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This Instrument Prepared by:
Paola A. West
PlanW3st LLC
10152 Indiantown Road, #159
Jupiter, FL 33478

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DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (“Declaration”) made this **day of February, 2024**, by AVIARA CORPORATE PARK LLC, whose address is 933 S Congress Avenue Delray Beach, FL 33445 (“Declarant”), which shall be for the benefit of the CITY OF POMPANO BEACH, a municipal corporation organized pursuant to the State of Florida (“City”).

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of land located in the City, more particularly described in **Exhibit “A” (“Property”)**; and

WHEREAS, the Declarant is proposing to construct 369 dwelling units, including 53 moderate income housing units, (“Project”) and has obtained development approval, specifically Planning and Zoning Board Development Order No. PZ23-12000006 and PZ23-05000006 (“Development Approvals”);

WHEREAS, consistent with the Development Approvals, the Declarant is required to set aside a minimum of 53 units as moderate-income housing prior to building permit approval; and

NOW, THEREFORE, in consideration of the foregoing premises and covenants, Declarant declares that the Property shall be subject to the covenants, restrictions, and regulations set forth below, all of which shall run with the land and which shall be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

1. Recitations. The recitals set forth above are true and correct and are incorporated into this Declaration by this reference.

2. Covenants. Declarant declares the following:

53 of the residential units to be constructed on the Property, pursuant to the Development Approvals, shall be Moderate Income Housing Units as defined in Section 154.60 of the City’s Code of Ordinances, and shall be further restricted by this Declaration (“Moderate Income Housing Units”). In accordance with section 154.61.F.4.a, affordable flex units are to be distributed by bedroom size in the same ratio as the overall project. The proposed project is 47% 1-bedroom units, 8% 2-bedroom units, and 45% efficiency units.

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3. The Property is being developed as a rental apartment complex, subject to the moderate income housing restrictions set forth in this Declaration. Declarant declares all Moderate Income Housing Units offered for rent shall be rented in accordance with the following:

(a) All Moderate Income Housing Units constructed on the Property shall be used solely as each renter's principal residence and shall be used solely for residential purposes. No Moderate Income Housing Unit may be used for any non-residential purpose, other than home offices when permitted by applicable zoning regulations; and

(b) All Moderate Income Housing Units shall be rented solely by persons who meet the following criteria at the time of lease:

1) One or more natural persons or a family whose incomes do not exceed one hundred and twenty (120) percent of Broward County's median income as reported by the United States Department of Housing and Urban Development and adjusted for family size.

2) The renter of a Moderate-Income Housing Unit shall have monthly rental payments that do not exceed the rent limits as published by the Florida Housing Finance Corporation for Broward County, Florida and thirty (30) percent of their monthly adjusted gross income.

(c) On an annual basis, beginning no later than 12 months after the Effective Date of this Declaration, the Declarant shall (through Declarant or Declarant's property manager or other representative) cause to be provided to the City written certification that at the time of lease the renter(s) satisfy the criteria in 3(b) for all the required Moderate Income Housing Units detailed above in paragraph 2.

4. Moderate Income Housing Units Offered For Sale. Declarant reserves the right to convert the Property or a portion to a condominium or other fee simple ownership structure in the future, subject to the Moderate Income housing restrictions as set forth in this Declaration (a "**Conversion**"). In the event of a Conversion, Declarant declares all Moderate Income Housing Units offered for sale shall be purchased in accordance with the following:

(a) All Moderate Income Housing Units constructed on the Property shall be used solely as each owner's principal residence and shall be used solely for residential purposes. No Moderate Income Housing Unit may be used for any non-residential purpose, other than home offices when permitted by applicable zoning regulations; and

(b) All Moderate Income Housing Units shall be purchased solely by persons who meet the following criteria at the time of purchase of a Moderate Income Housing Unit. "Purchased" shall be defined to mean by sale, inheritance, court order, or other legal method of transfer or acquisition.

1) One or more natural persons or a family whose incomes do not exceed one hundred and twenty (120) percent of Broward County's median income as reported by the United States Department of Housing and Urban Development and adjusted for family size; and

2) The purchaser of the Moderate Income Housing Unit shall have monthly mortgage payments (including taxes and insurance) that do not exceed thirty (30) percent of their monthly adjusted gross income; and

3) Excluding government subsidies, the required down payment, if any, for the purchase of the Property must not exceed twenty (20) percent of the purchase price; and

4) During the term of this Declaration, as defined herein, every deed of sale or equivalent document transferring title to the Moderate Income Housing Unit shall include a restriction stating as follows and citing the respective recording information:

This property is to be sold and occupied as a "Moderate Income Housing Unit," in accordance with the Declaration of Restrictive Covenants recorded in the Official Records of Broward County at O.R. Book _____, Page _____.

5) Prior to any transfer of title or closing on a purchase of a Moderate Income Housing Unit, each purchaser shall provide documentation to the City that establishes that the purchaser meets the criteria in (b) 1), 2), and 3) above. The City, following a request by the purchaser and the purchaser's submission of the required documentation, may issue a written certification that the purchaser satisfies the criteria in (b) 1), 2) and 3).

(c) At the time of sale of any Moderate Income Housing Unit, Declarant shall record a Notice of Designation of Moderate Income Housing Unit (a "**Moderate Income Housing Notice**") corresponding to the sale, the form of which Moderate Income Housing Notice is set forth on "**Exhibit B,**" which is attached and incorporated in this Declaration.

5. Amendments. Except as otherwise provided in this Declaration, this Declaration shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners(s) of the portion of the Property affected by such modification, amendment, or release and approved in writing by the City. The appropriate governmental authority of the City shall execute a written instrument effectuating and acknowledging such modification, amendment or release. Any amendment, modification or release of this Declaration shall be recorded in the Public Records of Broward County, Florida, at the then owner's sole expense.

6. Recordation and Effective Date.

(a) This Declaration shall become effective ("**Effective Date**") upon recordation in the Public Records of Broward County, Florida.

(b) Once recorded, this Declaration shall run with the Property for the sole benefit of the City and does not operate as a restriction in favor of any Property owner, and shall bind all successors and assigns to the title of the Property.

(c) From and after such time as any Moderate Income Housing Unit is conveyed by Declarant to a third party purchaser, following a Conversion, Declarant shall have no further obligations under this Declaration with respect to that particular Moderate Income Housing

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Unit and such third party purchaser shall be obligated to comply with all of the provisions of this Declaration.

7. Severability. If any court of competent jurisdiction shall declare any section, paragraph or part of this Declaration invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

8. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions of this Declaration.

9. Context. Whenever the context requires or admits, any pronoun used in this Declaration may be deemed to mean the corresponding masculine, feminine or neuter form, and the singular form of any nouns or pronouns may be deemed to mean the corresponding plural form and vice versa.

10. Term, Release and Termination. The restrictions, covenants, rights and privileges granted, made and conveyed in this Declaration ("**Moderate Income Housing Restrictions**") shall be valid for a period of thirty (30) years, commencing upon the Project Completion Date and issuance a Certificate of Occupancy, as defined in the Development Agreement ("Term"), unless sooner terminated pursuant to the terms of this Declaration; thereafter the Moderate Income Housing Restrictions shall be of no further force and effect and shall automatically terminate without the consent of the City, or the necessity to record any instrument in the Public Records of Broward County, Florida. The City shall cause a release to be recorded in the Official Records of Broward County, Florida upon the termination or expiration of this Declaration. Upon request by Declarant, the City shall execute an estoppel letter verifying the remaining term of the Declaration or that the Declaration has terminated or expired.

11. Remedies for Violation. In the event the Declarant, its successors or assigns, violate any of the covenants and restrictions contained in this Declaration, Declarant acknowledges and agrees that the City may withhold further permits and approvals with respect to the Project or the underlying Property and issue daily fines for code compliance violations as determined by the Special Magistrate; provided the City first provides Declarant with written notice and a thirty (30) day opportunity to cure the violation. The City's option to withhold further permits and approvals with respect to the Property and fine the property shall not be exercised if, within the thirty (30) day notice period (i) the violation is cured by Declarant. If the violation cannot reasonably be cured within that time period but the Declarant begins to cure such violation within such time period and thereafter diligently pursues such cure to completion, the Special Magistrate over the code compliance case will determine the amount of further fines and penalties for noncompliance.

12. Waiver. Any failure of the City to enforce these restrictive covenants shall not be deemed a waiver of the right to do so.

13. Florida Law/Venue. This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of

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the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida.

14. Subordination. If there is a mortgage against the Property, each mortgagee agrees that the mortgage it holds from Declarant which encumbers the Property shall be and are subordinate to the restrictive covenants set forth above (*i.e.*, restricting the use of the real Property for the time periods set forth above), subject to the provisions of Section 11 above.

Witnesses:

Declarant: AVIARA CORPORATE PARK LLC

(Signature)

Print name: _____

Print Address: _____

Florida Profit Corporation

Type of Company

By

Maher Hanna, Authorized Signatory

Print Address: 933 S Congress Avenue
Delray Beach, FL 33445

(Signature)

Print name: _____

Print Address: _____

ACKNOWLEDGMENT

STATE OF FLORIDA)

) SS

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this _____ day of _____ 2023, by EREZ HUS, as the Manager of Pompano Pointe, LLC, a Florida limited liability company, on behalf of the Company. He is ☒ personally known to me, or ☐ produced identification. Type of identification produced _____.

(Seal)

(Signature)

Printed Name: _____

Notary Title/Rank: _____

Notary Serial Number, if any: _____

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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL B & PARCEL C, LANIER PLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED
IN PLAT BOOK 180, PAGE 182, PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. SAID
LANDS LYING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA

EXHIBIT "B"

Return to
This Instrument Prepared by:
Paola A. West
PlanW3st LLC
10152 Indiantown Road, #159
Jupiter, FL 33478

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NOTICE OF DESIGNATION OF MODERATE INCOME HOUSING UNIT

By recordation of this Notice, AVIARA CORPORATE PARK LLC, designates for the Restriction Period, as defined below, the following unit as an "**Moderate Income Housing Unit**," as defined by that certain Declaration of Restrictive Covenants recorded in Official Records **Book**, **Page** of the Public Records of Broward County, Florida ("**Declaration**"), which requires that Moderate Income Housing Units be sold only to persons who meet the following criteria at the time of sale: (a) one or more natural persons or a family whose incomes do not exceed 120 percent of Broward County's median income as reported by the United States Department of Housing and Urban Development and adjusted to family size; and (b) the purchaser of the Moderate Income Housing Unit shall have monthly mortgage payments (including taxes and insurance) that do not exceed thirty (30) percent of their monthly adjusted gross income.

Unit Address: NW 31st Avenue, Pompano Beach, Florida 33069

and/or Unit Number: **Unit #**

The restriction of the foregoing designation shall be thirty (30) years from the recordation of this Notice against the applicable Moderate Income Housing Unit or until the expiration of the Term of the underlying Declaration, whichever time period expires first ("**Restriction Period**").

[signature and acknowledgement appear on the following page]

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Declarant: AVIARA CORPORATE PARK LLC

Witnesses:

Florida Profit Corporation

(Signature)

By

Maher Hanna, Authorized Signatory

Print Name: _____

Print Address: 933 S Congress Avenue
Delray Beach, FL 33445

Print Address: _____

(Signature)

Print Name: _____

Print Address: _____

ACKNOWLEDGMENT

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization this ____ day of _____, 20_____, by
_____, as the Manager of Pompano Pointe,
LLC, a Florida limited liability company, on behalf of the Company. He is ☐ personally known
to me, or ☐ produced identification. Type of identification produced _____.

(Seal)

(Signature)

Printed Name: _____

Notary Title/Rank: _____

Notary Serial Number, if any: _____

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