

After recording, return to:

STATE OF GEORGIA)
)
COUNTY OF CHATHAM)

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR
DENSITY VARIANCE HOUSING**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS (as amended, modified or supplemented from time to time, the "Agreement"), is made and entered into as of _____, 20__ (the "Effective Date"), by **[INSERT OWNER NAME]**, a _____ together with its successors, assigns and transferees of the Property (as hereinafter defined), "Owner") for the benefit of the **MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH**, a municipal corporation of the State of Georgia ("City"), as a condition precedent to granting a density variance in the districts zoned TC, TN, TR-1 or TR-2 in order to develop new Affordable Workforce Housing Units, which are subject to certain Affordability Requirements.

NOW, THEREFORE, in consideration of the promises and covenants in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** As used in this Agreement, the terms below shall have the following meanings:

"Affordability Period" means a period beginning on the date that a certificate of occupancy is issued for the Property and expiring Two Hundred Forty (240) months thereafter.

"Affordable Workforce Housing Unit" means a Residential Dwelling Unit in the TC, TN, TR-1 or TR-2 zoned districts that complies with the affordability requirement set forth in Section 2 below.

"AMI" means the area median income as calculated and published annually by the U.S. Department of Housing and Urban Development ("HUD") for the Savannah Metropolitan Statistical Area.

"Density variance" means an approved deviation from development standards for improvements and resident density on parcels located in the TC, TN, TR-1 or TR-2 zoned districts.

"Owner" means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities or affiliated entities and any transferee of all or part of the real property at one location, which after this chapter takes effect develops new residential dwelling units

at one location in the in the districts zoned TC, TN, TR-1 or TR-2.

"Property" means the land described on Exhibit A attached hereto and incorporated herein.

"Residential Dwelling Unit" means a single residential dwelling unit (including but not limited to a single family home, townhome, Accessory Dwelling Unit ("ADU"), as well as a studio, one-, two-, or three-bedroom apartment) offered for rental or sale, provided that the following shall not constitute a Residential Dwelling Unit: (i) rooms or units that are restricted for use or occupancy by students, faculty or staff at a college, university or other non-profit education-related entity, (ii) rooms or units in a hotel or motel, and (iii) units or rooms in a hospital, nursing home, assisted living facility or other health-care facility.

"Workforce Resident" means the person or persons occupying an Affordable Workforce Housing Unit earning an aggregate gross annual income at or below ninety (90%) percent Area Median Income (AMI) adjusted for household size as published by the U.S. Department of Housing and Urban Development (HUD) or otherwise determined by the City of Savannah Housing and Neighborhood Services Department (HNSD).

2. **Affordability Requirements.** All improvements of real property in the districts zoned TC, TN, TR-1 or TR-2, upon which a density variance has been granted for new Residential Dwelling Units to be constructed at one location regardless of the number of parcels, shall comply with the applicable affordability requirements as set out in Section 2 below with regards to use for rental purpose or in the event of a sale or transfer. Further, unless otherwise approved at the time a density variance is granted, the Affordable Workforce Housing Units shall be substantially similar in construction and appearance (e.g., square footage, type and brand of appliances, materials used for countertops, flooring, etc.) to the market rate and/or owner-occupied units located on the property or constructed contemporaneously therewith, and shall not be in isolated areas in the development, but shall be interspersed among owner-occupied and/or market rate units throughout developed parcel(s) for the entirety of the Affordability Period. The number of bedrooms in the Affordable Workforce Housing Units (e.g. studio, one-bedroom, two-bedrooms, three-bedrooms) shall be proportionate, to the extent feasible, to the number of bedrooms in the owner-occupied and/or market rate units located on the parcels. Owner agrees to the following:

a) **AFFORDABLE RENTAL DWELLINGS.**

- i. **Eligible Tenant:** To be considered an Eligible Tenant for rental of an Affordable Workforce Housing Dwelling Unit (Rental Dwelling), the individual or household must occupy the Rental Dwelling as his, her or their principal residence, meet the definition of Workforce Resident, and comply with the Maximum Income limits stated herein. Students 18 years or older who are not claimed by a parent or guardian as a dependent on IRS tax returns may be considered Eligible Tenants unless otherwise prohibited by funding sources used to develop or finance the Rental Dwellings. Any use of the Rental Dwelling or any activity thereon which is inconsistent with the purpose of this Deed Restriction is expressly prohibited.
- ii. **Maximum Income:** Tenants of Rental Dwellings must be Eligible Tenants who, at the time of lease execution during the Affordability Period, must have gross annual incomes at or below 90% Area Median Income (AMI) adjusted for household size as published by the U.S. Department of Housing and Urban Development (HUD) or otherwise determined by the City of Savannah

Housing and Neighborhood Services Department (HNSD) with verification provided to the HNSD prior to lease execution. Unless otherwise requested by the HNSD, verification of incomes do not have to be provided to the HNSD for tenants participating in the Section 8, Housing Choice Voucher, Low Income Housing Tax Credit, or other rental assistance programs recognized by the HNSD. Unless required by funding sources used to produce or finance Rental Dwellings, tenants who subsequently realize increases to income above the Maximum Income limits after leasing a unit, do not have to move.

- iii. Maximum Rents: At least 50% of the Residential Dwelling Units located on parcels subject to an approved Density Variance must have rents that do not exceed the Fair Market Rents published annually by the U.S. Department of Housing and Urban Development (HUD) during the Affordability Period.
- iv. Rental Assistance: Rental Dwellings must be available to qualified Eligible Tenants, including those who are recipients of Section 8 Vouchers or Certificates, Housing Choice Vouchers or Certificates, or other rental assistance recognized by the HNSD.
- v. Source of Income: Otherwise Eligible Tenants cannot be refused the opportunity to rent a Rental Dwelling based upon Source of Income including, but not limited to, having access to Section 8, Housing Choice Voucher, or other non-traditional sources of income.
- vi. Affordability Period: The Affordability Period shall be for the Term described herein which shall be for a two hundred forty (240) month period that begins from the date the Certificate of Occupancy is issued after building construction by the City of Savannah. This shall be known as the Affordability Period during which all terms and conditions outlined above apply. The Affordability Period shall remain in effect for the full Term regardless of the number of Eligible Tenants who reside in Rental Dwellings during the Term.

b) **AFFORDABLE FOR SALE DWELLINGS.**

- i. Eligible Purchaser: To be considered an Eligible Purchaser of an Affordable Workforce Housing Unit for sale (For Sale Dwelling), the individual or household must own and occupy the For Sale Dwelling as his, her or their principal residence, meets the definition of Workforce Resident, and comply with the Maximum Income limits stated herein. Any use of the For Sale Dwelling or any activity thereon which is inconsistent with the purpose of this Deed Restriction is expressly prohibited, unless the Affordable Workforce Housing Unit is leased out in accordance with the terms of Section 2(a).
- ii. Maximum Income: The initial purchaser of each newly constructed For Sale Dwelling must be an Eligible Purchaser who, at the time of purchase, has a gross annual income at or below 90% Area Median Income (AMI) adjusted for household size as published by the U.S. Department of Housing and Urban Development (HUD) or otherwise determined by the City of Savannah Housing and Neighborhood Services Department (HNSD) with verification provided to the HNSD prior to sale. Subsequent purchasers of For Sale Dwellings are not bound by these income requirements unless otherwise restricted as part of

the purchase financing.

- iii. Maximum Sale Price: For Sale Dwellings cannot be sold, initially or subsequently during the Affordability Period, for more than the HOME program sale price limits established by the City of Savannah Housing and Neighborhood Services Department (HNSD), which may be reviewed biannually. The Maximum Sale Price limit for a For Sale Dwelling in 2023 is \$250,000 and is subject to change upon review. Any sale, conveyance, or transfer of a For Sale Dwelling, or interest therein, during the Affordability Period and for more than the Maximum Sale Price (as established at the time of such sale, conveyance, or transfer) shall be considered void ab initio unless the Maximum Sale Price requirement is otherwise waived, in writing, by the City of Savannah or its assignee.
- iv. Affordability Period: The terms and conditions described above shall be in place for two hundred forty (240) months from the date a For Sale Dwelling is first purchased by an Eligible Purchaser. This shall be known as the Affordability Period. The Affordability Period shall remain in effect even if the For Sale Dwelling is resold by the initial Eligible Purchaser to another purchaser.

3. Verification of Workforce Residents.

a) The income of all initial tenants, who occupy or will occupy the Affordable Workforce Housing Units on the Property, as well as potential purchasers, shall be verified by Owner through an income certification. FOR RENTAL DWELLINGS: Each certification shall be dated not later than the date of execution of the lease but in no event more than six (6) months prior to the initial occupancy of the tenant. Photocopies of all income certifications shall be submitted to the City or its designee within thirty (30) days after the tenant's lease execution of an Affordable Workforce Housing Unit on the Property. FOR SALE DWELLINGS: Each certification shall be dated not later than the date of execution of the purchase-sales agreement but in no event less than fifteen (15) days prior to the transfer of any interest in the Property, other than leasehold. Photocopies of all income certifications shall be submitted to the City or its designee no later than fifteen (15) days prior to the transfer of any interest in the Property, other than leasehold. The City or its designee shall review all income certificates submitted under this Section to confirm completion, but the City shall have no responsibility for verifying the accuracy of the information submitted.

b) Owner shall provide to the City on at least annual basis detailed documentation regarding the Workforce Resident tenants, including but not limited to: unit number, tenant name, lease effective date, lease expiration date, number of bedrooms, household size, annual household income at time of initial occupancy, and rent charged. The City has the authority to request any and all additional documentation it deems necessary to verify the information provided by Owner. The City may request the completion of these forms monthly during the initial lease-up process for the Property.

c) During the Affordability Period, Owner shall maintain complete and accurate records pertaining to the Affordable Workforce Units subject to rents/leaseholds. Upon reasonable notice and at reasonable times, Owner will permit the City or its designee to inspect the books and records of Owner pertaining to each initial occupants' income certifications of Workforce Resident tenants for the purpose of verifying compliance by Owner hereunder. Owner shall keep information as set forth in this Section for a five-year period.

d) During the Affordability Period, Owner shall provide income recertification information as an addendum to any new lease.

e) The City may appoint a third-party agent to monitor Owner's compliance with the terms and conditions of this Agreement on behalf of the City. Upon receipt of written notice from the City identifying such designee, all income certifications, documents and other deliverables hereunder, shall thereafter be delivered to the designee at address so specified.

4. **Maintenance of Property Standards.** During the Affordability Period, Owner shall maintain the Property and the improvements thereon in compliance with the Savannah Code of Ordinances and all applicable laws. The City reserves the right to perform periodic on-site inspections of the Property throughout the Affordability Period.

5. **Sale, Lease or Transfer of Property.**

a) Owner expressly acknowledges and agrees that a sale, lease, exchange, assignment, or other transfer of all or any portion of the Property ("Disposition") shall not relieve Owner or any subsequent transferee of its obligations under this Agreement. Owner shall include by incorporation by reference or verbatim the requirements and restrictions contained in this Agreement in any deed or other documents with respect to a Disposition and shall obtain the express agreement from any transferee to assume in writing all duties and obligations of Owner under this Agreement. If the proposed transferee with respect to a Disposition of all (but not a part of the Property) has agreed to perform the obligations of Owner under this Agreement pursuant to an assumption agreement approved by the City in accordance with the terms and conditions hereof, Owner shall be released from its obligations hereunder, and the City shall upon request, execute a release by recordable written instrument effecting such release.

b) The restrictions contained in the foregoing provisions of this Section 6 shall not be applicable to the following: (i) grants of utility related easements and utility and other service related leases or easements, including without limitation, laundry service leases or television cable easements, over portions of the Property, provided the same are granted in the ordinary course of business in connection with the development and operation of the Property; (ii) leases of Residential Rental Dwelling Units to Workforce Residents or to other tenants of Residential Rental Dwelling Units; (iii) the income restrictions of Section 2(b)(ii) shall be waived in order to facilitate the transfer of title out of the estate of deceased individual Owner via a probated Will or Letters of Administration, but all other Affordability Requirements remain enforceable during the Affordability Period; (iv) the Property is foreclosed by any lender other than the City, or seized without payment by a governmental agency (as such, these Covenants shall automatically terminate, and the City shall execute any releases required for recording to confirm said termination upon written notice); or, (v) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof.

6. **Default.**

(a) Upon a violation of any provision, covenant, condition or obligation of this Agreement, the City shall give written notice thereof to Owner. Owner shall have sixty (60) days after the date of such notice (or such longer period as may be consented to by the City, in its sole discretion) to cure the violation.

(b) If a violation is not cured to the reasonable satisfaction of the City within the time period provided in Section 7(a), the City shall be entitled to apply to any court, state or federal, for specific performance of this Agreement or for an injunction against any violation of this Agreement, since the injury to the City would be irreparable and the amount of damage would be difficult to ascertain, and in each case, the City shall also be entitled to recover reasonable attorneys' fees and costs actually incurred.

7. **Covenants Run with the Land and the Real Property.** The City and Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land, shall run with the Property, and shall pass to and be binding upon Owner and its successors in title and Owner's successors and assigns. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth in such contract, deed or other instrument.

8. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

9. **Governing Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Georgia.

10. **Amendment.** This Agreement shall not be amended except by a writing duly executed by each of the parties hereto, provided that Owner shall not have the authority to amend this Agreement to incorporate greater restrictions, burdens or limitations on any portion of the Property it does not own at the time of such amendment or modification. Notwithstanding the foregoing, the City shall be entitled to waive the requirements of this Agreement running to its benefit or terminate this Agreement, in either case, without the consent of any other party hereto or owner of any portion of the Property.

11. **No Individual Liability.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any officer, commissioner, agent or employee, director, or member of the City, or any member or limited partner of Owner, or any officer, agent, employee, director, or member of Owner or City, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution hereof. The terms of this Agreement do not impose any liability on the City.

12. **Notices.** All notices, demands or acknowledgements permitted or required by this Agreement shall be sent by first-class, certified or registered mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery and in each case shall be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission to the City or Owner at the addresses set forth below, or to such other place as the City may from time to time designate in writing.

If to the City, to:

City of Savannah
Attn: Housing & Neighborhood Services Department Director
P.O. Box 1027
Savannah, GA 31402

If to Owner, to:

Name

Address

Attn:

IN WITNESS WHEREOF, the parties have executed this Declaration with the intention that this Agreement take effect as an instrument under seal, as of the above date.

OWNER(S)

Signed, sealed and delivered
On _____, 2023 in the
presence of:

By: _____
[INSERT NAME, TITLE]

Witness

By: _____
[INSERT NAME, TITLE]

Notary Public

(Corporate Seal)

[NOTARIAL SEAL]

[signatures continued on next page]

Signed, sealed and delivered
On _____, 2023 in the presence of:

**MAYOR AND ALDERMEN
OF THE CITY OF SAVANNAH**

Witness

By: _____
[INSERT NAME, TITLE]

Notary Public

By: _____
[INSERT NAME, TITLE]

[NOTARIAL SEAL]

(Corporate Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

[To be attached]