**DEVELOPMENT SERVICES – URBAN DESIGN & PLANNING**

**Affordable Housing Development Agreement Template**

**Rev:** 1 | **Revision Date:** 08/04/2022 | **I.D. Number:**

RECORDING REQUESTED BY AND )

WHEN RECORDED MAIL TO: )

)

City of Fort Lauderdale )

)

)

)

Fort Lauderdale, FL - )

Attn: )

# APN:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

# AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement (the “Agreement”), pursuant to Section 47-23.16 of the Fort Lauderdale Unified Land Development Regulations (“ULDR”) is entered into this day of **[date, 202\_]** by and between the CITY OF FORT LAUDERDALE, a Florida municipality (“City”), and [**insert name legal name of entity**] (referred to in this Agreement sometimes as “Developer” and sometimes as “Owner”), as follows:

# RECITALS

1. Developer/Owner is the owner of certain real property located in the City of Fort Lauderdale, in Broward County, Florida, more particularly described on the legal description, attached at Exhibit “A” and incorporated into this Agreement by this reference (the “Property”) on which Developer obtained approval to develop from the **[City Commission of the City of Fort Lauderdale or City of Fort Lauderdale].**
2. **[Insert General Description of Development]** *It is suggested to use the same narrative that was used for Question 1 of the approved Affordable Housing Plan.*
3. [**Insert the applicable ULDR Section and zoning district the incentive is referenced].** *For example: the Northwest Regional Activity Center-Mixed Use (“NWRAC-MU”) Special Regulations codified in Section 47-13.52 of the Fort Lauderdale Unified Land Development Regulation (“Special Regulations”) set forth performance standards and criteria for additional height bonus for projects in the NWRAC-MU east zoning district (“NWRAC-MUe”) of up to one-hundred ten (110) feet.).*
4. The purpose of Affordable Housing height incentive is to maintain a balanced community that provides housing for people of all income levels and to ensure the opportunity ofaffordable housing for employees of businesses that are located or will be located in the community.
5. The Property and the Project are located within **[Insert zoning district where the project is located.]** *For example: The Property and the Project are located within the NWRAC MU zoning district.*
6. **[Insert ULDR incentive section and set-aside requirements.]** Pursuant to the Affordable Housing Incentives at Section 47-23.16.B, any development requesting additional height pursuant to Section 47-23.16.B.1.a.i. shall include at least ten percent (10%) of all units in a development as affordable housing.
7. Developer has created an affordable housing development plan (the “Plan”) for the Project, in accordance with the requirements of Section 47-23.16.D.1. of the Affordable Housing General Requirements. This Plan is attached and incorporated into this Agreement as Exhibit “B”, also in accordance with Section 47-23.16. D.1. of the Affordable Housing General Requirements.
8. Developer and City desire to enter this Agreement to further set forth Developer’s responsibilities in connection with the Property and the Project, consistent with the provisions of the Special Regulations.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in this Agreement, the parties hereby agree as follows:

# AGREEMENT

1. Recitals. The Recitals set forth above are true and accurate, and incorporated into this Agreement by reference.
2. Definitions. All defined terms, as indicated by initial capitalization, shall have the meanings set forth in the Special Regulations, except as expressly indicated otherwise. For purposes of this Agreement, the terms listed below shall have the meanings specified.
3. “Affordable”: The term affordable as used in this section refers to the cost of housing that is reasonably priced for a person or household. Housing costs are deemed affordable for:
* an owner-occupied housing unit when the culminative costs of mortgage, taxes, insurance, and condominium or association fees, if any, is no greater than or equal to thirty five percent (35%) of a persons or household’s gross annual income.
* a leased housing unit when the culminative costs of common charges and heat and utility costs, excluding television, telecommunications, and information technology services is no greater than or equal to thirty percent (30%) of a persons or household’s gross annual income.
1. “Affordable Housing Development Agreement”: A written agreement between a developer of a residential or mixed-use development with a residential component and the city or county containing specific requirements to ensure the continued inclusion of affordable housing in the development.
2. “Affordable Housing Development Plan”: A plan prepared by an applicant for an affordable housing development that outlines and specifies the development's compliance with the applicable requirements in this section.
3. “Affordable Housing Unit”: A dwelling unit the sale or rental of which is restricted to a person or household with a gross annual income is less than or equal to one hundred twenty percent (120%) of the median family income (MFI).
4. “Applicant”: When used herein an applicant for an affordable housing incentive shall mean a property owner or authorized agent of the property owner of real property proposed for a development including affordable housing component.
5. “Area Median Income” (AMI): Area median income shall be defined as MFI.
6. “Conversion”: A change of a residential rental development or a mixed use development that includes rental dwelling units to a development that contains owner-occupied individual dwelling units, or a change of a development that contains owner-occupied individual units to a residential rental development or mixed use development.
7. “Eligible Person” or “Eligible Household”: means a person or household who meets the income categories established herein.
8. “Market Rate Housing”: Residential housing units affordable to persons or households with a gross annual income that exceeds one hundred twenty percent (120%) of the MFI.
9. “Median Family Income” (“MFI”): The estimated median family income for the Broward County Metropolitan Statistical Area as determined annually by the U.S. Department of Housing and Urban Development (HUD).
10. Notices. All notices required in this Agreement shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as date received or the date delivery was refused as indicated on the return receipt, as follows:

To Owner:

**[Enter Company name and address]**

**Attn:**

With copies to:

**[Enter Company name and address]**

Attn:

With copies to:

**[Enter Company name and address]**

**Attn:**

With copies to:

**[Enter Company name and address]**

**Attn:**

With copies to:

**[Enter Company name and address]**

**Attn:**

With copies to:

**[Enter Company name and address]**

**Attn:**

To City:

City Manager

City of Fort Lauderdale

100 North Andrews Avenue

Fort Lauderdale, Florida 33301

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 3.

1. Incorporation of Affordable Housing Dwelling Units in the Project.

Owner/Developer shall designate and set-aside at least ten percent (10%) of all dwelling units in the final Project as Affordable Housing Dwelling Units constituting Affordable Housing. [**Insert specific number of designated affordable units, broken down by income category, including the length of the deed restriction]** affordable housing units are to be set-aside as affordable, for no less than thirty (30) years, and can be extended with joint consent, with 5% of the units being rented to households with a gross household income that does not exceed 80% of the median family income, and 5% of the units being rented to households with a gross household income that does not exceed one hundred percent (100%) of the median family income within Broward County, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (HUD) on an annual basis.

1. Adoption of the Plan and Certain Criteria.

The Plan is hereby adopted. The Project shall comply with the following criteria:

The Affordable Housing Units shall be mixed with, and not clustered together or segregated or separated in any way from other units.

The Affordable Housing Units shall be developed and leased concurrently with the other units.

The exterior appearance of the Affordable Housing Units in the Project shall be similar to the other units in the Project by the provision of exterior building materials and finishes substantially the same in type and quality.

1. Declaration of Restrictive Covenants Running with the Land
2. The City and the Developer agree that the Property shall be held, maintained, transferred, sold, conveyed, used, demised, occupied, possessed and owned subject to the covenants, restrictions, regulations and burdens set forth in this Agreement and Developer shall execute a declaration of restrictive covenants that bind the Developer, its successors and assigns, and every successor in interest to the Property or any part thereof, and such Declaration of the Restrictive Covenants shall include the provisions of this agreement and shall make reference to the whole agreement.
3. In exchange for the height bonus (up to ninety feet in height) granted Owner shall ensure that the units referenced in Section 4 above shall be rented to persons meeting the applicable income limitations set forth herein.
4. The Applicant shall execute any and all documents deemed necessary by the City in a form to be established by the City Attorney's Office, including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the Affordable Housing Units in accordance with this Agreement.
5. Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall be transferred only with prior written approval by the City.
6. Rental of Affordable Housing Units:
	1. Affordable housing units shall be leased to and occupied by an eligible person or household as required by the affordable housing development agreement from the date of the initial certificate of occupancy.
	2. An eligible person or eligible household will continue to be considered income eligible if their incomes does not exceed twenty percent (20%) of the original qualifying income level.
	3. If a household is no longer income eligible for the original MFI level and exceeds the permitted income increase, described above, and the household qualifies for a higher MFI level within the development, the affordable housing unit may be re-designated as a higher MFI level, permitting the household to remain in the same unit. To restore the original mix of MFI levels, the next available unit, with the same number of bedrooms, shall replace the lower MFI level that was redesignated and rented as affordable.
	4. If a household is no longer income eligible for the original MFI level and exceeds the permitted income increase, described above, and the development does not have an affordable housing unit with a higher MFI level that the household qualifies, the household may remain in the affordable housing unit if the household agrees to pay market rate rent. To restore the required set-aside requirements, the next available unit, with the same number of bedrooms, is required to be designated and rented as affordable.
7. Annual Affidavit:
	1. The property owner or his or her agent are required to submit an annual affidavit, provided by the DSD Director of Designee, certifying rental affordable housing units are leased to eligible persons or households. The affidavit shall state the number of units required to be set-aside, required income level restrictions, the monthly rent for each unit, monthly income for tenants of each affordable unit, and other information as required by the City, while ensuring the privacy of the tenants. The annual report shall contain information sufficient to determine whether the property owner is in compliance with the affordability requirements.
8. Conversion:
	* + 1. Affordable housing rental units are permitted to be converted into for sale affordable housing units, and for sale affordable housing units are permitted to be converted into affordable housing rental units, subject to the following:
				- The percentage of affordable housing units and income-levels established under the recorded deed restriction for affordable housing shall not change upon conversion;
				- A converted affordable housing unit shall be sold, resold or rented to an income-eligible household, per Section B, herein;
				- Affordable housing units shall remain income restricted for the remainder of the originally recorded restriction; and
				- An updated deed restriction shall be reviewed and approved by the DSD Director or designee and the City Attorney's Office, prior to being executed and recorded in the public records of Broward County, Florida.
9. Maintenance of Units. Owner shall provide the Affordable Housing Units referenced in Section 4 with the same levels of services and maintenance as is provided to the other dwelling units on the Property.
10. Federal and State Laws. Notwithstanding the above provisions, nothing contained in this Agreement shall require Owner or City to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated thereunder applicable to the construction, and management of Affordable Housing Dwelling Units in the City of Fort Lauderdale.
11. Prohibition Against Discrimination. Owner shall not discriminate against any potential tenant on the basis of sex, color, race, religion, ancestry, national origin, age, pregnancy, marital status, family composition, sexual orientation, or the potential or actual occupancy of minor children. Owner further agrees to take affirmative action to ensure that no such person is discriminated against for any of the above-mentioned reasons.
12. Indemnification. Owner shall defend, indemnify and hold harmless the City and its officers, agents, employees, representatives, and volunteers (collectively, “Indemnitees”) from and against any actual out of pocket loss, liability, claim or judgment relating in any manner to the Project or this Agreement. Owner shall not be required to indemnify and hold harmless Indemnitees for liability attributable to the active negligence or willful misconduct of Indemnitees.
13. City’s Right to Inspect Units and Documents. The City may inspect the Affordable Housing Units and any documents or records relating to those units to determine Owner’s compliance with this Agreement. All inspections contemplated in this Section 13 may be conducted only with reasonable notice to both Owner and any tenant whose unit is being inspected, in compliance with all lease documents governing the units so inspected, and in compliance with applicable state and federal laws and regulations, including but not limited to Part II, Chapter 83, Florida Statutes governing residential tenancies.
14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of City and Owner, and their respective successors, owners and assigns. City reserves the right to designate another public agency to perform City obligations or to exercise City rights and options under this Agreement.
15. Burden to Run with Property. The covenants and conditions contained in this Agreement shall run with and burden the Property for so long as either: (i) the rights to develop the Project remain in effect; or (ii) the Project authorized by the Permit or any successor development constructed pursuant to the Permit remains in existence; or both. Owner shall expressly make the conditions and covenants in this Agreement a part of any deed or other instrument conveying an interest in the Property.
16. Default. Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not initiate proceedings against the party in default until thirty (30) days after giving its notice. Failure or delay in giving the notice shall not constitute a waiver of any default, nor shall it change the time of default. For purposes hereof, the City shall accept a timely cure by the Owner’s Investor of a default hereunder.
17. Remedies.
	1. If the Owner rents (including subleasing) an Affordable Housing Unit referenced in Section 4 in violation of the provisions of this Agreement, it shall be required to forfeit to City all monetary amounts so obtained or otherwise return the same to the tenant in accordance with the Tax Credit Program.
	2. City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to actions for injunctive relief or damages.
18. Governing Law. The laws of the State of Florida shall govern this Agreement. Any legal action brought under this Agreement must be instituted in the Circuit Court for Broward County, State of Florida.
19. Attorneys’ Fees. In any action brought to declare the rights granted in this Agreement or to enforce or to interpret any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney(s) fees in an amount determined by the court.
20. Entire Agreement. This Agreement constitutes the entire agreement between the parties and integrates all the terms and conditions mentioned in this Agreement or incidental to this Agreement and supersedes all negotiations or previous agreements between the parties regarding all or any part of the subject matter thereof. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied in this Agreement, and that any other agreement, statement or promise not contained in this Agreement shall not be valid or binding. This Agreement may be amended only by written instrument signed by both City and Owner.
21. Non-Waiver. Failure to exercise any right City may have or be entitled to, in the event of default hereunder shall not constitute a waiver of such right or any other right in the event of a subsequent default.
22. Further Assurances and Recordation. Owner shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form and do such further acts as may be necessary, desirable or proper as City shall from time to time find necessary or appropriate to effectuate its purpose in entering this Agreement.

# [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

# “CITY”

**CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida

ATTEST: By CHRISTOPHER J. LAGERBLOOM

City Manager

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: JEFFREY A. MODARELLI

City Clerk

(SEAL)

Approved as to form:

D’WAYNE M. SPENCE

Assistant City Attorney

# “OWNER”

**[Insert Owner Name]**

By: [**name & title]**

**Date**:

EXHIBIT “A”

**LEGAL DESCRIPTION**

**[Insert Legal Description of Development Site]**

EXHIBIT “B”

**AFFORDABLE HOUSING PLAN**

**[Insert approved Affordable Housing Plan]**