

Deed Book 59934 Pg 568
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Real Estate Transfer Tax \$0.00
CATHELENE ROBINSON
Clerk of Superior Court
Fulton County, Georgia

Upon recording return to:

Eric L. Weiss
Schulten Ward Turner & Weiss
260 Peachtree St. NW, Ste 2700
Atlanta, Georgia 30303

Cross Reference: Deed Book: 58009

Page: 278

AMENDMENT TO THE DECLARATION OF EASEMENTS AND RESTRICTIONS

THIS AMENDMENT TO THE DECLARATION OF EASEMENTS AND RESTRICTIONS (hereinafter referred to as the "Amendment") is made this 16th day of April, 2019 by **DEVELOPMENT AUTHORITY OF FULTON COUNTY** ("Retail Parcel Owner"), **FUQUA BCDC MADISON YARDS PROJECT OWNER, LLC**, a Georgia limited liability company ("Adjacent Housing Parcel Owner"), **DEVELOPMENT AUTHORITY OF FULTON COUNTY** ("Office Parcel Owner"), **MADISON YARDS, LLC**, a Delaware limited liability company ("East Residential Parcel Owner"), and **MADISON YARDS, LLC**, a Delaware limited liability company ("West Residential Parcel Owner") (each of the Retail Parcel Owner, Adjacent Housing Parcel Owner, Office Parcel Owner, East Residential Parcel Owner, and West Residential Parcel Owner, an "Owner", and collectively, the "Owners").

WITNESSETH

WHEREAS, Fuqua BCDC Madison Yards Project Owner, LLC, a Georgia limited liability company, and Madison Yards, LLC, a Delaware limited liability company, executed that certain Declaration of Easements and Restrictions, recorded October 11, 2017 in Deed Book 58009, Page 278, *et seq.*, Fulton County, Georgia land records (the "Declaration") which subjected certain real property located in the City of Atlanta, Fulton County, Georgia, being more particularly described therein (individually, each a "Parcel" and collectively, the "Parcels") to certain covenants, conditions, restrictions and easements, as more particularly set forth therein; and

WHEREAS, Section 10.8 of the Declaration provides that the Declaration may not be amended in whole or in part except by the written consent of all Owners; and

WHEREAS, the Owners of all of the Parcels subject to the Declaration desire to amend the Declaration as set forth herein, as evidenced by their signatures attached hereto and by this reference incorporated herein;

NOW THEREFORE, the Owners hereby adopt this Amendment to the Declaration of Easements and Restrictions, hereby declaring that all of the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as follows:

1.

The Declaration is hereby amended by adding to the end of Article I, Section 1.14, entitled "Owner," the following sentence:

In addition, with respect to the Adjacent Housing Parcel, the term "Owner" shall also be deemed to include the Association (as such term is defined below).

2.

The Declaration is hereby amended by adding to the end of Article I, a new Section 1.22, entitled "Adjacent Housing Parcel Declaration," to read as follows:

1.22 Adjacent Housing Parcel Declaration. "Adjacent Housing Parcel Declaration" shall mean that certain Declaration of Protective Covenants, Conditions, Restrictions and Easements for Madison Yards, recorded or to be recorded in the Fulton County, Georgia land records, which establishes certain covenants, restrictions and easements applicable only to the Adjacent Housing Parcel.

3.

The Declaration is hereby amended by adding to the end of Article I, a new Section 1.23, entitled "Association," to read as follows:

1.23 Association. "Association" shall mean the Madison Yards Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

4.

The Declaration is hereby amended by adding to the end of Article I, a new Section 1.24, entitled "Declarant," to read as follows:

1.24 Declarant. "Declarant" shall mean MH Madison Yards, LLC, a Georgia limited liability company, and its successor, successor-in-title or assigns taking title to any portion of the Adjacent Housing Parcel for the purpose of development and/or sale and designated as Declarant in a recorded instrument by the then holder of the rights of Declarant under the Adjacent Housing Parcel Declaration.

5.

The Declaration is hereby amended by adding to the end of Article II, Section 2.6, a new subsection (f) to read as follows:

(f) Upon the termination of any temporary construction easement granted in this Section 2.6, to the extent any of the Owners used such easement, such Owners shall restore the applicable easement area to the substantially same condition, except as otherwise agreed to in writing by the parties subsequent to this Agreement. In the event the need for maintenance, repair or replacement of completed infrastructure within a property owned by another Owner is caused by an act or omission of one or more Owners of the unaffected property, their successors or assigns, or their respective licensees, contractors, subcontractors, agents, lessees or invitees, then such maintenance, repair or replacement and all costs thereof shall be made at the sole expense of the responsible Owner(s).

6.

The Declaration is hereby amended by adding to the end of Article IV, Section 4.1(d), entitled "Residential Rental Use," the following sentence:

Further, this Section 4.1(d) does not prohibit or restrict the development of the Adjacent Housing Parcel into a single-family residential townhome development and the subsequent use, occupancy, sale and leasing of such single-family residential townhome units by the owners thereof, subject to the leasing restriction set forth in Article 8 of the Adjacent Housing Parcel Declaration, which Article 8 is attached to this Amendment as Exhibit "A" and by this reference incorporated herein.

7.

The Declaration is hereby amended by deleting Article IV, Section 4.1(e), entitled "Adjacent Housing Parcel," in its entirety and replacing it with a new Section 4.1(e) to read as follows:

(e) Adjacent Housing Parcel Use. The Adjacent Housing Parcel shall, at all times during the term of this Agreement, be used for the development, use,

occupancy and operation of a first-class single-family residential townhome development.

8.

The Declaration is hereby amended by adding to the end of Article V, Section 5.1, entitled "Insurance," the following sentence:

Notwithstanding anything herein to the contrary, with respect to the Adjacent Housing Parcel, the Association shall be responsible for maintaining the insurance required pursuant to this Section 5.1 and no other Owner of a portion of the Adjacent Housing Parcel shall be subject to the requirements set forth in this Section 5.1.

9.

The Declaration is hereby amended by adding to the end of Article VI, a new Section 6.3, entitled "Adjacent Housing Parcel Shared Costs," to read as follows:

6.3 Adjacent Housing Parcel Shared Costs. With respect to the Adjacent Housing Parcel, the Association shall be deemed the "Owner" responsible for the payment of the Adjacent Housing Parcel's Pro-Rata Share of shared costs under this Agreement. Further, any shared costs that may be owed to the Adjacent Housing Parcel Owner under this Agreement shall be paid to the Association and the Association shall have all rights and remedies available under this Agreement to collect such costs.

10.

The Declaration is hereby amended by adding to the end of Article X, Section 10.2, entitled "Estoppel Certificates," the following sentence:

With respect to the Adjacent Housing Parcel, the Association shall have the right to issue such estoppel certificate on behalf of the Owners of all or a portion of the Adjacent Housing Parcel.

11.

The Declaration is hereby amended by adding to the end of Article X, Section 10.8, entitled "Amendments," the following sentences:

For purposes of this Section, with respect to the Adjacent Housing Parcel, the "written consent of the Owners" shall be deemed to mean the written consent of the Declarant or, in the event that the Declarant has terminated its rights under the Adjacent Housing Parcel Declaration, the written consent of the Association, and no other Owner of a portion of the Adjacent Housing Parcel shall be required

to consent to amendments to this Agreement. The consent of the Declarant shall be evidenced by the execution of the amendment by the Declarant. The consent of the Association shall be evidenced by the execution of the amendment by the President of the Association, whose signature shall be attested by the Secretary of the Association.

12.

Unless otherwise defined herein, the defined terms used in this Amendment shall have the same meaning as set forth in the Declaration.

13.

This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Fulton County, Georgia.

14.

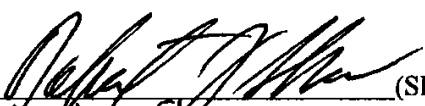
Except as herein modified, the Declaration shall remain in full force and effect.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Owners have executed this Amendment under seal as of the date and year first written above.

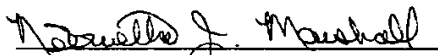
RETAIL PARCEL OWNER: **DEVELOPMENT AUTHORITY OF
FULTON COUNTY**

By:  (SEAL)
Name: Robert S. Shaw
Title: Chairman

Signed, sealed, and delivered
in the presence of:

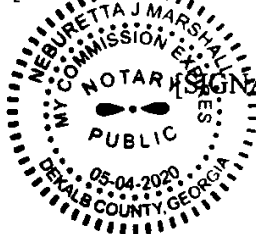


WITNESS

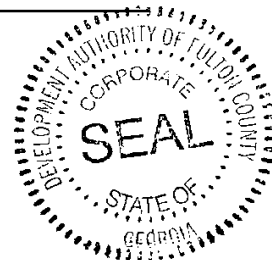

NOTARY PUBLIC

My Commission Expires: May 4, 2020

[AFFIX NOTARY SEAL]



[SIGNATURES CONTINUE ON FOLLOWING PAGE]



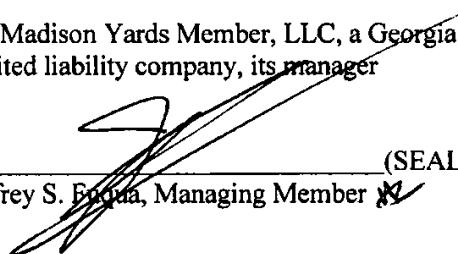
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ADJACENT HOUSING PARCEL OWNER: **FUQUA BCDC MADISON YARDS
PROJECT OWNER, LLC**, a Georgia
limited liability company

By: Fuqua BCDC Madison Yards, LLC, a
Georgia limited liability company, its sole
member

By: FPL Madison Yards Member, LLC, a
Georgia limited liability company, its
manager

By: FC Madison Yards Member, LLC, a Georgia
limited liability company, its manager

By: _____ (SEAL)
Jeffrey S. Fuqua, Managing Member 

Signed, sealed, and delivered
in the presence of:


WITNESS


NOTARY PUBLIC

My Commission Expires: 3/29/21


[AFFIX NOTARY SEAL]



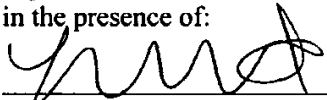
[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]


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OFFICE PARCEL OWNER: **DEVELOPMENT AUTHORITY OF
FULTON COUNTY**

By:  (SEAL)
Name: Robert J. Shaw
Title: Chairman

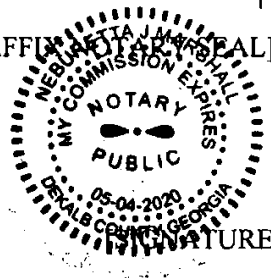
Signed, sealed, and delivered
in the presence of:


WITNESS


NOTARY PUBLIC

My Commission Expires: May 4, 2020

[AFFIRMATION SEAL]



[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



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EAST RESIDENTIAL PARCEL OWNER: **MADISON YARDS, LLC**, a Delaware
limited liability company

By: [Signature] (SEAL)
Name: John Robinson
Title: VP

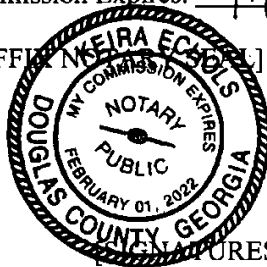
Signed, sealed, and delivered
in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC

My Commission Expires: 2/1/2022

[AFFIX NOTARY SEAL]



SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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WEST RESIDENTIAL PARCEL OWNER: **MADISON YARDS, LLC**, a Delaware
limited liability company

By: [Signature] (SEAL)
Name: John Roberson
Title: VP

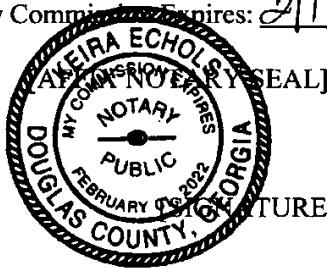
Signed, sealed, and delivered
in the presence of:

[Signature]

WITNESS

Keira Echols

NOTARY PUBLIC

My Commission Expires: 2/1/2022

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

**CONSENT AND SUBORDINATION TO AMENDMENT TO DECLARATION OF
EASEMENTS AND RESTRICTIONS**

HCF STRUCTURED DEBT HOLDINGS LLC, a Delaware limited liability company, is Lender under that certain: (a) Deed to Secure Debt, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of October 11, 2017 and recorded in the Records of the Clerk of Superior Court of Fulton County, Georgia in **Deed Book 58009, Page 355, et seq.**; and (b) Leasehold Deed to Secure Debt, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of October 11, 2017 and recorded in the aforesaid records in **Deed Book 58009, Page 380, et seq.** (collectively, the "**Mortgages**"). By executing this instrument, the undersigned hereby consents to the execution, delivery and recordation of the within and foregoing Amendment to the Declaration of Easements and Restrictions (the "Amendment") to which this instrument is attached and confirms the subordination of the lien of the Mortgages, and the debt and any fixtures secured thereby, to the Amendment.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Consent and Subordination, this 20th day of March, 2019

Signed, sealed and delivered in the
presence of:

Sorah Yim
Unofficial Witness

Sean Brown
Notary Public
My Commission Expires:

[NOTARIAL SEAL]



**HCF STRUCTURED DEBT HOLDINGS
LLC**, a Delaware limited liability company,

By: Jodi Luzin
Name: Jodi Luzin
Title: Assistant Vice President

By: _____
Name: _____
Title: _____

[CORPORATE SEAL]

[END OF SIGNATURES]

EXHIBIT "A"**Leasing Restriction Applicable to Adjacent Housing Parcel**
(Excerpt from Adjacent Housing Parcel Declaration)**Article 8****Restriction on Leasing**

8.1 General. In order to protect the equity of the individual members, to carry out the purpose for which the Association was formed by preserving the character of the Community as a homogenous residential community of predominantly owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Units shall be governed by the restrictions imposed by this Article.

No Owner may lease such Owner's Unit unless the Owner has received either a leasing permit or a hardship leasing permit, in writing, from the Board of Directors or Declarant, as applicable, all as may be more specifically set forth below. A leasing permit or hardship leasing permit will allow an Owner to lease such Owner's Unit in accordance with the terms and conditions set forth in this Section and in accordance with the rules and regulations of the Association and the covenants and conditions set forth in the Declaration. Notwithstanding anything to the contrary herein, leasing permits and hardship leasing permits shall only be valid as to a specific Owner and Unit and shall not be transferrable between Units or subsequent Owners.

For purposes of this Article 8, leasing means the regular, exclusive occupancy of a Unit by any Person(s) other than the Owner for which the Owner received any consideration or benefit, including, but not limited to, a fee, rent, gratuity or emolument. For purposes hereof the following shall not constitute leasing: (a) occupancy of the Unit by member of the Owner's family; (b) occupancy of the Unit by a roommate of an Owner-Occupant; (c) occupancy of the Unit by one or more wards if the Unit is owned by their legal guardian; or (d) occupancy of the Unit by one or more beneficiaries of a trust if the Unit is owned in trust by the trustee.

8.2 Leasing Permits. Any Owner desiring to lease a Unit shall submit a written request regarding the same to the Board of Directors. The Board of Directors shall automatically approve an Owner's application for a leasing permit and shall issue the same if less than four (4) of the Units in the Community are leased. If four (4) or more of the Units in the Community are leased, no additional leasing permits shall be issued, except for hardship leasing permits as provided below, until that number falls below four (4). Owners who have been denied a leasing permit shall be placed on a waiting list to be issued such a permit. When the number of leased Units falls below four (4), the Owner at the top of the waiting list shall be issued a leasing permit and shall have ninety (90) days to lease such Unit at which time if the Unit is not leased, the leasing permit shall be revoked and the Owner shall automatically be placed at the bottom of the waiting list. Notwithstanding anything to the contrary herein, the issuance of a hardship leasing permit to an Owner shall not cause such Owner to be removed from the waiting list for a leasing permit.

Leasing permits are automatically revoked upon: (a) the sale or transfer of a Unit to a third party (excluding sales or transfers to an Owner's spouse); (b) the failure of an Owner to lease such Owner's Unit within ninety (90) consecutive days at any time after the issuance of such leasing permit; or (c) the occupancy of the Unit by the Owner.

8.3 Hardship Leasing Permits. If an Owner must lease such Owner's Unit to avoid an undue hardship, the Owner shall apply to the Board in writing for a hardship leasing permit. The Board may issue or deny requests for hardship leasing permits in its discretion after considering the following factors, which include, but are not limited to: (a) the nature, degree and likely duration of the hardship; (b) the harm, if any, which will result to the Community if the hardship leasing permit is approved; (c) the number of hardship leasing permits which have been issued to other Owners; (d) the Owner's role in causing the hardship or ability to cure the hardship; and (e) whether previous hardship leasing permits have been issued to the Owner.

A hardship hereunder shall include, but not be limited to, the following situations: (a) an Owner dies and the Unit is being administered by such Owner's estate; (b) an Owner must relocate outside metropolitan Atlanta and cannot, within six months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after making reasonable efforts to do so; or (c) an Owner takes a leave of absence or temporarily relocates out of the metropolitan Atlanta area and intends to return to reside in the Unit within one year.

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may reapply for additional hardship leasing permits at the expiration of a hardship leasing permit in accordance with the procedures set forth herein.

8.4 Transient Rentals. Notwithstanding anything herein to the contrary, under no circumstance shall a Unit be leased, rented or used for short-term transient or hotel purposes or rented through short-term internet rental services, including, without limitation, VRBO, Airbnb, HomeAway, or such other similar rental services.

8.5 Leasing Provisions. Leasing authorized under this Article shall be governed by the following provisions:

(a) **Notice.** Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board of Directors with the following information: (i) a copy of the fully executed lease agreement; (ii) the name of the lessee and all other people occupying the Unit; (iii) the phone number of the lessee; (iv) the Owner's address and telephone number other than at the Unit; and (v) other such information as the Board may reasonably require.

(b) **General.** Units may be leased only in their entirety; rooms, basements or fractions or portions of a Unit may not be leased without the prior written approval of the Board of Directors. All leases shall be in writing. There shall be no subleasing of Units or assignment of leases unless approved in writing by the Board of Directors. All leases must be for an initial term of at least one (1) year, except with written approval by the Board of Directors, which shall not be unreasonably withheld in cases of undue hardship. The Owner must provide the lessee with copies of the Declaration, Bylaws, and the rules and regulations and any architectural guidelines

of the Association and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations and any architectural guidelines.

(c) Compliance; Liability for Assessments. If a Unit is leased or occupied in violation of this Article, then the Board of Directors shall be authorized, in addition to all other available remedies, to terminate the lease and occupancy, and to suspend all voting rights and the right to use and enjoy the Common Property of the Owner and any unauthorized tenants(s) or Occupant(s). Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws and Rules and Regulations and Architectural Guidelines. Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations and any architectural guidelines adopted pursuant thereto. Lessee shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner agrees to cause all Occupants of such Owner's Unit to comply with the Declaration, Bylaws, and the rules and regulations and any architectural guidelines adopted pursuant thereto and is responsible for all violations caused by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations and any architectural guidelines adopted pursuant thereto.

In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation or architectural guideline for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Declaration, Bylaws or rules and regulations and architectural Guidelines adopted pursuant thereto by the lessee, any Occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law.

(ii) Liability for Assessments; Assignment of Rent. If an Owner who is leasing such Owner's Unit fails to pay any general, special or specific assessment or any other charge owed to the Association for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid general, special and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due

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CATHELENE ROBINSON
Clerk of Superior Court
Fulton County, Georgia

dates for, monthly rental payments unpaid at the time of the Board of Director's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board of Director's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which such Owner would otherwise be responsible.

(iii) Right to Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property.

8.6 Mortgagee Exemption. The provisions of this Article shall not apply to any Mortgagee in possession of a Unit through foreclosure or otherwise as a result of the exercise of any rights arising out of a first priority Mortgage on a Unit.

8.7 Rights Reserved for the Declarant. Notwithstanding the restriction on the leasing of Units as described herein, Declarant may enter into a lease agreement for the lease of a Unit and the extent and duration of said lease agreement shall be determined solely by Declarant. Under such circumstances, Declarant shall not be required to obtain a leasing permit or a hardship leasing permit as provided herein. Declarant may also grant an Owner a leasing permit for any reason and the extent and duration of said privilege granted by Declarant shall be determined solely by Declarant. Said leasing permit may, but shall not be required to, count towards the leasing cap applicable to the Units set forth herein, as determined by the Declarant in its sole discretion. Any ability to lease a Unit granted by Declarant which extends beyond the termination of Declarant's rights under this Declaration shall be valid and may not be terminated by the Association so long as the Owners and Occupants comply with the terms and conditions imposed by Declarant.

* The defined terms used in this exhibit shall have the same meaning as set forth in the Adjacent Housing Parcel Declaration.