

## ASSIGNMENT OF REIMBURSEMENT OBLIGATIONS

This ASSIGNMENT OF REIMBURSEMENT OBLIGATIONS (the "**Assignment**") is made effective as of August 5, 2019, by and between HT FLATIRON LP, a Delaware limited partnership ("**Borrower**"), and FLAGSTAR BANK, FSB ("**Lender**").

### RECITALS:

WHEREAS, THE TOWN OF ERIE, a municipal corporation, in the Counties of Weld and Boulder, State of Colorado ("**Erie**"), and BAYOU DEVELOPMENT CORPORATION, a Colorado corporation ("**Bayou**"), and predecessor in interest to Borrower, have entered into that certain Flatiron Meadows Second Amended and Restated Master Development Agreement dated as of September 8, 2015 and recorded on September 9, 2015 as Instrument Number 03472486 in the Official Records of Boulder County, Colorado (as amended, "**Development Agreement**").

WHEREAS, the Development Agreement provides for the funding of the construction of certain improvements to benefit the landowners and inhabitants of the Flatirons Meadows Development ("**Development**") and for the reimbursement of certain of Borrower's costs in constructing such improvements.

WHEREAS, pursuant to that Construction Loan Agreement (Master Development Revolving Line of Credit) dated as of May 25, 2016, as amended by that certain First Agreement to Modify Loan Documents dated as of September 26, 2017, as further amended by that certain letter agreement dated as of April 19, 2018 ("**Letter Agreement**"), as further amended by that certain Second Agreement to Modify Loan Documents dated as of April 30, 2018, as further amended by that certain Third Agreement to Modify Loan Documents dated as of January 30, 2019 and as further amended by that certain Fourth Agreement to Modify Loan Documents of even date herewith (as the same has been and may be further amended, modified, extended, increased, restated, and renewed, from time to time, "**Loan Agreement**"), Lender made a non-revolving line of credit ("**Line of Credit**") available to Borrower in an amount not to exceed Thirty Million and 00/100 Dollars (\$30,000,000.00), subject to the limitations set forth in the Loan Agreement. The Line of Credit is evidenced by a Construction Loan Promissory Note dated as of May 25, 2016, in the principal amount of \$30,000,000.00 (as the same has been amended, modified, extended, increased, restated, and renewed, from time to time, "**Note**").

WHEREAS, as a portion of the collateral for the Loan, Borrower wishes to assign to Lender Borrower's right to receive the reimbursements contemplated in the Development Agreement.

### ASSIGNMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, and as part of the consideration for the Line of Credit, Borrower hereby agrees for the benefit of Lender as follows:

1. **Assignment.** Borrower hereby absolutely and unconditionally assigns to Lender, its participants, subsequent holders of the Note, successors and assigns, designees, or nominees: (i) all of Borrower's rights to reimbursement or other payments for design, construction and installation costs with respect to public improvements and common facilities specifically regulated as necessary for the Development, and dedication of public improvements, and any and all other funds, if any, which may be payable to Borrower under the Development Agreement from time to time, whether accruing before, on or after the date hereof (collectively, the "**Reimbursement Payments**"), and (ii) any and all rights, benefits, privileges, causes of action or remedies arising in favor of Borrower to recover the Reimbursement Payments under the Development Agreement and any and all extensions, modifications or renewals thereof (such rights, titles and interests described in the preceding clauses (i) - (ii) being



collectively referred to herein as the "**Assigned Rights**"). This Assignment is, and is intended to be, an absolute assignment from Borrower to Lender and not merely the passing of a security interest; provided, however, if a court of competent jurisdiction ever determines that this is not an absolute assignment of the Assigned Rights, then such assignment contained in this paragraph shall constitute and be construed as Borrower's grant of a security interest in the Assigned Rights for purposes of securing the Line of Credit. This Assignment does not assign Borrower's duties or obligations under the Development Agreement and Borrower will remain fully liable for performance of all such duties and obligations. Under no circumstances shall Lender be deemed by any party to have assumed Borrower's duties or obligations under the Development Agreement unless and until Lender expressly assumes such obligations.

2. **Representations and Warranties of Borrower.** Borrower hereby warrants and represents to Lender that, except as expressly otherwise agreed in writing by Lender, the Assigned Rights are and shall be held by Borrower free and clear of all prior liens, security interests, charges and encumbrances whatsoever and covenants and agrees with Lender to perform all acts required of it to maintain the Development Agreement in good standing at all times and not to terminate the same nor modify or supplement the terms thereof without the prior written consent of Lender. Borrower shall provide prompt written notice to Lender of the occurrence of any event which might with the passage of time or giving of notice, or both, constitute a Default or Event of Default under the Development Agreement. Borrower further warrants and represents to Lender that its rights under the Development Agreement are fully assignable, that all acts required for such assignment have been performed or have occurred and that no further consents thereto are required for this Assignment to be fully enforceable by Lender.

3. **Additional Documents.** At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the assignments and interests created by this Assignment with respect to the Assigned Rights. Upon any failure by Borrower so to do, Lender may make, execute, record, file, rerecord and/or refile any and all such assignments, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

4. **Indemnity.** Lender shall not be liable for any loss sustained by Borrower resulting from any act or omission of Lender in connection with this Assignment or the Development Agreement, unless such loss is caused by the gross negligence or willful misconduct of Lender. Lender shall not be obligated to perform or discharge nor does Lender undertake to perform or discharge any obligation, duty or liability under the Development Agreement or under or by reason of this Assignment, and Borrower shall indemnify Lender for, defend and hold Lender harmless from, any and all liability, loss or damage which may be incurred by or asserted against Lender under the Development Agreement or under or by reason of this Assignment and from any and all claims and demands which may be asserted against Lender by reason of any alleged obligations or understandings to perform or discharge any of the terms, covenants or agreements contained in the Development Agreement, except for Lender's gross negligence or willful misconduct. Should Lender incur any such liability under the Development Agreement or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be reimbursed by Borrower to Lender immediately upon demand, and upon failure of Borrower to make such reimbursement within fifteen (15) days of the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear



interest at the lesser of the default rate of interest set forth in the Note or the maximum lawful rate. This Assignment shall not operate to obligate Lender to exercise any of the Assigned Rights or make Lender responsible or liable for any of Borrower's obligations under the Development Agreement.

5. **Borrower's License; Lender's Rights.** Although it is the intention of the parties that this Assignment shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that, until the occurrence of an Event of Default and the continuance of such Event of Default after such notice of and such opportunity to cure the Event of Default as maybe required under the Loan Agreement, Borrower shall have the right under the license hereby granted (but limited as herein provided) to exercise the Assigned Rights, including without limitation collection of Reimbursement Payments as they become due and payable from time to time. As used in this paragraph, "**Event of Default**" shall have the meaning given to that term in the Loan Agreement. A default by Borrower under this Assignment shall constitute an Event of Default under the Loan Agreement and Note, the Deed of Trust and all other Loan Documents (as defined in the Loan Agreement. Upon the occurrence of an Event of Default and the continuance of such Event of Default after such notice of and such opportunity to cure the Event of Default as may be required under the Loan Agreement and Note, Lender shall, at its option, without notice and without regard to the adequacy of any security for the payment or performance of any duties or obligations arising under the Loan Documents, with or without bringing any action or proceeding, or by receiver appointed by a court, and without taking possession of the Project, have the immediate and continuing right to terminate the license hereby granted to exercise the Assigned Rights and collect the Reimbursement Payments, whereupon Lender shall be entitled to (i) exclusively exercise any or all of the Assigned Rights, including without limitation collection of the Reimbursement Payments which become payable from time to time, whether past due or thereafter accruing, and/or (ii) exercise any and all other rights and remedies to which Lender may be entitled in equity or at-law under this Assignment and the other Loan Documents. Upon electing to exercise the Assigned Rights, Lender shall, in its own discretion, determine the method of the enforcement of the rights of Borrower under the Development Agreement and collection of Reimbursement Payments, and Lender shall not in any event be accountable for more Reimbursement Payments than it actually receives from Erie or liable for failure to collect any Reimbursement Payments. Borrower does hereby authorize and direct Erie and any trustee or escrow agent appointed by Erie under the Development Agreement, if any, to pay all Reimbursement Payments directly to Lender and otherwise recognize Lender as being entitled to exercise and receive all benefits of the Assigned Rights, upon receipt of written notice (the "**Loan Default Notice**") from Lender that an Event of Default has occurred and continues to exist after such notice of the Event of Default and such opportunity to cure the Event of Default as may be required by the Note or the other Loan Documents, and that Lender is exercising its rights under this Assignment. Erie shall be entitled to conclusively rely upon the validity of Lender's Loan Default Notice.

6. **Application of Reimbursement Payments by Lender.** All Reimbursement Payments received by Lender may be applied as set forth in the Note.

7. **Rights and Remedies Cumulative.** The rights and remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in the Note, the Deed of Trust, this Assignment, any of the other Loan Documents, or in law or equity, all of which rights and remedies are specifically reserved by Lender. The rights and remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the rights and remedies herein provided shall not constitute a waiver thereof; nor shall use of any of the rights or remedies herein provided prevent the subsequent or concurrent resort to any other rights or remedies; and no act of Lender shall be construed as an election to proceed under any other provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding. This paragraph shall be broadly construed so that all rights and remedies herein provided

or otherwise available to Lender shall continue and be each and all available to Lender until the Loan shall have been paid in full.

8. **Termination.** Upon payment in full of the Line of Credit, and cancellation of the Note, or upon payment by Borrower to Lender of the applicable release price provided for in the Fourth Agreement to Modify Loan Documents dated as of August 5, 2019 among Borrower, Hines Real Estate Holdings Limited Partnership and Lender and satisfaction of all other conditions to partial release of collateral set forth in the Loan Agreement, this Assignment shall cease, terminate and be of no further effect; provided, however, that the affidavit, certificate, letter or statement of Lender or any officer, agent or attorney of Lender showing any part of the Line of Credit being unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon.

9. **Severability.** Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but, should any provision of this Assignment be prohibited or rendered invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provisions or the remaining provisions of this Assignment.

10. **Inurement.** This Assignment, together with the agreements and warranties herein contained, shall inure to the benefit of Lender and its successors and assigns and shall be binding upon Borrower and its respective heirs, successors and assigns as to all or any part of this Project.

11. **Construction.** This Assignment is made pursuant to and shall be construed and governed by the laws of the United States and the rules and regulations promulgated thereunder, and, to the extent the laws of the state are applicable, by the laws of the State of Colorado and the rules and regulations promulgated thereunder. If any paragraph, clause or provision of this Assignment is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses and provisions of this Assignment.

12. **WAIVER OF JURY TRIAL. IT IS MUTUALLY AGREED BY AND BETWEEN BORROWER AND LENDER THAT THE RESPECTIVE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS ASSIGNMENT, THE LOAN AGREEMENT, AND ALL OTHER INSTRUMENTS EXECUTED IN CONNECTION THEREWITH.**

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IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed as of the date set forth above.

**BORROWER:**

HT FLATIRON LP, a Delaware limited partnership

By: Hines Flatiron Associates Limited Partnership,  
a Texas limited partnership, its general partner

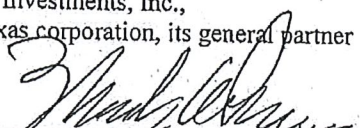
By: Hines Flatiron GP LLC,  
a Delaware limited liability company,  
its general partner

By: Hines Investment Management Holdings Limited  
Partnership,  
a Texas limited partnership, its sole member

By: HIMH GP LLC,  
a Delaware limited liability company,  
its general partner

By: Hines Real Estate Holdings Limited  
Partnership,  
a Texas limited partnership, its sole member

By: JCH Investments, Inc.,  
a Texas corporation, its general partner

By:   
Mark A. Cover  
Senior Managing Director/  
Chief Executive Officer

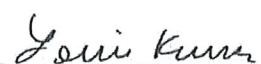
STATE OF TEXAS )  
 ) ss.  
COUNTY OF DALLAS )

Executed before me this 6th day of August, 2019, by Mark A. Cover, as Senior Managing Director/Chief Executive Officer of JCH Investments, Inc., a Texas corporation, as general partner of Hines Real Estate Holdings Limited Partnership, a Texas limited partnership, as sole member of HIMH GP LLC, a Delaware limited liability company, as general partner of Hines Investment Management Holdings Limited Partnership, a Texas limited partnership, as sole member of Hines Flatiron GP LLC, a Delaware limited liability company, as general partner of Hines Flatiron Associates Limited Partnership, a Texas limited partnership, as general partner of HT Flatiron LP, a Delaware limited partnership.

Witness my hand and official seal.

My Commission Expires: 7/3/21



  
Notary Public

**ACKNOWLEDGMENT**

The foregoing Assignment of Reimbursement Obligations from HT FLATIRON LP, a Delaware limited partnership, to FLAGSTAR BANK, FSB, is hereby acknowledged and approved this \_\_\_\_ day of \_\_\_\_\_, 2019.

TOWN OF ERIE, a Colorado municipal corporation, in the Counties of Weld and Boulder, State of Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_