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RETURN TO: Neeraj Agam
3814 Farnam St #203
Omaha, NE 68131

CHECK NUMBER

**HUD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR BLAIR COMMONS**

Blair High Residences

This HUD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BLAIR COMMONS (“Amendment”) is made as of June 17, 2019, by BHRHUD, LP, (“Owner” or “Borrower”), Rowsat96, LP (“Rowsat96”), HUDBLAIRGP, LLC (“HUDBLAIRGP”), Blair Commons Owners Association (“Association”), and Clarity Development Company, LLC (“Clarity”)

WHEREAS, Owner has obtained financing from Gershman Investment Corp. (“Lender”) for the benefit of the project known as Blair High Residences (“Project”), which loan is secured by a Multifamily Deed of Trust, Construction Security Agreement a/k/a Multifamily Deed of Trust, Security Agreement, Assignment of Rents, and Fixture Filing (Nebraska), Assignment of Rents, and Fixture Filing (Nebraska) (“Security Instrument”) dated as of April 1 and recorded April 6, 2017 and modified as of _____, 2019, in the Register of Deeds of Douglas County, Nebraska (“Records”) and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Owner entered into that Declaration of Covenants, Conditions, and Restrictions for Blair Commons (the “Declaration”) with Rowsat96, LP, (“Rowsat96”), HUDBLAIRGP, LLC (“Subdivider”), Blair Commons Owners Association (“Association”), and Clarity Development Company, LLC (“Clarity”) recorded against the project on July 9, 2018, at Instrument Number 2018053439 with the Assessor/Register of Deeds of Douglas County, Nebraska (“Douglas County Register of Deeds”) (Owner, Rowsat96, Subdivider, Association, and Clarity shall collectively be referred to as the “Declaration Parties”);

WHEREAS, Borrower’s Declaration with respect to the Project was recorded in relation to the real property more particularly described in Exhibit A attached hereto;

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

WHEREAS, the Declaration Parties have agreed to subordinate the Declaration to the lien of the Mortgage Loan in accordance with the terms of this Amendment.

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 Declaration and any provision contained in this Amendment, the provisions contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.

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

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

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

"Lender" means Gershman Investment Corp., its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Owner 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 Owner 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 Declaration to the contrary, except for the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, 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”). Owner covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or the Declaration. In the event of any conflict between the provisions of the Declaration and HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Authority’s ability to enforce the terms of the Declaration, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Owner represents and warrants that to the best of Owner’s knowledge the Declaration imposes no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure (or deed in lieu of foreclosure), the Declaration (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.

(e) Owner and the Declaration Parties acknowledge that Owner’s failure to comply with the covenants provided in the Declaration 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 Declaration Parties’ reporting requirements, in enforcing the Declarations the Declaration Parties 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 Project other than a claim against:

- i. Available Surplus Cash, if the Owner is a for-profit entity;
- ii. Available distributions of surplus cash and Residual Receipts authorized for release by HUD, if the Owner is a limited distribution entity; or
- iii. Available Residual Receipts authorized by HUD, if the Owner is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Owner and the Declaration Parties shall not further amend the Declaration, 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 Declaration Parties may require the Owner to indemnify and hold the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the Authority relating to the subordination and covenants set forth in the LURA, provided, however, that Owner's obligation to indemnify and hold the Authority harmless shall be limited to available surplus cash and/or residual receipts of the Owner.

(i) Owner represents and warrants that to the best of Owner's knowledge, the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Declaration. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Declaration is to articulate requirements on the Declaration Parties relative to a subdivision commonly known as Blair Commons in Douglas County, Nebraska. In the event an apparent conflict between the HUD Requirements and the Declaration arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Owner, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Declaration. 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.

The undersigned agree to the terms and provisions of this Amendment as of the date set forth herein.

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EXHIBIT A

Lot 1, Blair Commons Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, EXCEPT for a tract of land in a part of Lot 1, Blair Commons Replat 1 more particularly described as follows:

Beginning at the Southeast corner of said Lot 1, said corner also being on the West right-of-way line of 93rd Avenue; thence on the South line of said Lot 1 on an assumed bearing of S87°17'02"W, 88.28 feet; thence N02°27'06"W, 286.93 feet to a point of curvature on said West right-of-way line of 93rd Avenue; thence on said West right-of-way line of 93rd Avenue for the following three (3) described courses: (1) on a 125.00 foot radius curve to the left, an arc length of 137.51 feet (long chord bears S33°58'01"E, 130.68 feet) to a point of reverse curvature; (2) on a 75.00 foot radius curve to the right, an arc length of 97.97 feet (long chord bears S28°03'39"E, 91.15 feet); thence S09°21'38"W, 94.93 feet to the point of beginning.

[Signature page of Owner to HUD Amendment to Declaration of Covenants, Conditions, and Restrictions for Blair Commons -Blair High Residences]

BHRHUD, LP
Owner

By: _____

Name: Neeraj Agarwal

Title: Authorized Signatory

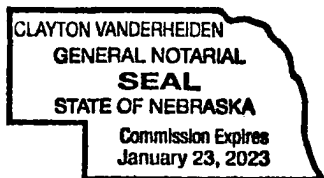
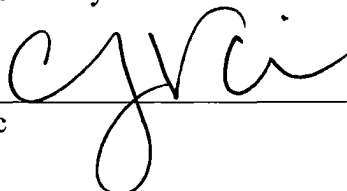
STATE OF NEBRASKA
COUNTY OF Douglas

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 28 day of June of 2019, Neeraj Agarwal, authorized representative of BHRHUD, LP, 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 (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of BHRHUD, LP, for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

Notary Public



[Signature page of Rowsat96 to HUD Amendment to Declaration of Covenants, Conditions, and Restrictions for Blair Commons -Blair High Residences]

Rowsat96, LP

By: *Neeraj Agarwal*
Name: *Neeraj Agarwal*
Title: *Authorized Signatory*

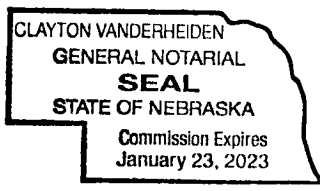
STATE OF NEBRASKA
COUNTY OF *Douglas*

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this *28* day of *June* of 2019, Neeraj Agarwal, authorized representative of Rowsat96, LP, 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 (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of Rowsat96, LP, for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

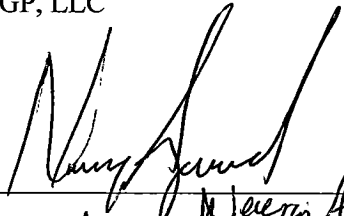
[seal]

CVH
Notary Public



**[Signature page of the Subdivider to HUD Amendment to Declaration of Covenants,
Conditions, and Restrictions for Blair Commons -Blair High Residences]**

HUDBLAIRGP, LLC


By: 
Name: Neeraj Agarwal
Title: Authorized Signatory

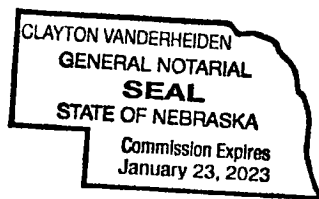
STATE OF NEBRASKA
COUNTY OF Douglas

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 28 day of June of 2019, Neeraj Agarwal, authorized representative of HUDBLAIRGP, LLC, 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 (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of HUDBLAIRGP, LLC, for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

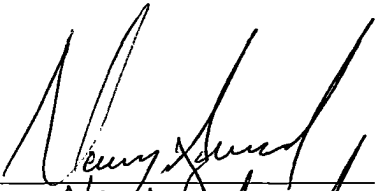
[seal]


Notary Public



[Signature page of the Blair Commons Association to HUD Amendment to Declaration of Covenants, Conditions, and Restrictions for Blair Commons -Blair High Residences]

BLAIR COMMONS OWNERS ASSOCIATION,
INC

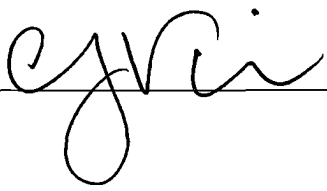
By: 
Name: Neeraj Agarwal
Title: Authorized Signatory

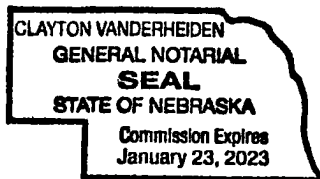
STATE OF NEBRASKA
COUNTY OF Douglas

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 28 day of June of 2019, Neeraj Agarwal, authorized representative of BLAIR COMMONS OWNERS ASSOCIATION, INC., 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 (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of BLAIR COMMONS OWNERS ASSOCIATION, INC., for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]


Notary Public



[Signature page of the Authority to HUD Amendment to Declaration of Covenants, Conditions, and Restrictions for Blair Commons -Blair High Residences]

Clarity Development Company, LLC

By: *[Signature]*
Name: Neeraj Agarwal
Title: Authorized Signatory

STATE OF NEBRASKA
COUNTY OF Douglas

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this 28 day of June of 2019, Neeraj Agarwal, authorized representative of Clarity Development Company, LLC, 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 (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of Clarity Development Company, LLC., for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

[Signature]
Notary Public

