required by either party to this the Amended Regulatory Agreement to further evidence or confirm the intent of the Amended Regulatory Agreement.

10. 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.

MASTER TENANT

By: _____
Name: _____
Title: _____
Date: _____

Secretary of Housing
and Urban Development

By: _____

Authorized Agent

Date: _____

[ADD ACKNOWLEDGMENTS FOR RECORDING PURPOSES]