

## **HUD Amendment To Restrictive Covenants**

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of \_\_\_\_\_, 2016, by **ONIC-HOLLOWBROOK, LLC**, a Florida limited liability company ("Borrower") and the **CITY OF ORLANDO**, a Florida municipal corporation ("Agency").

WHEREAS, Borrower has obtained financing from GREYSTONE FUNDING CORPORATION, a Virginia corporation ("Lender"), for the benefit of the project known as Hollowbrook Apartments ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases And Rents, and Security Agreement (FLORIDA) ("Security Instrument") dated as of \_\_\_\_\_, and recorded on \_\_\_\_\_ in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, Public Records of Orange County, Florida ("Records"), and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received HOME funds from the Agency, which Agency has required certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Declaration of Covenants and Restrictions ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit "A" attached hereto, dated as of October 30, 2006 and recorded in Official Records Book 8994, Page 1641, Public Records of Orange County, Florida;

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 Agency has agreed to subordinate the Restrictive Covenants 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 Restrictive Covenants and any provision contained in this Amendment, the provision 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:

"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 GREYSTONE FUNDING CORPORATION, a Virginia corporation, 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 Program Obligations.

“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) 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.

(e) Except for the Agency’s reporting requirement, if any, 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.

(f) 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.

(g) 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.

**IN WITNESS WHEREOF**, the Borrower has caused this Amendment to be executed in its name by its proper officers or representatives as of the day and year first set forth above.

**BORROWER:**

**ONIC-HOLLOWBROOK, LLC**,  
a Florida limited liability company

By: ORLANDO NEIGHBORHOOD  
IMPROVEMENT CORPORATION,  
INC., a Florida not-for-profit corporation,  
its sole member and manager

By: \_\_\_\_\_  
**ROBERT E. ANSLEY, JR.**  
President

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this \_\_\_\_\_, 2016, ROBERT E. ANSLEY, JR., as President of ORLANDO NEIGHBORHOOD IMPROVEMENT CORPORATION, INC., a Florida not-for-profit corporation, as the sole Member and Manager of ONIC-HOLLOWBROOK, LLC, a Florida limited liability company, on behalf of said company, 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 \_\_\_\_\_ 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

**AGENCY:**

ATTEST:

**CITY OF ORLANDO, FLORIDA**, a  
municipal corporation, organized and  
existing under the laws of the State of  
Florida

By:

\_\_\_\_\_  
Amy T. Iennaco, Interim City Clerk

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016  
by \_\_\_\_\_, Mayor Pro Tem and \_\_\_\_\_, Interim City Clerk, who is  
personally known to me who did (did not) take an oath.

\_\_\_\_\_  
Name  
Notary Public  
Serial Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_, 2016

Exhibit A

**Legal Description**

**The Southeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of Section 33, Township 22 South, Range 30 East, all of said lands lying and being in Orange County, Florida LESS AND EXCEPT the West 3 acres thereof, acquired by Monterey Baptist Church, by Quit Claim Deed dated June 10, 1965, recorded June 11, 1965, in Official Records Book 1450, page 451, Public Records of Orange County, Florida. ALSO LESS AND EXCEPT the existing right of way of Curry Ford Road lying and being the South 50 feet.**

**ALSO DESCRIBED AS FOLLOWS:**

**That part of the Southeast 1/4 of Section 33, Township 22 South, Range 30 East, Orange County, Florida, described as follows: Beginning at the Northeast corner of the Southeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of said Section 33, run South 00° 00' 17" East, 614.12 feet along the West line of MONTEREY SUBDIVISION UNIT SIX recorded in Plat Book W, page 68, Public Records of Orange County, Florida; thence run North 89° 57' 20" West 466.67 feet along the North line of Curry Ford Road; thence North 00° 00' 17" West, 614.35 feet along the East line of the West 3 acres of the Southeast 1/4 of the Southwest 1/4 of the Southeast 1/4 of said Section 33; then run South 89° 55' 38" East, 466.67 feet along the South line of MONTEREY SUBDIVISION UNIT FOUR, recorded in Plat Book U, page 51, Public Records of Orange County, Florida, to the Point of Beginning.**