



## MASSHOUSING RIDER TO OPERATING AGREEMENT

This MassHousing Rider to Operating Agreement is dated as of \_\_\_\_\_, 201\_ (the “Rider”) and is attached to and made a part of the Amended and Restated Operating Agreement, dated as of \_\_\_\_\_, 201\_ (the “Operating Agreement”), of \_\_\_\_\_ LLC, a limited liability company organized under the laws of the Commonwealth of Massachusetts (the “Company”). The terms of this Rider are incorporated into the Operating Agreement in order to induce the Massachusetts Housing Finance Agency (“MassHousing”) to make the following mortgage loans to the Company: [*MassHousing loans and loan documents*]. For purposes hereof, the [*MassHousing Loans*] are collectively referred to as the “Loan,” the [*MassHousing Notes*] are collectively referred to as the “Note,” and the [*MassHousing Mortgages*] are collectively referred to as the “Mortgage.” The Loan is further evidenced and secured by a Regulatory Agreement (the “Regulatory Agreement”), a [*Residential Compliance Agreement*][*Disposition Agreement*] and a [*Development Fund Agreement*], all by and between MassHousing and the Company and dated as of the date hereof, and by related contract documents, as more fully described in the Mortgage, all of which, together with the Note and Mortgage, are collectively referred to in this Rider as the “Contract Documents.”

The Loan is being made by MassHousing to the Company to provide [*construction*][*permanent*] financing for the development known as “\_\_\_\_\_,” located at \_\_\_\_\_, Massachusetts, as more fully described in the Mortgage (the “Development”).

The Company’s Manager(s), Managing Member(s) and Member(s) are as specified in the Operating Agreement. Any other capitalized terms not defined herein shall have the meanings ascribed to them in the Contract Documents.

The parties hereto agree that the following covenants, terms and conditions shall be part of and shall modify and supplement the Operating Agreement, and that in the event of any inconsistency or conflict between the covenants, terms, and conditions of the Operating Agreement and this Rider, the following covenants, terms, and conditions of this Rider shall control and prevail.

### 1. Company.

(a) Company Purpose. The sole purpose of the Company shall be to develop, construct, rehabilitate, own and lease the Development as affordable rental housing in accordance with the requirements of the Regulatory Agreement. The Company shall not engage in any other business and shall not have or acquire an ownership interest in any asset other than the Development.

(b) New Members; Transfers of Beneficial Interest. The admission, change or substitution of any Manager, Managing Member or Member, and the conveyance, assignment, transfer, surrender or relinquishment of a beneficial interest in the Company and/or of any right to manage or receive the rents and profits of the Development (including any action or event constituting a Transfer under MassHousing’s Transfer Policy, as described in the Regulatory Agreement), shall be subject to the requirements set forth in the Regulatory Agreement, including, if applicable, the prior written approval of MassHousing. Any new or substitute Manager, Managing Member or Member must agree to acknowledge the Company’s obligations to MassHousing in connection with the Loan and the operation of the Development (including, without limitation, this Rider, any of the Contract Documents and/or any other instrument as requested by MassHousing). At MassHousing’s request, such acknowledgement shall be made in a written instrument in form and substance acceptable to MassHousing; provided, however,

that the execution of any instrument effecting, accepting or otherwise acknowledging the inclusion of any such new or substitute Manager, Managing Member or Member into the Company shall be deemed and shall constitute such acknowledgment.

(c) Declaration of Bankruptcy. The Company shall not authorize the commencement of any voluntary bankruptcy, receivership, or insolvency proceeding without the written consent of all of the Manager(s), Managing Member(s) and Member(s).

(d) Voluntary Dissolution. The Company may not voluntarily be dissolved without the prior written approval of MassHousing.

(e) Continuation of the Company. Upon the withdrawal, termination, retirement, dissolution, bankruptcy, death or declaration of legal incompetence of any Manager or Managing Member, either voluntarily or by operation of law, the remaining Manager(s) or Managing Member(s), if any (or, if none, the remaining Manager(s), Managing Member(s) and Member(s)), shall promptly notify MassHousing of such event and shall continue the business of the Company, and, if no Manager or Managing Member remains, the Member(s) shall appoint a Manager or Managing Member acceptable to MassHousing. The retirement, death, dissolution, bankruptcy or declaration of legal incompetence of the Manager(s) or Managing Member(s), or any other event of dissolution or disassociation of the Company under the Massachusetts Limited Liability Company Act (M.G.L. Chapter 156C shall not dissolve the Company, and the business of the Company shall be continued by the remaining Manager(s), Managing Member(s) and Member(s).

(f) Right, Title and Control of Development. Upon any dissolution of the Company, no title or right to possession and control of the Development, and no right to collect the rents from the Development, shall pass to any party or person who is not bound by the Contract Documents.

## 2. Manager or Managing Member.

(a) Engagement in Business and Activities. If the Company's Manager or Managing Member (which term, for purposes of this Rider, shall, except where the context provides otherwise, be deemed to include each Manager or Managing Member, if more than one) is a corporation, partnership or limited liability company, such Manager or Managing Member shall not engage in any business or activity or have a controlling interest in any property, business or asset other than MassHousing-financed developments unless otherwise approved in writing by MassHousing.

(b) Authority. The Manager or Managing Member shall be solely responsible for the management of the Company's business, with all the rights and powers generally conferred by law and the Operating Agreement. Any party dealing with the Company may rely on a certificate signed by the Manager or Managing Member (or a single Manager or Managing Member, if more than one) that the Manager or Managing Member has all necessary power and authority to bind the Company by its acts.

(c) Reliance on Manager or Managing Member. The Members are entering into the Operating Agreement and MassHousing is making the Loan in reliance upon the unique expertise, skills and management ability of the Manager or Managing Member. The Manager or Managing Member shall not assign, delegate or permit the assignment of its management rights, whether voluntarily or involuntarily, without the prior written consent of MassHousing. In the event of the involuntary assignment of the Manager or Managing Member's interest in the Company as a result of the Manager or Managing Member's death, dissolution, bankruptcy, or declaration of legal incompetence or incapacity, the Manager or Managing Member's assignees or successors in interest shall be entitled only to the rights of an assignee of the Manager or Managing Member's economic interest in the Company, if any, and

shall not succeed to any of the Manager or Managing Member's management rights or authority without the prior written approval of MassHousing.

(d) Execution of Documents. The Manager or Managing Member (or any Manager or Managing Member, if more than one), by its authorized representative, is authorized to execute and deliver the Contract Documents and any other documents required by MassHousing in connection with the Loan on behalf of the Company, and the delivery thereof to MassHousing shall constitute conclusive evidence that such execution and delivery have been duly authorized.

(e) Designation of Company Representative. The Company designates the Manager or Managing Member (or any Manager or Managing Member, if more than one) as its representative for all matters concerning the Development that require MassHousing's consent or approval, and the signature of an authorized representative of the (or, as applicable, any) Manager or Managing Member shall bind the Company in all such matters.

*[If construction loan:]*

(f) Conduct of Repairs. The Company has hired \_\_\_\_\_ (the "Contractor") to complete certain repairs at the Development that are financed by proceeds of the Loan. The construction contract with the Contractor may not be terminated or amended without the prior written consent of MassHousing, and the Company may not appoint a new contractor or enter into a new construction contract to complete repairs financed by the proceeds of the Loan without the prior written consent of MassHousing.

### 3. Operating Agreement.

(a) Term. The Operating Agreement, including this Rider, shall remain in full force and effect for so long as MassHousing is the holder of the Note and Mortgage (or, if the Note or Mortgage, as applicable, comprises multiple notes or mortgages, for so long as MassHousing is the holder of any such note or mortgage). The Operating Agreement shall not have a term that is shorter than the term of the Note (or, if the Note comprises multiple notes, the longest term of all such notes).

(b) Amendment. No amendment to the Operating Agreement, including this Rider, that would affect the rights of MassHousing under the Contract Documents and/or under this Rider shall be made without the prior written consent of MassHousing, and any amendment purported to be made without such consent shall be void and without effect.

(c) Conflicting Provisions in Contract Documents and Operating Agreement. Notwithstanding any other provision of the Operating Agreement, including this Rider, in the event that any provision of the Operating Agreement or this Rider conflicts with the Contract Documents (or any of them), the provisions of the Contract Documents shall control. Nothing in the Operating Agreement, including this Rider, shall serve to impede or restrict MassHousing's rights under the Contract Documents.

4. Member Loans. The terms of any loan(s) or advance(s) to the Company by any Member (each, a "Member Loan"), shall be subject to the prior written approval of MassHousing. Any payment made by the Company on a Member Loan shall be subject to and must comply with the terms of the Regulatory Agreement, including, without limitation, the provisions thereof regarding "Use of Development Revenues" and "Distributions."

5. Assignment or Pledge of Company Interests.

(a) MassHousing Loan. Any Member may assign or pledge its interest in the Company to MassHousing as security for the Loan. Upon exercise by MassHousing of its rights pursuant to such pledge or assignment, MassHousing shall succeed to all of the assignor's right, title, and interest in the Company, and, at MassHousing's sole election, shall be admitted to the Company as a Substitute Member having all of the rights of a Member attributable to such interest.

(b) Member Loan. Any assignment or pledge of a Company interest as security for a Member Loan shall be subject to the prior written approval of MassHousing. Notwithstanding any provision to the contrary in the Operating Agreement or any documentation entered into in connection with a Member Loan, any pledge of Company interests to secure such Member Loan is and shall be subject to any and all pledges to MassHousing under the DFA and any other applicable Contract Documents.

6. Development Operations.

(a) Limitations on Distributions. Distributions to the Members, or any of them, shall be subject to the limitations set forth in the Regulatory Agreement.

(b) Reserves and Escrows. Operating and Replacement Reserves for the Development and any other reserves and escrows for the Development described in the Contract Documents shall be maintained as set forth in the Regulatory Agreement and any other applicable Contract Documents. Unless the Operating Agreement expressly provides otherwise, the amounts of reserves and escrows required under the Contract Documents shall be credited toward the amount of any corresponding reserves and escrows required under the Operating Agreement. *[If applicable: If the Operating Agreement and/or any of the Contract Documents provides for replenishment of any such reserves or escrows, MassHousing's prior written confirmation that the source of funds for replenishment contemplated by the Company to effect such provisions is consistent with the Development budget previously approved by MassHousing and is acceptable to MassHousing shall be required in connection with each required replenishment.]*

(c) Management Agent. The hiring of a management agent for the Development, the management contract and the management fees payable thereunder shall be subject to the prior written consent of MassHousing, and no provision in the Operating Agreement, including this Rider, shall serve to impede or restrict MassHousing's rights under the Contract Documents to require termination of the management contract and designation of a management agent acceptable to MassHousing. No distribution or loan to the Company may be guaranteed by any assignment of any management fee to be received by any Member.

(d) Development Fee. If any construction or repair work is or will be financed by proceeds of the Loan, no payment of any amount reflected in the budget approved by MassHousing in connection with its closing on the Loan that comprises all or a part of the Development Fee (as defined in the Loan Agreement) shall be paid unless and until all costs of construction of the Development approved by MassHousing in connection with its making of the Loan have been paid and all construction or bridge loan financing by MassHousing or any other lender have been repaid, except to the extent expressly authorized under the Loan Agreement (or otherwise expressly approved by MassHousing).

7. MassHousing as Third-Party Beneficiary. The provisions of this Rider are intended for the benefit of MassHousing so long as the Loan (or, if more than one loan comprises the Loan, so long as any such loan) shall remain outstanding, and MassHousing (or its assignee) shall have the right to enforce the

provisions of this Rider as a third-party beneficiary. Violation of the provisions of this Rider shall constitute an event of default under the Contract Documents.

*[The remainder of this page is intentionally blank. Signature page follows.]*

*Signature Page – Operating Agreement*

IN WITNESS WHEREOF, the undersigned, being all the Managers, Managing Members and Members of the Company, have executed this MassHousing Rider to Operating Agreement as of the date set forth above.

[MANAGER] [MANAGING MEMBER]:

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

MEMBER:

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title: