

Record and Return to:
Lisa R. Peterson, Esq.
Chief Assistant City Attorney
City of Orlando
400 South Orange Avenue
Orlando, Florida 32801

ABOVE SPACE RESERVED FOR
RECORDING PURPOSES ONLY

**AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANT CONTAINING
RENT AND INCOME RESTRICTIONS**

Timber Sound Apartments – City of Orlando Loan

This AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANT CONTAINING RENT AND INCOME RESTRICTIONS is made as of _____, 2017, by Timber Sound Preservation, L.P., a Florida limited partnership (“Borrower”) and the City of Orlando, a Florida municipal corporation (“City”).

WHEREAS, Borrower has obtained financing from SunTrust Bank, a Georgia banking corporation (“Lender”) for the benefit of the project known as Timber Sound Apartments (“Project”), which loan is to be secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (“Security Instrument”) dated of even date herewith and to be recorded in the Public Records of Orange County, Florida (“Records”), and is to be insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Timber Sound II, Ltd. (“Seller”) received a loan from the City (the “Loan”), pursuant to that certain HOME Program Agreement Between City of Orlando and Timber Sound II, Ltd., dated October 25, 2013, as amended by the First Amendment to HOME Program Agreement between the City of Orlando and Timber Sound II, Ltd., dated September 10, 2014 (the “Loan Agreement”), which loan was evidenced by that certain Promissory Note dated October 25, 2013, in the principal amount of Six Hundred Eighty-One Thousand and 00/100 Dollars (\$681,000), executed by Seller and delivered to the City (the “2013 Note”) and that certain Promissory Note dated September 10, 2014, in the principal amount of Seven Hundred Ten Thousand Nine Hundred and 00/100 Dollars (\$710,900.00), executed by Seller and delivered to the City (the “2014 Note” and with the 2013 Note, collectively, the “Note”) and secured by that certain Mortgage and Security Agreement by the Seller, as mortgagor, in favor of the City, as Mortgagee, dated October 25, 2013, and recorded on October 30, 2013, in Official Records Book 10657, Page 3414, of the Public Records of Orange County, Florida, as modified by the First Note and Mortgage Modification Agreement, dated September 10, 2014 and recorded on September 16, 2014, in Official Records Book 10805 Page 5387, of the Public Records of Orange County, Florida (the “Mortgage”).

WHEREAS, as a requirement of the Loan, Seller entered into that Declaration of Restrictive Covenant Containing Rent and Income Restrictions, dated October 25, 2013 and recorded on October 30, 2013 in OR Book 10657 Page 3410 of the Orange County Public Records, which was amended and restated by the Amended and Restated Declaration of Restrictive Covenant Containing Rent and Income Restrictions, dated September 10, 2014, and recorded on September 16, 2014 in OR Book 10805 Page 5382 (“Restrictive Covenants” and with the Loan Agreement, Note and Mortgage, collectively, the “Loan Documents”) with respect to the Project;

WHEREAS, pursuant to that certain Assignment and Assumption of Mortgage and Other Loan Documents, dated and to be recorded in the Orange County public records on even date herewith, Seller assigned the Loan and all of the benefits, duties and obligations of the Seller under the Loan and Loan Documents to Buyer and Buyer assumed the Loan and all of the benefits, duties and obligations of the Seller under the Loan and Loan Documents

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 amended and subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the City has agreed to amend the Restrictive Covenants and 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 SunTrust Bank, a Georgia banking 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 and known as FHA #067-11280.

“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 City’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) Reserved.

(e) Borrower and the City 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 City’s reporting requirement, in enforcing the Restrictive Covenants the City 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.

(g) For so long as the Mortgage Loan is outstanding, Borrower and City 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 City may require the Borrower to indemnify and hold the City harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against City relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the City harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) Reserved.

(j) Notwithstanding anything set forth herein to the contrary, Borrower shall continue to be obligated to continue to comply with the terms and conditions of the Restrictive Covenant and the Loan Documents.

[SIGNATURE PAGE TO FOLLOW]

CITY:

CITY OF ORLANDO, FLORIDA, a municipal corporation

ATTEST:

By: _____
Denise Aldridge, City Clerk

By: _____
Mayor, Mayor Pro Tem

Date: _____

STATE OF FLORIDA)

) ss:

COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, Mayor/ Pro Tem and _____ City Clerk, who are personally known to me who did (did not) take an oath.

Name
Notary Public
Serial Number: _____
My Commission Expires: _____

Approved as to form and legality for the use and reliance of the City of Orlando, Florida only

_____, 2017

By: _____
Chief Assistant City Attorney

Warning:

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

BORROWER:

Timber Sound Preservation L.P., a Florida limited partnership

By: Timber Sound Preservation GP LLC, a Florida limited liability company, its general partner

By: _____

Jonathan A. Gruskin, Vice President

STATE OF FLORIDA)

) SS:

COUNTY OF _____)

On this ___ day of _____, 2017, before me personally appeared Jonathan A. Gruskin, as Vice President of Timber Sound Preservation GP LLC, a Florida limited liability company, the general partner of Timber Sound Preservation L.P., a Florida limited partnership. He is personally known to me and/or has produced _____ as a form of identification.

NOTARY PUBLIC, State of Florida

My Commission Expires:

Warning:

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

Exhibit A – Legal Description

A PORTION OF LOTS 8, 9 AND 10, THE VILLAGES OF TIMBERLEAF, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 23, PAGES 22 THROUGH 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 10, THE VILLAGES OF TIMBERLEAF, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 23, PAGES 22 THROUGH 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S89°32' 37" W, ALONG THE SOUTH LINE OF SAID LOT 10, A DISTANCE OF 739.17 FEET; THENCE DEPARTING SAID SOUTH LINE, RUN N01°13' 58" W, A DISTANCE OF 763.18 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 25.00 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 23.29 FEET THROUGH A CENTRAL ANGLE OF 53°22' 19" TO THE POINT OF REVERSE CURVATURE OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 60.00 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 180.94 FEET THROUGH A CENTRAL ANGLE OF 172°47' 20" TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF TIMBERLEAF BOULEVARD, ACCORDING TO THE SAID PLAT OF THE VILLAGES OF TIMBERLEAF, SAID POINT BEING THE POINT OF REVERSE CURVATURE OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 500.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 163.44 FEET THROUGH A CENTRAL ANGLE OF 18°43' 44" ; THENCE DEPARTING SAID CURVE AND SAID RIGHT-OF-WAY, RUN N11°55' 15" W, A DISTANCE OF 71.59 FEET; THENCE RUN N01°46' 04" E, A DISTANCE OF 205.00 FEET; THENCE RUN N23°26' 35" E, A DISTANCE OF 85.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF LOT 8 OF SAID PLAT OF THE VILLAGES OF TIMBERLEAF; THENCE RUN S66°33' 25" E, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 322.28 FEET TO THE SOUTHEAST CORNER OF TRACT "D" OF SAID PLAT OF THE VILLAGES OF TIMBERLEAF, SAID POINT BEING ON A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 500.00 FEET; THENCE FROM A TANGENT BEARING OF N31°56' 16" E, RUN NORTHEASTERLY ALONG THE EAST LINE OF SAID TRACT "D" AND ALONG THE ARC OF SAID CURVE, A DISTANCE OF 75.61 FEET THROUGH A CENTRAL ANGLE OF 07°39' 51"; THENCE DEPARTING SAID CURVE AND SAID EAST LINE, RUN S88°56' 27" E, A DISTANCE OF 586.50 FEET TO A POINT ON THE EAST LINE OF LOT 9, ACCORDING TO SAID PLAT OF THE VILLAGES OF TIMBERLEAF; THENCE RUN S01°03' 33" W, ALONG SAID EAST LINE, A DISTANCE OF 145.00 FEET; THENCE RUN S01°30' 48" E, ALONG THE EAST LINE OF SAID LOTS 9 AND 10, A DISTANCE OF 953.48 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

A PORTION OF LOTS 9 AND 10, THE VILLAGES OF TIMBERLEAF, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 23, PAGES 22 THROUGH 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 10, THE VILLAGES OF TIMBERLEAF, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 23, PAGES 22 THROUGH 24, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N89°32' 37" E, ALONG THE SOUTH LINE OF SAID LOT 10, A DISTANCE OF 50.00 FEET; THENCE DEPARTING SAID SOUTH LINE, RUN N01°13' 58" W, A DISTANCE OF 763.18 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 25.00 FEET; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 23.29 FEET THROUGH A CENTRAL ANGLE OF 53°22' 19" TO THE POINT OF REVERSE CURVATURE OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 60.00 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 99.93 FEET THROUGH A CENTRAL ANGLE OF 95°25' 28" TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF TIMBERLEAF BOULEVARD, ACCORDING TO SAID PLAT OF THE VILLAGES OF TIMBERLEAF, SAID POINT BEING A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 550.00 FEET; THENCE FROM A TANGENT BEARING OF S53°14' 23" W, RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 80.66 FEET THROUGH A CENTRAL ANGLE OF 08°24' 09" ; THENCE DEPARTING SAID CURVE AND SAID RIGHT-OF-WAY LINE, RUN S01°13' 58" E, ALONG THE WEST LINE IF SAID LOTS 9 AND 10, A DISTANCE OF 829.01 FEET TO THE POINT OF BEGINNING.

A PORTION OF THE ABOVE PARCEL ALSO BEING DESCRIBED AS:

LOT 1 OF TIMBER SOUND APARTMENTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 37, PAGE 88, IN THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.