

LAND USE RESTRICTION AGREEMENT
for
AFFORDABLE MULTIFAMILY RENTAL DEVELOPMENT IN AREAS ZONED FOR
COMMERCIAL, INDUSTRIAL, OR MIXED USE IN COMPLIANCE WITH CHAPTER
2023-17, LAWS OF FLORIDA, THE LIVE LOCAL ACT

between

ALACHUA COUNTY

and

[PROPERTY OWNER]

THIS LAND USE RESTRICTION AGREEMENT (hereinafter “LURA” or “Agreement”) is made and entered into as of this _____ day of _____, 20__ (the “Effective Date”) by and between Alachua County, a political subdivision of the State of Florida (hereinafter referred to as the “County”) and [PROPERTY OWNER], a _____ (state) _____ (corporate form) for itself and its successors, assigns, and agents (hereinafter referred to as the “Owner”).

RECITALS

WHEREAS, the Owner is the owner in fee of that certain real property located in Alachua County, Florida, located at _____, on Alachua County Tax Parcel _____, as further described in Exhibit “A” attached hereto and incorporated herein by reference, hereinafter referred to as the “Property”; and

WHEREAS, the Property is zoned for commercial, industrial, or mixed use development; and

WHEREAS, pursuant to section 125.01055(7) of the Florida Statutes, as created by Chapter 2023-17, Laws of Florida (the “Live Local Act”), a County must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial or mixed use if at least 40 percent of the residential units in the proposed multifamily or mixed-use rental development are, for a period of at least 30 years, affordable as defined in s. 420.0004, Fla. Stats.; and,

WHEREAS, the Owner seeks to develop the Property with multifamily or mixed-use affordable rental housing utilizing the Live Local Act’s land use tool at section 125.01055(7) of the Florida Statutes; and

WHEREAS, in compliance with the Live Local Act, the Owner agrees to restrict at least 40 percent of the total number of residential rental units to be developed on the Property as affordable housing, as defined herein; and

WHEREAS, to maintain compliance with the Live Local Act, the Owner and the County wish to ensure that the restricted rental units are maintained as affordable housing for a period of not less than thirty (30) years, regardless of any subsequent changes in ownership of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the County and the Owner do hereby contract and agree as follows:

Section 1. Recitals. The recitals set forth above are true and correct and incorporated into this LURA by reference.

Section 2. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below:

- a. **“Adjusted Gross Income”** means all wages, assets, regular cash or noncash contributions or gifts from persons outside the Eligible Household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under s. 62 of the Internal Revenue Code.
- b. **“Affordable”** means that monthly rents including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the annual median Adjusted Gross Income for an Eligible Household.
- c. **“Affordable Unit”** or **“Affordable Units”** means those Dwelling Units that are Affordable to an Eligible Household. Affordable Unit(s) need not be limited to particular designated Dwelling Units within the Project but may be floating units that change over time. If the Project, as defined herein, is developed with the Maximum Number of Units, the number of Affordable Units within the Project shall be no fewer than _____ () Affordable Units.
- d. **“Dwelling Units”** means the residential rental units within the Project, including Affordable Units and those units which are market-rate.
- e. **“Eligible Household”** means one or more natural persons or a family, the total annual adjusted gross household income of which is at or less than 120 percent of the median annual Adjusted Gross Income, as posted annually by the Florida Housing Finance Corporation, for households within Alachua County.
- f. **“Maximum Number of Units”** means the number of dwelling units approved for this project. The Project is approved for no more than _____ () Dwelling Units of which at least 40 percent (40%) shall be Affordable Units.
- g. **“Project”** means multifamily rental housing development on the Property for which the Owner is applying to obtain site development or subdivision approval from the County.

Section 3. Affordability Period. The Affordability Period shall commence upon the issuance of the first certificate of occupancy for the Project, and end after a period of no less than thirty (30) years from the last certificate of occupancy for the Project.

Section 4. Use and Occupancy of the Property. The Owner shall comply with the following restrictions regarding the use and occupancy of the Property for the duration of the Affordability Period as defined and established in Article 3 of this Agreement. These covenants shall run with the land until the end of the thirty-year affordability period and shall be binding on all parties and persons claiming under them.

- a. **Use of Property.** The Owner shall develop and maintain the Project as a multifamily or mixed-use rental housing development and shall rent and hold available for rental no fewer than 40 percent (40%) of the Dwelling Units as Affordable Units for rent exclusively to Eligible Households. If the property is a mixed-use residential project, at least sixty-five percent (65%) of the total square footage of the property must be for residential purposes.
- b. **Owner Responsible for Income Verification.** For each Affordable Unit, the Owner shall be responsible for accepting rental applications and determining and verifying the Adjusted Gross Income of prospective tenants to ensure such tenants qualify as an Eligible Household. Adjusted Gross Income shall be calculated by annualizing verified sources of income for the household as the amount of income to be received by the household during the 12 months following the effective date of determination.
- c. **Affordable Rents.** Rents for all Affordable Units shall be Affordable to the Eligible Household occupying the Affordable Unit.
- d. **Affordable Units Must be Comparable in Quality to the Market-Rate Units.** The Affordable Units shall be intermixed with, and not segregated from, the Market Rate Units in the Project. At all times, the Affordable Units must be at least reasonably comparable in terms of size, features and number of bedrooms to the Market Rate Units. Eligible Households shall not be excluded from using common area amenities within the Project.
- e. **No Conflict of Interest.** No Affordable Unit shall be occupied by the Owner or any person related to or affiliated with the Owner or the operator of the Project.
- f. **What Happens if a Household's Income Exceeds 120% AMI.** To be determined by County Attorney's office.

Section 5. Required Recordkeeping. The Owner shall maintain complete and accurate income records pertaining to each Eligible Household occupying an Affordable Unit. These records must be updated annually and shall be maintained for at least seven years following the date of each such record. At a minimum, Owner shall maintain the following records for each occupied Affordable Unit:

- a. An Eligible Household's complete application for tenancy and related information including the name of each household member, proof of identity, and employment, income and asset information for each household member;
- b. A copy of the lease agreement listing the term of tenancy, the rent, and identifying each tenant residing in the Affordable Unit;
- c. Verification that the household is an Eligible Household as defined herein; and
- d. Verification that the Eligible Household's rent is Affordable as defined herein; and
- e. Information about the unit being occupied, including a floorplan that shows the number of bedrooms, the size of the unit, the estimated utilities for the unit and any amenities included with the rent for the term of tenancy.

Section 6. Annual Reporting. Throughout the duration of this Agreement, the Owner shall provide an Annual Report to the County's Community Support Services Housing Program by _____ of each year. The Annual Report shall provide the following information regarding each Affordable Unit: (a) unit address; (b) number of persons residing in each Affordable Unit; (c) the Adjusted Gross Income of the persons residing in the Affordable Unit; (d) the monthly

rent charged; (e) any other information reasonably required to ensure compliance with this Agreement and requested by the County. The Owner shall permit the County or its designee to inspect all records, in person or virtually, including but not limited to financial statements and rental records, pertaining to Affordable Units upon reasonable notice, within normal working hours and without additional cost, and shall submit to the County such documentation as required by the County to document compliance with this Agreement.

Section 7. Monitoring and Inspection. The County may, from time to time, make or cause to be made housing quality standards inspections of the Affordable Units and Project rental records to determine compliance with the conditions specified herein. The County shall provide reasonable notification to the Owner prior to scheduled inspections, and the Owner shall make any and all necessary arrangements to facilitate the County's inspection. The County may make, or cause to be made, other reasonable entries upon and inspections of the Property, provided that the County shall give the Owner notice prior to any such inspection, specifying reasonable cause therefore related to the County's interest in enforcing this Agreement. The Owner shall permit the County or its designee to inspect all Project rental records, in person or virtually, including but not limited to financial statements and rental records, pertaining to Affordable Units, within normal working hours and without additional cost, and shall submit to the County such documentation as required by the County to document compliance with this Agreement.

Section 8. Enforcement and Remedies. If the Owner violates any of the terms and conditions of this Agreement or breaches a restriction, warranty, covenant, obligation or duty set forth herein, and if such violation or breach remains uncured for a period of thirty (30) days after written notice thereof, the County shall be entitled, in its sole discretion, to any or all of the remedies described below:

- a. If the County determines that the Owner has taken and diligently continues corrective action and that the breach cannot be corrected within the thirty (30) day period, the County may, in its sole discretion, allow the Owner up to six (6) months after first notice to cure the breach.
- b. The County may institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation and to compel specific performance. The County shall be entitled to recover its costs and expenses and reasonable attorneys' fees in any such judicial proceeding where the County shall prevail.
- c. The County may require that the Annual Report required pursuant to Section 7 hereof be provided quarterly for so long as the County deems reasonable and necessary.
- d. In the event that the violation or breach requires that the County undertake additional monitoring of the Project, the County, in its sole discretion, may require the Owner to pay to the County a compliance monitoring fee for supplemental monitoring in the amount necessary to reimburse the County for performing such supplemental monitoring. This fee shall be in addition to, and distinct from, any reimbursement of costs and legal fees to which the County may be entitled as a result of judicial enforcement action and any fines payable to the County and shall be payable without respect to whether the County undertakes or succeeds in judicial enforcement or code enforcement activities. The County's right to be compensated for additional monitoring

shall, at the County discretion, extend for a period of up to two years following the most recent finding of noncompliance with this Agreement. The County shall submit written invoices to the Owner on a quarterly basis which shall be paid by the Owner within thirty (30) days of receipt.

- e. In the event that the Owner charges rent to an Eligible Household that exceeds the limit for an affordable unit, the Owner shall reimburse the Eligible Household for the amount overcharged either in a lump sum, or by discounting the rent on the unit over the remainder of the lease term. The County may also require that the Owner remit to the County, for deposit in the County's Affordable Housing Trust Fund, an amount equal to the difference between the rent that would be Affordable for an Eligible Household and the rent that was charged to Eligible Household.
- f. In the event that the Owner fails to provide at least the required number of Affordable Units during the Affordability Period, as described in Section 3, the Owner shall increase the number of Affordable Units provided in the Project for at least one year to make up the difference.
- g. The provisions hereof are imposed upon and made applicable to the land and shall run with the land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation.
- h. Any failure of the County to enforce this Agreement shall not be deemed a waiver of the right to do so thereafter.

Section 9. Covenants Run with the Land. All conditions, covenants, and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the County its successors and assigns, against the Owner, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or the Project or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property or the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property or the Project.

Section 10. Notice of Intent to Sell or Otherwise Transfer the Property and Subsequent Transfer. Owner agrees to provide written notice to the County upon an intent to sell or otherwise transfer the Property. In the event of a sale or transfer of ownership of the Property, Owner agrees to provide thirty (30) days written notice to the County with contact information regarding the new Owner. County shall coordinate with any successors and assigns to ensure the affordability terms contained in this agreement continue throughout the affordability term.

Section 11. Recordation. This Agreement shall be recorded in the Official Records of Alachua County, Florida by the Owner at its sole expense. A certified copy of the recorded Agreement shall

be provided to the County's Community Support Services Housing Program within ten (10) days of receipt of the executed Agreement.

Section 12. Effective Date. This Agreement shall become effective as of the date set forth above.

Section 13. Duration. This Agreement and the restrictions provided herein shall run with the Property and remain in effect for a period of at least thirty (30) years from the effective date set forth above. Upon conclusion of the thirty-year (30) affordability period, the covenants herein shall be deemed satisfactory complied with unless documents properly and timely recorded with the Alachua County Clerk of the Circuit Court indicate otherwise, and the County and the Owner will execute a recordable document further evidencing such termination.

Section 14. Modification. The County and its successors and assigns and Owner and the successors and assigns of Owner in and to all or any part of the fee title to the Property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions, or restrictions contained in this Agreement without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having any interest less than a fee in the Property. Any amendment or modification to this Agreement must be in writing and signed by the County and the Owner, or their successors and assigns.

Section 15. Notice. All notices which may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time.

As to County:
Michele Lieberman
County Manager
12 SE 1st Street
Gainesville, FL 32601

And with a copy to:
A New Person
Housing Program Manager
John Henry Thomas, M.D. Center
218 SE 24th Street
Gainesville, FL 32641

As to Developer:
Name
Company
Mailing Address

Section 16. Severability. If any provision hereof shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 17. Annexation. This Agreement is not intended to be, and indeed is not, a “development agreement” within the meaning of Sections 163.3220-163.3242, Florida Statutes. The parties shall not be deprived of their rights and obligations, and this agreement shall not be terminated, modified, or affected by operation of a municipal annexation of any portion of the Property.

Section 18. Construction of Agreement. Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

Section 19. Entire Agreement. This LURA together with the Exhibits embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby.

Section 20. Counterparts. This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

Section 21. Venue and Governing Law. Each party covenants and agrees that any and all legal actions arising out of or connected with this Agreement shall be instituted in the Circuit Court of the Eight District in and for Alachua County, Florida, or in the United States District Court for the Northern District of Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This Agreement is entered into within, and with reference to the internal laws of, the State of Florida, and shall be governed, construed, and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

IN WITNESS HERETO, the parties herein have caused this Agreement to be executed at the place and on the day specified hereinabove.

(signatures start on next page)

DEVELOPER:

Developer Name

By: _____

Click or tap here to enter text.

Witness #1 for the Developer:

Witness #2 for the Developer:

Signature

Signature

Printed Name

Printed Name

STATE OF FLORIDA
COUNTY OF _____

The foregoing document was acknowledged before me this ____ day of _____,
20____, by _____ as _____ of
_____, who is personally known to me or has produced _____
as identification.

Notary Public, State of Florida

Printed Name

Commission Number: _____

Commission expires: _____

(signatures continued on next page)

ALACHUA COUNTY:

**BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA**

By: _____
Michele Lieberman, County Manager

ATTEST

J.K. "Jess" Irby, Esq., Clerk

APPROVED AS TO FORM

County Attorney

(SEAL)

DRAFT