



Doc#: 1102544119 Fee: \$158.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/25/2011 03:00 PM Pg: 1 of 27

**AFTER RECORDING RETURN TO:**  
Illinois Housing Development Authority  
401 North Michigan Avenue, Suite 700  
Chicago, Illinois 60611  
Attn: Maureen Gainer Ohle

4403626 RP 2/14

Property Address: 5110 S. King Drive, Chicago, Illinois, 60615

Property Identification No(s): 20-10-306-051, 20-10-306-054, 20-10-306-055, 20-10-306-059, 20-10-306-061

**LOW INCOME HOUSING TAX CREDIT EXTENDED USE AGREEMENT**

**Project Summary**

Project Owner:	Harvin-PV, LLC, an Illinois limited liability company
Project Owner's Address:	1100 Corporate Office Drive, Suite 110, Milford, Michigan 48381
Project Name:	Parkview Towers Apartments
Project Address:	5110 S. King Drive, Chicago, Illinois, 60615
IHDA Project Application No.:	10412
Project Unit Count:	102/102 (Number of Low Income Units/Total Number of Units in the Project)
Minimum Low Income Set-Aside Election:	100% of the units in the Project must be occupied by Tenants at or below 60% of Area Median Gross Income and Rent-Restricted in accordance with such income level.
Minimum Applicable Fraction for Project:	100%

**THIS LOW INCOME HOUSING TAX CREDIT EXTENDED USE AGREEMENT** (this "Agreement") is entered into on the 27<sup>th</sup> day of December, 2010, by and between **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** (the "Authority"), a body politic and corporate established pursuant to the Illinois Housing Development Act, ILCS 3805/1 *et seq.*, as amended from time to time (the "Act") with its principal offices located at 401 North Michigan Avenue, Suite 700, Chicago, Illinois 60611, and **HARVIN-PV, LLC**, an Illinois limited liability company (the "Owner"), with its principal offices located at 1100 Corporate Office Drive, Suite 110, Milford, Michigan 48381.

**RECITALS**

(1) The Owner is the holder of legal title of certain real property upon which a qualified low-income housing development is erected, or to be erected, with the common address set forth above in the Project Summary, and legally described on **Exhibit A** attached hereto.

(2) The Authority has been designated by Section 7.24g of the Act as the housing credit agency for the State of Illinois for the allocation of low-income housing tax credit authority ("Tax Credit Authority") pursuant to Section 42 of the Code (as hereinafter defined).

2/15

# UNOFFICIAL COPY

(3) The Owner has represented to the Authority in its Application (as hereinafter defined) that it will lease at least the minimum percentage of Units (as hereinafter defined) and residential floor space in the Project to Qualifying Tenants (as hereinafter defined) such that the Minimum Applicable Fraction for the Project shall be as set forth above in the Project Summary.

(4) As a condition precedent to the allocation of Tax Credit Authority, the Owner must enter into an extended low income housing commitment, as provided in Section 42 of the Code, to be recorded in the Office of the Recorder of Deeds in the county in which the Project is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Project.

(5) The Owner under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project land for the Compliance Period and Extended Use Period (as hereinafter defined), are binding upon all subsequent owners and operators of the Project during such Compliance Period and Extended Use Period, and are not merely personal covenants of the Owner, such that this Agreement shall be, and shall satisfy all requirements applicable to, an extended low income housing commitment for purposes of Section 42 of the Code.

In consideration of the mutual promises set forth below, and other good and valuable consideration, the Owner and the Authority agree as follows:

**A. Definitions.**

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the following meanings:

“Agreement” means this Low Income Housing Tax Credit Extended Use Agreement between the Authority and the Owner.

“Applicable Fraction” means the smaller of the Unit Fraction (as hereinafter defined) or the Floor Space Fraction (as hereinafter defined), all calculated in accordance with Section 42(c)(1) of the Code.

“Application” means the application the Owner submitted to the Authority.

“Area Median Gross Income” means the median gross income of the area in which the Project is located as determined by the Secretary (as hereinafter defined) for purposes of Section 42 of the Code, including adjustments for family size.

“Assumption Agreement” means that certain agreement defined in Section F of this Agreement.

# UNOFFICIAL COPY

“Authority” means the Illinois Housing Development Authority and its successor.

“Code” means the Internal Revenue Code of 1986, as amended, and where appropriate, Regulations and revenue rulings promulgated pursuant thereto.

“Compliance Period” (notwithstanding Section 42(i)(1) of the Code) means the period of 15 consecutive taxable years beginning with the first taxable year of the Credit Period, unless otherwise indicated herein or unless terminated earlier in accordance with Section D hereof.

“Credit Period” means, with respect to any building in the Project, the period of ten taxable years beginning with the taxable year in which such building is placed in service or (at the election of the Owner) the following taxable year.

“Extended Use Period” means the period beginning with the first day of the Compliance Period and ending on the date which is 15 years after the end of the Compliance Period, unless otherwise indicated herein or unless terminated earlier in accordance with Section D hereof.

“Extremely Low Income” means a household income that falls between 15% and 30% of the median income for the area in which a Project is located.

“Floor Space Fraction” means the fraction, the numerator of which is the total floor space of the Low Income Units in a building and the denominator of which is the total floor space of the Units in such building.

“Gross Rent” means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

“Income” means the income of a tenant in the Project determined in a manner consistent with the requirements of Section 142(d)(2)(B) of the Code.

“Low Income” means, with respect to any tenant in the Project, an income level not exceeding 50% or 60% of Area Median Gross Income, as applicable to the Project pursuant to the Minimum Low Income Set-Aside Election set forth above in the Project Summary, or, in context, such alternative income level as may be set forth herein.

“Low Income Unit” means a Unit in the Project that is occupied by (or, pursuant to the Code, treated as occupied by) a Qualifying Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(i)(3).

“Minimum Applicable Fraction” means the proportion of the Project, measured by calculation of the Applicable Fraction in accordance with Section 42 of the Code, which is required to be occupied by Qualified Tenants, as set forth above in the Project Summary.

“Minimum Low Income Set-Aside Election” means the minimum number of Units in the Project required to be Low Income Units for purposes of determining the income

# UNOFFICIAL COPY

level for Qualifying Tenants, which Minimum Low Income Set-Aside Election for this Project is 20% or 40% of the Units, as set forth above in the Project Summary.

“Occupancy Restrictions” means those restrictions set forth in Section C(1) of this Agreement.

“Project” means the residential rental housing project identified above in the Project Summary.

“Qualified Low Income Housing Project” means a residential rental project meeting the requirements of Section 42 of the Code.

“Qualifying Tenants” means individuals or families whose income is less than or equal to the percentage of Area Median Gross Income (including adjustments for family size), as applicable to the Project pursuant to the Minimum Low Income Set-Aside Election set forth above in the Project Summary, as determined in accordance with Section 42. Individuals or families meeting this requirement shall be referred to herein as “Qualifying Tenants”. For so long as a tenant, which had been determined to be a Qualifying Tenant, occupies the particular Unit, the tenant will remain a Qualifying Tenant if the tenant's income, upon the most recent income certification, does not exceed 140% of the applicable Low Income limit.

“Referral and Support Plan” means that certain Referral and Support Agreement for Units Targeted to Supportive Housing Populations Parkview Tower Apartments, Chicago, Illinois as delivered to the Authority on or about the date hereof.

“Regulations” means those regulations promulgated pursuant to the Code.

“Rent-Restricted” means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code, as modified herein, if applicable.

“Secretary” means the Secretary of the Treasury of the United States.

“Section 42” means Section 42 of the Code, including, where appropriate, Regulations and revenue rulings promulgated pursuant thereto.

“Service” means the United States Internal Revenue Service and any successor thereto.

“Supportive Housing” means housing that helps people live stable, successful lives through a combination of affordable, permanent housing and supportive services, appropriate to the needs and preferences of residents, either onsite or closely integrated with the housing. Supportive housing serves individuals and families who are homeless, at risk of homelessness, and/or have disabilities, and who require access to supportive services in order to maintain housing.

# UNOFFICIAL COPY

“Tax Credits” means the low income housing tax credits for which owners of a Qualified Low Income Housing Project may qualify pursuant to Section 42 of the Code.

“Tax Credit Authority” means the maximum amount of Tax Credits which, pursuant to an allocation by the Authority under Section 42(h)(1) of the Code or by virtue of the qualification under Section 42 (h)(4) of the Code, may be received by the owner of a Qualified Low Income Housing Project in any one year.

“Term” shall have the meaning set forth in Section D of this Agreement.

“Unit” means any residential rental unit in the Project consisting of an accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy units used on a nontransient basis may be treated as Units.

“Unit Fraction” means the fraction, the numerator of which is the total number of Low Income Units in a building and the denominator of which is the total number of Units in such building.

## **B. Representations, Warranties and Covenants of the Owner.**

The Owner hereby makes the following representations and warranties to induce the Authority to enter into this Agreement:

(1) The Owner (i) is duly organized and validly existing under the laws of the state in which it was formed, and is qualified to transact business under the laws of the State of Illinois; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by this Agreement); and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(2) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulation, or any order of any court or other agency or governmental body; (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound; and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(3) The Owner has, as of the date of execution, recordation and delivery of this Agreement, good and marketable title to the real estate legally described in **Exhibit A** free and clear of any lien or encumbrance, except those created by any loan documents relating to the Project, those which are created pursuant to this Agreement and those which are otherwise permitted encumbrances.

(4) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the

# UNOFFICIAL COPY

Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement), or would materially adversely affect its financial condition.

(5) The Project constitutes or will constitute a Qualified Low Income Housing Project, as defined in Section 42, within and throughout the time period required under this Agreement and Section 42.

(6) Each Unit in the Project contains, or will contain, complete facilities for living, sleeping, eating, cooking and sanitation, which are to be used on other than a transient basis as provided in Section 42(i)(3) of the Code (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless).

(7) During the term of this Agreement, all Low Income Units shall be leased and rented or made available to members of the general public who qualify as Qualifying Tenants (or otherwise qualify for occupancy of the Low Income Units).

(8) Upon completion of the rehabilitation or construction of the Project, and during the remainder of the term of this Agreement, the Owner represents, warrants and agrees that each Low Income Unit will be and will remain suitable for occupancy taking into account local, health, safety and building codes.

(9) Upon completion of the rehabilitation or construction of the Project, the Owner will not demolish any part of the Project, or substantially subtract from any real or personal property of the Project or permit the use of any residential rental Unit for any purpose other than rental housing during the term of this Agreement, unless required by law.

(10) The Owner represents, warrants and agrees that if the Project, or any part of it, is damaged or destroyed or is condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.

(11) The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(12) The Owner agrees, warrants, and covenants to comply with all applicable laws, ordinances, statutes, codes, orders, rules, regulations and decrees of any governmental authority, including, without limitation, the following: Section 42, Regulations and rulings pursuant to Section 42 and the Code generally, the Act and Rules promulgated under the Act, as amended from time to time; the Civil Rights Act of 1964 (42 U.S.C. 2000(d)); Executive Order 11063, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Fair

# UNOFFICIAL COPY

Credit Reporting Act (15 U.S.C. 1681 et seq.); Fair Housing Act, as amended (42 U.S.C. 3601 et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland Anti-Kickback" Act (18 U.S.C. 874 et seq.); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4201 et seq.); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. 4321 et seq.); ("NEPA"); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822 et seq.); and such governmental requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

## C. **Occupancy Restrictions.**

(1) At least the percentage of Units and percentage of floor space in the Project (and in each building in the Project, as applicable) needed to support the Minimum Applicable Fraction, as set forth above in the Project Summary, shall be both Rent-Restricted and occupied (or treated as occupied as provided herein) by Qualifying Tenants, as determined in accordance with Section 42 and the Regulations. The Owner shall make the determination of whether an individual or family is a Qualifying Tenant at least annually on the basis of the current income of such Qualifying Tenant(s). Any Unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Qualifying Tenant, provided that should such Qualifying Tenant's income subsequently exceed one hundred forty percent (140%) of the applicable income limit, such tenant shall no longer be a Qualifying Tenant if, after such determination of income, but prior to the next determination, any residential Unit of comparable or smaller size in the building is rented to a tenant who is not a Qualifying Tenant. If a tenant ceases to be a Qualifying Tenant, the Owner shall take such steps as may be necessary to ensure that the Project meets the Minimum Applicable Fraction. A Low Income Unit that has been vacated will continue to be treated as a Low Income Unit, provided that reasonable attempts are made to rent the Unit. In no case will a Unit be treated as a Low Income Unit if all the tenants of the Unit are students (as determined under Section 152(f)(2) of the Code), no one of whom is entitled to file a joint income tax return; provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code.

(2) The Owner shall require each individual or family that is intended to be a Qualifying Tenant (i) to sign and deliver an income certification form prior to occupancy of a Low Income Unit in the Project; (ii) to sign and deliver such income certification form at least annually so long as such individual or family remains a tenant in the Project; and (iii) to provide appropriate documentation to support each such certification in accordance with the Regulations and in accordance with the requirements of the Authority, as such may be modified from time to time. The Owner shall be responsible for assuring that each tenant's income certifications and documentation satisfy the Regulations and the requirements of the Authority. The Owner shall retain the income certification forms and supporting documentation for all Qualifying Tenants for a period of five years, or such other period as may be specified in Section 42 and/or the Regulations.

# UNOFFICIAL COPY

(3) The amount of Tax Credit Authority allocated or assigned to the Project is based upon the requirement that the Applicable Fraction for buildings in the Project will be at least the Minimum Applicable Fraction set forth above in the Project Summary, and as specified, building-by-building. The Owner's failure to ensure that each building in the Project complies with such requirement will cause the Authority (i) to report such fact to the Service, which may result in the reduction and recapture by the Service of Tax Credits; and (ii) to take other appropriate enforcement action.

(4) The Owner covenants that, throughout the Extended Use Period, the Owner will not evict or terminate the tenancy, other than for good cause, of the tenant of any Low Income Unit, and that each such Low Income Unit shall remain Rent Restricted in accordance with the requirements of Section C(1).

(5) At least ten percent (10%) or more of the Units in the Project must be Rent Restricted and occupied by Qualifying Tenants at or below thirty percent (30%) of Area Median Gross Income.

(6) The Compliance Period shall be a period of fifteen (15) consecutive taxable years and the Extended Use Period shall be a period of fifty (50) consecutive taxable years.

(7) As set forth in the Referral and Support Plan for the Project, which has been approved by the Authority, the Owner will partner with a lead referral agency and target at least 10% of the Units for Extremely Low Income Qualifying Tenants who are homeless, at risk of homelessness, and/or have disabilities, and who require access to supportive services in order to maintain housing.

(8) At least 10% of the Units in the Project will be constructed to exceed minimum accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as amended, for persons with mobility impairments. An additional 2% of the Units in the Project will be constructed to exceed minimum accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as amended, for persons with sensory impairments in accordance with the Application and any supporting documentation submitted with the Application. Requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) must be met. The proportion of "accessible" and "adaptable" Units which must be constructed for Qualifying Tenants must be consistent with the Project's Applicable Fraction.

(9) At least twenty percent (20%) of Units in the Project will contain three or more bedrooms targeted to Qualifying Tenants who are Low Income families.

(10) This Agreement and the Occupancy Restrictions shall cease to apply to any given unit if, following the end of the Compliance Period, a Qualified Purchaser (as defined below) or other eligible organization purchases the Unit, provided that the transaction meets the requirements of the Code. The Authority agrees that, upon a sale by the Owner to a Qualified Tenant (a "Qualified Purchaser"), as approved by the Authority, the Authority will provide a partial release of this Agreement for the Unit to which the sale pertains.



# UNOFFICIAL COPY

(11) The Project will be constructed and/or maintained consistent with Owner-selected and Authority-approved requirements contained in the applicable Green Housing Initiatives checklist, included as part of Supplemental Document 5 to the Qualified Allocation Plan.

(12) The Project will be constructed and/or maintained with the following amenities: Perimeter fencing, upgraded landscaping, energy star ceiling fans, on-site management office, 100% native landscaping, trash disposal chutes, energy star microwave ovens and 50%+ brick/masonry exterior.

## **D. Term of Restrictions.**

(1) **Term.** This Agreement shall become effective with respect to a building in the Project on the first day of the Compliance Period for such building and shall terminate on the last day of the Extended Use Period, unless this Agreement is earlier terminated pursuant to Sections D(2), D(3) or D(4) below, subject to Section (D)(5) (the "Term").

(2) **Involuntary Non-Compliance.** This Agreement and the Occupancy Restrictions shall cease to apply with respect to a building (or portion thereof) in the event and to the extent of involuntary noncompliance caused by unforeseen events such as fire or other casualty loss, seizure, requisition, condemnation or a change in federal law or an action of a federal agency after the date of final allocation of Tax Credit Authority to the Project that prevents the Authority from enforcing the requirements of this Agreement; provided that if insurance proceeds, condemnation awards or other amounts received as a result of any such loss, destruction or other event are used to restore the building, the Occupancy Restrictions shall continue to apply.

(3) **Foreclosure.** This Agreement and the Occupancy Restrictions shall cease to apply in the event of a foreclosure, transfer of title by deed in lieu of foreclosure or similar event, unless (i) at any time subsequent to such event, and during the Term hereof, the Owner or a related person (as defined in the Code) obtains an ownership interest in the Project for federal tax purposes; or (ii) the Service determines that such foreclosure, transfer of title by deed-in-lieu of foreclosure or similar event has occurred pursuant to an arrangement between the Owner and any lender(s) or any other party, a purpose of which is to terminate the Occupancy Restrictions.

(4) **Qualified Contract.** This Agreement and the Occupancy Restrictions shall cease to apply if, following the end of the Compliance Period, the Owner has properly requested the Authority's assistance in procuring a "Qualified Contract", as defined in the Code, for the acquisition of a building, and the Authority is unable to present a Qualified Contract. To properly request the Authority's assistance in procuring a Qualified Contract for the acquisition of a building, the Owner must submit a written request to the Authority no earlier than one year prior to the expiration of the Compliance Period, or in any year during the Extended Use Period, if applicable, accompanied by such information and supporting documentation as the Authority may require under procedures, accompanied by such information and supporting documentation as the Authority may require under procedures in effect at the time of submission. The Authority will have one year from the date of receipt of the Owner's written request to find a buyer to acquire the Owner's interest in the building. The Authority will attempt to procure a Qualified

# UNOFFICIAL COPY

Contract for the acquisition of any building only once during the Extended Use Period. The Owner agrees that if the Authority obtains a Qualified Contract for the acquisition of a building, the Owner will sell the building in accordance with such Qualified Contract. This section does not apply to Projects with a Compliance Period of 30 or more years.

(5) **Occupancy Restrictions.** If this Agreement is terminated prior to the end of the Extended Use Period pursuant to subsections (3) or (4) above, during the three-year period following such termination the Owner shall not (i) evict or terminate the tenancy, other than for good cause, of the tenant of any Low Income Unit, which tenant was in occupancy at the date of such termination; or (ii) increase the rent charged to such tenant of any such Low Income Unit, except as permitted with respect to Units that are Rent Restricted accordance with the requirements of Section C(1).

## **E. Records and Enforcement.**

(1) During normal business hours and upon reasonable notice, the Owner shall permit any duly authorized representative of the Authority to inspect all books and records of the Owner with respect to the Project's compliance with the Occupancy Restrictions and the requirements of Section 42.

(2) The Owner and the Authority each acknowledges that the primary purpose for requiring that the Owner comply with the Occupancy Restrictions is to assure that the Owner and the Project are in compliance with Section 42 and the Regulations, AND FOR THAT REASON THE OWNER, IN CONSIDERATION FOR RECEIVING TAX CREDIT AUTHORITY FOR THE PROJECT, AGREES AND CONSENTS THAT THE AUTHORITY AND ANY QUALIFYING TENANT (WHETHER PROSPECTIVE, PRESENT OR FORMER), SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(3) The Owner agrees that the representations and covenants set forth in this Agreement may be relied upon by the Authority and all persons interested in the compliance of the Project with the provisions of Section 42 and the Regulations. The Owner further agrees that all such representations and covenants represent ongoing and continuing requirements, and that the Owner will give notice to the Authority, in accordance with Section N hereof, in the event of any change in the facts or circumstances upon which any such representations and covenants are based.

(4) The Owner acknowledges that the Authority is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Owner's and the Project's compliance with the requirements of Section 42; and (ii) to notify the Service of any noncompliance which is found. The Owner agrees that it will take any and all actions reasonably necessary and required

# UNOFFICIAL COPY

by the Authority (i) to substantiate the Owner's compliance with the Occupancy Restrictions and the requirements of Section 42; and (ii) to allow the Authority to monitor such compliance.

(5) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42, the Act or this Agreement. Any violation of Section 42, the Act or this Agreement may constitute or warrant the filing of IRS Form 8823 with the Service. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of the Authority, to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Service, or the United States Department of Housing and Urban Development from time to time, pertaining to the Owner's obligations under Section 42 and affecting the Project.

(6) The Owner agrees that the Authority may, at any time during the construction, rehabilitation or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

(7) The Owner agrees that the Authority may at any time order it and/or its managing agent or Project manager to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, Authority rule, or term of an agreement regarding the Project, and that the Authority may file and prosecute a complaint against a managing agent, Project manager, or the Owner for a violation of any applicable law or ordinance.

(8) Upon a determination by the Authority that the Owner has failed to comply with the Occupancy Restrictions or to maintain the Project in good and habitable condition and suitable for occupancy as hereinabove required, the Owner agrees to correct any cited noncompliance or to supply any missing certifications within 90 days of receipt of notice of noncompliance from the Authority; provided that the Authority, in its sole discretion, (i) may extend the correction period for up to six months if it determines that good cause exists for granting such extension; and (ii) may provide such other period for correction, whether shorter or longer, as is (a) permissible under the law; and (b) appropriate, in the Authority's determination, to the circumstances.

(9) The Owner agrees to indemnify and hold harmless the Authority, its members, officers, agents and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Authority as a result of any inaccuracy in any of the representations and warranties contained in this Agreement, or as a result of any action by the Owner, including claims by third parties.

(10) The Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Authority which arise out of any of the matters relating to this Agreement, the Owner will cooperate fully with the Authority in the defense or other disposition thereof.

# UNOFFICIAL COPY

(11) In order to compensate the Authority for its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code, the Owner agrees to pay to the Authority an annual compliance monitoring fee in an amount which shall be determined by the Authority from time to time. Such fee must be paid and sent to the Authority lock box at the time that compliance monitoring information is supplied to the Authority, unless the Authority shall direct an alternative means or time for payment.

## **F. Transfer Restrictions.**

The Owner agrees to notify the Authority in writing prior to any sale, transfer or exchange of the entire Project, or of any low income portion of the Project, and to provide to the Authority with the name(s), address(es) and any other information requested by the Authority of any prospective successor owner and operator of the Project or building. The Owner agrees that (i) it will not dispose of any portion of a building in the Project unless the individual or entity that acquires such portion also acquires the entire building in which such portion is located and (ii) the transferee of the Project shall assume in writing, in a form of Assumption Agreement acceptable to the Authority, this Agreement and all duties and obligations of the Owner under this Agreement, Section 42 and the Regulations. The Owner shall have such Assumption Agreement recorded in the Office of the Recorder of Deeds in the county in which the Project is located and deliver a copy of such recorded Assumption Agreement, certified by the Recorder of Deeds, to the Authority prior to the Transfer. The Owner agrees that the Authority may void any sale, transfer or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Agreement, Section 42 and the Regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any building in the Project. Notwithstanding the requirement of an Assumption Agreement, and regardless of whether any such Assumption Agreement shall be executed, the requirements of this Agreement are, and shall only be interpreted to be, covenants running with the Project, encumbering the Project for the term of this Agreement, and binding upon the Owner's successors in title and all subsequent owners and operators of the Project.

## **G. Tenant Selection.**

The Owner shall not, in the selection of Qualifying Tenants, in the provision of services or in any other matter relating to the construction, rehabilitation or operation of the Project, discriminate against any person on the basis of race, creed, religion, color, sex, sexual orientation, age, handicap, marital status, family status, national origin or unfavorable military discharge, or because the tenant is receiving governmental assistance, which includes, but is not limited to, vouchers or certificates of eligibility under Section 8 of the United States Housing Act of 1937.

## **H. Covenants Run With the Land; Successors Bound.**

(1) Upon execution and delivery of this Agreement, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the Office of the Recorder of Deeds of the county in which the Project is located, and shall pay all fees and charges incurred

# UNOFFICIAL COPY

in connection therewith. All liens on the real property upon which the Project is located must be subordinate to this Agreement, and the Owner shall obtain the written consent of any existing superior lienholder of record on the Project to this Agreement and the requirements hereof. The Owner shall ensure that this Agreement is recorded prior to any and all loan documents used in connection with the financing for the Project. Upon recording, the Owner shall immediately transmit to the Authority an executed original of the recorded Agreement showing the date and recording number of record. The Owner agrees that the Authority shall not be required to issue IRS Form(s) 8609 for the building(s) constituting the Project, unless and until the Authority has received the properly recorded, executed original of this Agreement.

(2) The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth herein regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project for the term of this Agreement, and binding upon the Owner's successors in title and all subsequent owners and operators of the Project; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner (and the benefits shall inure to the Authority and any past, present or prospective Qualifying Tenant) and its respective successors and assigns during the term of this Agreement. For the longer of (i) the period during which the Tax Credits, if any, are claimed; and (ii) the Term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Project, or portion of it, shall expressly provide that such conveyance is subject to this Agreement; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project, or portion of it, provides that such conveyance is subject to this Agreement.

## **I. Notification of Noncompliance.**

The Owner agrees to notify the Authority or its designee if there is a determination by the Service that the Project is not a "Qualified Low Income Housing Project." Notification to the Authority shall be made within ten business days of receipt of any such determination.

## **J. No Conflicting Agreements.**

The Owner warrants that it is not bound by and will not execute any other agreement with provisions that bind it to violate the provisions of this Agreement.

## **K. Interpretation.**

Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 and the Regulations. In the event of any conflict between this Agreement and Section 42 and/or the Regulations, Section 42 and/or the Regulations shall control. The Authority's interpretation of this Agreement shall be controlling for purposes of determining whether (i) the Compliance Period or the Extended Use Period shall have commenced, (ii) this

# UNOFFICIAL COPY

Agreement shall have been terminated in accordance with Section D hereof, and (iii) the Occupancy and Other Restrictions set forth in Section C hereof, if any, shall have been complied with.

## **L. Amendment.**

This Agreement may only be amended with the prior written approval of the Authority to reflect changes in the Act, Section 42 and/or the Regulations and any revenue ruling promulgated thereunder, and any such amendment shall be recorded in the Office of the Recorder of Deeds in the county in which the Project is located. The Owner expressly agrees to enter into all amendments to this Agreement that, in the opinion of counsel to the Authority, are reasonably necessary or desirable for maintaining the compliance of the Project under Section 42 and the Regulations.

## **M. Severability.**

The invalidity of any clause, part or provision of this Agreement shall not affect the validity of its remaining portions.

## **N. Notices.**

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) registered or certified United States mail, postage prepaid, return receipt requested; or (c) overnight courier.

Authority: Illinois Housing Development Authority  
401 North Michigan Avenue, Suite 700  
Chicago, Illinois 60611  
Attn: Legal Department

Owner: Harvin-PV, LLC  
1100 Corporate Office Drive, Suite 110  
Milford, MI 48381  
Attention: Amin Irving

Such addresses may be changed by notice to the other parties given in the same manner as herein provided. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective upon proper deposit with the United States Postal Service. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective upon deposit with the overnight courier.

# UNOFFICIAL COPY

## **O. Governing Law.**

This agreement shall be governed by the internal laws of the State of Illinois and, where applicable, the laws of the United States of America.

## **P. Project Decertification.**

Notwithstanding anything in this Agreement to the contrary, if the Owner fails to comply fully with Section 42, the covenants and agreements contained herein and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Service or the Authority, from time to time, pertaining to the obligations of the Owner, the Authority may, in addition to all of the remedies described above or provided by law or in equity, request the Service to decertify the Project for Tax Credits and to immediately commence recapture of the Tax Credits previously allocated to the Project, if any. In such circumstances, if it shall be permissible under Section 42, the Authority may treat the Tax Credit Authority associated with the Project as "returned credit" under Section 42 and the Regulations.

## **Q. Survival of Obligations.**

The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Tax Credits, and shall not be deemed to terminate or merge with the awarding of such allocation.

## **R. Counterparts.**

This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement but all such counterparts shall constitute one and the same instrument.

## **S. HUD Required Provisions Rider.**

The document entitled "HUD-Required Provisions Rider" attached hereto as **Exhibit B** is hereby incorporated into this Agreement as if fully set forth herein and shall remain a part of this Agreement so long as the Secretary of HUD or his/her successors or assigns are the insurers or holders of the promissory note evidencing the Senior Loan (known as the Mortgage Note in the HUD-Required Provisions Rider). Upon such time as HUD is no longer the insurer or holder of the foregoing Mortgage Note or such time as the Mortgage Note is paid in full, the parties hereto agree that the HUD-Required Provisions Rider shall no longer be a part of this Agreement except for the provisions of paragraph R-11 which shall survive for the required period of time.

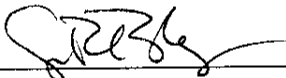
(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day and year set forth above.

**AUTHORITY:**

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

By: 

Printed Name: Jane R. Elger

*MSO*

Its: Assistant Executive Director

**OWNER:**

**Harvin-PV, LLC,**  
an Illinois limited liability company

By: **Harvin Company, LLC,**  
a Michigan limited liability company and  
its sole member and manager

By: \_\_\_\_\_  
Amin Irving, Manager

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day and year set forth above.

**AUTHORITY:**

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

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

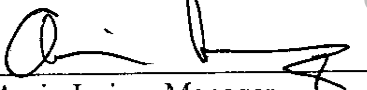
Printed Name: \_\_\_\_\_

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

**OWNER:**

**Harvin-PV, LLC,**  
an Illinois limited liability company

By: **Harvin Company, LLC,**  
a Michigan limited liability company and  
its sole member and manager

By:   
Amin Irving, Manager

Property of Cook County Clerk's Office

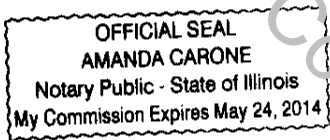
# UNOFFICIAL COPY

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for the County and State aforesaid, certify that Jane A. Bliger, personally known to me to be the Assistant Executive Director of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument in his/her capacity as the Assistant Executive Director of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** as his/her free and voluntary act and deed and as the free and voluntary act and deed of **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, for the uses and purposes therein set forth.

Given under my hand and official seal this 28<sup>th</sup> day of December, 2010.

Amanda Carone  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF Michigan )  
 ) SS.  
COUNTY OF Livingston

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Amin Irving, the Manager of Harvin Company, LLC, a Michigan limited liability company, the sole member and manager of Harvin-PV, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing Amendment, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, on behalf of said corporations and as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22<sup>nd</sup> day of December, 2010.

Diane R. Hoskins

Notary Public

My Commission Expires: October 3, 2016

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

**PARCEL 1: THE NORTH 40 FEET OF LOT 17 (EXCEPT THE WEST 150 FEET AND EXCEPT THE EAST 165 FEET THEREOF), LOT 18 (EXCEPT THE EAST 165 FEET THEREOF) AND LOT 19 (EXCEPT THE EAST 132 FEET OF THE NORTH 73.44 FEET AND EXCEPT THE EAST 165 FEET OF THAT PART OF SAID LOT 19 LYING SOUTH OF THE NORTH 73.44 FEET THEREOF) IN BAYLEY'S SUBDIVISION OF THE NORTH 20 ACRES OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.**

**PARCEL 2: EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT DATED NOVEMBER 20, 1968 AND RECORDED DECEMBER 3, 1968 AS DOCUMENT NO. 20693286 FROM CHICAGO BAPTIST INSTITUTE TO BAPTIST TOWERS, INC. AND AS RESERVED IN QUIT CLAIM DEED FROM BAPTIST TOWERS, INC. TO CHICAGO BAPTIST INSTITUTE DATED DECEMBER 4, 1968 AND RECORDED JANUARY 17, 1969 AS DOCUMENT NO. 20731979 FOR INGRESS AND EGRESS AND CONSTRUCTION AND MAINTENANCE OF PARKING FACILITIES OVER AND UPON THE FOLLOWING TO WIT:**

**THE NORTH 40 FEET OF THE EAST 132 FEET OF THAT PART OF LOT 17 LYING WEST OF THE EAST 33 FEET THEREOF IN BAYLEY'S SUBDIVISION AFORESAID.**

**PARCEL 3: EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY GRANT DATED NOVEMBER**

**20, 1968 AND RECORDED DECEMBER 3, 1968 AS DOCUMENT NO. 20693286 FROM CHICAGO BAPTIST INSTITUTE TO BAPTIST TOWERS, INC. AND AS RESERVED IN QUIT CLAIM DEED FROM BAPTIST TOWERS, INC. TO CHICAGO BAPTIST INSTITUTE DATED DECEMBER 4, 1968 AND RECORDED JANUARY 17, 1969 AS DOCUMENT NO. 20731979 FOR INGRESS AND EGRESS OVER AND**

**UPON THE FOLLOWING TO WIT:**

**THE NORTH 6.5 FEET OF THE EAST 132 FEET OF THAT PART OF LOT 19 LYING SOUTH OF THE NORTH 73.44 FEET AND WEST OF THE EAST 33 FEET THEREOF IN BAYLEY'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.**

# UNOFFICIAL COPY

## EXHIBIT B

### ILLINOIS HOUSING DEVELOPMENT AUTHORITY HUD-REQUIRED PROVISIONS RIDER

**THIS RIDER** is being executed by HUD (as defined below) and is attached to and made a part of that certain Low Income Housing Tax Credit Extended Use Agreement (the "**Document**"), dated as of December 27, 2010, entered into by and between HARVIN-PV, LLC, an Illinois limited liability company (the "Company" or "Owner"), and the ILLINOIS HOUSING DEVELOPMENT AUTHORITY, a body politic and corporate established pursuant to the Illinois Housing Development Act, ILCS 3805/1 et seq. (the "Authority") and ("**Authority**") relating to the property known as Parkview Towers Apartments and located at 5110 S. King Drive, Chicago, Illinois, 60615. In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the Document, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Document. As used herein, the term "**HUD**" (or "**Mortgagee**") shall mean the United States Department of Housing and Urban Development; the term "**FHA**" shall mean the Federal Housing Administration, an organizational unit within HUD; the term "**Project**" shall have the same meaning as in the HUD Regulatory Agreement described below; and the term "**HUD/FHA Loan Documents**" shall mean the following documents relating to the HUD-insured mortgage loan for the Project (Projec. No. 071-35685):

1. Mortgage dated June 27, 2001 and filed for record June 27, 2001 as document number 0010567352 in the Recorder's Office of Cook County, Illinois, (the "**Recorder**"), to GMAC Commercial Mortgage Corporation (the predecessor in interest to Berkadia Commercial Mortgage LLC pursuant to that certain Assignment of Mortgage dated December 10, 2009 and filed with the Recorder on April 7, 2010 as Document No. 1009710009).
2. Mortgage Note in the original principal amount of SEVEN HUNDRED EIGHTY-SEVEN THOUSAND AND 00/100 DOLLARS (\$787,000.00) dated as of June 27, 2001.
3. That certain Security Agreement dated as of June 27, 2001, by and between GMAC Commercial Mortgage Corporation (the predecessor in interest to Berkadia Commercial Mortgage LLC pursuant to that certain Assignment of Mortgage dated December 10, 2009 and filed with the Recorder on April 7, 2010 as Document No. 1009710009) and/or the Secretary of HUD, as Secured Party and Debtor.
4. Regulatory Agreement for Insured Multifamily Housing Projects (With Section 8 Housing Assistance Payments Contracts) dated June 27, 2001, recorded with the Recorder on June 27, 2001 as Document No. 0010567353.
5. Mortgage dated June 27, 2001 and filed for record June 27, 2001 as document number 0010567354 (as amended by an Amendment to Mortgage Restructuring Mortgage dated October 16, 2003 and recorded with the Recorder on November 19, 2003 as document number 0332319096), in the office of the Recorder.
6. Mortgage Restructuring Mortgage Note in the original principal amount of ONE MILLION TWO HUNDRED EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FIVE AND 00/100 DOLLARS (\$1,288,705.00) dated as of June 27, 2001.

# UNOFFICIAL COPY

7. Regulatory Agreement For Multifamily Housing Projects (With Section 8 Housing Assistance Payments Contracts) dated June 27, 2001, recorded with the Recorder on June 27, 2001 as Document No. 0010567355, as amended by an Amendment dated February 24, 2003 and filed on March 14, 2003 as Document No. 0030357617.
8. Mortgage dated June 27, 2001 and filed for record with the Recorder on June 27, 2001 as document number 0010567356 (as amended by an Amendment to Contingent Repayment Mortgage dated as of October 16, 2003 and filed for record with the Recorder on November 19, 2003 as Document Number 0332319097.
9. Contingent Repayment Mortgage Note in the original principal amount of ONE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED SIXTEEN AND 00/100 DOLLARS (\$1,650,616.00) dated as of June 27, 2001, as modified by a Modification of Contingent Repayment Mortgage Note dated as of October 16, 2003, and by an Allonge (Note and Mortgage Modification Agreement) dated as of November 12, 2008 and filed with the Recorder on March 12, 2009 as Document Number 0907139006.
10. Regulatory Agreement for Insured Multifamily Housing Projects dated June 27, 2001 recorded with the Recorder on June 27, 2001 as Document No. 0010567357, as amended by an Amendment dated February 24, 2003 and filed on March 14, 2003 as Document No. 0030357618.
11. Use Agreement for Multifamily Projects Participating in the Mark to Market Program dated June 27, 2001 recorded with the Recorder on June 27, 2001 as Document No. 0010567351.
12. Mortgage dated May 21, 1988 and filed for record as document number 88227306.
13. Flexible Subsidy Note in the original principal amount of TWO HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$225,000.00) dated May 26, 1988.
14. Use Agreement dated June 27, 2001 recorded with the Recorder on May 26, 1988 as Document No.88227312, which was modified by a Modification of Flexible Subsidy Note and Use Agreement Subordination Agreement dated June 27, 2001 and filed with the Recorder on June 27, 2001 as Document No. 0010567348.
15. Mortgage dated May 1, 1988 and filed for record on May 26, 1988 as document number 88227310.
16. Residual Receipts Note in the original principal amount of ONE MILLION FOUR HUNDRED FIFTY-THREE THOUSAND EIGHT HUNDRED THIRTY-FOUR AND 00/100 DOLLARS (\$1,453,834.00) dated as of May 1, 1988, which Note was modified by a Modification of Residual Receipts Note and Mortgage Subordination Agreement dated June 27, 2001 and filed June 27, 2001 with the Recorder as Document No. 0010567350.
17. UCC-1 Financing Statements made by Borrower, as debtor, and Mortgagee and/or the Secretary of HUD, as their interests may appear as secured party recorded with the Cook County Recorder's Office and filed with the Illinois Secretary of State.

# UNOFFICIAL COPY

Notwithstanding anything else in this Rider to the contrary, the provisions of this Rider shall be and remain in full force and effect only so long as HUD is the insurer or holder of the Mortgage; thereafter, this Rider shall be deemed no longer in effect.

- R-1 Notwithstanding anything in the Document to the contrary, the provisions of the Document are subordinate to all applicable Federal statutes, HUD mortgage insurance regulations and related HUD directives and administrative requirements other than those HUD mortgage insurance regulations, related HUD directives or administrative requirements which have been waived in writing by HUD with respect to the Project. The provisions of the Document are also expressly subordinate to the HUD/FHA Loan Documents. In the event of any conflict between the Document and the provisions of applicable Federal statutes, HUD mortgage insurance regulations, related HUD directives and administrative requirements, or HUD/FHA Loan Documents, the Federal statutes, HUD mortgage insurance regulations, related HUD directives and administrative requirements and HUD/FHA Loan Documents shall control, except for those HUD mortgage insurance regulations, related HUD directives or administrative requirements which have been waived in writing by HUD with respect to the Project.
- R-2 Failure on the part of the Owner to comply with the covenants contained in the Document shall not serve as a basis for default on any HUD-insured or HUD-held mortgage on the Project.
- R-3 Compliance by the Owner with the provisions and covenants of the Document and enforcement of the provisions and covenants contained in the Document, including, but not limited to, any indemnification provisions or covenants, will not and shall not result in any claim or lien against the Project (except for the Authority's mortgage liens and UCC filings), any asset of the Project, the proceeds of the Mortgage, any reserve, or deposit required by HUD in connection with the Mortgage transaction or the rents or other income from the Project, other than distributable "Surplus Cash" (as that term "Surplus Cash" is defined in the HUD Regulatory Agreement).
- R-4 No amendment to the Document made after the date of the HUD initial endorsement of the Mortgage Note shall have any force or effect until and unless such amendment is approved in advance in writing by HUD. No amendment made after the aforesaid date to any HUD/FHA Loan Document shall be binding upon the Authority unless the Authority has consented thereto in writing.
- R-5 Unless waived in writing by HUD with respect to the Project, any action of the Owner which is prohibited or required by HUD pursuant to applicable Federal law, HUD regulations, HUD directives and administrative requirements or the HUD/FHA Loan Documents shall supersede any conflicting provision of the Document, and the performance or failure to perform of the Owner in accordance with such laws, regulations, directives, administrative requirements or HUD/FHA Loan Documents shall not constitute an event of default under the Document.
- R-6 So long as HUD is the insurer or holder of any mortgage on the Project or any indebtedness secured by a mortgage on the Project, the Owner is not permitted to pay any amount required to be paid under the provisions of the Document except from distributable Surplus Cash, unless otherwise specifically permitted in writing by HUD. In the event there is insufficient available Surplus Cash to pay any amount in full, when due pursuant to the provisions of the Document, failure to pay shall not be a default or event of default under the Document but such amount shall accrue and be payable when there is sufficient available Surplus Cash or at the termination of the Mortgage, whichever shall first occur.

# UNOFFICIAL COPY

R-7 In the event of the appointment by any court, of any person, other than HUD or the Mortgagee, as a receiver, as a mortgagee or party in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the Document, with or without court action, no rents, revenue or other income of the Project collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Document except from distributable Surplus Cash in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Project in accordance with all provisions of the HUD/FHA Loan Documents.

R-8 A duplicate of each notice given, whether required or permitted to be given, under the provisions of the Document shall also be given to:

Department of Housing and Urban Development  
77 West Jackson Blvd.  
Chicago, IL 60604

Attention: Director of Multifamily Hub, Project No. 071-35685.

HUD may designate any further or different addresses for such duplicate notices.

R-9 Notwithstanding anything in the Document to the contrary, and expressly excepting residential leases and subleases which conform to the HUD Regulatory Agreement and HUD directives and policies, the Owner and its successors and assigns may sell, convey, transfer, lease, sublease or encumber the Project or any part thereof, provided it obtains the prior written consent of HUD to any such sale, conveyance, transfer, lease, sublease or encumbrance. Notwithstanding anything in the Document to the contrary, the Owner may make application to HUD for approval of a Transfer of Physical Assets in accordance with HUD regulations, directives and policies. A duplicate copy of such application shall be served on the Authority. Within 90 days after such service, the Authority shall serve written notice of its approval of such transfer, or of its requirements for approval of such transfer, on HUD, the Mortgagee and the Owner. No such transfer shall occur or be effective until the requirements shall have been satisfied. In the event the Authority fails to serve such notices on HUD, the Mortgagee, and the Owner within said time, then any consent by HUD to such transfer shall be deemed to be the Authority's prior written consent to such transfer and consummation of such transfer shall not be a default under the Documents.

R-10 Notwithstanding anything in the Document to the contrary, the provisions of this HUD-Required Rider are for the benefit and are enforceable by HUD and the Mortgagee.

R-11 It is the intent and agreement of the parties hereto as well as **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company (the "Senior Lender") who has countersigned this Rider for such purpose, and for any other party who may claim any interest herein, that the Document shall qualify as an "extended low-income housing commitment" under the provisions of Section 42(h)(6)(B) and Section 42(h)(6)(E) of the Code. Notwithstanding any other provision of this Rider, the provisions of Section 42(h)(6)(B) and 42(h)(6)(E) of the Code shall supersede, govern and control any inconsistent or contradictory terms of this Rider and any other inconsistent or contradictory terms set forth in any document encumbering the Project through expiration of the Extended Use Period and the Three-Year Period, if any, but solely for the purpose of qualifying this Document under the minimum requirements set forth in Section 42(h)(6)(B) and 42(h)(6)(E).



# UNOFFICIAL COPY

- R-12 The Document and all covenants and provisions therein and all lien rights created thereby, if any, shall automatically terminate in the event of a foreclosure, or a deed in lieu of foreclosure, of any mortgage insured or held by HUD with respect to the Project, or any portion thereof. Upon such termination, the Authority shall furnish to HUD and Mortgagee such releases and other documentation as HUD or Mortgagee shall deem necessary or convenient to confirm or evidence such termination.
- R-13 Any provision requiring the Owner to take any action necessary to preserve the tax credits or prohibiting the Owner from taking any action that might jeopardize the tax credits is qualified to except actions prohibited or required by HUD pursuant to the National Housing Act, applicable mortgage insurance regulations, the HUD/FHA Loan Documents, or, if applicable, Section 8 of the U.S. Housing Act of 1937 and the regulations thereunder.
- R-14 This Rider may be executed in several counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties, notwithstanding that all parties are signatory to the original or the same counterpart. Any such counterpart shall be admissible into evidence as an original hereof against the party who executed it.
- R-15 If the Document relates to the granting of funds made available to the Authority under Sections 1404 and 1602 of the Law ("Section 1602"), or the rights and remedies of the Authority relating to Section 1602, the Authority shall not, without the prior written consent of HUD, and notwithstanding any contrary provisions in the Document: (i) collect the Recapture Amount (as defined in that certain 1602 Written Agreement between the Authority and the Owner dated as of October 1, 2010 ("Written Agreement")) from the Owner or the Project, but the Authority may pursue its remedies to collect the Recapture Amount from the members of Owner, any guarantors, or any other parties that have agreed to be liable to the Authority for such funds, (ii) pursue any remedies for any default under the Written Agreement or any other document evidencing, governing or securing the grant made by the Authority to the Owner ("1602 Grant Documents"), other than for a Recapture Event (as defined in the Written Agreement), (iii) charge interest of any type, including default interest, to the Owner pursuant to the Grant Documents, (iv) accelerate any amount due under the Grant Documents, except pursuant to a Recapture Event, and (v) present for collection any letters of credit held by it, or apply any reserves held by it to any amounts due under the Grant Documents.

*[Signature Pages of HUD and Berkadia Commercial Mortgage LLC to this Rider follow]*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Rider has been executed and delivered by an authorized representative of HUD.

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT Acting by and through the Federal Housing Commissioner

By: *Edward Hinsberger*  
Authorized Agent

STATE OF ILLINOIS )  
                                  ) ss.  
COUNTY OF COOK )

Edward J. Hinsberger  
Director, Chicago Multifamily HUB

Before me, a Notary Public in and for the County and State aforesaid, this 27<sup>th</sup> day of DECEMBER, 2010, personally appeared Edward Hinsberger the AUTHORIZED AGENT of The Secretary of Housing Urban Development, and acknowledged the execution of the foregoing.

*Deborah Monroe*  
Notary Public

My Commissions Expires

*[Signature Page of Berkadia Commercial Mortgage LLC to this Rider follows]*



PROPERTY OF COOK COUNTY CLERK'S OFFICE

# UNOFFICIAL COPY

<sup>Rider</sup>  
**IN WITNESS WHEREOF**, this ~~Agreement~~ has been executed and delivered by the authorized representatives of the Senior Lender.

BERKADIA COMMERCIAL MORTGAGE LLC,  
a Delaware limited liability company

By: [Signature]  
Name: Allen Sullivan  
Title: Authorized Representative

STATE OF PENNSYLVANIA )  
  ) ss.  
COUNTY OF Montgomery )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of December, 2010 by Allen Sullivan, the Authorized Representative of Berkadia Commercial Mortgage LLC, a Delaware limited liability company, on behalf of the corporation.

[Signature]  
Notary Public  
My Commissions Expires: 2-20-2012

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
AMY HIGGINS, Notary Public  
Horsham Twp., Montgomery County  
My Commission Expires February 20, 2012

Property of OK County Clerk's Office