

WHEN RECORDED, RETURN TO:

FIRST AMENDMENT TO TAX REGULATORY AGREEMENT

by and among

EMANUEL GRANT COMPANY LLC,
a Colorado limited liability company,
as Owner

and

CITY AND COUNTY OF DENVER, , COLORADO
as Issuer

and

UMB BANK, N.A.,
as Trustee

Dated as of _____, 2014

FIRST AMENDMENT TO TAX REGULATORY AGREEMENT

THIS FIRST AMENDMENT TO TAX REGULATORY AGREEMENT (this “**Amendment**”), is made and entered into as of _____, 2014, by and among **EMANUEL GRANT COMPANY LLC**, a Colorado limited liability company (the “**Owner**”) the **CITY AND COUNTY OF DENVER, COLORADO**, a home rule city, a municipal corporation and a political subdivision of the State of Colorado (the “**Issuer**”), **UMB BANK, N.A.**, a national banking association (the “**Trustee**”), and amends that Tax Regulatory Agreement made as of September 1, 1999, among the Issuer, The Bank of Cherry Creek, N.A. (predecessor in interest to the Trustee) (the “**Prior Trustee**”) and the Borrower, recorded in the Official Records of Denver County, Colorado (the “**Official Records**”) as Reception Number 9900154571 (the “**Initial Agreement**”). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Initial Agreement.

WITNESSETH

WHEREAS, pursuant to a Trust Indenture dated as of September 1, 1999 (the “**Senior Indenture**”), between the Issuer and the Prior Trustee, the Issuer issued its Multifamily Housing Revenue Bonds (Capital Heights Apartments), in two separate series, consisting of \$13,525,000 in the aggregate principal amount of tax-exempt Series 1999A Bonds and \$2,025,000 in the aggregate principal amount taxable Series 1999B Bonds, and pursuant to a separate Trust Indenture dated as of September 1, 1999 (the “**Subordinate Indenture**” and, together with the Senior Indenture, the “**Indenture**”), the Issuer issued its tax-exempt Subordinate Multifamily Housing Revenue Bonds (Capital Heights Apartments) Series 1999C, in the aggregate principal amount of \$1,885,000 (the Series 1999A Bonds and the Series 1999C Bonds are collectively referred to herein as the “**Tax Exempt Bonds**” and the Series 1999A Bonds, Series 1999B Bonds and the Series 1999C Bonds are collectively referred to herein as the “**Bonds**”); and

WHEREAS, the Issuer used the proceeds of the Bonds to make separate loans to the Borrower (together, the “**Mortgage Loan**”) to provide for the financing of the development of a multifamily residential rental project located in the City of Denver, Colorado, known as the Residences at Capitol Heights (the “**Project**”), which is more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference, and pay certain other costs; and

WHEREAS, Bellwether Enterprise Real Estate Capital, LLC, an Ohio limited liability company (the “**Mortgage Lender**”) has made a loan to the Borrower to refinance the Project (the “**FHA Loan**”), which loan is insured by the United States Department of Housing and Urban Development (“**HUD**”); and

WHEREAS, as a condition to insuring the FHA Loan, HUD required that the Issuer and the Trustee agree to subordinate any remaining use restrictions and other covenants set forth in the Initial Agreement to the lien of the FHA Loan; and

WHEREAS, the Issuer, the Trustee and the Borrower now desire to amend the Initial Agreement to confirm certain matters and to subordinate the remaining use restrictions and other covenants set forth in the Initial Agreement to the liens of the FHA Loan.

NOW, THEREFORE, in consideration of the above, and the mutual promises contained in the Initial Agreement as modified by this Amendment, the receipt and sufficiency of which are acknowledged, the Issuer, the Trustee and the Borrower agree as follows:

Section 1. HUD Requirements. The Regulatory Agreement is amended to add Section 19 as follows:

“Section 19. HUD Requirements. The HUD Rider to Restrictive Covenants, attached hereto as Appendix I, is incorporated by reference into the Regulatory Agreement for such time as the Project is subject to a mortgage, deed of trust or security instrument insured or held by the Secretary of Housing and Urban Development (“HUD”), or its successors or assigns.”

Section 2. HUD Rider to Restrictive Covenants. Appendix I to the Initial Agreement is hereby amended and restated with Exhibit “B” to this Amendment.

Section 3. No Further Modifications. Except as modified by this Amendment, the Initial Agreement shall remain unmodified and in full force and effect.

Section 4. Applicable Law. This Amendment shall be governed by and construed in accordance with the laws of the State.

Section 5. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

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IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower Owner have executed this Amendment as of the date subscribed herein.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
DEBRA JOHNSON, Clerk
and Recorder, Ex-Officio Clerk of
the City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
D. SCOTT MARTINEZ,
Attorney for the City and
County of Denver

REGISTERED AND COUNTERSIGNED:
By _____
Manager of Finance

By _____
City Attorney

By _____
Auditor

[Issuer signature to First Amendment to Tax Regulatory Agreement]

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

On this ____ day of _____, 2014, personally came before me D. Scott Martinez, who by me duly sworn, did say that he is the City Attorney of the Issuer and that the said writing was signed and sealed by him on behalf of said Issuer, by authority duly given. And the D. Scott Martinez acknowledged the said writing to be the act and deed of said Issuer.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My commission expires:

[Notary page for D. Scott Martinez to First Amendment to Tax Regulatory Agreement]

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

On this ____ day of _____, 2014, personally came before me Michael B. Hancock, who by me duly sworn, did say that he is the Mayor of the Issuer and that the said writing was signed and sealed by him on behalf of said Issuer, by authority duly given. And the said Michael B. Hancock acknowledged the said writing to be the act and deed of said Issuer.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My commission expires:

[Notary page for Michae B. Hancock to First Amendment to Tax Regulatory Agreement]

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

On this ____ day of _____, 2014, personally came before me Debra Johnson, who by me duly sworn, did say that she is the City Clerk and Recorder of the Issuer and that the said writing was signed and sealed by her on behalf of said Issuer, by authority duly given. And the Debra Johnson acknowledged the said writing to be the act and deed of said Issuer.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My commission expires:

[Notary page for Debra Johnson to First Amendment to Tax Regulatory Agreement]

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

On this ____ day of _____, 2014, personally came before me Cary Kennedy, who by me duly sworn, did say that she is the Manager of Finance of the Issuer and that the said writing was signed and sealed by her on behalf of said Issuer, by authority duly given. And the said Cary Kennedy acknowledged the said writing to be the act and deed of said Issuer.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My commission expires:

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

On this ____ day of _____, 2014, personally came before me Dennis J. Gallagher, who by me duly sworn, did say that he is the City Auditor of the Issuer and that the said writing was signed and sealed by him on behalf of said Issuer, by authority duly given. And the said Dennis J. Gallagher acknowledged the said writing to be the act and deed of said Issuer.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My commission expires:

[Notary page for Dennis J. Gallagher to First Amendment to Tax Regulatory Agreement]

EMANUEL GRANT COMPANY LLC,
a Colorado limited liability company

By: 1350 GRANT COMPANY LLC,
a Colorado limited liability company
Its: Manager

By: _____
Bruce Heitler, Manager

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

On _____, 2014, before me, _____ personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Borrower signature and notary page to First Amendment to Tax Regulatory Agreement]

EXHIBIT A

LEGAL DESCRIPTION

A Leasehold Estate in and to the following described property:

The Southerly 23 feet of Lot 7 and Lots 8 through 13, inclusive, Block 66, H.C. Brown's Second Addition to Denver, Colorado, together with a strip of land adjoining said Lots on the East being all of that part of the W 1/2 of the NE 1/4 of Section 3, Township 4 South, Range 68 West bounded on the North by the North line of Lot 1 extended East on the South by the South line of Lot 13 extended easterly on the East by the East line of said W 1/2 of the NE 1/4 and on the West by the Easterly line of Lots 1 to 13, said Block 66,

And

Lots 14 through 20, inclusive Block 66, H.C. Brown's Second Addition to Denver, together with that certain strip of land lying immediately East of and adjacent to said Lots, and bounded on the North by the extended North line of Lot 14, on the South by the extended South line of Lot 20 and on the East by the East line of the West 1/2 of NE 1/4 of Section 3, Township 4 South, Range 68 West, City and County of Denver, State of Colorado.

NOTE: The above legal is further defined and described as:

Residential Unit and Commercial Unit, Capitol Heights Condominiums according to the Condominium Map thereof, recorded on October 21, 2002, with Reception Number 2002194392, in the records of the office of the Clerk and Recorder of the City and County of Denver, Colorado, and as defined and described in Capitol Heights Condominiums Condominium Declaration recorded on October 21, 2002, with Reception Number 2002194391, in said records, City and County of Denver, State of Colorado.

EXHIBIT B

HUD RIDER TO RESTRICTIVE COVENANTS

This HUD Rider to Restrictive Covenants (“**Rider**”) is made as of _____, 2014, by Emanuel Grant Company LLC, a Colorado limited liability company (“**Borrower**”), UMB Bank, N.A. (the “**Trustee**”), and the City and County of Denver, Colorado (the “**Issuer**”).

WHEREAS, Borrower has obtained financing from Bellwether Enterprise Real Estate Capital, LLC, an Ohio limited liability company (“**Lender**”) for the benefit of the project known as Residences at Capitol Heights (“**Project**”), which loan is secured by a Multifamily Deed of Trust, Assignment of Leases and Rents, and Security Agreement, (“**Security Instrument**”) dated as of _____, 2014, and recorded in the official records of Denver County, Colorado (“**Records**”) on _____, 2014, at Reception Number _____, and is insured by the United States Department of Housing and Urban Development (“**HUD**”);

WHEREAS, Borrower entered into that certain Tax Regulatory Agreement (“the **Restrictive Covenants**”) with respect to the Project, as more particularly described in Exhibit A of the First Amendment to Tax Regulatory Agreement to which this Rider is attached, dated as of September 1, 1999, and recorded in the Records;

WHEREAS, HUD requires as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Issuer has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Bellwether Enterprise Real Estate Capital, LLC, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “**HUD Requirements**”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency’s reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit

- entity. [or
iv. [A HUD-approved collateral assignment of any HAP contract.]

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.