

BCC Mtg. Date: September 10, 2024

RESOLUTION

of the

ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

regarding

ADOPTION OF A FORM LAND USE RESTRICTION AGREEMENT FOR AFFORDABLE MULTI-FAMILY DEVELOPMENT TO BE USED WHEN THE COUNTY APPROVES APPLICATIONS FILED PURSUANT TO SECTION 125.01055(7)(THE “LIVE LOCAL ACT”).

Resolution No. 2024-M- 34

WHEREAS, on March 29, 2023, the Governor signed into law SB 102, the “Live Local Act” (the “Act”), a comprehensive set of laws to support affordable housing policies in the state. The Act became effective July 1, 2023. The Act was clarified and amended pursuant to SB 328 which became law on May 16, 2024;

WHEREAS, the Act requires that the county must authorize multi-family and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least forty percent of the residential units in the proposed multifamily development are rental units that for a period of at least thirty years are affordable and if the development is a mixed-use project, the development is required to provide at least sixty-five percent of the total development square footage for residential purposes; and

WHEREAS, as a result of the regulatory requirements the county has drafted a template for declaration of covenants and restrictions (the “Agreement”) to bind the land for future development/redevelopment projects seeking administrative zoning under the Act to secure the thirty-year affordability period.

**BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
ORANGE COUNTY:**

Section 1. Authority. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida, Chapter 125, Florida Statutes, the Charter of Orange County, and other applicable provisions of law.

Section 2. Form Land Use Restriction Agreement. The Board hereby adopts the form Land Use Restriction Agreement for Affordable Multi-Family Development to be used when the County approves applications pursuant to the Act as set forth on Exhibit "A," attached hereto and incorporated herein by reference. The Board hereby directs that such Land Use Restriction Agreement shall be in substantially the form attached hereto.

Section 3. Authority to Approve. The Board hereby authorizes the Director of the Planning, Environmental and Development Services Department, or authorized designee, to sign the Land Use Restriction Agreement described herein, provided such Land Use Restriction Agreement is identical to or in substantially the form shown in Exhibit "A" hereto.

Section 4. Effective Date. This Resolution shall take effect on _____, 2024.

ADOPTED this 10 day of September, 2024.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Jerry L. Demings
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

By: Phil Diamond
Deputy Clerk

EXHIBIT "A"
FORM LAND USE RESTRICTION AGREEMENT
AGREEMENT

After Recording Return to:
Orange County Housing and
Community Development Division
525 East South Street
Orlando, FL 32801

Parcel ID No(s): _____

(SPACE ABOVE THIS LINE FOR RECORDING)

**DECLARATION
OF COVENANTS AND RESTRICTIONS**

and

**LAND USE RESTRICTION AGREEMENT FOR AFFORDABLE MULTI-FAMILY
RENTAL DEVELOPMENT PURSUANT TO CHAPTER 2023-17, LAWS OF FLORIDA,
THE LIVE LOCAL ACT**

for

[Project Name]

THIS DECLARATION OF COVENANTS AND RESTRICTIONS and LAND USE RESTRICTION AGREEMENT, hereinafter referred to as the “LURA”, is entered into by and between Orange County, Florida, a charter county and political subdivision of the State of Florida, hereinafter referred to as the “County”, and _____, a _____ (state) _____ (corporate form) hereinafter referred to as “Owner”.

R E C I T A L S

WHEREAS, the Owner is the owner in fee of that certain real property located in Orange County, Florida, as legally described in **Exhibit “A,”** attached hereto and incorporated herein by reference, hereinafter referred to as the “Property”;

WHEREAS, the Property is zoned for commercial, industrial, or mixed-use development;

WHEREAS, the Owner seeks to develop the Property with multifamily and/or mixed-use rental housing;

WHEREAS, pursuant to Section 125.01055(7), Florida Statutes (2023), as created by Chapter 2023-17, Laws of Florida (the “Live Local Act”), “a county must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in [the] proposed multifamily development are rental units that are, for a period of at least 30 years, affordable as defined in [Section] 420.0004,” Florida Statutes;

WHEREAS, in compliance with the Live Local Act, the Owner agrees to restrict at least 40 percent of the total number of residential units to be developed on the Property as rental units, as affordable housing, as defined herein;

WHEREAS, in the event the development is a mixed-use project, the Owner further agrees to restrict at least 65 percent (65%) of the total development square footage for residential purposes; and

WHEREAS, to maintain compliance with the Live Local Act, the Owner and the County wish to ensure that the restricted units are maintained as affordable housing for a period of not less than thirty (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, the County and the Owner do hereby contract and agree as follows:

1. **RECITALS.** The recitals set forth above are true and correct and incorporated into this LURA by reference.

2. **PROPERTY.** The Property subject to this LURA is further described in **Exhibit “A”**, attached hereto, and incorporated herein by reference.

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

a. **“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 26 U.S.C. §62 of the Internal Revenue Code.

b. **“Affordable”** means that monthly rents and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the eligible household.

c. **“Affordable Unit”** or **“Affordable Units”** means those Dwelling Units that are Affordable to an Eligible Household. Affordable Unit(s) need not be limited to particular designated Dwelling Units within the Project but may be floating units that change over time. If the Project, as defined herein, is developed with the Maximum Number of Units, the number of Affordable Units within the Project shall be no fewer than ____ () Affordable Units.

d. **“Dwelling Units”** means the residential rental units within the Project, including Affordable Units and those units which are market-rate. The Project is approved for no more than ____ () Dwelling Units (the **“Maximum Number of Units”**), of which at least 40 percent (40%) of the rental units shall be Affordable Units.

e. “**Eligible Household**” means one or more natural persons or a family, the total annual adjusted gross household income which is not more than 120 percent (120%) of the median annual Adjusted Gross Income for households within Orange County.

f. “**Project**” means the multifamily or mixed-use rental housing development on the Property for which the Owner has received site development approval from the County under Case # LLDP-_____.

4. USE AND OCCUPANCY OF THE PROPERTY. The Owner shall comply with the following restrictions regarding the use and occupancy of the Project for the duration of the Affordability Period as defined and established in Section 5 hereof:

a. The Owner shall develop and maintain the Project as a multifamily rental housing development and shall rent and hold available for rental no fewer than 40 percent (40%) of the Dwelling Units as Affordable Units for rent exclusively to Eligible Households.

b. If the Project is constructed in phases, the number of Affordable Units for each phase shall be no less than 40 percent (40%) of the total Dwelling Units constructed for such phase.

c. For each Affordable Unit, the Owner shall be responsible for accepting rental applications and determining and verifying the Adjusted Gross Income of prospective tenants to ensure such tenants qualify as an Eligible Household. Adjusted Gross Income shall be calculated by annualizing verified sources of income for the household as the amount of income to be received by the household during the 12 months following the effective date of determination.

d. Rents for all Affordable Units shall be Affordable to the Eligible Household occupying the Affordable Unit. Rents shall not exceed the 120 percent (120%) Area Median Income threshold which are determined in a manner consistent with Section 42 (g) (2) of the Internal Revenue Code of 1986, as amended. The gross monthly rent shall not exceed 30 percent (30%) of the imputed income limitation applicable to such unit. Gross rents includes an allowance for utilities and therefore if the household pays for utilities (other than telephone and cable), such utility allowance is deducted from the maximum gross rent allowed in the unit.

e. The Affordable Units shall be intermixed with, and not segregated from, the Dwelling Units in the Project which are not designated as Affordable Units (“**Market Rate Units**”). At all times, the Affordable Units must be at least reasonably comparable in terms of size, features and number of bedrooms to the Market Rate Units. Eligible Households shall not be excluded from using common area amenities within the Project.

f. No Affordable Unit shall be occupied by the Owner or any person related to or affiliated with the Owner or the operator of the Project.

g. In the event the Project is a mixed-use development, at least 65 percent (65%) of the total square footage must be used for residential purposes.

5. AFFORDABILITY PERIOD.

a. The Affordability Period shall commence upon the date of the issuance of the first certificate of occupancy for the Project, and end after a period of no less than thirty (30) years. In the event the Project is to be developed in phases, the County's Housing and Community Development Division ("Division") may determine a completion date for each phase of the Project, in which case the thirty-year Affordability Period for the Affordable Units in that phase shall commence and conclude based on the phase-specific completion date.

6. **RECORDS.** The Owner shall maintain complete and accurate income records pertaining to each Eligible Household occupying an Affordable Unit. These records must be updated annually and shall be maintained for at least six (6) years following the date of each such record.

At a minimum, Owner shall maintain the following records for each occupied Affordable Unit:

a. An Eligible Household's complete application for tenancy and related information including the name of each household member, proof of identity, and employment, income and asset information for each household member;

b. A copy of the lease agreement listing the term of tenancy, the rent, and identifying each tenant residing in the Affordable Unit;

c. Verification that the household is an Eligible Household as defined herein; and

d. Verification that the Eligible Household's rent is Affordable as defined herein.

7. **ANNUAL REPORT.** The Owner shall, during the Affordability Period as defined herein, provide an Annual Report to the Division between January 1 and December 31 of each year. The Annual Report shall provide the following information regarding each Affordable Unit: (a) the unit address; (b) the number of persons residing in the Affordable Unit; (c) the Adjusted Gross Income of the persons residing in the Affordable Unit; (d) the monthly rent charged; and (e) any other information requested by the County reasonably required to ensure compliance with this LURA.

8. **MAINTENANCE OF THE PROPERTY, COMPLIANCE WITH APPLICABLE LAWS, AND INCORPORATION OF COUNTY POLICIES.**

a. The Owner shall at all times operate the Project in conformity with all federal, state and local laws, rules, regulations, ordinances and orders which may be applicable to the Project, including but not limited to the Federal Fair Housing Act, as implemented by 24 CFR Part 100, the Florida Fair Housing Act, the Americans with Disabilities Act of 1990, and the Florida Americans with Disabilities Accessibility Implementation Act, as amended.

b. This Agreement shall be read in conjunction with and be subject to all applicable County regulations, policies, resolutions, and ordinances; such County regulations, policies, resolutions, and ordinances are incorporated herein by reference.

9. **MONITORING AND INSPECTION.** The Owner shall permit the County or its designee to inspect all records, including but not limited to financial statements and rental records, pertaining to Affordable Units upon reasonable notice and within normal working hours, and shall submit to the County such documentation as required by the County to document compliance with this LURA. The County may, from time to time, make or cause to be made inspections of the Affordable Units and Project rental records to determine compliance with the conditions specified herein. The County shall notify the Owner prior to scheduled inspections, and the Owner shall make any necessary arrangements to facilitate the County's inspection. The County may make, or cause to be made, other reasonable entries upon and inspections of the Property, provided that the County shall give the Owner notice prior to any such inspection, specifying reasonable cause therefore related to the County's interest in enforcing this LURA.

10. **COVENANTS RUN WITH THE LAND.** All conditions, covenants, and restrictions contained in this LURA shall be covenants running with the land, and shall, 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 the County, its successors and assigns, against the 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 the Project or any portion thereof or interest therein 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 or the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property or the Project.

11. **ENFORCEMENT, NO WAIVER OF BREACH.**

a. If the Owner violates any of the terms and condition of this LURA or a restriction set forth herein, and if such violation remains uncured for a period of thirty (30) days after written notice thereof, the County 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. The provisions hereof are imposed upon and made applicable to the land and shall run with the land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation.

b. The County shall, in its sole discretion, have the right to terminate all approvals and acceptances granted by this Agreement in the event Applicant fails to comply with any of the terms and conditions of this Agreement. All approvals granted by this Agreement are conditioned upon the continued compliance with the terms of this Agreement.

c. Waiver of a breach of one covenant or condition of this Agreement is not a waiver of breach of other covenants and conditions of this Agreement, or of a subsequent breach of the waived covenants or conditions; any failure of the County to enforce this LURA shall not be deemed a waiver of the right to do so thereafter.

d. In the event the County's Code is amended subsequent to the Effective Date of this LURA such that a violation of this LURA would be a violation of County Code, violations of this LURA may, at the election of the County, be enforced consistent with Chapter 11, County Code or as provided in Chapter 162, Parts I and II, of the Florida Statutes, which, among other remedies, would enable the County to impose fines or issue citations for noncompliance and to place liens on the Property.

12. RECORDATION, EFFECTIVE DATE AND DURATION.

a. The parties hereto agree that a fully executed original of this LURA, and any subsequent amendments hereto, shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida.

b. This LURA shall become effective upon the date of full execution by the authorized representative(s) of the Owner and the County (the "Effective Date").

c. This LURA and the restrictions provided herein shall run with the Property and shall remain in effect until the termination of the Affordability Period, or in the event the Project is phased, until the termination of the Affordability Period for the final phase of the Project.

d. Upon conclusion of the Affordability Period, the covenants herein shall be deemed to have been satisfactorily complied with, unless documents properly and timely recorded with the Orange County Clerk of the Circuit Court indicate otherwise.

13. MODIFICATION OF AGREEMENT. The County and its successors and assigns and Owner and the successors and assigns of Owner in and to all or any part of the fee title to the Property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions, or restrictions contained in this LURA without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having any interest less than a fee in the Property. Any amendment or modification to this LURA must be in writing and signed by the County and the Owner, or their successors and assigns; provided, however, that no amendment may be made to this LURA that would cause it to be out of compliance with the Live Local Act, or any other applicable law.

14. NOTICE. All notices which may be given pursuant to this LURA shall be in writing and shall be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time.

COUNTY: Orange County
Housing and Community Development Division
525 East South Street
Orlando, FL 32801
Attn: Manager

COPY: County Administrator
Orange County Administration
201 S. Rosalind Ave, 5th floor
Orlando, Florida 32802

OWNER: _____

15. **SEVERABILITY.** If any provision 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.

16. **ENTIRE AGREEMENT.** This LURA together with the Exhibits embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby.

17. **DISCLAIMER OF THIRD-PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the County and Owner and no right or cause of action shall accrue to or for the benefit of any third party.

18. **NO PARTNERSHIP OR AGENCY.** Nothing in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relations of principal/agent, employer/employee, or joint venture partnership between the parties.

19. **LAND USE APPROVALS.** This Agreement shall not be construed as granting, assuring, or in any way indicating any future grant of any land use, zoning, or density approvals, development approvals, permissions, or rights with respect to the Property.

20. **MULTIPLE COUNTERPARTS.** This LURA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. **ELECTRONIC SIGNATURES AUTHORIZED.** The County and the Owner agree that this LURA and all documents associated with the transaction contemplated herein may be executed by electronic signature in a manner that complies with Chapter 668, Florida Statutes, and consistent with Orange County Administrative Regulation 2.24 (Digital / Electronic Signatures).

22. **APPLICABLE LAW.** The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Any and all legal action necessary to enforce the provisions of this Agreement will be held in Orange County, Florida. Venue for any litigation involving this Agreement shall be the Circuit Court in and for Orange County, Florida.

IN WITNESS HERETO, the parties herein have caused this LURA to be executed at the place and on the day specified hereinabove.

“COUNTY”

ORANGE COUNTY, FLORIDA

By: Orange County Board of County
Commissioners

BY: _____
Jerry L. Demings
Orange County Mayor

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

BY: _____
Deputy Clerk

“OWNER”

_____, a <state>
<type of entity>

BY: _____

Name: _____

Title: _____

Date: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me, a Notary Public, by means of physical presence or online notarization this ___ day of ____, 20___, by _____, as _____ of _____, a _____, on behalf of said _____, who is personally known to me or has produced (type of identification) _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ___ day of _____, 20___.

Notary Public

My Commission Expires:

Printed Name: _____

EXHIBIT A

Legal Description of the Property