

Prepared by and Recording Requested by:

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Fox Rothschild LLP  
BNY Mellon Center  
500 Grant Street, Suite 2500  
Pittsburgh, PA 15219

After Recording return to:

Department of Housing and Urban Development  
Attn: Legal Department  
400 West Bay Street, Suite 1015  
Jacksonville, Florida 32202

### **HUD Amendment to Restrictive Covenants**

This AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS (this "Amendment") is made as of \_\_\_\_\_, 2021, by BROWARD COUNTY, a political subdivision of the State of Florida, ("County"), HOUSING AUTHORITY OF THE CITY OF FORT LAUDERDALE, a public body corporate and politic ("Agency"), and NORTHWEST PROPERTIES III, LTD., a Florida limited partnership ("Borrower").

WHEREAS, Borrower has obtained financing from JLL REAL ESTATE CAPITAL, LLC, a Delaware limited liability company ("Lender") for the benefit of the project known as Northwest Gardens III ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of leases and Rents and Security Agreement ("Security Instrument") dated as of \_\_\_\_\_, 2021, and recorded in the Public Records of Broward County, Florida ("Records") on \_\_\_\_\_, 2021 in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, and is insured by the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, Agency has leased to Borrower the property on which the Project was built pursuant to a ground lease; and

WHEREAS, County waived certain impact or administrative fees conditioned upon the Agency agreeing to certain affordable rental housing restrictions; and

WHEREAS, Agency entered into a Declarations of Restrictive Covenants (the "Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of April 19, 2011 and recorded on May 2, 2011 in Official Records Book 47887, page 103 in the Records; and

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, County and Agency have agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this HUD 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 JLL Real Estate Capital, LLC, a Delaware limited liability company, 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 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 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 County'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) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, to the extent applicable, or as otherwise approved by HUD.

(e) 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.

(f) Except for County's reporting requirement, if any, in enforcing the Restrictive Covenants County 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 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.

(h) Subject to the HUD Regulatory Agreement, County may require the Borrower to indemnify and hold County harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against County relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold County harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) INTENTIONALLY OMITTED.

(signatures appear on following pages)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first written above.

**AGENCY:**

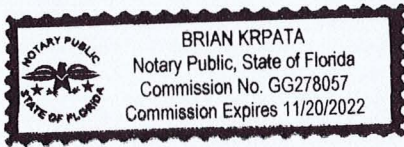
HOUSING AUTHORITY OF THE CITY OF  
FORT LAUDERDALE

By: [Signature]  
Tam A. English  
Executive Director

STATE OF FLORIDA        )  
  ) ss.:  
COUNTY OF BROWARD    )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this APRIL 23, 2021, by Tam A. English, as Executive Director of the Housing Authority of the City of Fort Lauderdale, a public body corporate and politic.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]  
Notary Public: State of Florida  
Print Name: BRIAN KRPATA

Commission Number: *(Stamp acceptable)*  
My Commission expires: *(Stamp acceptable)*

Personally Known X OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

Signed, sealed, and delivered in the presence of.

WITNESSES:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

**COUNTY**

BROWARD COUNTY,  
through its County Administrator

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA                    )  
  )ss  
COUNTY OF BROWARD                )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_, 2021, by \_\_\_\_\_, as County Administrator of Broward County, a political subdivision of the State of Florida. She/He is personally known to me or has produced \_\_\_\_\_ as identification.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public: State of Florida  
Print Name: \_\_\_\_\_  
Title or rank: \_\_\_\_\_  
Serial No.: \_\_\_\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney


By \_\_\_\_\_  
Name: \_\_\_\_\_ (Date)  
Title: Assistant County Attorney



**BORROWER:**

NORTHWEST PROPERTIES III, LTD.,  
a Florida limited partnership

By: HEF-Sunnyland, Inc., a Florida  
corporation, its general partner

By: 

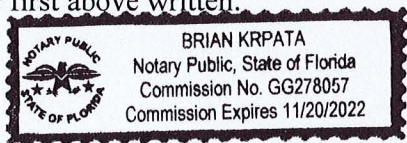
Name: Tam A. English

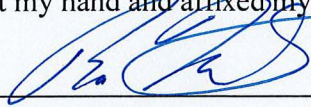
Title: President

STATE OF FLORIDA            )  
  ) ss.:  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this APRIL 23, 2021, by Tam A. English, as President of HEF-  
Sunnyland, Inc., a Florida corporation, general partner of NORTHWEST PROPERTIES III, LTD.,  
a Florida limited partnership, on behalf of said general partner of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and  
year first above written.



  
Notary Public: State of Florida  
Print Name: BRIAN KRPATY

Commission Number: *(Stamp acceptable)*  
My Commission expires: *(Stamp acceptable)*

Personally Known X OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

Exhibit A

Description of the Land

Lots 7 through 12 (inclusive), Lots 17 through 42 (inclusive), Block 24; Lots 1 through 48 (inclusive), Block 25; Lots 1 through 48 (inclusive), Block 26; Lots 7 through 13 (inclusive), Lots 31 through 48 (inclusive), Block 27, AMENDED PLAT OF LINCOLN PARK, THIRD ADDITION, according to the plat thereof as recorded in Plat Book 7, Page 4, of the Public Records of Broward County Florida.

Together with:

Parcels "B" and "C", of SUNNYLAND HOMES NO. 1, according to the Plat thereof, as recorded in Plat Book 49, Page 49, of the Public Records of Broward County, Florida.