

After recordation to be returned to:

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Morris Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326



Subordination Agreement

This Subordination Agreement (this "**Agreement**") is made and executed as of this ____ day of _____, 2018 by the CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida ("**Subordinate Lender**") for the benefit of SunTrust Bank ("**Senior Lender**"); and acknowledged and agreed to by WEST LAKES PHASE II, LP, a Florida limited partnership ("**Borrower**").

WITNESSETH:

A. Borrower is constructing a 66 unit family housing development on the real property described in the attached **Exhibit A** (the real estate and improvements thereon shall be collectively referred to as the "**Property**"); and

B. Subordinate Lender is making a loan (the "**Subordinate Loan**") to Borrower, the proceeds of which will be disbursed pursuant to a HOME Program Agreement (the "**Subordinate Loan Agreement**"). The Subordinate Loan is evidenced by a Note in the principal amount of \$_____ (the "**Subordinate Note**") and secured by *inter alia* a Mortgage and Security Agreement (the "**Subordinate Security Instrument**") from Borrower to Subordinate Lender, conveying the Property as collateral for the Subordinate Loan. The Subordinate Loan Agreement, the Subordinate Note, the Subordinate Security Instrument, and all other documents or instruments relating to or evidencing the Subordinate Loan are collectively referred to as the "**Subordinate Loan Documents**." The obligations created under and pursuant to the Subordinate Loan Documents are herein referred to collectively as the "**Subordinate Obligations**"; and

C. Senior Lender has made a construction loan (the "**Senior Loan**") to Borrower, the proceeds of which will be disbursed pursuant to a Construction Loan Agreement (the "**Senior Loan Agreement**"). The Senior Loan is evidenced by a Promissory Note in the principal amount of \$17,000,000.00, dated of even date herewith (the "**Senior Note**") and secured by *inter alia* a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the "**Senior Security Instrument**") from Borrower to Senior Lender, conveying the Property as collateral for the Senior Loan. The Senior Loan Agreement, the Senior Note, the Senior Security Instrument, and all other documents or instruments relating to or evidencing the Senior Loan, and any amendment, modification, restatement, replacement, extension or renewal of any of them, are herein collectively referred to as the "**Senior Loan Documents**." The obligations created under and pursuant to the Senior Loan Documents are herein referred to collectively as the "**Senior Obligations**"; and

D. As a condition under the Senior Loan Documents, Senior Lender has required that Subordinate Lender subordinate the Subordinate Loan, Subordinate Obligations and Subordinate Loan Documents in all respects to the Senior Loan, Senior Loan Obligations and Senior Loan Documents in the manner set forth herein. It was and continues to be of substantial benefit to Subordinate Lender and to Borrower for Senior Lender to disburse the Senior Loan proceeds, and Subordinate Lender is willing to subordinate the Subordinate Loan Documents and the Subordinate Loan on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements set forth herein and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Recitals Incorporated.** The recitals set forth hereinabove are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth hereinbelow, provided, however, that such recitals shall not be deemed to modify the express provisions hereinafter set forth.

2. **Subordination.** Subordinate Lender does hereby subordinate (a) the Subordinate Security Instrument, (b) all of the Subordinate Obligations, and (c) all of its right, title, lien, and interest in and to the Property and the rents, issues, and profits therefrom, to (i) the Senior Security Instrument, (ii) all of the Senior Obligations, and (iii) all of the right, title, lien and interest held by Senior Lender, or its successors and assigns (including, without limitation, all subsequent holders of the Senior Note and the Senior Security Instrument), in and to the Property and the rents, issues, and profits therefrom, under and pursuant to the Senior Loan Documents. From and after the date hereof, all of the documents, indebtednesses, right, title, lien, and interest described in clauses (a), (b) and (c) hereinabove shall be subject and subordinate to all of the documents, indebtednesses, right, title, lien, and interest

described in clauses (i), (ii) and (iii) hereinabove. The priorities herein specified are applicable irrespective of the time of creation of the Senior Obligations or the Subordinate Obligations. Subordinate Lender does hereby agree that, notwithstanding anything provided in the Subordinate Loan Documents to the contrary, so long as the Senior Obligations remain outstanding, unless Senior Lender shall consent in writing: (A) all of the Senior Obligations shall be paid and satisfied in full before any payment is made on account of the Subordinate Obligations; and (B) no prepayment of the Subordinate Obligations shall be made. In the event that any payment is made to Subordinate Lender on account of the principal, interest, fees, or other amounts on or with respect to the Subordinate Obligations which is not permitted hereunder, such payment shall be held by Subordinate Lender in trust for the benefit of Senior Lender and shall be paid forthwith over and delivered to Senior Lender for application to the payment of all of the Senior Obligations remaining unpaid.

3. Amendments to the Subordinate Loan Documents. Notwithstanding anything in the Subordinate Loan Documents to the contrary, Subordinate Lender agrees that, so long as the Senior Obligations remain outstanding, Subordinate Lender shall not modify, renew or extend any of the Subordinate Loan Documents without Senior Lender's prior, written consent in its sole discretion,

4. Enforcement of Rights and Remedies Under Subordinate Loan Documents. Subordinate Lender agrees that it will not accelerate the Subordinate Obligations or otherwise exercise any rights under the Subordinate Loan Documents (including, but not limited to, instituting a foreclosure proceeding) or take or accept a deed in lieu of foreclosure of the Subordinate Security Instrument until the Senior Obligations shall have been indefeasibly paid and performed in full and the Senior Security Instrument shall have been satisfied and cancelled of record. As long as any portion of the Senior Obligations shall remain outstanding, the sole remedy of the holder of the Subordinate Loan Documents, in the event of any default under the Subordinate Loan Documents, shall be to pay off (or to purchase at par, without warranty or recourse) the Senior Loan and the Senior Loan Documents as a condition to, and prior to asserting, any rights or remedies under the Subordinate Loan Documents.

5. Cure Provisions. If a default occurs under the Subordinate Loan Documents, Subordinate Lender shall notify the Senior Lender in writing within five (5) business days of Subordinate Lender's knowledge of the default, which notice shall specify the nature of the default. For a period of thirty (30) days following the Senior Lender's receipt of such notice, but in no event less than the period of time afforded Borrower under the Subordinate Loan Documents (the "Cure Period"), Senior Lender shall have the right (but not the obligation) to cure Borrower's default without meeting any requirements as to the assumption of the Subordinate Loan Documents. If Senior Lender cures the default within the Cure Period or if Borrower cures the default, then the Subordinate Loan shall be deemed reinstated, and, in the latter case, Subordinate Lender shall notify Senior Lender of the cure.

6. Warranties, Representations and Acknowledgements of Subordinate Lender. Subordinate Lender hereby warrants and represents to Senior Lender that:

- a. Subordinate Lender is the owner and holder of the Subordinate Loan Documents, free and clear of any lien, security interest or other claim whatsoever;
- b. Subordinate Lender has full power and authority to enter into this Agreement, the persons executing, acknowledging, and delivering this Agreement on behalf of Subordinate Lender are fully authorized to do so, and all of the terms and provisions of this Agreement are fully enforceable against Subordinate Lender and its successors and assigns (including, without limitation, all subsequent holders of the Subordinate Note and the Subordinate Security Instrument).
- c. This Agreement does not violate any contract or other obligation by which Subordinate Lender is bound, and the Senior Loan does not cause a default under the Subordinate Loan Documents;
- d. Exhibit B attached hereto is a true, correct and complete listing of all of the Subordinate Loan Documents as of the date hereof. To Subordinate Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Subordinate Loan Documents.

7. Casualty and Condemnation. In the event of a casualty to, or a condemnation or taking under a power of eminent domain of all or any portion of, the Property or payment under any payment or performance bond obtained by Borrower, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "Award"), and Senior Lender shall have the right to apply any such Award in accordance with the terms of the Senior Loan Documents. If Senior Lender makes any portion of the Award available to the Borrower for the repair or restoration of the Property, such portion of the Award shall not be subject to attachment by Subordinate Lender, and Subordinate Lender shall likewise make available to Borrower for the purpose of restoration the insurance proceeds or condemnation award (if any) to which it is entitled under the Subordinate Loan Documents.

8. Bankruptcy. (a) Upon any distribution of the assets or properties of Borrower or upon any dissolution, winding up, liquidation, bankruptcy or reorganization involving Borrower (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise, herein referred to as a "Proceeding"):

- (i) Senior Lender shall first be entitled to receive payment in full of the principal of and interest on the Senior Obligations and all fees and any other payments (including post-petition interest and all costs and expenses) due pursuant to the terms of the Senior Documents, before Subordinate Lender is entitled to receive any payment on account of the Subordinate Obligations; and
- (ii) any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, to which Subordinate Lender would be entitled except for the provisions of this Agreement, shall be paid by the debtor in possession, liquidating trustee or agent or other person making such payment or distribution directly to Senior Lender; and
- (iii) in the event that, notwithstanding the foregoing, any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, shall be received by Subordinate Lender on

account of principal, interest, fees, or other amounts on or with respect to the Subordinate Obligations before all of the Senior Obligations are paid in full, such payment or distribution shall be received and held in trust for and shall be paid over to Senior Lender forthwith, for application to the payment of the Senior Obligations until all such Senior Obligations shall have been paid in full in accordance with the terms of the Senior Loan Documents.

Subordinate Lender, by its execution of this Agreement, authorizes and expressly directs Senior Lender to take such action as may be necessary or appropriate, in Senior Lender's sole discretion, from time to time to effectuate the subordination provided herein and the foregoing, hereby appoints Senior Lender its attorney-in-fact for all such purpose, and does hereby: (i) irrevocably assign to Senior Lender all of Subordinate Lender's rights as a secured or unsecured creditor in any Proceeding and authorizes Senior Lender to take, or refrain from taking, any action to assert, enforce, modify, waive, release or extend Subordinate Lender's lien and/or claim in such Proceeding, including but not limited to (a) filing a proof of claim arising out of the Subordinate Obligations, (b) voting or refraining from voting claims arising from the Subordinate Obligations, either in Subordinate Lender's name or in the name of Senior Lender as attorney-in-fact of Subordinate Lender, (c) accepting or rejecting any payment or distribution made with respect to any claim arising from the Subordinate Obligations and applying such payment and distribution to payment of Senior Lender's claim until the Senior Obligations are paid and satisfied in full in accordance with their terms, and (d) taking any and all actions and executing any and all instruments necessary to effectuate the foregoing and, *inter alia*, to establish Senior Lender's entitlement to assert Subordinate Lender's claim in such Proceeding; and (ii) release and indemnify Senior Lender and hold Senior Lender harmless from and against any claims, causes of action, losses, costs or damages arising out of or with respect to Senior Lender's actions in a Proceeding as set forth in this Agreement.

(b) For so long as the Senior Obligations shall remain outstanding, Subordinate Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause Borrower to: (i) commence any Proceeding or other action against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (ii) institute proceedings to have Borrower adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of a Proceeding against Borrower; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, custodian or any similar official for Borrower, the Property (or any portion thereof) or any other collateral securing the Senior Obligations (or any portion thereof); (vi) make an assignment for the benefit of any credit of Borrower; or (vii) take any action in furtherance of any of the foregoing.

9. No Modification to Senior Loan Documents; Dealings with Borrower; No Third Party Beneficiaries. Nothing herein shall be deemed to modify, limit or in any way affect the rights and obligations of Borrower to Senior Lender, or the rights and remedies of Senior Lender, under the Senior Loan Documents, except as expressly set forth herein. Senior Lender may extend, renew, modify, or amend the Senior Obligations and any of the Senior Loan Documents, and release, transfer, assign, sell, or exchange any security therefor and otherwise deal freely with Borrower to the same extent as could any person, all without notice to or consent of Subordinate Lender and without affecting the liabilities and obligations of Subordinate Lender. Senior Lender shall have no obligations or liability to Subordinate Lender with respect to the Senior Loan, except as expressly set forth herein. Without limiting the foregoing, Senior Lender has no obligation to Subordinate Lender to advance any funds under the Senior Loan Documents, and Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of the proceeds of the Senior Loan by Borrower or any other person to whom Senior Lender disburses such proceeds. The parties hereto do not intend the benefits of this Agreement to inure to Borrower or any other person or entity.

10. Waiver; Modification. No delay on the part of Senior Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Senior Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon Senior Lender except as expressly set forth in a writing duly signed and delivered by or on behalf of Senior Lender.

11. Legend. Subordinate Lender and Borrower hereby agree to cause all instruments evidencing indebtedness or other obligations of Borrower to Subordinate Lender which are or may be subject to the provisions of this Agreement to contain a legend confirming subordination to the Senior Obligations as and to the extent set forth in this Agreement, and Subordinate Lender will make appropriate entries in its books and records to so indicate.

12. Notices. Any notice or other communication required or permitted hereunder shall be given in writing and deemed to be duly given and received on the date the same shall be personally delivered to the addressee (including delivery by a professional overnight courier service), or on the third day after the same shall be deposited in the United States mail, certified mail, return receipt requested postage prepaid, at the address specified below:

If to Subordinate Lender:
City of Orlando
400 South Orange Avenue
Orlando, Florida 33802

If to Senior Lender:

SunTrust Bank
CRE Atlanta Middle Office
Attention: Middle Office Hub Team Lead
Mail Code: GA-Atlanta-0081
1155 Peachtree Street, N.E.
Suite 300
Atlanta, Georgia 30309

with a copy to:
SunTrust Bank Legal Department - CRE
303 Peachtree Street, N.E.
Mail Code GA-ATL-0643
Atlanta, Georgia 30308

Any party hereto may by written notice in the manner herein provided change the address to which any such notice or other communication shall be thereafter given to it.

13 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns (including all subsequent holders of any note, security instrument or other instrument described in this Agreement). Any references to the parties shall be deemed to include the parties hereto and their successors and assigns.

14. Miscellaneous. This Agreement is made and executed under and in all respects is to be governed and construed by the law of the state where the Property is located. Subordinate Lender waives any right to trial by jury in connection with any action arising under this Agreement. Headings to this Agreement are for the purpose of reference only and shall not limit or otherwise affect the meaning hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which, taken together, shall constitute one instrument. This Agreement sets forth the final expression of the entire agreement of the parties hereto with regard to the subordination provided for herein and shall supersede and cancel any prior agreements as to such subordination, including without limitation any provisions in the Subordinate Security Instrument. So long as the Senior Security Instrument shall affect the Property or any portion thereof, Subordinate Lender, its successors or assigns, or any other legal holder of the Subordinate Security Instrument, as the case may be, shall execute, acknowledge, and deliver upon the demand of Senior Lender, at any time or times, any and all further documents or instruments in recordable form for the purpose of further confirming the subordination and the agreements herein set forth.

{Signatures on next page}

IN WITNESS WHEREOF, Subordinate Lender has caused this instrument to be executed by its duly authorized officer as of the day and year first above written.

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

By: _____
Name: _____
Title: _____

STATE OF FLORIDA

ACKNOWLEDGMENT

COUNTY OF ORANGE to wit:

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____ personally appeared before me this day and acknowledged that he/she is the _____ of the CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida, the within-named bargainor, and that he/she as such _____ executed the foregoing instrument for the purposes therein contained, by signing the name of said municipal corporation, in its capacity as referenced above.

[Seal]

Notary Public
My Commission Expires: _____

{Signatures continued on next page}

The undersigned have set their respective hands and seals hereto to acknowledge and agree to the terms and conditions of the foregoing Agreement dated _____, 2018, by Subordinate Lender, for the benefit of Senior Lender, and acknowledged and agreed to by the undersigned:

BORROWER:

WEST LAKES PHASE II, LP, a Florida limited partnership

By: Lift Orlando, Inc.
a Florida non-profit corporation
Its General Partner

By: _____ (Seal)
Name: Eddy Moratin
Title: President

STATE OF FLORIDA

ACKNOWLEDGMENT

COUNTY OF ORANGE to wit:

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Eddy Moratin personally appeared before me this day and acknowledged that he is the President of Lift Orlando, Inc., a Florida non-profit corporation, which is the General Partner of WEST LAKES PHASE II, LP, a Florida limited partnership, the within-named bargainor, and that he as such President of the General Partner of Borrower executed the foregoing instrument for the purposes therein contained, by signing the name of the limited partnership, in its capacity as referenced above.

[Seal]

Notary Public
My Commission Expires: _____

Exhibit A
[see attached legal description]

Exhibit B
List of Subordinate Loan Documents