

This instrument prepared by:
Robert B. Dunckel,
Assistant City Attorney
City of Fort Lauderdale
P.O. Drawer 14250
Fort Lauderdale, FL 33302-4250

**SECOND AMENDMENT TO
DECLARATION OF RESTRICTIVE COVENANTS**

This Second Amendment to Declaration of Restrictive Covenants ("**Second Amendment**") is made this ____ day of February, 2013 by and between:

CITY OF FORT LAUDERDALE, a Florida municipal corporation,
100 North Andrews Avenue, Fort Lauderdale, FL 33301, its
successors or assigns ("**CITY**")

and

HOUSING AUTHORITY OF THE CITY OF FORT LAUDERDALE,
a public body corporate and body politic, pursuant to the authority
granted in Section 421.08, Florida Statutes, 437 S.W. 4th Avenue,
Fort Lauderdale, FL 33315, its successors or assigns
("**AUTHORITY**")

RECITALS

A. By Special Warranty Deed ("**Deed**") dated September 3, 2008, CITY conveyed to AUTHORITY certain lands described therein, said Deed being recorded at Official Records Book 45808, Page 1615 of the Public Records of Broward County, Florida; and

B. That the Deed made reference to a Declaration of Restrictive Covenants ("**Declaration**") which Declaration was attached to the Deed and by acceptance of the Deed, AUTHORITY also accepted the terms and conditions of the Declaration, which Declaration appears at Official Records Book 45808, Pages 1619 through 1636 of the Public Records of Broward County, Florida; and

C. AUTHORITY revitalized a portion of the lands described in the Deed and Declaration by transferring a portion of such land to Northwest Properties I, Ltd. ("**Phase I**") and constructing thereon 143 low-income rental units (the "**Phase I Development**").

D. CITY and AUTHORITY entered into the First Amendment to Declaration of Restrictive Covenants dated June 2, 2010 (the "**First Amendment**") to permit the revitalization of Phase I;

E. AUTHORITY is presently preparing to revitalize the property described in Exhibit "A" by transferring such lands to Northwest Properties II, Ltd., a Florida limited partnership ("**Partnership**"); and

F. CITY and AUTHORITY have amended the Conveyance, Development and Use Agreement ("**Conveyance Agreement**") which serves as the basis of the Declaration, pursuant to that certain Second Amendment to the Conveyance, Development and Use Agreement of even date herewith ("**Second Amended Conveyance Agreement**") and desire to amend the Declaration in order to reflect the revitalization of a portion of the lands described in the Declaration.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby stipulated, the parties agree to amend the Declaration as follows:

1. The foregoing recitals are true and correct.

2. CITY acknowledges and consents to the transfer of the property described on **Exhibit "A"** hereto ("**Phase II Revitalization Property**") pursuant to a long-term ground lease from the AUTHORITY to the Partnership. The Phase II Revitalization Property, together with certain other property (collectively, "**Phase II Development**") will be utilized to develop new affordable housing.

3. The term "Parcels" as used in this Second Amendment to the Declaration shall mean the property described in Exhibit "B" attached hereto.

4. The Declaration, Article 4, entitled Development and Use as Affordable Housing is hereby amended as follows:

. . . .

4.2 Description of Buildings and Improvements. The Construction Project shall be constructed upon the Parcels conveyed in accordance with applicable Building Code(s), ordinances and all other applicable City, County, State and Federal laws, rules, regulations, ordinances and requirements. Construction must meet the new construction standards set forth in 24 CFR Part 92. The Construction Project consists of the construction of at least 38 rental units constructed on the Parcels conveyed. ~~The development of the Phase I Development shall consist of 143 rental units comprised of 114 low-income units, and 29 very low-income units which the parties agree shall satisfy the requirement to build 24 of the 38 rental units to be constructed on the Parcels. AUTHORITY and CITY agree that 14 additional rental units will be constructed by AUTHORITY on the remaining Parcels.~~ The development of the Phase II Development shall consist of 128 rental units comprised of 115 low-income units and 13 very low-income units, which the parties agree shall satisfy the requirement to build the remaining 14 rental units to be constructed on the Parcels. The term "Rental Project" shall mean the 24 rental units developed in

the Phase I Development and the 14 rental units developed in the Phase II Development.

. . . .

4.4 Schedule of Development of Project. As to the Phase I Revitalization Property, AUTHORITY shall, on or before December 31, 2010, commence construction of the Buildings and Improvements thereon. As to the Phase II Revitalization Property, AUTHORITY shall, on or before March 31, 2013, commence construction of the Buildings and Improvements thereon. Within twenty-four (24) months of the effective date of this Second Amendment AUTHORITY shall commence construction of the Buildings and Improvements on Parcels A, D, E, F, G & H. Construction on a Parcel shall be deemed to have commenced upon issuance of a building permit for vertical construction of the Buildings and Improvements thereon. In the event construction of the Phase I Revitalization is not commenced within the time set forth above, the First Amendment shall become forthwith become null and void and of no further force and effect. In the event construction of the Phase II Revitalization is not commenced within the time set forth above, the Second Amendment shall forthwith become null and void and of no further force and effect. AUTHORITY shall substantially complete construction on a parcel and secure Certificate(s) of Occupancy and Certificates of Completion for all Buildings and Improvements thereon within eighteen (18) months from commencement of construction of each respective Phase of Development such parcel, unless extended by other provisions of this Agreement or separate agreement signed by CITY through its City Manager.

. . . .

4.4.2. Any Parcel ~~conveyed upon,~~ which construction has not commenced on or before June 1, 2012 as to Phase I Deveopment or December 31, 2013 as to Phase II Development, shall, upon the request of CITY, be reconveyed to CITY without cost and free of any liens, encumbrances, restrictions or other defects in title which had not attached to the Parcel prior to or contemporaneous with conveyance of title to the Parcel from CITY to AUTHORITY.

. . . .

5. The Declaration, Article 7, entitled Declaration of Restrictive Covenants from the Amended Conveyance Agreement is hereby amended as follows:

. . . .

7.4 Enforcement. CITY may enforce the Declaration in any judicial proceeding in any court of competent jurisdiction seeking any remedy cognizable at law or in equity, including an action or suit seeking damages, against the AUTHORITY, in addition, CITY may enforce the Declaration with regard to the Parcels, excluding the Phase I Revitalization Property and the Phase II Revitalization Property, with an action seeking injunctive relief, specific

performance, enforcement of judicial forfeiture of AUTHORITY's title and enforcement of CITY's reversionary interest in the Parcel(s) conveyed (provided, however, that for the purposes of this the First Amendment and Second Amendment CITY relinquishes its right of enforcement of judicial forfeiture of AUTHORITY'S title as to Parcels "B", "C" and "I"), or any other form of relief, against any person, firm, or entity violating or attempting to violate any term or condition of this Agreement or the Declaration. The failure of CITY to enforce any provision contained in this Agreement shall in no event be deemed a waiver of such provision or of the right of CITY to thereafter enforce such provision. The enforcing party, as the prevailing party in any such litigation shall be entitled to award of court costs and reasonable attorney's fees at both the trial and appellate levels. For the purposes of enforcement of the Agreement and Declaration, it is stipulated that a violation thereof constitutes irreparable injury for which there is no adequate remedy at law.

7.7.3 Reverter. Notwithstanding anything herein to the contrary, if AUTHORITY fails to enter into a ground lease for the ~~Phase I Revitalization Property on or before December 31, 2010~~ Phase II Revitalization Property on or before December 31, 2013 or if AUTHORITY fails to complete construction of the units of the ~~Phase I Revitalization Property as described in Section 4.2 of this First Amendment to Declaration on or before December 31, 2012~~ Phase II Revitalization Property as described in Section 4.2 of this Second Amendment to Declaration on or before December 31, 2014, subject to an extension for a force majeure event, then CITY shall have the right to terminate this ~~First~~ Second Amendment to Declaration of Restrictive Covenants ~~and the Conveyance Agreement shall be reinstated.~~

6. The Declaration, Article 8, entitled "Default; Remedies; Reversionary Interest" is hereby amended to read as follows:

8.3 Remedy. In the event AUTHORITY shall fail to timely cure a Material Default, then CITY shall have the right to commence judicial proceedings for appropriate enforcement, provided, however, that any such action to enforce CITY's reversionary interest (judicially enforced possibility of reverter) may proceed only in accordance with the provisions set forth in this Article.

8.3.1 Reversionary Interest. As to the Parcels, excluding Phase I Revitalization Property and Phase II Revitalization Property, CITY shall retain a reversionary interest in the Parcel(s) conveyed, such reversionary interest being in the nature of a possibility of reverter which may only be judicially enforced. CITY's reversionary interest may only be enforced by CITY filing an action to terminate the estate or interest of AUTHORITY in the affected Parcel(s) conveyed upon AUTHORITY's failure to timely cure a Material Default under the terms hereof. Upon judicial termination of

AUTHORITY's estate or interest in the Parcel(s) conveyed, AUTHORITY shall yield up and surrender the Parcel(s) quietly to CITY, together with all rents and revenues therefrom, which shall thereupon and thereafter belong to CITY free and clear of any and all rights, claims, liens or encumbrances by, through, or under the AUTHORITY.

8.3.2 Other. CITY may seek any relief cognizable at law or in equity, except as provided in Sec. 8.3.1 above, including, but not limited to the right to seek damages from AUTHORITY in an amount equal to the damages incurred by CITY to HUD arising out of AUTHORITY'S failure to cure a Material Default.

7. This Second Amendment to Declaration shall be given effect as of December 31, 2012.

8. In the event and to the extent that there is any conflict between the terms and conditions of the Declaration of Restrictive Covenants, the First Amendment and the terms and conditions of this Second Amendment to Declaration, then the terms and conditions of this Second Amendment to Declaration shall supersede and prevail over any such conflicting terms in the underlying Declaration.

9. In all other respects, the parties ratify and confirm the Declaration of Restrictive Covenants, as amended by the First and Second Amendments.

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SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the CITY OF FORT LAUDERDALE has caused this instrument to be fully-executed on the date set forth above.

WITNESSES:

CITY OF FORT LAUDERDALE

By: _____
John P. "Jack" Seiler, Mayor

[Witness-print or type name]

By: _____
Lee R. Feldman, City Manager

ATTEST:

[Witness-print or type name]

City Clerk

(CORPORATE SEAL)

Approved as to form:

Robert B. Dunckel,
Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by JOHN P. "JACK" SEILER, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

Commission Number

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by LEE R. FELDMAN, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

Commission Number

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

WITNESSES:

THE HOUSING AUTHORITY OF THE CITY OF FORT LAUDERDALE

By: _____
Tam A. English, Executive Director

[Witness-print or type name]

[Witness-print or type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by TAM A. ENGLISH, Executive Director, The Housing Authority of the City of Fort Lauderdale. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

Commission Number

EXHIBIT A

The following parcels constitute the "Phase II Revitalization Property":

Lots 27 through 36, inclusive, all in Block 274, Progresso, according to the Plat thereof, as recorded at Plat 2, Page 18 of the Dade County Public Records; said lands situate lying and being in Broward County, Florida.

Being the same property shown as;

Parcel "B" in that Special Warranty Deed from the City of Fort Lauderdale to the Housing Authority of the City of Fort Lauderdale dated September 3, 2008 and recorded in Official Records Book 45808, Page 1615 on November 14, 2008.

EXHIBIT B

Parcel "A" - 740 N.W. 10th Terrace

Lots 1 and 2, Block 274, PROGRESSO, according to the Plat thereof, as recorded at Plat Book 2, Page 18, of the Dade County Public Records; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 4942-34-06-7350

Parcel "B" - 700 Blk. N.W. 11th Avenue

Lots 27 through 36, Block 274, PROGRESSO, according to the Plat thereof, as recorded at Plat Book 2, Page 18, of the Dade County Public Records; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 4942-34-06-7490

Parcel "C" - 600 Blk. N.W. 10th Avenue

Lots 1 through 6, Block 330, PROGRESSO, according to the Plat thereof, as recorded at Plat Book 2, Page 18, of the Dade County Public Records; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 4942-34-07-8540

Parcel "D" - 1200 Blk. N.W. 7th Street

Lot 11, Block "B" HOME BEAUTIFUL PARK, according to the Plat thereof, as recorded in Plat Book 2, Page 47 of the Public Records of Broward County, Florida; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 5042-04-04-0260

Parcel "E" - 650 N.W. 14th Avenue

Lots 28 and 29, Block 1, LINCOLN PARK CORRECTED PLAT, according to the Plat thereof, as recorded in Plat Book 5, Page 2 of the Public Records of Broward County, Florida; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 5042-04-11-0140

Parcel "F" - 746 N.W. 14th Way

Unnumbered Block 9, LINCOLN PARK CORRECTED PLAT, according to the Plat thereof, as recorded in Plat Book 5, Page 2 of the Public Records of Broward County, Florida; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 5042-04-11-1280

Parcel "G" - 911 N.W. 12th Terrace

Lots 8 and 9, Block 6, LINCOLN PARK 4th ADDITION, AMENDED, according to the Plat thereof, as recorded in Plat Book 7, Page 35 of the Public Records of Broward County, Florida; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 5042-04-15-0292

Parcel "I" - 700 Blk. N.W. 11th Avenue

Lots 11 and 12, Block 330, PROGRESSO, according to the Plat thereof, as recorded at Plat Book 2, Page 18, of the Dade County Public Records; said lands situate, lying and being in Broward County, Florida.

Broward County Tax Folio No. 4942-34-07-8570

Second Amendment to Declaration of Restrictive Covenants
City of Fort Lauderdale
Housing Authority of the City of Fort Lauderdale