

Prepared by and Return to:
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HUD Amendment To Declaration Regarding Maintenance Obligation

This AMENDMENT TO DECLARATION REGARDING MAINTENANCE OBLIGATION is made as of _____, 2019, by HTG FORT LAUDERDALE, LLC, a Florida limited liability company (“Borrower”) and CITY OF FORT LAUDERDALE, a Florida municipal corporation (the “City”).

WHEREAS, Borrower has obtained financing from Greystone Funding Company LLC, a Delaware limited liability company (“Lender”) for the benefit of the project known as Village Place (“Project”), which loan is a mortgage lien against the Property described in **Exhibit “A”** hereto and further secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (“Security Instrument”) dated as of _____, 2019 and recorded in the Official Records of Broward County, Florida (“Records”) simultaneously herewith, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received approval from the City for the installation of certain improvements within the adjacent public rights-of-way for N.E. 4th Avenue and N.E. 7th Street, Fort Lauderdale, FL, adjacent and contiguous to, but not part of the Property (“Approval”), for which the City has required certain obligations be recorded against the Project;

WHEREAS, Borrower entered into that certain Declaration Regarding Maintenance Obligation (Village Place), dated as of November 14, 2014, and recorded as Instrument Number 112650076 in the Records (the “Declaration”), with respect to the Project, a copy of which is attached hereto as Exhibit “B”;

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

WHEREAS, the City has 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 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 Company LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to 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 HUD Regulatory Agreement.

“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 Declaration to the contrary, the provisions of the Declaration, as amended herein 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 Declaration. In the event of any conflict between the provisions of the Declaration 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 Declaration, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. Borrower represents and warrants that to the best of Borrower’s knowledge the Declaration imposes no terms or requirements that conflict with the National Housing Act and related regulations.

(d) 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 therein) shall automatically terminate.

(e) Borrower and the City acknowledge that Borrower'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 City's reporting requirements in enforcing the Declaration, the City will not file any claim of lien against the Project.

(g) For so long as the Mortgage Loan is outstanding, Borrower and the City 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 City may require Borrower to indemnify and hold the City harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the City relating to the subordination and covenants set forth in the Declaration, 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 Borrower.

[Signatures on following page]

BORROWER:

HTG FORT LAUDERDALE, LLC,
a Florida limited liability company

By: HTG Affordable Partners II, LLC,
a Florida limited liability company,
Member

By: HTG Affordable, LLC,
a Florida limited liability company,
Member

By: _____
Matthew Rieger, Vice President

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this _____, 2019, Matthew Rieger, the Vice President of HTG Affordable, LLC, a Florida limited liability company, which is a member of HTG Affordable Partners II, LLC, a Florida limited liability company, which is a member of HTG Fort Lauderdale, LLC, a Florida limited liability 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 free and voluntary act and the free and voluntary act of said limited liability company 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

CITY:

WITNESSES:

**CITY OF FORT LAUDERDALE,
A MUNICIPAL CORPORATION OF FLORIDA**

[Witness type or print name]

By _____
Dean J. Trantalis,
Mayor

[Witness type or print name]

By _____
Christopher J. Lagerbloom,
City Manager

ATTEST:

Approved as to form:
Alain E. Boileau, City Attorney

Jeffery A. Modarelli,
City Clerk

By _____
Robert B. Dunckel,
Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2019 by Dean J. Trantalis, Mayor for the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me or has produced _____ as identification.

(SEAL)

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

My Commission Expires: _____

Commission Number: _____

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2019 by Christopher J. Lagerbloom, City Manager of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me or has produced _____ as identification.

(SEAL)

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

My Commission Expires: _____

Commission Number: _____

Exhibit A – Legal Description

LOTS 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 AND 38, BLOCK 291, "PROGRESSO", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 18, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

SAID LANDS NOW LYING AND BEING IN BROWARD COUNTY, FLORIDA.

TOGETHER WITH THE WEST 1/2 OF THAT PORTION OF THE VACATED ALLEY LYING ADJACENT TO THE LOTS DESCRIBED ABOVE. ALLEY WAS VACATED BY ORDINANCE C-87-66, RECORDED NOVEMBER 5, 1987, IN OFFICIAL RECORDS BOOK 14933, PAGE 3, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID LANDS ALSO DESCRIBED AS FOLLOWS:

LOTS 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, AND 38, BLOCK 291 OF "PROGRESSO", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 18, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 25, BLOCK 291; THENCE NORTH 00°00'00" EAST, ALONG THE WEST LINE OF SAID LOTS 25 THROUGH 38, A DISTANCE OF 350.00 FEET; THENCE SOUTH 89°58'36" EAST, ALONG THE NORTH LINE OF SAID LOT 38, A DISTANCE OF 135.00 FEET; THENCE SOUTH 00°00'00" EAST, ALONG THE EAST LINE OF SAID LOTS 38, 37, 36, 35, 34, 33, 32, 31, 30, 29, 28, 27, 26, AND 25, A DISTANCE OF 350.00 FEET; THENCE NORTH 89°58'36" WEST, ALONG THE SOUTH LINE OF SAID LOT 25, A DISTANCE OF 135.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA.