

**NORTH CAROLINA  
DURHAM COUNTY**

**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (hereinafter "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the City of Durham, a municipal corporation organized and existing pursuant to North Carolina state law (as more specifically defined below, the "City").

Background

A. The City owns the approximately four-acre site located at 505 West Chapel Hill Street in Durham, North Carolina (as more specifically defined below, the "Property"), which was conveyed to the City on January 14, 1997 by a general warranty deed recorded in the Durham County Register of Deeds Office at Book 2273, Page 350.

B. The City desires and requires that subsequent owners develop or maintain (or develop and maintain) a portion of the Property as affordable housing as and to the extent provided in this Declaration and as may be further provided in any applicable Master Development Agreement, as more specifically defined below. The general scheme of development for this affordable housing residential use is described in this Declaration and may be further provided in any applicable Master Development Agreement.

C. In furtherance of the public purpose of providing affordable housing in the City of Durham and pursuant to North Carolina General Statutes Section 39-6.4, the City is declaring and creating the following restrictions, covenants, and conditions on the Property.

D. These restrictions, covenants, and conditions shall run with the land for the purpose of enforcing the obligation to Maintain the Affordable Units for Eligible Households during the Period of Affordability (all as more specifically defined below) and the other covenants contained herein.

### Definitions

1. “Affordable Rent” means the rent an Eligible Household (as defined below) would be required to pay pursuant to Section 42 of the Internal Revenue Code (“Section 42”) for low-income housing tax credit (“LIHTC”) units as enforced by the North Carolina Tax Reform Allocation Committee via the North Carolina Housing Finance Agency under its Qualified Allocation Plan for LIHTC units (the “North Carolina QAP”), including any successor legislation to Section 42 and/or the North Carolina QAP. The rent rules and regulations of Section 42 and the North Carolina QAP shall be used whether or not the Affordable Units (as defined below) are then subject to a Declaration of Land Use Restrictive Covenants by and between the owner of the Affordable Units and the North Carolina Tax Reform Allocation Committee.

2. “Affordable Unit” means a one or two-family dwelling unit made available initially to and thereafter occupied by an Eligible Household for the Period of Affordability.

3. “Eligible Household” means a household earning up to and including 60 percent of Area Median Income (AMI) as defined and published by the United States Department of Housing and Urban Development from time to time. An Eligible Household shall be determined upon initial occupancy and, thereafter, its status as an Eligible Household shall be governed by the rules and regulations for occupancy under Section 42 and the North Carolina QAP during the Period of Affordability (as defined below). The occupancy rules and regulations of Section 42 and the North Carolina QAP shall be used to determine an Eligible Household whether or not the Affordable Units are then subject to a Declaration of Land Use Restrictive Covenants by and between the owner of the Affordable Units and the North Carolina Tax Reform Allocation Committee.

4. “City” means the City of Durham, a North Carolina municipal corporation. When this Declaration requires or allows action or approval by the “City,” the City Manager shall have the authority to take such action or execute a document providing such approval on behalf of the City.

5. “Master Development Agreement” shall mean any applicable master development agreement to be entered into by and between the City and the Subsequent Owner, notice of which shall be recorded in the Durham County Register of Deeds Office as long as such master development agreement is in effect at the time.

6. "Period of Affordability" means the period of compliance during which the Affordable Units must be made available to Eligible Households in accordance with this Declaration, which is in perpetuity beginning on the date of the issuance of a Certificate of Compliance by the Durham

City-County Inspections Department or other appropriate governing authority for the Affordable Units.

7. "Property" means all and any part of the real property in Durham, North Carolina commonly known as 505 West Chapel Hill Street, including all improvements, and as more particularly described in **Exhibit A**, which is attached hereto and incorporated herein by this reference, as may be amended in accordance with this Declaration.

8. "Subsequent Owner" means the applicable owner or owners of the Property from time to time following the City's ownership, but only during such owner's period of ownership of the Property.

### Covenants, Restrictions, and Requirements

Upon conveyance of the Property by the City to a Subsequent Owner, the Property shall be held, sold, transferred, and conveyed subject to the restrictions, covenants, and conditions hereinafter set forth:

1. **Construction of Affordable Units.** The Subsequent Owner shall construct or cause to be constructed at least eighty (80) Affordable Units on the Property for Eligible Households as further described in any applicable Master Development Agreement. The commencement and completion dates for construction of the Affordable Units by any Subsequent Owner, if any, shall be as defined in any applicable Master Development Agreement.
2. **Maintenance of Affordable Units.** During the Period of Affordability, the Affordable Units shall be Maintained (as defined below) for Eligible Households at Affordable Rent, which shall be monitored annually by the City of Durham Community Development Department. The determination of whether a prospective tenant meets the income requirement as an Eligible Household shall be made by the Subsequent Owner or the Subsequent Owner's designated agent at least annually on the basis of the current income of said tenant. The determination that a prospective tenant is an Eligible Household shall be made by the Subsequent Owner or the Subsequent Owner's designated agent prior to a lease being signed or renewed by the Subsequent Owner. As used herein, the Subsequent Owner's obligation to "Maintain" the Affordable Units means the following: (i) the Affordable Units have not been rendered uninhabitable as a result of gross negligence or willful misconduct by the Subsequent Owner; (ii) the Affordable Units have not been leased by the Subsequent Owner to non-Eligible Households; and (iii) the Affordable Units have not been unavailable to Eligible Households for more than 36 consecutive months during restoration or rehabilitation, unless the City has given its written consent.
3. **Amendment.** This Declaration shall not be amended in any manner whatsoever without the prior written consent of the City (and, if the owner of the property is not then the City,

the Subsequent Owner) as to whether to amend and the substance of the amendment(s). Except as otherwise provided in this Section 3, it shall be within the sole discretion of the City (and the Subsequent Owner, if applicable) whether to give such consent, except that if the Property is (i) subdivided, (ii) subjected to a land condominium regime, or (iii) otherwise divided at any time following the recordation of this Declaration, then upon written request of the Subsequent Owner, and notwithstanding anything in this Declaration to the contrary, the City shall execute to an amendment to this Declaration, including without limitation **Exhibit A**, such that this Declaration shall thereafter only run with, be applicable to and binding upon and pertain to the lot, condominium unit, or other real property with residential uses under the general scheme of development that is planned following the subdivision, subject to any applicable Master Development Agreement.

4. **Schedule of Declaration and Recordation.** The City shall declare and record this Declaration, as the in effect, no later than every 29 years from the previous declaration and for the sole purpose of extending the term of this Declaration for another 29 years. During any time when the Subsequent Owner owns the Property, the City may unilaterally record a notice of its rights hereunder pursuant to the North Carolina Real Property Marketable Title Act, N.C. Gen. Stat. Section 47B-4. Upon the City's request, the Subsequent Owner shall cooperate with such recording to whatever extent is necessary to effectuate the recording. In no event shall any such unilateral declaration, recordation, or notice modify or change in any respect this Declaration or the terms hereof.
5. **Covenants Run with the Property.** The covenants, restrictions, and requirements of this Declaration shall run with the Property and continue in full force and effect until this Declaration is terminated. Such covenants, restrictions and requirements shall pass to and be binding upon the Subsequent Owner and its assigns, successors, successors in title to all or any portion of the Property. Each and every deed, ground lease, or instrument hereafter executed conveying title to all or any portion of the Property, including deeds of trust, shall be made expressly subject to this Declaration. Notwithstanding the foregoing, each and every contract, deed, master lease or other instrument hereafter executed covering or conveying all or any portion of the Property shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, restrictions, and requirements regardless of whether the same are set forth in such contract, deed, master lease or other instrument. It is expressly agreed and acknowledged that: (i) the covenants provided in this Declaration are in addition to or supplemental to the provisions of any other applicable documents; (ii) this Declaration shall not be deemed to limit any other applicable documents or vice versa; (iii) this Declaration shall not be deemed to merge into any other applicable documents or vice versa (iv) this Declaration shall survive the expiration or termination of any of the other applicable documents; and (v) the satisfaction or release of any other applicable documents shall not be deemed to a satisfaction or release of this Declaration.

6. **Consent to Conveyances.** Any Subsequent Owner shall not convey, transfer, sell, or encumber all or any portion of the Property except as allowed in any applicable Master Development Agreement. Upon any such conveyance, the successor shall adopt and affirm in writing the requirements of this Declaration and shall record this document in the Durham County Register of Deeds Office.
7. **Right of Enforcement.** This Declaration is made by and for the benefit of the City and the public and it confers upon only the City and its respective successors and assigns the right, without limitation, to enforce the provisions of this Declaration in accordance with the terms hereof.
8. **Remedies for Violation.**
  - a. *Failure to Construct Affordable Units.* If the Subsequent Owner fails to construct the Affordable Units pursuant to Section 1 of this Declaration, subject to any notice and cure periods in any applicable Master Development Agreement, the City thereafter shall have, as its sole and exclusive remedy, the right of reentry subject to the terms of any applicable Master Development Agreement. and the City may recover title to the Property through an action at law,
  - b. *Failure to Maintain Affordable Units.* If (i) the Subsequent Owner fails to Maintain the Affordable Units pursuant to Section 2 of this Declaration, (ii) the City delivers written notice of such violation to Subsequent Owner, and (iii) such violation is not cured within thirty (30) days of the Subsequent Owner's receipt of such notice (or if such violation is not reasonably susceptible of being cured within thirty (30) days, such longer period as may be reasonably required to effect such cure so long as the Subsequent Owner is diligently and in good faith pursuing such cure), the City may thereafter:
    - i. institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation or compel specific performance of such obligation; and
    - ii. receive, within five (5) business days of written demand therefore, liquidated damages (the "Liquidated Damages") for each month that such failure continues with respect to each Affordable Unit that the Subsequent Owner has failed to Maintain for such month (or applicable portion thereof) in an amount equal to (i) three (3) multiplied by (ii) the difference between (a) the rent offered by the Subsequent Owner for a market rate residential unit at the Property comparable to such Affordable Unit for such month and (b) the Affordable Rent for such Affordable Unit for such month. The Liquidated Damages shall be prorated for any partial month. The Liquidated Damages, if pursued, shall be the City's sole claim to monetary damages, at law or in equity.

- c. *Other Violations.* If (i) the Subsequent Owner violates any of the provisions of this Declaration, other than the violations described in Sections 7.a. and 7.b. of this Declaration, (ii) the City delivers written notice of such violation to Subsequent Owner, and (iii) such violation is not cured within thirty (30) days of the Subsequent Owner's receipt of such notice (or if such violation is not reasonably susceptible of being cured within thirty (30) days, such longer period as may be reasonably required to effect such cure so long as Subsequent Owner is diligently and in good faith pursuing such cure), the City may thereafter institute and prosecute any proceeding at law or in equity to: abate, prevent, or enjoin any such violation or attempted violation; compel specific performance of this Declaration; recover monetary damages caused by the violation or attempted violation; or pursue any remedy allowed under the terms of any applicable Master Development Agreement.
  - d. *Attorneys' Fees.* In any successful action or proceeding to enforce its rights under this Declaration, the City shall be entitled to the recovery of its reasonable attorneys' fees and consultants' fees, if any, from the Subsequent Owner found in violation of this Declaration.
9. **Non-Waiver.** Any failure by the City to insist upon a strict performance of any covenants, restriction or requirement of this Declaration, or to exercise any option, right or remedy contained or created in this Declaration, shall not be construed as a waiver or relinquishment for the future of such covenant, restriction or requirement; rather, the same shall continue and remain in full force and effect.
10. **Severability.** If a court of competent jurisdiction determines that any of the provisions of this Declaration are void or unenforceable, the remainder of the provisions of this Declaration shall continue in full force and effect.
11. **Survival.** This Declaration shall survive any proceedings in foreclosure, bankruptcy, probate, or any other proceedings at law or in equity.

[Execution section begins on next page.]

IN WITNESS WHEREOF, this instrument is executed under seal on the date and year first above written.

CITY OF DURHAM

By: Thomas J. Bonfield, City Manager

By: \_\_\_\_\_(SEAL)

ATTEST:

\_\_\_\_\_(SEAL)  
City Clerk

State of \_\_\_\_\_

**ACKNOWLEDGMENT**

County of \_\_\_\_\_

I, a Notary Public in and for the aforesaid County and State, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is the City of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by THOMAS J. BONFIELD, CITY MANAGER, sealed with its corporate seal and attested by herself as its City Clerk.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Exhibit A**  
**Legal Description of the Property**

Being all that parcel of land situated in the City of Durham, County of Durham, North Carolina, and more particularly described as follows:

BEGINNING at a monument located in the northwest intersection of the boundary lines of Jackson Street and South Duke Street, and running thence North  $00^{\circ} 26' 00''$  East a distance of 476.87 feet to a point, which is the southwest intersection of the boundary lines of West Chapel Hill Street and South Duke Street; thence South  $89^{\circ} 44' 59''$  West a distance of 365.01 feet to a stake, which is the southeast intersection of the boundary lines of South Gregson Street and West Chapel Hill Street; thence South  $03^{\circ} 21' 23''$  West a distance of 199.70 feet to a point; thence South  $03^{\circ} 53' 19''$  West a distance of 134.03 feet to a point; thence North  $89^{\circ} 39' 55''$  East a distance of 8.89 feet to a point; thence South  $03^{\circ} 03' 15''$  West a distance of 131.49 feet to a stake; thence in a southeasterly direction along a curve to the left having a radius of 12 feet and a length of 19.54 feet to a stake; thence North  $89^{\circ} 45' 28''$  East a distance of 368.36 feet to a monument, being the point and place of BEGINNING and being approximately 4.10 acres, as shown on that plat and survey entitled "Title Survey for Webb-Wittenberg Ventures" by Ballentine Associates, P.A. and recorded in Plat Book 124, Page 60, Durham County Registry, to which plat reference is made for a more particular description.

The parcel is further identified as 505 W. Chapel Hill Street, Durham, NC 27701, parcel #114577.

This is the same property acquired by the City of Durham in the deed recorded in Book 2273, Page 350, Durham County Registry.