

Recording Fees: \$61.00
Documentary Stamps: \$0.00

This instrument prepared by and return to:

BRADLEY J. ELLIS, ESQUIRE



2033 Main Street, Suite 600
Sarasota, Florida 34237
Tel: (941) 366-8100
Fax: (941) 366-6384
Matter: 69708-117097

Cross-references: Instr. No. 2017004778;
Instr. No. 2017154235;
Instr. No. 2018093242; and
Instr. No. 2018141052

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2019049796 7 PG(S)
April 18, 2019 03:41:07 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FL



For Recording Purposes Only

**FOURTH AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR
ARTISTRY LOCATED IN SARASOTA COUNTY, FLORIDA, AND FOR
THE ARTISTRY COMMUNITY ASSOCIATION, INC.**
(Amending the default Initial Startup Assessment)

THIS FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR ARTISTRY LOCATED IN SARASOTA COUNTY, FLORIDA, AND FOR THE ARTISTRY COMMUNITY ASSOCIATION, INC. ("Fourth Amendment") is made as of the Effective Date hereof by **KH PALMER BLVD LLC**, a Florida limited liability, maintaining a principal office of 701 South Olive Avenue, Suite 104, West Palm Beach, Florida 33401 ("**Declarant**").

RECITALS:

A. WHEREAS, the *Declaration of Covenants, Conditions, Easements, and Restrictions for Artistry Located in Sarasota County, Florida, and for the Artistry Community Association, Inc.* ("**Declaration**") is recorded in the County's official public records as O.R. Instrument No. 2017004778; and

B. WHEREAS, the *First Amendment to the Declaration of Covenants, Conditions, Easements, and Restrictions for Artistry Located in Sarasota County, Florida, and for the Artistry Community Association, Inc.* ("**First Amendment**") is recorded in the County's official public records as O.R. Instrument No. 2017154235; and

C. WHEREAS, the *Second Amendment to the Declaration of Covenants, Conditions, Easements, and Restrictions for Artistry Located in Sarasota County, Florida, and for the Artistry Community Association, Inc.* ("**Second Amendment**") is recorded in the County's official public records as O.R. Instrument No. 2018093242; and

D. WHEREAS, the *Third Amendment to the Declaration of Covenants, Conditions, Easements, and Restrictions for Artistry Located in Sarasota County, Florida, and for the Artistry Community Association, Inc.* ("Third Amendment") is recorded in the County's official public records as O.R. Instrument No. 2018141052; *and*

E. WHEREAS, the Declaration §8.16 provided for a default calculation of the Initial Startup Assessment of "one-fourth (1/4) of the Base Assessment of that Lot and/or Unit for that fiscal year"; *and*

F. WHEREAS, Declarant desires to hereby amend the default calculation of the Initial Startup Assessment to be a flat rate of One-Thousand and No Dollars (\$1,000.00 USD); *and*

G. WHEREAS, the Declaration §17.7(a) provides:

Subject to Applicable Law, until Turnover (or until such earlier date as the Declarant records a "certificate of termination of interest" of its right to unilaterally amend this Declaration), the Declarant may unilaterally amend this Declaration by executing and recording an Amendment in the County's official public records. Such Amendment may impose additional conditions, covenants, easements, provisions, reservations, restrictions, and/or terms on Artistry or portions thereof; *and*

H. WHEREAS, as of the Effective Date hereof, Turnover has not occurred, and Declarant has not otherwise terminated its right to unilaterally amend the Declaration; *and*

I. WHEREAS, the Association's consent is not required under the Declaration for this Fourth Amendment to be effective, but the Association nevertheless hereby memorializes its consent to this Fourth Amendment.

NOW THEREFORE, in furtherance thereof, and for and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby declares as follows:

1. **Recitals Incorporated.** The foregoing recitals are true, accurate, and incorporated herein by reference.

2. **Definitions.** The words used in this Fourth Amendment shall be given their normal, commonly understood definitions. Unless defined in this Fourth Amendment, capitalized terms shall have the same meanings as used in the Declaration, as it may be amended or supplemented from time to time.

3. **Text Amendments.**

(a) **Underline** text signifies new and additional text.

(b) **Strikethrough** text signifies deleted text.

4. Article VIII, §8.16 of the Declaration is hereby amended and restated as follows:

8.16 Initial Startup Assessment. Upon the initial acquisition of record title to a Lot and/or Unit by an Owner other than Declarant or a Builder, a one-time Assessment shall be levied on the purchaser in an amount equal to: (a) a flat rate of One-Thousand and No Dollars (\$1,000.00 USD) ~~one fourth (1/4) of the Base Assessment of that Lot and/or Unit for that fiscal year (to be calculated as if the annual budget had included any and all Lot(s) and/or Unit(s) first conveyed to an Owner other than the Declarant and/or a Builder within that same fiscal year and as of the date of the purchase);~~ or (b) such other lesser amount as the Board may specify, from year to year, as a flat rate applicable to all Lots and/or Units. This Initial Startup Assessment shall be in addition to, not in lieu of, the other Assessments applicable to such Lot and/or Unit, and shall not be considered an advance payment of such other Assessments. The amount of the Initial Startup Assessment shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association. Initial Startup Assessments shall be used to offset the Budget Deficit (if any) and to otherwise cover operating expenses and other authorized expenses incurred by the Association.

5. **Effective Date.** The Effective Date of this Fourth Amendment shall be the date and time of recording of this Fourth Amendment in the County's official public records.

6. **Term of this Fourth Amendment; Amendments and Termination.** All of the conditions, covenants, easements, provisions, reservations, restrictions, and all the other terms, provisions, and limitations of this Fourth Amendment and of the Declaration shall run with the land and continue and remain in full force and effect at all times as against all Owners, their successors, successors-in-interest, heirs, or assigns, regardless of how the Owners acquire title, for a period coextensive with the term of the Declaration, as same may be extended from time to time until terminated pursuant to the provisions of the Declaration. Notwithstanding anything to the contrary in the foregoing, subject to the limitations within the Declaration (including, but not limited to any provision of the Declaration pertaining to the withdrawal of property from Artistry) this Fourth Amendment may be mutually amended, terminated, or modified by a written instrument executed by the Declarant and the Mortgagee (if still applicable) (or their successors, successors-in-interest, or assigns); provided further that no amendment, termination, or modification shall become effective prior to all of the Declarant and the Mortgagee (if still applicable) (or their successors, successors-in-interest, or assigns) duly executing and acknowledging such document and a copy thereof being recorded in the County's official public records.

7. **Interpretation.** All signatories hereto acknowledge and agree that each has been given the opportunity to independently review this Fourth Amendment with legal counsel, has agreed to the particular language of the provisions hereof and has fully participated in the drafting of this Fourth Amendment. In the event of any ambiguity in or dispute regarding the interpretation of any provision of this Fourth Amendment, such dispute shall not be resolved by any rule of construction providing for interpretation against the party who causes the ambiguity, or against the drafter. All signatories hereto agree that in the event of ambiguity or dispute regarding the interpretation of this Fourth Amendment, the Fourth Amendment will be interpreted as if each participated in the drafting hereof.

8. **Attorneys' Fees and Costs.** The prevailing party in any dispute arising out of this Fourth Amendment shall be entitled to reasonable Attorneys' Fees and Costs, in addition to all other relief granted or awarded by the presiding authority.

9. **Further Acts.** All signatories hereto shall cooperate with each other and execute and deliver any further authorizations, documents, and instruments, and shall take any further acts as reasonably necessary to effectuate or carry out the intent and purposes of this Fourth Amendment.

10. **Binding Effect.** This Fourth Amendment shall be binding upon and shall inure to the benefit of all signatories and Owners, and their respective successors, successors-in-title, heirs, and assigns, with respect to the Subject Lands.

11. **Covenants to Run with the Title to the Land.** This Fourth Amendment shall be deemed to run with the title to all portions of the Subject Lands under the Declaration, and shall remain in full force and effect unless and until terminated in accordance with the provisions set out in this Fourth Amendment.

12. **No Exhibits.** No exhibits are attached to this Fourth Amendment.

13. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Fourth Amendment.

14. **Governing Law, Jurisdiction, and Venue.** The construction, enforcement, and validity of this Fourth Amendment shall be determined according to the laws of the State of Florida, without regard to the principles of conflicts of laws thereof. The exclusive jurisdiction and venue of any action or suit brought in connection with this Fourth Amendment shall be in the State Circuit Court in and for Sarasota County, Florida. Any Owner, by taking title to any portion of the Subject Lands hereby agrees that neither (a) shall any action or suit brought in connection with this Fourth Amendment be filed in Federal Court, nor (b) shall any such action or suit which is brought in State Court be removed, or attempted to be removed, to Federal Court, unless such filing in or removal to Federal Court is consented to in writing by the affected parties to such litigation.

15. **Authorization.** The Declarant, Mortgagee, and Association each represent and warrant that: such party has authorized the execution, delivery, and performance of this Fourth Amendment by all necessary corporate, partnership, and/or company action; the individual(s) and/or entities executing this Fourth Amendment on behalf of such party has been authorized to execute this Fourth Amendment on behalf of such party; and this Fourth Amendment creates a valid, binding, and enforceable agreement of such party.

IN WITNESS WHEREOF, the Declarant, together with the joinder and consent of the Mortgagee having an interest in the Subject Lands owned by Declarant, and with the joinder and consent of the Association, has caused this Fourth Amendment to be executed on the Effective Date.

{THIS SPACE INTENTIONALLY LEFT BLANK}

{SIGNATURES COMMENCE ON FOLLOWING PAGE}

{ATTACHED TO THE FOURTH AMENDMENT TO THE DECLARATION FOR ARTISTRY}

DECLARANT

Signed, sealed, and delivered in the presence of:

Witness

Printed Name

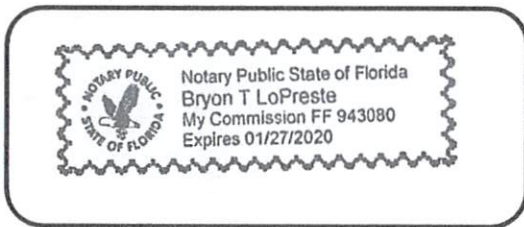
Witness

Printed Name

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 10th day of April, 2019, by James P. Harvey as Vice President of KH PALMER BLVD LLC, on behalf of the company. He ☒ is personally known to me or ☐ has produced _____ as identification, and did not take an oath.



Notary Stamp

KH PALMER BLVD LLC, a Florida limited liability

By:

Print Name: James P. Harvey

Title: Vice President

Date: April 10, 2019

(CORPORATE SEAL)

Signature of Notary

Print Name of Notary

My Commission Expires: 01-27-21

{THIS SPACE INTENTIONALLY LEFT BLANK}

{SIGNATURES CONTINUE ON FOLLOWING PAGE}

{ATTACHED TO THE FOURTH AMENDMENT TO THE DECLARATION FOR ARTISTRY}

JOINDER AND CONSENT OF ASSOCIATION

The undersigned, being the Association for Artistry under the Declaration, does hereby join in, consent to, and approve the Fourth Amendment to the Declaration and agrees to comply with and fully and promptly perform all of its duties and obligations thereunder.

Signed, sealed, and delivered in the presence of:

Lisa K Cox

Witness

Lisa K. Cox

Printed Name

Al Langh

Witness

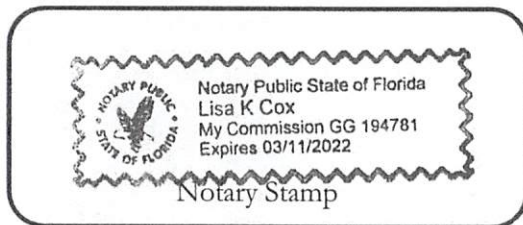
Jared Lybert

Printed Name

STATE OF FLORIDA

COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 15th day of April, 2019, by David Langhout as President of Artistry Community Association, Inc., on behalf of the corporation. He is ☒ personally known to me or ☐ has produced N/A as identification, and did not take an oath.



Notary Stamp

ARTISTRY COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation

By: David BZA

David Langhout, as its President

Attest: James P. Harvey

James P. Harvey, as its Secretary

(CORPORATE SEAL)

Lisa K Cox

Signature of Notary

Lisa K. Cox

Print Name of Notary

My Commission Expires: 3/11/2022

{THIS SPACE INTENTIONALLY LEFT BLANK}

{SIGNATURES CONTINUE ON FOLLOWING PAGE}

{ATTACHED TO THE FOURTH AMENDMENT TO THE DECLARATION FOR ARTISTRY}

JOINDER AND CONSENT OF MORTGAGEE

FLAGSTAR BANK, FSB, a federally chartered savings bank ("**Mortgagee**"), whose address is 5151 Corporate Drive, Troy, Mail Stop E-203-3, Michigan 48098, is the owner and holder of that certain *Construction Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing*, dated May 9, 2016 and recorded on May 12, 2016 as Official Records Instrument No. 2016058554 of the Public Records of Sarasota County, Florida, as modified by that certain *Mortgage Spreader Agreement (Florida)* dated June 27, 2017 and recorded on July 3, 2017 as Official Records Instrument No. 2017083263 of the Public Records of Sarasota County, Florida, as affected by the *Mortgage Modification Agreement and Notice of Future Advance* dated December 19, 2017 and recorded on December 26, 2017 as Official Records Instrument No. 2017157925 of the Public Records of Sarasota County, Florida, and as affected by that certain *Mortgage Spreader Agreement* dated April 30, 2018 and recorded on May 1, 2018 as Official Records Instrument No. 2018056970 of the Public Records of Sarasota County, Florida (collectively, the "**Mortgage**"), which Mortgage constitutes a lien and encumbrance upon the Subject Lands owned by Declarant, hereby joins in this Fourth Amendment for the sole purpose of consenting to the terms hereof.

Signed, sealed, and delivered in the presence of:

FLAGSTAR BANK, FSB, a federally chartered savings bank

Witness

Printed Name

Witness

Printed Name

STATE OF Texas

COUNTY OF Harris

By:

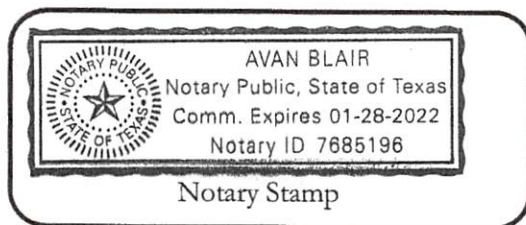
Print Name:

Title

Date:

(CORPORATE SEAL)

The foregoing instrument was acknowledged before me this 15th day of April, 2019, by Drew C Szilagyi as Vice President of Flagstar Bank, FSB, on behalf of the bank. ☐ She ☒ He is ☐ personally known to me or ☐ has produced _____ as identification, and did not take an oath.



Signature of Notary

Print Name of Notary

My Commission Expires: 1-28-22

{END OF DOCUMENT}