

Prepared by and Return to:
CITY OF PALM BAY
120 Malabar Road SE
Palm Bay, Florida 32907

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR
AFFORDABLE MULTI-FAMILY RENTAL DEVELOPMENT IN AREAS ZONED
FOR COMMERCIAL, INDUSTRIAL, OR MIXED USE, IN COMPLIANCE WITH
SECTION 166.04151, FLORIDA STATUTES**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, also known as the "Land Use Restriction Agreement" ("LURA"), is entered into this 8 day of November, 2024 ("Effective Date"), by and between the CITY OF PALM BAY, a Florida municipal corporation ("City"), and APARTMENTS AT PALM BAY, LLC, a Florida limited liability company ("Owner").

R E C I T A L S

WHEREAS, Owner is the owner in fee simple of that certain real property located in Brevard County, City of Palm Bay, Florida, as legally described in Exhibit A attached hereto and incorporated herein by reference, ("Property");

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

WHEREAS, Owner seeks to develop the Property with multi-family rental housing;

WHEREAS, pursuant to Section 166.04151(7)(a), Florida Statutes ("Live Local Act"), a city must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial or mixed use if at least forty (40%) percent of the residential units in the proposed multifamily rental development are, for a period of at least thirty (30) years, affordable as defined in Section 420.0004, Florida Statutes (subject to the terms and conditions set forth below);

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

WHEREAS, to maintain compliance with the Live Local Act, Owner and City 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;

WHEREAS, on _____, the City Council of the City of Palm Bay, Florida approved the form of this LURA and delegated authority to execute the LURA to the City Manager or designee.

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, City and 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 is 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
 - 3.1 *Adjusted Gross Income* shall mean all wages, assets, regular cash or non-cash 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.
 - 3.2 *Affordable* shall mean that monthly rents including taxes, insurance, and utilities (excluding utilities which are separately metered to Dwelling Unit tenants, or otherwise paid by Dwelling Unit tenants directly to the applicable utility providers) do not exceed thirty (30%) percent of that amount which represents the percentage of the annual median Adjusted Gross Income for an Eligible Household.
 - 3.3 *Affordable Unit* or *Affordable Units* shall mean 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 forty-eight (48) Affordable Units.
 - 3.4 *Dwelling Units* shall mean 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 one hundred twenty (120) Dwelling Units ("Maximum Number of Units"), of which at least forty percent (40%) shall be Affordable Units.
 - 3.5 *Eligible Household* shall mean one or more natural persons or a family, the total annual adjusted gross household income of which is less than one hundred twenty (120%) percent of the median annual Adjusted Gross Income for households within the state or the Palm Bay-Melbourne-Titusville Metropolitan Statistical Area, whichever is greater.
 - 3.6 *Project* shall mean the multifamily rental housing development on the Property for which Owner is applying to obtain site development approval from City.
4. **Use and Occupancy of the Property.** 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.
 - 4.1 Owner shall develop and maintain the Project as a multifamily or mixed-use rental housing development and shall rent and hold available for rental no fewer than forty

(40%) percent of the Dwelling Units as Affordable Units for rent exclusively to Eligible Households.

- 4.2 In order to receive a Certificate of Occupancy for a building within the Project containing Dwelling Units, the number of Affordable Units in the building must, at a minimum, be greater than or equal to either: (i) forty (40%) percent of the Dwelling Units within that building; or (ii) the total forty (40%) percent of the required Dwelling Units within the Project when combined with previously constructed Affordable Units in the Project for which certificates of occupancy have already been received.
- 4.3 For each Affordable Unit, 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 twelve (12) months following the effective date of determination.
- 4.4 Rents for all Affordable Units shall be Affordable to the Eligible Household occupying the Affordable Unit.
- 4.5 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 and features to the Market Rate Units. Eligible Households shall not be excluded from using common area amenities within the Project. For the avoidance of doubt, nothing contained herein shall restrict or prohibit Owner from designating only Dwelling Units of a specific bedroom count (e.g. studio Dwelling Units and/or one-bedroom Dwelling Units only, for example) as Affordable, provided that the designated Affordable Dwelling Units are similar in size and features as Market Rate Dwelling Units at the Property of the same bedroom count, and are otherwise intermixed throughout the Property.
- 4.6 No Affordable Unit shall be occupied by Owner, or any person related to or affiliated with Owner or the operator of the Project.
5. **Affordability Period.** The Affordability Period shall commence upon the issuance of the first Certificate of Occupancy for the Project, and end after a period of no less than thirty (30) years from the last Certificate of Occupancy for the Project.
6. **Records.** 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:
 - 6.1 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;
 - 6.2 A copy of the lease agreement listing the term of tenancy, the unit occupied, the rent, and identifying each tenant residing in the Affordable Unit;
 - 6.3 Verification that the household is an Eligible Household as defined herein; and

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

7. **Annual Report; Monitoring Fee.** Owner shall, during the Affordability Period as defined herein, provide an Annual Report to the City's Community and Economic Development Department ("Department") between May 1 and July 31 of each year, unless the Department, in its sole discretion, agrees in writing to a different reporting period. 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 reasonably required to ensure compliance with this LURA and requested by the County. The Annual Report shall identify the dates of both the initial and the final certificates of occupancy for the Project.

Subsequent to submittal of each Annual Report, the Community and Economic Development Department shall provide the Owner with a written fee statement for City's actual costs of monitoring the Project for the reporting period, in accordance with the prescribed fee schedule published by the City from time to time. Owner shall pay the monitoring fee to the City within thirty (30) days of receipt of the fee statement. Failure to make a full and timely payment shall be a violation of this LURA, subject to the enforcement provisions of Section 11 below.

8. **Maintenance of the Property and Compliance with Applicable Laws.** 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. Owner shall maintain the Project and the Property in a condition which is consistent with the Code of Ordinances, City of Palm Bay).
9. **Monitoring and Inspection.** Owner shall permit City, or its designee, to inspect all records, in person or virtually, 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 City such documentation as required by the City to document compliance with this LURA. The City 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. City shall notify Owner prior to scheduled inspections, and Owner shall make any and all necessary arrangements to facilitate City's inspection. City may make, or cause to be made, other reasonable entries upon and inspections of the Property, provided that City shall give Owner notice prior to any such inspection, specifying reasonable cause therefor related to the City'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 City, 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 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. Prior to any transfer of interest in the Property or the Project, Owner shall provide written notice to City of Owner's intent to transfer the Property or the Project in accordance with Section 17 herein.

11. **Enforcement.** If Owner violates any of the terms and conditions of this LURA or breaches a restriction, warranty, covenant, obligation or duty set forth herein, and if such violation or breach remains uncured for a period of thirty (30) days after written notice thereof, City shall be entitled, in its sole discretion, to any or all of the remedies described below:
 - 11.1 If City, by and through the Department, determines that Owner has taken and diligently continues corrective action and that the breach cannot be corrected within the thirty (30) day period, City may, in its sole discretion, allow Owner up to six (6) months after first notice to cure the breach.
 - 11.2 City 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. City shall be entitled to recover its costs and expenses and reasonable attorneys' fees in any such judicial proceeding where City shall prevail.
 - 11.3 City may require that the Annual Report required pursuant to Section 7 hereof be provided quarterly for so long as City deems reasonable and necessary.
 - 11.4 In the event that the violation or breach requires that City undertake additional monitoring of the Project, City, in its sole discretion, may require Owner to pay to City a compliance monitoring fee for supplemental monitoring in the amount necessary to reimburse the City for performing such supplemental monitoring. This fee shall be in addition to, and distinct from, any reimbursement of costs and legal fees to which City may be entitled as a result of judicial enforcement action and any fines payable to City pursuant to Subsection 11.5 hereof and shall be payable without respect to whether City undertakes or succeeds in judicial enforcement or code enforcement activities. City's right to be compensated for additional monitoring shall, at the Department's discretion, extend for a period of up to two (2) years following the most recent finding of noncompliance with this LURA. City shall submit written fee statements to Owner on a quarterly basis which shall be paid by Owner within thirty (30) days of receipt.
 - 11.5 The site development plans for this Project were administratively approved by the City in consideration of Owner's agreement to comply with the terms and conditions of this LURA for the duration of the Affordability Period. Therefore, a violation of the terms and conditions of this LURA constitutes a violation of the site development approval for the Project and such violation may, at the election of the City, be enforced as provided in Chapter 162, Florida Statutes, which, among other remedies, would enable City to impose fines or issue citations for noncompliance and to place liens on the Property. Owner irrevocably consents to the jurisdiction of the Palm Bay Code Enforcement Special Magistrate for all purposes related to enforcement of this LURA and expressly waives any objection or defense to such jurisdiction.
 - 11.6 The provisions hereof are imposed upon and made applicable to the land 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 Project at the time of such violation or attempted violation.

- 11.7 Any failure of the City to enforce this LURA shall not be deemed a waiver of the right to do so thereafter.
12. **Subordination.** Owner shall obtain and record in the Public Records of Brevard County the written consent and subordination to this LURA and the requirements hereof of any prior recorded lienholder of record on the Property in a form substantially similar to that attached as Exhibit B. Copies of the executed and acknowledged lienholder's consent(s), if any, shall be provided to the City for review and approval along with a current title opinion or property information report prior to the acceptance by the City of a preliminary development plan application or final development plans for the Project.
13. **Owner's Representations and Warranties.** Owner warrants and represents that:
 - 13.1 Owner has the full power, authority and capacity to enter into this LURA and to carry out Owner's obligations as described in this LURA; and
 - 13.2 The execution and performance of this LURA by Owner will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which Owner is a party or by which it or the Property is bound, and will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.
14. **Release.** Owner hereby releases City and the City Council of the City of Palm Bay, and the respective agents and employees of the City and the City Council, from and against any and claims, demands, damages, actions or causes of action, whether in law or in equity, which Owner has or may have, by reason of Owner's decision to proceed with the Project in reliance on this LURA.
15. **Recordation; Effective Date; Duration.** This LURA and any amendments hereto shall be recorded by the City in the Public Records of Brevard County, Florida, and City shall pay all fees and charges incurred in connection therewith.

This LURA shall become effective as of the Effective Date set forth above.

This LURA and the restrictions provided herein shall run with the Property and shall remain in effect until the termination of the Affordability Period.

Upon conclusion of the Affordability Period, the covenants herein shall be deemed satisfactory complied with unless documents properly and timely recorded with the Brevard County Clerk of the Circuit Court indicate otherwise, and City and Owner will execute a recordable document further evidencing such termination.

16. **Modification of Agreement.** City 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 City and Owner, or their successors and assigns.

The City agrees that, in the event that the Live Local Act is amended, modified, or supplemented following the Effective Date of this LURA (a "Live Local Act Amendment"), Owner may request an amendment to this LURA to incorporate any amendments, modifications, or supplements contemplated in any such Live Local Act Amendment.

17. **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: City of Palm Bay
120 Malabar Road SE
Palm Bay, Florida 32909
Attn: City Manager

OWNER: Apartments at Palm Bay, LLC
Suite 305
2875 Northeast 191st Street
Aventura, Florida 33180
Attn: Samy Cohen

18. **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.
19. **Agreement.** This LURA together with the Exhibits embodies the entire agreement and understanding between the parties hereto and there are no other agreements or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby.
20. **Governing Law; Venue.** This LURA is entered into within, and with reference to the internal laws of the State of Florida, and shall be governed, construed, and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida. Each party covenants and agrees that any and all legal actions arising out of or connected with this LURA shall be instituted in the Circuit Court of the Eighteenth Judicial Circuit, in and for Brevard County, Florida, or in the United States District Court for the Middle District of Florida, Orlando Division, 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.
21. **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.


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

OWNER:

APARTMENTS AT PALM BAY, LLC, a Florida limited liability company,

By: Apartments at Palm Bay Manager, LLC, a Florida limited liability company, its Manager

Witnesses


Signature

Stephanie Roque
Print Name

2875 NE 191st St. Aventura, FL 33180
Address


Signature

Barrett Wolf
Print Name

2875 NE 191st Street, Aventura, FL. 33180. PTH
Address


Signature

Sammy Cohen
Print Name

Manager
Title

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☒ online notarization, this 8th day of November, 2024 by Sammy Cohen of Apartment at Palm Bay, a Florida limited liability company, on behalf of the company. They are personally known to me or has produced _____ as identification.


Notary Public



ATTEST:

CITY OF PALM BAY, FLORIDA, a
Florida municipal corporation,

Terese Jones, City Clerk

Suzanne Sherman, City Manager

EXHIBIT A

Legal Description

Parcel 3, Bilda Executive Park, according to the plat thereof, as recorded in Plat Book 67, Page 70, of the Public Records of Brevard County, Florida.

Together with those non-exclusive easements for vehicle parking and access as set forth in that certain Declaration of Covenants and Easements for Bilda Park, recorded in Official Records Book 8521, Page 1999, of the Public Records of Brevard County, Florida

EXHIBIT B

Consent and Subordination of Lienholder

Prepared by:
[name]
[title, organization]
[address]

After Recording Return to:
City of Palm Bay
120 Malabar Road SE
Palm Bay, Florida 32909

CONSENT AND SUBORDINATION OF LIENHOLDER

The undersigned Lender hereby consents to the execution of the Declaration of Covenants and Restrictions (“LURA”) by and between CITY OF PALM BAY, a Florida municipal corporation (“City”), and APARTMENTS AT PALM BAY, LLC, a Florida limited liability company (“Owner”), the owner of the property identified as Exhibit A to the LURA (“Property”). A copy of the LURA is attached hereto as Exhibit 1.

The undersigned Lender hereby subordinates its lien(s) on the Property to the LURA and the covenants, conditions, and restrictions therein, such that a foreclosure (or the execution of an instrument in lieu of foreclosure) of the Lender’s lien(s) shall not extinguish the LURA.

The Lender acknowledges and agrees, and this Consent and Subordination of Lienholder shall be recorded by the Owner in the Official Records of Brevard County, Florida, and a copy of the recorded document shall be provided by the Owner to the Lender.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Witnesses:

Signature

Print Name

Address

Signature

Print Name

Address

LENDER:

Signature

Print Name

Title

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ (date) by _____ (name of officer or agent, title of officer or agent) of _____ (name of company acknowledging) , a _____ (state or place of incorporation) company, on behalf of the company. He/she is personally known to me or has produced _____ (type of identification) as identification.

Notary Public

EXHIBIT 1 to CONSENT AND SUBORDINATION OF LIENHOLDER

[attach Live Local Act Declaration of Covenants and Restrictions between Owner and City]