

AFFORDABILITY REQUIREMENTS
ADMINISTRATIVE AGREEMENT

for

This Affordability Requirements Administrative Agreement (the "Agreement") is made this ____ day of _____, 202__ by and between _____, a _____ [limited liability company] with an address at _____ (the "Developer") and the CITY OF CHARLOTTE (the "City").

1. PURPOSE

This Agreement shall govern the compliance and monitoring requirements for subdivisions approved under Developer's rezoning petition no. RZP-_____ (the "_____ Development" and the "Development"). Under the approved rezoning, the [rental] [sale] of a minimum of _____ percent (____%) of the _____ (____) units (____ units) will be restricted to [tenants] [buyers] with income levels at or below eighty percent (80%) of Area Median Income in Charlotte-Mecklenburg County.

2. DEFINITIONS

Restricted Unit – A unit provided under the City's Unified Development Ordinance (the "Ordinance") to meet the Ordinance's affordability requirements.

Area Median Income - The area median income (or AMI) is the midpoint of a region's income distribution, meaning that half of the households in a region earn more than the median and half earn less than the median.

Affordable Housing - Affordable housing is generally defined as housing on which the occupant is paying no more than 30 percent of gross income for housing costs, including utilities. (Reference: www.hud.gov)

3. REQUIREMENTS

Affordability Period:	__ years beginning when units are initially sold to eligible buyers
Income Limits:	The number of affordable units will equal ____% of the total number of units that are approved for construction on site. Affordable units will be provided to households at or below 80% AMI.
Project type:	
Required Restrictions/ Covenants	[Sale] [rental] of units to [buyers][tenants] with income levels at or below 80% AMI

a. AFFORDABILITY

Household Income Limits - Charlotte-Concord-Gastonia, NC-SC HUD Metro FMR Area					
1 Person	2 Person	3 Person	4 Person	5 Person	6 Person
\$59,400	\$67,850	\$76,350	\$84,800	\$91,600	\$98,400

City housing programs follow affordability definitions established by the U.S. Department of Housing and Urban Development (“HUD”). The following table provides the current maximum household incomes allowed to participate in the **purchase or rental of restricted units** under the City’s Program.

b. INCOME CALCULATION

Income calculation shall be determined using the HUD Part 5 definition of income and calculated using the HUD One CPD income calculator. The calculator can be found at <https://www.hudexchange.info/incomecalculator/>. All calculations must be reviewed and approved by City staff prior to executing a contract or lease agreement with the Restricted Unit buyer.

c. RESTRICTIONS

To ensure compliance with the Ordinance under which this Development is approved, the City shall require and the Developer shall record a restriction on the Property and applicable to each of the ___ units identified by the Developer to meet the Development’s affordability requirements (the “Declaration of Deed Restrictions”), which Declaration of Deed Restrictions shall run with the land and be binding on Developer and any successor owner or developer of the Property, including without limitation the **eligible buyers** of the Restricted Units.

Eligible buyers of the Restricted Units may apply for any lawful financial assistance, including but not limited to down payment assistance programs, housing grants, or subsidized loans, toward the purchase price of the unit, provided that any such buyer meets the income requirements of 80% or below AMI and all such assistance complies with applicable laws.

4. MONITORING

a. PRECONSTRUCTION

Prior to the construction process, the Developer will identify the units that will be used to meet the affordability requirements. Restrictions will be placed on those units prior to the commencement of construction, as set forth in Attachment 2, required Deed Restrictions. Once restrictions are recorded, the property will be released for permitting.

b. CONSTRUCTION

City Housing Services staff will monitor the construction of affordable units; therefore, Developer must notify City staff to confirm units once construction has begun on affordable units shall be substantially similar to market rate units and distributed throughout the community. Affordable units shall blend in architecturally with other units to include materials and building styles.

Affordable units will be substantially complete before the first certificates of occupancy are issued for the market rate dwelling units within the development.

5. APPLICABILITY

This Agreement applies to units selected by the Developer and accepted by the City in the

_____ Subdivision (See Attachment 1 – Identification of Affordable Housing Units). _____ is a subdivision of tax parcels _____.

Agreed to this ____ day of _____, 202__.

[Insert legal name of Developer]

By: _____

Name:

Title:

CITY OF CHARLOTTE

By: _____

Warren Wooten

Assistant Director – Affordable Housing

Attachment 1 – Identification of Affordable Housing Units

Total Units approved for Construction: _____

Number of Affordable Units (also referred to as Restricted Units): _____ (.20 x _____).

Location of Affordable Units: Affordable Units are anticipated to be located in the buildings as identified on the attached site plan. At Developer's discretion, unit locations within the respective buildings may change; however, in no event shall less than _____ Affordable Units be available.

Description of Affordable Units*: Proposed Affordable Units should consist of a similar bedroom mix to that of the market rate units.

* Unit details subject to change with site plan and building plan approvals.

Site Plan

SAMPLE

Attachment 2 – Restrictions

Mail to:

Housing Services

Attn: Asset Management

City of Charlotte, Housing & Neighborhood Services

600 East Trade Street

Charlotte, NC 28202-2859

DECLARATION OF DEED RESTRICTIONS

THIS DECLARATION OF DEED RESTRICTIONS (the “Declaration”) is made and entered into this the _____ day of _____, 202__ by _____, a _____ **[limited liability company]** (“Owner”) for the benefit of and enforceable by the City of Charlotte (the “City”);

WHEREAS, the Owner is the owner of certain tracts of real property, Mecklenburg County tax parcels _____ more particularly described on Exhibit A-1 attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, the City may provide financial and other assistance to the Owner in the development and or preservation of the Property; and

WHEREAS, the City and Owner desire to protect the longevity of the Property for use by households with incomes at or below eighty percent (80%) of Area Median Income (“AMI”) established by the U.S. Department of Housing and Urban Development (“HUD”) in certain restricted units, to be constructed by Owner or a Transferee (defined below), and **offered [for sale to buyers] [rental to tenants]** with incomes at or below 80% AMI as described in Exhibit A-2 attached hereto and incorporated herein by reference (the “Restricted Units”); and

WHEREAS, as a condition of City participation, and in compliance with the City’s affordability program and related requirements of the City’s Unified Development Ordinance (the “Program”), the City has required and Owner has agreed to restrict the Property as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby represents, covenants, warrants and agrees:

1. Restrictions. At all times during the Period of Affordability (as hereinafter defined), the Property shall be subject to:

(a) Any transfer of this Property by the Owner to a new owner (any “Transferee”) is subject to and the Transferee must comply with the Affordability Requirements Administrative Agreement for the _____ Subdivision as executed by the City and the Owner (the “Agreement”).

(b) Under the Program, the **[sale] [rental]** of all Restricted Units must be limited to households and [buyers] [tenants] with incomes at or below 80% of AMI as determined by HUD. The Owner and any successor owner or Transferee shall confirm to the City in writing

that [all buyers of Restricted Units] [all tenants of Restricted Units] are qualified under this provision, consistent with Program requirements.

2. Term. This Declaration shall remain in full force and effect until the later of (a) **Fifteen (15) years** from the date hereof or (b) **Fifteen (15) years** from the date of [initial sale of each of the Restricted Units to eligible buyers] [initial rental of each of the Restricted Units to eligible tenants] (the "Period of Affordability"). Upon foreclosure by a lender or other transfer in lieu of foreclosure, the Period of Affordability shall be suspended if the foreclosure by a lender or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability. However, if at any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the Period of Affordability, the Owner, the Transferee, or other owner of record prior to the foreclosure or deed in lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Property, the Period of Affordability shall be revived according to its original terms.

3. Covenants to Run With the Land. The covenants, reservations and restrictions set forth herein (i) shall be deemed covenants running with the land and, shall pass to and be binding upon Owner, the Owner's heirs, successors and assigns in title to the Property (including any Transferee) and all subsequent owners or operations of the Property; and (ii) are not merely personal covenants of the Owner. The benefits shall inure to the City during the term of this Declaration. The Owner hereby agrees that any and all requirement of the laws of the State of North Carolina to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the Property and which touch and concern the Property shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the land. 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, 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 are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property.

4. Compliance Monitoring. The Owner (and any successor owner or Transferee) shall submit any information, documents or certifications requested by the City which the City shall deem reasonably necessary to substantiate the Owner's continuing compliance with the Program, if any, and this Declaration.

5. Remedies; Enforceability. The Owner and the City acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Declaration is to assure compliance of the Property and the Owner with the Program, Program Regulations, if any, and additional City restrictions. AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING ANY LOAN OR OTHER FINANCIAL ASSISTANCE, IF ANY, HEREBY AGREES AND CONSENTS THAT THE CITY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO OBTAIN SPECIFIC PERFORMANCE

BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN ANY COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the City cannot be adequately compensated by monetary damages in the event of default hereunder.

The provisions hereof are imposed upon and made applicable to the Property and shall run with the land and shall be enforceable against Owner or any other person or entity that has or had an ownership interest in the Property at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach of violation hereof at any later time or times.

6. Amendment. This Declaration shall not be amended or, except as otherwise provided herein, terminated except by a written instrument, executed by the City and the Owner, or their successors or assigns, which amendment shall be duly recorded in the office of the Register of Deeds for the county in which the Property is located. This Declaration may be terminated by written instrument executed only by the City which termination shall be duly recorded in the office of the Register of Deeds for the county in which the Property is located.

7. Severability. If any portion 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.

8. Construction. Unless the context clearly requires otherwise, as used in this Declaration words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Declaration and all the terms and provisions hereof shall be construed to effectuate the purposes set forth and to sustain the validity hereof.

9. Successors and Assigns. This Declaration shall be binding on Owner, its successors and assigns and shall inure to the benefit of the City, its successors and assigns and may be enforced by the City or any other persons specifically given enforcement rights herein.

10. Headings. The titles and headings of the sections of this Declaration have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof, nor should they be considered or given any effect in construing this Declaration or any provisions hereof, or in ascertaining intent if any questions of intent shall arise.

11. Governing Law. This Declaration shall be governed by the laws of the State of North Carolina.

[Signature pages follow]

IN WITNESS WHEREOF, Owner has executed this Declaration by duly authorized representatives, all on the date first above written.

[INSERT NAME OF DEVELOPER/OWNER]

By: _____ (SEAL)
Name:
Title:

STATE OF _____

COUNTY OF _____

I, _____ a Notary Public of the County and State aforesaid, certify that _____, either being personally known to me or proven by satisfactory evidence, personally came before me this day and acknowledged that s/he is the _____ of the above-described Owner, executed the foregoing on behalf of the Owner.

Witness my hand and official stamp or seal this _____ day of _____, 2024.

Notary Public

(Seal-Stamp)

My Commission Expires: _____

EXHIBIT A-1

Legal Description

[insert legal description of the restricted Property]

SAMPLE

EXHIBIT A-2

Restricted [Units] [Lots]

SAMPLE