



**AMENDMENT TO RESTRICTIVE COVENANT**

THIS AMENDMENT TO RESTRICTIVE COVENANT (this "Amendment") is made effective as of the 14th day of December, 2016, by **SOUTH LAMAR APARTMENTS LIMITED PARTNERSHIP**, a Delaware limited partnership, as to its undivided 82.4452% interest as tenant-in-common, and **THC SOUTH LAMAR DEVELOPMENT LP**, a Delaware limited partnership, as to its undivided 17.5548% interest as tenant-in-common (collectively, the "Owner"), and **THE CITY OF AUSTIN, TEXAS**, a Texas home rule municipal corporation situated in the counties of Hays, Travis and Williamson (the "City"), and is as follows:

**RECITALS**

A. On or around October 30, 2015, SOUTH LAMAR APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership, and the City executed that certain Restrictive Covenant, recorded as Document No. 2015178680 in the Official Public Records of Travis County, Texas (the "**Restrictive Covenant**"), encumbering the real property set forth on Exhibit "B" attached thereto (the "**Property**").

B. SOUTH LAMAR APARTMENTS LIMITED PARTNERSHIP, a Delaware limited partnership, conveyed to THC SOUTH LAMAR DEVELOPMENT LP, a Delaware limited partnership, an undivided 17.5548% interest to the Property as a tenant-in-common.

C. Owner, as the sole owners of the Property, and the City desire to amend the Restrictive Covenant so as to clarify the requirements set forth in Section 1 thereof.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the City hereby amend the Restrictive Covenant as follows:

**AMENDMENT**

1. Section 1.a. of the Restrictive Covenant is hereby deleted in its entirety and replaced with the following quoted language:

"a. The total number of residential units in the Project is 340 and the number of residential units in the VMU portion of the Project is 116. Pursuant to Part 3.A. of the City's Vertical Mixed Use Ordinance No. 20081016-049 (the "VMU Ordinance"), 10 percent of the residential units available for rental within a vertical mixed use building shall be reserved for rental to households earning no more than 60 percent of the annual median family income (adjusted for family size) in the Austin-Round Rock-San Marcos Texas Metropolitan Statistical Area ("AMFI"). Notwithstanding the foregoing, Owner shall be deemed to be in compliance with the requirements of Part 3.A. of the VMU Ordinance if 12 units within the overall Project (regardless of whether such units are located within the VMU portion of the Project) are reserved for rental to households earning no more than 60 percent of AMFI, as published by the City of Austin's Neighborhood Housing and Community Development Office ("NHCD") from time to time, at base rent rates applicable to households earning no more than 60 percent of AMFI, as published by NHCD from time to time (which base rents do not include utilities

or additional amenity fees).”

2. Section 1.b. of the Restrictive Covenant is hereby deleted in its entirety and replaced with the following quoted language:

“b. Pursuant to the Declaration of Restrictive Covenants recorded as Document No. 2012174268 in the Official Public Records of Travis County, Texas (the “Zilker RC”), an additional eight (8) residential dwelling units in the overall Project will be reserved for rental to residential households whose income is no more than 60% of AMFI, as published from time to time by the Texas Department of Housing and Community Affairs (“TDHCA”), at base rent rates applicable to households earning no more than 60% of AMFI, as published by TDHCA from time to time.”

3. Section 1.c. of the Restrictive Covenant is hereby deleted in its entirety and replaced with the following quoted language:

“c. When the 8 units in paragraph b. are combined with the 12 units in paragraph a., a total of 20 units in the overall Project will be reserved for rental to residential households whose income is no more than 60% of AMFI, as published from time to time by: (i) TDHCA with respect to the 8 units required by paragraph b.; and (ii) NHCD with respect to the 12 units required by paragraph a.”

4. Section 1.d. of the Restrictive Covenant is hereby deleted in its entirety and replaced with the following quoted language:

“d. Pursuant to the Zilker RC, an additional fourteen (14) dwelling units in the overall Project will be reserved for rental to residential households whose income is no more than 80% of AMFI, as published from time to time by TDHCA, at base rents applicable to households earning no more than 80% of AMFI, as published by TDHCA from time to time.”

5. Section 1 of the Restrictive Covenant is hereby amended by adding a new paragraph f. that reads as follows:

“f. Any reference made herein to the Zilker RC is for the sole purpose of providing background and context with respect to the overall Project, and the City will not enforce, and does not claim any authority or power to enforce, the provisions of the Zilker RC.

6. Section 4 of the Restrictive Covenant is hereby deleted in its entirety and replaced with the following quoted language:

“**Duration.** This Restrictive Covenant shall be effective for no more than forty (40) years from the first date that the Project has achieved full compliance with this Restrictive Covenant, in accordance with the terms of Exhibit “A” (Affordable Housing Certification Letter) unless this Restrictive Covenant is modified, amended, or terminated in accordance with Section 3 (Modification and Amendment), or unless NHCD publishes updated income and rent limits, in which case the Project shall comply with such updated

income and rent limits in accordance with this Restrictive Covenant. The Director of NHCD agrees to provide a certificate of compliance in recordable form upon the Project achieving compliance with this Restrictive Covenant in accordance with the terms of Exhibit "A". The purpose of the certificate of compliance is to document the first date on which the Project has achieved compliance and the commencement of the forty (40) year term of this Restrictive Covenant. Upon recordation of the certificate of compliance, the Owner shall be released from the terms of Exhibit "A" but shall be required to remain in compliance pursuant to the terms of this Restrictive Covenant. In order to determine compliance, Owner may request that NHCD perform a monitoring review of the Project, and upon receipt of such request, NHCD may perform such monitoring review, even if such monitoring review would occur prior to NHCD's next regularly scheduled monitoring review."

7. Exhibit "A" to the Restrictive Covenant is hereby deleted in its entirety and replaced with the attached Exhibit "A".

8. The Restrictive Covenant shall remain in full force and effect, except as amended hereby. Where the terms of the Restrictive Covenant and the terms of this Amendment are in conflict, the terms of this Amendment shall control.

9. Capitalized terms used but not defined herein shall have the same meanings as given to such terms in the Restrictive Covenant.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Owner and the City have executed this Amendment as of the date set forth above to be effective as of the date of recording in the Official Public Records of Travis County, Texas.

**OWNER:**

**SOUTH LAMAR APARTMENTS LIMITED PARTNERSHIP,**  
a Delaware limited partnership

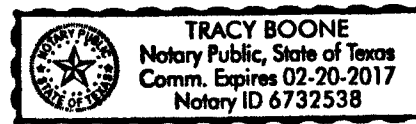
By: SLJV G.P., LLC, a Delaware limited liability company, its general partner

By: Kathy K. Binford  
Kathy K. Binford, Vice President

STATE OF TEXAS                   §  
  §  
COUNTY OF HARRIS           §

This instrument was acknowledged before me the 13<sup>th</sup> day of December, 2016, by Kathy K. Binford, as Vice President of SLJV G.P., LLC, a Delaware limited liability company, general partner of South Lamar Apartments Limited Partnership, a Delaware limited partnership, on behalf of said limited liability company and said limited partnership.

Tracy Boone  
Notary Public, State of Texas



**THC SOUTH LAMAR DEVELOPMENT LP,**  
a Delaware limited partnership

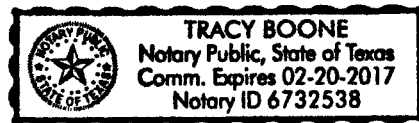
By: THC SL G.P., LLC, a Delaware limited liability  
company, its general partner

By: Kathy K. Binford  
Kathy K. Binford, Vice President

STATE OF TEXAS           §  
  §  
COUNTY OF Harris       §

This instrument was acknowledged before me the 13<sup>th</sup> day of December, 2016, by Kathy K. Binford, as Vice President of THC SL G.P., LLC, a Delaware limited liability company, general partner of THC South Lamar Development LP, a Delaware limited partnership, on behalf of said limited liability company and said limited partnership.

Tracy Boone  
Notary Public, State of Texas



CITY:

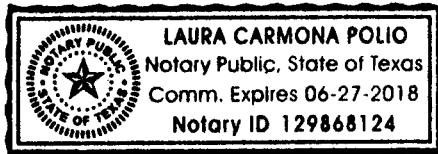
**CITY OF AUSTIN, TEXAS,**  
a Texas home rule municipal corporation

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

*[Handwritten Signature]*  
Bert Lumbreras  
Assistant City Manager  
City of Austin

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me the 14<sup>th</sup> day of December, 2016, by Bert Lumbreras, as Assistant City Manager of the City of Austin, a Texas home rule municipal corporation, on behalf of said municipal corporation.



*[Handwritten Signature]*  
Notary Public, State of Texas

APPROVED AS TO FORM:

*[Handwritten Signature]*  
Assistant City Attorney  
City of Austin

**AFTER RECORDING RETURN TO:**  
City of Austin -  
Neighborhood Housing and Community Development  
Attn: Regina Copic/Sandra Harkins  
1000 East 11th Street, Suite 200  
Austin, TX 78702

EXHIBIT "A"

AUS 536588959V5

**Recorders Memorandum**-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



## City of Austin

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P.O. Box 1088, Austin, TX 78767  
[www.cityofaustin.org/housing](http://www.cityofaustin.org/housing)

### **Neighborhood Housing and Community Development Department**

December 13, 2016

**VMU Restrictive Covenant Affordability Compliance Requirements  
Hanover R.S. Limited Partnership -809 South Lamar Blvd - Hanover South Lamar**

**TO WHOM IT MAY CONCERN:**

The mixed-use development located at 809 South Lamar Boulevard known as Hanover South Lamar was partially zoned Vertical Mixed Use (VMU) while the other portion was zoned MF-6. The project has a total of 340 units. Of the 340 units, 116 units fall under Article 4 Subchapter E of Chapter 25-2 of the Land Development Code (the VMU Ordinance"). Pursuant to this section of the VMU Ordinance, 10% (12 units) of the 116 units must be reserved for rental to households earning no more than 60% of the annual median family income (MFI) and such units may be located anywhere within the development. The 12 affordable units shall be leased to households that spend no more than 30% of its gross monthly income on utilities and rent. An affordable unit means a household that is required to spend no more than 30% of its gross monthly income on utilities or rental payments. Notwithstanding the foregoing, for the required affordable units, the rents to be charged are the monthly rental rates established annually by the City of Austin's Neighborhood Housing and Community Development Office based on the current Annual Median Family Incomes for the Austin Metropolitan Statistical Area, for households earning 60% MFI. The current effective rates are attached hereto as Attachment "A". A restrictive covenant was entered into stating the affordability requirements and terms, recorded under Document No. 2015178680, Official Public Records of Travis County, Texas (the "Restrictive Covenant"), which has been (or will be concurrently herewith) amended to clarify the requirements for the affordable units required under the VMU Ordinance.

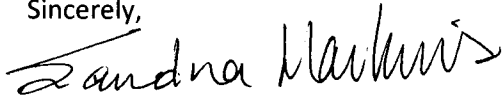
In addition to the 12 units required in the aforementioned Restrictive Covenant, the developer agreed to reserve 22 additional units, which may be located anywhere within the development, at the following income levels: 8 units for households at 60% MFI and 14 units for households at 80% MFI. A private restrictive covenant was entered into stating these affordability requirements and terms, recorded under Document No. 2012174268, Official Public Records of Travis County, Texas. The City of Austin's Law Department has confirmed such restrictive covenant is a private restrictive covenant, and therefore the City has no enforcement authority and no monitoring responsibilities for those units. The rent rates for the additional 22 units should be based on the language in the private restrictive covenant.



As of the date of this letter, this project is not currently in compliance with the VMU Ordinance E. Neighborhood Housing and Community Development has agreed to the attached Hanover South Lamar Affordable Housing Compliance Plan dated of even date with this letter. (See Attachment-2) The Owner will enter into an amendment to the original Restrictive Covenant (and will attach this letter to such amendment) stating the affordability requirements and terms which will be filed for record at the Travis County Clerk Office.

Please contact me by phone 512.974.3128 or by email at [Sandra.harkins@austintexas.gov](mailto:Sandra.harkins@austintexas.gov) if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "Sandra Harkins". The signature is written in a cursive style with a long, sweeping underline.

Sandra Harkins, Project Coordinator  
Neighborhood Housing and Community Development

Attachments:

Attachment 1 – Current rental rates published by NHCD

Attachment 2 – Hanover South Lamar Affordable Housing Compliance Plan

ATTACHMENT "1"

Effective June 6, 2016

<b>Median Family Income</b>	<b>Efficiency/One Bedroom</b>	<b>Two Bedroom</b>	<b>Three Bedroom</b>
60% AMFI	\$763	\$872	\$981
FORMULA: [60% AMFI Income Limit] * 0.28 = Base Rent (which does not include parking, additional storage, or any other additional rent or amenity fees)			

ATTACHMENT "2"

AUS 536589436v5

**Recorders Memorandum**-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

**HANOVER SOUTH LAMAR**  
**AFFORDABLE HOUSING COMPLIANCE PLAN**

1. **Plan Purpose.** This compliance plan will be attached to the affordability compliance requirements letter provided by the City of Austin Neighborhood Housing and Community Development Department (“NHCD”) and shall serve as the plan for the owner, or its successors and assigns, (the “Owner”) of Hanover South Lamar apartments (the “Project”) to come into “compliance” (herein so called) with the terms and provisions of that certain restrictive covenant recorded as Document No. 2015178680, as amended, in the Official Public Records of Travis County, Texas (the “Restrictive Covenant”). NHCD has agreed to the terms of this compliance plan. If the Owner fails to comply with its obligations under this compliance plan any such remedies shall be limited to those set forth in the Restrictive Covenant, as amended (including any applicable notice and cure periods contained therein).
  
2. **Affordable Units.**
  - a. In order to achieve compliance, upon expiration or renewal of the leases for units within the Project that are currently designated by the Owner as affordable units, the Owner will use commercially reasonable efforts to lease to qualifying tenants twelve (12) units within the Project at affordable base rent rates, in accordance with the terms below. The location and size of such affordable units shall be determined in the sole discretion of the Owner.
  
  - b. Pursuant to the Restrictive Covenant, as amended, the requirements for the twelve (12) affordable units are as follows:
    - i. The affordable units shall be leased to households earning no more than sixty percent (60%) of the annual median family income (adjusted for family size) in the Austin-Round Rock-San Marcos Texas Metropolitan Statistical Area (“AMFI”), as published by NHCD from time to time.
  
    - ii. An affordable unit means a household that is required to spend no more than 30% of its gross monthly income on utilities or rental payments. Notwithstanding the foregoing, for the required affordable units, the rents to be charged are the monthly rental rates established annually by the City of Austin’s Neighborhood Housing and Community Development Office based on the current Annual Median Family Incomes for the Austin Metropolitan Statistical Area, for households earning 60% MFI. The currently effective rates are attached hereto as Attachment “A”.

- c. Upon receipt by the Owner of any notice from a tenant occupying an affordable unit which states that such tenant intends to vacate the unit, terminate the lease, or renew the lease, the Owner will either: (i) in the case of a vacation or termination, list the unit at the affordable base rent rate, as set forth on Attachment "A" or such other applicable base rent as may be published by NHCD at the time of such lease termination; or (ii) in the case of a renewal, confirm that such tenant qualifies for an affordable unit and provide notice to such tenant that the renewal base rent rate will be the affordable base rental rate, as set forth on Attachment "A" or such other applicable base rent as may be published by NHCD at the time of such lease renewal.
3. **Compliance Timing**. The Owner shall use commercially reasonable efforts to cause the Project to come into compliance with the Restrictive Covenant on or before December 31, 2017.

Attachment "A"  
Neighborhood Housing and Community Development  
Current Chart for VMU Rents

Effective June 6, 2016

<b>Median Income</b>	<b>Family</b>	<b>Efficiency/One Bedroom</b>	<b>Two Bedroom</b>	<b>Three Bedroom</b>
60% AMFI		\$763	\$872	\$981
FORMULA: [60% AMFI Income Limit] * 0.28 = Base Rent (which does not include parking, additional storage, or any other additional rent or amenity fees)				

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

Dec 15, 2016 08:23 AM

2016207017

WILLIAMSJ: \$78 00

Dana DeBeauvoir, County Clerk

Travis County TEXAS