

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

*This instrument was prepared by and
after recording please return to:*

City of Atlanta
Attn: Office of Housing and Community Development
55 Trinity Ave, SW
Suite 1450
Atlanta, Georgia 30303

LAND USE RESTRICTION AGREEMENT

by and between

CITY OF ATLANTA

and

[INSERT COMPANY NAME]

Relating to:

**[INSERT PROJECT NAME (hereinafter, the
“Project”)]**

Dated as of _____



LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, the "LURA") is made and entered into as of _____ (the "Effective Date"), by and between [**INSERT NAME OF COMPANY**], a _____ limited liability company, (together with its successors, assigns and transferees of the Property (as hereinafter defined, "Owner") and the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia ("City").

WITNESSETH:

WHEREAS, Ordinance 17-O-1556, Westside Overlay District, (the "Ordinance") was adopted by the City of Atlanta on November 20, 2017, and codified as Atlanta City Code Section 16-37.001 et seq.; and

WHEREAS, the Ordinance constitutes the City’s Inclusionary Zoning program which requires that owners of new residential rental developments of ten (10) or more units within the Westside Overlay District (the “Westside District”), provide Affordable Workforce Housing Units (as hereinafter defined) as a condition of the special administrative permit, building permit, land disturbance permit, or certificate of occupancy; and

WHEREAS, Owner has undertaken to build, construct and/or develop the above-referenced Project on property located at [_____] (the “Property”) within the Westside District, therefore subjecting the Project and the Property to the Affordability Requirements and the land covenants set forth herein; and

WHEREAS, Owner and the Property will materially benefit from the significant public and private investment by the City into various communities, including, but not limited to several local and federal initiatives including the Westside Tax Allocation District, University Choice Neighborhoods, and the Westside Promise Zone, as well as density bonuses, parking incentives, and/or priority application review, as outlined in Atlanta City Code Sections 16-37.008, 16-37.009, & 16-37.010, and more as specifically detailed in Exhibit “B”, “Inclusionary Zoning Certification Form”; and

WHEREAS, the Affordable Workforce Housing Units (as defined herein) must be provided from one of the two tiers set forth in Atlanta City Code Section 16-37.004 during the Affordability Period (as hereinafter defined); and

WHEREAS, the Ordinances further provide that the Affordable Workforce Housing Units (as hereinafter defined) shall be similar in construction and appearance (e.g., square footage, type and brand of appliances, materials used for countertops, flooring, etc.) to the market rate units and shall not be in isolated areas in the development, but shall be interspersed among market rate units throughout the entirety of the Affordability Period (as hereinafter defined); and

WHEREAS, the Inclusionary Zoning program requires that a signed and executed City of Atlanta Land Use Restriction (LURA) be filed with the City of Atlanta’s Department of City Planning, and this LURA will run concurrently with any other LURA that may be associated with the Property; and

WHEREAS, the Inclusionary Zoning program further provides that no Certificate of Occupancy shall be issued for owners of these new residential rental units until the owner provides a copy of a recorded land use restriction agreement in the form promulgated by the City; and

WHEREAS, the Owner intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Property for the term stated herein and binding upon all subsequent owners of the Project for such term and are not merely personal covenants of the Owner;

NOW, THEREFORE, it is hereby agreed by Owner as follows:

1. **Definitions.** As used in this Land Use Restriction Agreement (“LURA”), the terms below shall have the following meanings:

"Actively Marketed" means that Owner shall coordinate with the City of Atlanta Office of Housing and Community Development to develop an approved marketing plan to locate and place Workforce Residents in available Affordable Workforce Housing Units. If Owner coordinates in writing and in a commercially reasonable manner with the City of Atlanta Office of Housing and Community Development for a period of sixty (60) days with respect to any Affordable Workforce Housing Unit from the completion of such units or the vacation of any such unit by any Workforce Resident, and despite such coordination, such unit has not been leased to a Workforce Resident then such units shall be counted toward the Affordable Workforce Housing Unit requirement if so certified by the City of Atlanta Office of Housing and Community Development.

"Affordability Period" means a period beginning on the date that a certificate of occupancy is issued for the Property and expiring twenty (20) years thereafter.

"Affordable Workforce Housing Unit" means a Residential Rental Dwelling Unit in the Westside Overlay District 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 Atlanta- Sandy Springs-Marietta Metro Fair Market Rent Area.

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

"Residential Rental Dwelling Unit" means a single residential dwelling unit offered for rental, provided that the following shall not constitute a Residential Rental 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 in the aggregate no more than eighty percent (80%) of AMI or no more than sixty percent (60%) of AMI depending on the affordability requirement selected by Owner in Section 2 below. The published income limits will be adjusted by household size. The income limits and rent limits will be adjusted annually according to the HUD published limits.

2. **Affordability Requirements.** All improvement of real property in the Westside Overlay District, regardless of the number of parcels, upon which ten (10) or more new Residential Rental Dwelling Units will be constructed at one location, shall comply with the affordability requirement selected by Owner as initialed in Section 2(a) or (b) below. ***Only complete the Owner's Initials section for the AMI (80% or 60%) that your company is complying with; please write NA in the section that is not applicable.*** Further, 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 units, and shall not be in isolated areas in the development, but shall be interspersed among market rate units throughout the entirety of the Affordability Period. The number of bedrooms in the Affordable Workforce Housing Units (e.g. 1 bedroom, 2 bedrooms, 3 bedrooms) shall be proportionate to the number of bedrooms in the market rate units. In order to satisfy the requirements of Section 2(a) or (b) below, Owner shall Actively Market Affordable Workforce Housing Units for a minimum of sixty (60) days. This sixty-day period shall begin at the issuance of a certificate of occupancy or upon the move-in ready condition of any vacant Affordable Workforce Housing Unit. All requirements of this Section 2 shall apply for the duration of the Affordability Period. Owner agrees to the following:

a) At least 15 percent of the total residential rental units shall be Actively Marketed for lease to households having an income, as certified by the prospective tenant(s) at the time of execution of the applicable lease agreement, that does not exceed 80 percent of the AMI limits as published by the City of Atlanta Office of Housing and Community Development on an annual basis. The AMI limits will account for household size based on AMI data for the Atlanta-Sandy Springs-Marietta, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the tenant's application). The rental limits will be based on AMI data published periodically by HUD (not including utilities and mandatory fees) to ensure that tenant households at 80 percent of the AMI pay no more than 30 percent of their household's monthly gross income, adjusting for the number of bedrooms in the units; or

Owner's Initials _____ City's Initials _____

b) At least 10 percent of the total residential rental units shall be Actively Marketed for lease to households having an income, as certified by the prospective tenant(s) at the time of execution of the applicable lease agreement, that does not exceed 60 percent of the AMI limits as published by the City of Atlanta Office of Housing and Community Development on an annual basis. The AMI limits will account for household size based on AMI data for the Atlanta-Sandy Springs-Marietta, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the tenant's application). The rental limits will be based on AMI data published periodically by HUD (not including utilities and mandatory fees) to ensure that tenant households at 60 percent of the AMI pay no more than 30 percent of their household's monthly gross income, adjusting for the number of bedrooms in the units.

Owner's Initials _____ City's Initials _____

3. **Verification of Workforce Residents.**

a) The income of all tenants who occupy or will occupy the Affordable Workforce Housing Units on the Property shall be verified by Owner through an income certification. Each certification shall be dated not later than the date of execution of the lease but in no event more than thirty (30) days prior to the initial occupancy of the tenant and recertified annually thereafter. Digital copies of all income certifications shall be submitted to the City or its designee within fifteen (15) days following the end of the calendar month after the tenant's initial occupancy of an Affordable Workforce Housing Unit on the Property and thirty (30) days following the end of each calendar year thereafter. The City or its designee shall review the certificates submitted under this Section 3 to confirm completion, but the City shall have no responsibility for verifying the accuracy of the information submitted. The Owner bears the sole responsibility of ensuring all initial and recertification income certifications are accurate and in compliance with the applicable income and rent limits. Units with incomplete or inaccurate income certifications will be treated as non-compliant units under Section 4(b) of this agreement, and if the income certification is not cured within 60 days, or accurate completion or audit shows the occupant's income to be in excess of the initial or recertification income limit, whichever is applicable, the Owner shall rent the next available unit to a workforce resident at the affordable income limit and level.

b) On an annual basis as determined by the City, Owner shall provide to the City detailed documentation regarding the Workforce Residents, including but not limited to: unit number, tenant name, lease effective date, lease expiration date, number of bedrooms, household size, annual household income, 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, including without limitation, income certifications. 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 the income certifications of Workforce Residents for the purpose of verifying compliance by Owner hereunder. Owner shall keep information as set forth in this Section 3 for a five-year period.

d) During the Affordability Period, Owner shall provide income recertification information as an addendum to the 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. **Compliance with Affordability Requirements.**

a) An Affordable Workforce Housing Unit that is occupied by a Workforce Resident in compliance with Section 2 at initial occupancy shall be treated as continuing to comply with Section 2 if the Workforce Resident's income is not more than (i) one hundred and twenty percent

(120%) AMI if Owner provides Affordable Workforce Housing Units pursuant to Section 2(a) or (ii) one hundred percent (100%) AMI if Owner provides Affordable Workforce Housing Units pursuant to Section 2(b) (collectively, the "Recertification Limit") for a period no greater than two (2) years from the date of income recertification.

b) An Affordable Workforce Housing Unit that is occupied by a Workforce Resident in compliance with Section 2 at initial occupancy shall not be deemed in compliance with Section 2 if as of the most recent income certification, income exceeds the Recertification Limit. However, Owner may avoid non-compliance (on the basis of an existing Workforce Resident exceeding the Recertification Limit) if the next available Residential Rental Dwelling Unit of comparable size not counted as occupied by a Workforce Resident is rented to a Workforce Resident.

c) In the event the Workforce Resident's recertification income exceeds the applicable Recertification Limit, the Resident's rent upon the next lease renewal shall be the AMI rent corresponding to AMI level of the tenant for the most recent recertification year, unless the Resident's recertification income exceeds 120% AMI. For example, if a 60% AMI Resident recertifies at 120% AMI income, the renewal rent for the next lease term shall be the rent level designated at 120% AMI by the City of Atlanta in its annual rent level chart, as posted on OHCD's website. However, in the event the tenant recertifies above 120% AMI income, the renewal rent shall be equivalent to the current market rate rent for a comparable unit in the same development.

d) If Owner chooses to lease units by bedroom rather than by unit, they must select either 10% or 15% of total bedroom leases to be set aside for households at or below 60% or 80% of AMI respectively. If Owner opts to also include some units that would be leased by unit, the developer must also set aside 10% or 15% of those units as affordable. In the event that some leases are based on bedrooms and other leases are based on units, the same affordability percentage selected would apply to both sets of leases. The maximum affordable rents for bedroom leases would be based on the calculations for a studio apartment. Income eligibility would be based on the income of the individuals in each bedroom. For example (and for purposes of illustration only), the maximum monthly rent for a single bedroom lease (not a 1 bedroom apartment) may not exceed the approved OHCD studio apartment monthly rent.

e) All new and renewal Workforce Resident Leases shall be accompanied by a completed copy of the OHCD-issued "Workforce Unit Lease Addendum" specifying, *inter alia*, the initial or renewal rent of the unit, the affordability term, and the compliance requirements for the unit. See Exhibit 1, "Workforce Unit Lease Addendum."

5. **Maintenance of Property Standards.** During the Affordability Period, Owner shall maintain the Property and the improvements thereon in compliance with the Atlanta 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.

6. **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 LURA. Owner shall include by incorporation by reference or verbatim the requirements and restrictions contained in this LURA 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 LURA. 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 LURA 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, or (iii) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof.

7. **Default.**

(a) Upon a violation of any provision, covenant, condition or obligation of this LURA, 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 remedies specific to performance of this LURA or for an injunction against any violation of this LURA, 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.

8. **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.

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

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

11. **Amendment.** This LURA 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 LURA 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 LURA running to its benefit or terminate this LURA, in either case, without the consent of any other party hereto or owner of any portion of the Property.

12. **No Individual Liability.** No covenant or agreement contained in this LURA 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 LURA do not impose any liability on the City.

13. **Notices.** All notices, demands or acknowledgements permitted or required by this LURA 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 Atlanta
Office of Housing and Community Development 55 Trinity Ave SW
Suite 1450
Atlanta, Georgia 30303 Attn: Director of Housing and Community Development

With a copy to:

City of Atlanta
Department of Law
55 Trinity Avenue, SW
Suite 5000
Atlanta, GA 30303 If to Owner, to:

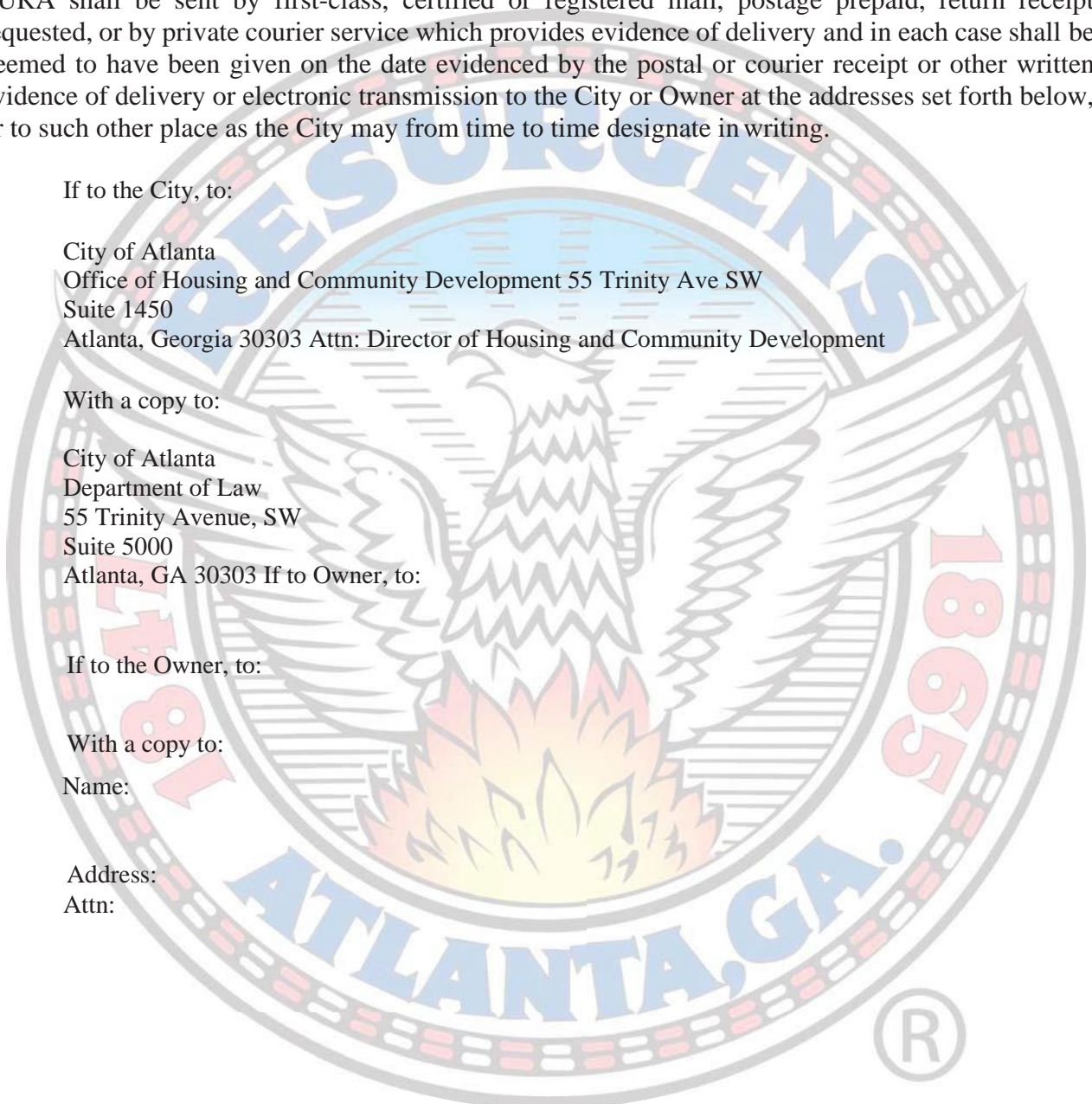
If to the Owner, to:

With a copy to:

Name:

Address:

Attn:



IN WITNESS WHEREOF, Owner has executed this LURA under seal on the date first above written

OWNER:

By:

Signature:

Name: _____

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My Commission Expires: _____

(Notarial Seal)



EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

[To be attached]