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EXAMPLE LAND USE RESTRICTION AGREEMENT

Background

This example land use restriction agreement is an educational document. A local government should consult with its attorney when the local government drafts or accepts a land use restriction agreement.

This example land use restriction agreement uses brackets to indicate where a local government should insert language specific to local needs. Within those brackets, instructions are in italics and optional language is within quotation marks. For example: *[insert language specific to local needs such as “option 1” or “option 2”]*.

Agreement

EXAMPLE LAND USE RESTRICTION AGREEMENT

between

[name of local government]

and

[name of real property owner]

This land use restriction agreement (hereinafter “this Agreement”) is made and entered into as of this *[day of month]* day of *[month]*, *[year]* (hereinafter “Effective Date”) by and between *[name of local government]*, a political subdivision of the State of Florida (hereinafter “Local Government”), and *[name of real property owner]*, a *[state and corporate form]* for itself and its successors, assigns, and agents (hereinafter “Owner”).

Recitals

WHEREAS, Owner is the owner in fee of that certain real property located in *[name of local government]*, Florida, as legally described in Exhibit A attached hereto and incorporated herein by reference (hereinafter “the Property”); and

WHEREAS, Local Government has zoned the Property for commercial, industrial, or mixed-use development; and

WHEREAS, pursuant to Florida Statutes sections *[select one: “125.01055(7)–(8)” for a county or “166.04151(7)–(8)” for a city]* Local Government allows multifamily residential and mixed-use residential developments on land zoned for commercial, industrial, or mixed-use if at least 40 percent of the residential units in the development are, for a period of at least 30 years, affordable as defined in Florida Statutes section 420.0004; and

WHEREAS, Owner seeks to develop a multifamily residential or a mixed-use residential development on the Property; and

WHEREAS, in compliance with Florida Statutes sections [*select one: “125.01055(7)–(8)” for a county or “166.04151(7)–(8)” for a city*], Owner seeks to restrict at least 40 percent of the total number of residential units to be developed on the Property to be affordable as defined herein; and

WHEREAS, in compliance with Florida Statutes sections [*select one: “125.01055(7)–(8)” for a county or “166.04151(7)–(8)” for a city*], Owner and Local Government wish to ensure that the restricted units are affordable for a period of not less than 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, Local Government and Owner do hereby contract and agree as follows:

Article 1. Recitals

The recitals set forth above are true and correct and incorporated into this Agreement by reference.

Article 2. Definitions

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

“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 section 62 of the Internal Revenue Code.

“Affordability period” means the period of time that begins on the day [*name of local government*] issues the first certificate of occupancy for Project and ends 30 years following the day [*name of local government*] issues the last certificate of occupancy for Project.

“Affordable” means that the annualized cost of monthly rents including taxes, insurance, and utilities does not exceed 30 percent of an eligible household’s adjusted gross income.

“Affordable unit” or “affordable units” means the dwelling units for which cost is affordable to an eligible household. The affordable units do not need to be the same dwelling units throughout the affordability period. Instead, which dwelling units are affordable units may change over time.

“Dwelling units” means the residential rental units within the Project, including the affordable units.

“Eligible household” means one or more natural persons, the total annual adjusted gross income of whom does not exceed the greater of (1) 120 percent of the median annual adjusted gross income for households within the state, or (2) 120 percent of the median annual adjusted gross income for households within [*insert “the metropolitan statistical area” or, if not within a metropolitan statistical area, insert name of county*], who rent and actually occupy an affordable unit.

“Project” means the multifamily residential or mixed-use residential development on the Property.

Article 3. Use and occupancy of the Property

Section 3.1. Owner responsible for compliance with these restrictions. Owner must ensure use of the Property complies with the use and occupancy restrictions in this article throughout the affordability period. These restrictions are covenants that run with the land throughout the affordability period and are binding on Owner.

Section 3.2. Use requirement. Owner must develop and maintain Project as a multifamily residential or a mixed-use residential rental housing development. If the Project is a mixed-use residential development, at least 65 percent of the total square footage of the development must be used for residential purposes. Owner must rent at least 40 percent of the dwelling units to eligible households at a cost that is affordable to the eligible households.

Section 3.3. Minimum number of affordable units. Local Government approves [*insert the number of dwelling units Local Government approves in Project*] dwelling units. Throughout the affordability period, the number of affordable units must equal at least the lesser of (1) [*the number of dwelling units Local Government approves in Project times 0.4 and rounded up to the nearest whole number*] or (2), if Owner has not constructed the total number of dwelling units Local Government approves, the actual number of dwelling units existing.

Section 3.4. Certificates of occupancy. Owner will not apply for, and Local Government will not approve, a certificate of occupancy for a dwelling unit if Project does not include the number of affordable units Section 3.3 requires.

Section 3.5. Owner responsible for income verification. For each affordable unit, the Owner is responsible for determining and verifying the adjusted gross income of prospective tenants to ensure tenants renting and actually occupying an affordable unit constitute an eligible household and to ensure the cost is affordable to the eligible household.

Section 3.6. Affordable rents. The cost of an affordable unit must be affordable to the eligible household renting and actually occupying the affordable unit.

Section 3.7. Affordable units must be comparable to other dwelling units. The Owner must intermix affordable units with, and not segregate affordable units from, the other

dwelling units in Project. Throughout the affordability period the affordable units must be comparable to other dwelling units in quality, in features, in size, in number of bedrooms, and in access to common amenities.

Section 3.8. No conflict of interest. Neither Owner nor a person related to or affiliated with Owner may occupy an affordable unit.

Section 3.9. No subleasing. Owner must ensure no person renting an affordable unit sublets the affordable unit or assigns the rental agreement for the affordable unit.

Article 4. Compliance monitoring

Section 4.1. Required recordkeeping. Owner must maintain complete and accurate income records pertaining to each eligible household occupying an affordable unit. Owner must update these records annually and must maintain these records throughout the affordability period. At a minimum, Owner must maintain the following records:

- a. each eligible household's complete application for tenancy and related information including the name, proof of identity, employment, income, and asset information of each member of the eligible household;
- b. a copy of the lease agreement showing the term of tenancy, showing the cost, and identifying each tenant residing in the affordable unit;
- c. documents verifying that the tenants of each affordable unit constitute an eligible household;
- d. documents verifying that the cost of each affordable unit is affordable to the eligible household renting and actually occupying the affordable unit; and
- f. descriptive information about each dwelling unit including which dwelling units are affordable units, floorplans showing the number of bedrooms within and the size of each dwelling unit, the estimated cost of utilities for each dwelling unit, and what amenities Owner provides to the tenants occupying each dwelling unit.

Section 4.2. Annual reporting. Throughout the affordability period, Owner must provide Local Government an annual report to the ["county" or "city"] manager by *[date parties select]* of each year. The annual report must provide the following information regarding each affordable unit—

- a. the unit address;
- b. the number of people residing in the affordable unit;
- c. the adjusted gross income of the people residing in the affordable unit;
- d. the monthly cost of the affordable unit; and

e. any other information the Local Government timely requests that Local Government reasonably requires to ensure Owner is complying with this Agreement.

Section 4.3. Records inspection. Owner must permit Local Government to inspect all records this Agreement requires Owner to maintain including, but not limited to, financial statements and rental records pertaining to affordable units. Local Government may inspect records in person or virtually. Local Government will provide reasonable notice of its intent to inspect records. Owner may limit inspection to normal working hours. Owner must submit to Local Government copies of records Local Government requests and reasonably requires to ensure Owner is complying with this Agreement.

Section 4.4. Housing quality standards inspection. Local Government may, from time to time, make or cause to be made a housing quality standards inspection of the Property to determine whether Owner is complying with this Agreement. Local Government will provide reasonable notice to Owner of its intent to inspect the Property. Owner must make any and all necessary arrangements to facilitate Local Government's inspection.

Section 4.5. Monitoring fee. The Local Government will annually provide Owner a written fee statement showing Local Government's actual cost to monitor whether Owner is complying with this Agreement. Owner must pay the the Local Government the amount the fee statement shows within 30 days of receiving the fee statement. Owner failing to timely pay the amount the fee statement shows violates this Agreement.

Article 5. Enforcement and remedies

Section 5.1. Local Government entitled to remedies. If 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 30 days after written notice thereof, Local Government may, in its sole discretion, to any or all of the remedies in this article.

Section 5.2. Local Government may allow additional time to cure breach. If Local Government determines that Owner has taken and diligently continues corrective action and that Owner cannot correct the breach within a 30-day period, Local Government may, in its sole discretion, allow Owner up to 6 months after first notice to cure the breach.

Section 5.3. Local Government may pursue judicial remedy. Local Government 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. Local Government will be entitled to recover its costs and expenses and reasonable attorneys' fees in any such judicial proceeding where the Local Government prevails.

Section 5.4. Local Government may require quarterly reporting. The Local Government may require the Owner to provide the Local Government with a quarterly report meeting the standards of the annual report this Agreement requires for so long as the Local Government deems reasonable and necessary.

Section 5.5. Supplemental monitoring fee. In the event that the violation or breach requires Local Government to conduct supplemental monitoring of whether Owner is complying with this Agreement, Local Government may, in its sole discretion, require Owner to pay to Local Government a supplemental monitoring fee equal to the Local Government's actual cost to conduct supplemental monitoring. This supplemental monitoring fee will be in addition to, and distinct from, any reimbursement of costs and legal fees to which Local Government may be entitled as a result of judicial enforcement action and any fines payable to Local Government and Owner must pay the supplemental monitoring fee without regard to whether Local Government undertakes or succeeds in judicial enforcement or code enforcement activities. Local Government's rights to conduct and to receive compensation for supplemental monitoring will extend for two years following the most Owner breach of this Agreement. If Local Government requires Owner to pay a supplemental monitoring fee, Local Government will submit written fee statements to Owner on a quarterly basis which Owner must pay within 30 days of receipt.

Section 5.6. Owner must reimburse eligible households for overcharges. In the event that Owner charges rent to an eligible household that exceeds the amount that is affordable for that eligible household, Owner must reimburse the eligible household for the amount overcharged either in a lump sum, or by discounting the rent on the affordable unit over the remainder of the lease term. In the event that Owner cannot reimburse the eligible household, Owner may pay the amount overcharged to Local Government.

Section 5.7. Owner must increase the number of affordable units if it fails to provide the number this Agreement requires. In the event that Owner fails to provide at least the number of affordable units this Agreement requires, Owner must increase the number of affordable units Owner provides in the Project by the number of affordable units the Owner failed to provide. Owner must provide the additional affordable units for the longer of (1) the amount of time Owner failed to provide the required number of affordable units or (2) one year.

Section 5.8. Local Government may enforce this Agreement using code enforcement process. Local Government approved Project pursuant to Florida Statutes sections [*select one: "125.01055(7)-(8)" for a county or "166.04151(7)-(8)" for a city*] in reliance upon Owner's promise to comply with this Agreement. A breach of this Agreement violates development standards the state of Florida and Local Government have adopted and the terms of Local Government's development approval for Project. Local Government may, in its sole discretion, enforce Owner compliance with this Agreement through the Local Government Code Enforcement Boards Act or any locally-adopted code enforcement process including by imposing fines on Owner up to the maximum amount allowed by law, attaching a lien to the Owner's real property, and foreclosing on the code enforcement lien. Owner consents to Local Government's authority to enforce the terms of this Agreement through code enforcement processes.

Section 5.9. Local Government may enforce this Agreement against any party with an interest in Project at time of violation. The enforcement provisions within this article apply to the land, run with the land, and are enforceable against Owner and any other person or entity that has or had an ownership interest in the Property at the time of a violation or attempted violation of this Agreement.

Section 5.10. Failure to enforce not waiver. Any failure by Local Government to enforce this Agreement is not a waiver of Local Government's right to do so thereafter.

Article 6. Covenants run with the land

Section 6.1. Covenants run with the land. All conditions, covenants, and restrictions contained in this Agreement are covenants running with the land, and will, 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 Local Government its successors and assigns, against 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 Project or any portion thereof or interest therein will 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 Project are conveyed, all of such covenants, reservations and restrictions will run to each portion of the Property or Project.

Section 6.2. Notice of intent to sell or otherwise transfer the Property and subsequent transfer. Owner agrees to provide written notice to Local Government 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 written notice to Local Government with contact information regarding the purchaser. Local Government will coordinate with any successors and assigns to ensure the Owner's use of the Property continues to comply with this Agreement.

Article 7. Recording, effective date, and duration

Section 7.1. Recording. Owner must cause this Agreement to be recorded in the Official Records of [name of county], Florida at Owner's sole expense. Owner must provide a certified copy of this Agreement as recorded to Local Government within 10 days of the Effective Date. Local Government must not issue a building permit for the Project before Local Government receives a certified copy of this Agreement as recorded.

Section 7.2. Effective date. This Agreement is effective as of the Effective Date.

Section 7.3. Duration. This Agreement will remain in effect throughout the affordability period.

Article 8. Miscellaneous provisions

Section 8.1. Notice. All notices which Local Government and Owner may give pursuant to this Agreement must be in writing and must be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses as indicated below or as the Local Government or Owner may state in writing from time to time.

[Local

Governme

nt address]

[Owner

address]

Section 8.2. Severability. If any provision hereof is found invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 8.3. Disclaimer against development agreement. This Agreement is not intended to be, and indeed is not, a “development agreement” within the meaning of Florida Statutes sections 163.3220–163.3242. Municipal annexation or contraction impacting any portion of the Property does not terminate, modify or otherwise affect the rights or obligations of Local Government or of Owner under this Agreement.

Section 8.4. Entire agreement. This Agreement together with exhibits attached hereto embodies the entire agreement and understanding between the parties and no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, exist that are not merged herein and superseded hereby.

Section 8.5 Venue and governing law. Local Government and Owner covenant and agree that any and all legal actions arising out of or connected to this Agreement must be instituted in the Circuit Court of the [appropriate state circuit court] in and for [name of county], Florida, or in the United States District Court for the [appropriate federal district] 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 will 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.

[signature block.]