

Return to: (enclose self-addressed stamped envelope)

**Name:** Elizabeth Adler, Esq.

**Address:**

Greenspoon Marder LLP  
200 E. Broward Boulevard, Suite 1800  
Fort Lauderdale, FL 33301

**This Instrument Prepared by:**

Elizabeth Adler, Esq.  
Greenspoon Marder LLP  
200 E. Broward Boulevard, Suite 1800  
Fort Lauderdale, FL 33301

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## **DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DECLARATION OF RESTRICTIVE COVENANTS** ("Declaration") made this \_\_\_\_\_ of \_\_\_\_\_, 2022, by SVAP POMPANO CITI CENTRE, L.P., a Delaware limited partnership, and MACY'S RETAIL HOLDINGS, LLC, an Ohio limited liability company (collectively, "Declarant"), which shall be for the benefit of **BROWARD COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County") and **THE CITY OF POMPANO BEACH, FLORIDA**, 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 of Pompano Beach, Florida ("City"), more particularly described in **Exhibit "A"** ("Property"); and

WHEREAS, applications have been made to the City and the County Planning Council requesting that the land use plan designation on the Property be changed from Commercial on the City Land Use Plan and Commerce on the County Land Use Plan to Irregular (29.5) Residential on both the City Land Use Plan and County Land Use Plan in conjunction with redevelopment of the Property ("Project"); and

WHEREAS, the Property is being developed as a rental apartment complex, subject to the affordable housing restrictions set forth in this Declaration. Declarant reserves the right to convert the Property, or a portion thereof, to a condominium or other fee simple ownership structure in the future, subject to the affordable housing restrictions as set forth in this Declaration (a "Conversion"); and

WHEREAS, in connection with the Project, Declarant has voluntarily agreed to place certain restrictions on the development of the Property as set forth below in favor of the County and the City; and

WHEREAS, Declarant agrees to make certain provisions for affordable housing for the period of time provided herein.

NOW, THEREFORE, in consideration of the foregoing premises and the promises and covenants herein contained, Declarant hereby declares that the Property shall be subject to the covenants, restrictions, and regulations hereinafter set forth, 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 or any part thereof, 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 hereby declares the following:

Fifteen (15) percent of the residential units to be constructed on the Property (as set forth on the final site plan approved by the City) shall be affordable moderate income units as defined in the County Comprehensive Plan, and as further restricted by this Declaration ("Affordable Housing Units"). If fifteen (15) percent of the actual residential units to be constructed on the Property does not yield a whole number of Affordable Housing Units, the partial of Affordable Housing Units yielded shall be rounded up to the next whole number.

3. Affordable Housing Units Offered For Sale. In the event of a Conversion, Declarant hereby declares all Affordable Housing Units offered for sale shall be purchased in accordance with the following:

- (a) All Affordable 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 Affordable Housing Unit may be used for any non-residential purpose, other than home-based businesses when permitted by applicable law; and
- (b) All Affordable Housing Units shall be purchased solely by persons who meet the following criteria at the time of purchase of an Affordable 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, the total annual adjusted gross household income of which does not exceed 120 percent of the median annual adjusted gross income for Broward County, adjusted for family size, shall occupy said Affordable Housing Unit. Said limits to be published annually by Broward County or other appropriate governmental entity designated by Broward County. For the purposes of this provision, the term "adjusted gross income" shall mean all wages, assets, regular cash or noncash contributions or gifts from persons outside the 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. For the purposes of this provision, the term

"adjusted for family size" means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, based upon a formula as established by the United States Department of Housing and Urban Development; and

2) The purchaser of the Affordable 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 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 Affordable Housing Unit shall include a restriction stating as follows:

This property is to be sold and occupied as an "Affordable Housing Unit," in accordance with the Declaration of Restrictive Covenants recorded in the Official Records of Broward County at Instrument No. \_\_\_\_\_.

5) Prior to any transfer of title or closing on a purchase of an Affordable Housing Unit, each purchaser shall request written certification that the criteria in (b) 1), 2), and 3) above have been satisfied from the City or from an agent designated by the City for the purpose of providing such certifications. Purchaser shall not be required to comply with this provision if the City does not approve or deny the request within thirty (30) days of purchaser's request.

4. Affordable Housing Units Offered For Rent. Declarant hereby declares all Affordable Housing Units offered for rent shall be rented in accordance with the following:

(a) All Affordable 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 Affordable Housing Unit may be used for any non-residential purpose, other than home-based businesses when permitted by applicable law; and

(b) All Affordable 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, the total annual adjusted gross household income of which does not exceed 120 percent of the median annual adjusted gross income for Broward County, adjusted for family size, shall occupy said Affordable Housing Unit. Said limits to be published annually by Broward County or other

appropriate governmental entity designated by Broward County. For the purposes of this provision, the term "adjusted gross income" shall mean all wages, assets, regular cash or noncash contributions or gifts from persons outside the 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. For the purposes of this provision, the term "adjusted for family size" means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, based upon a formula as established by the United States Department of Housing and Urban Development; and

2) The renter of an Affordable Housing Unit shall have monthly rental payments (including taxes and insurance) that do not exceed 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 owner of an Affordable Housing Unit offered for rent shall request written certification that the criteria in 4(b) has been satisfied from the City or from an agent designated by the City for the purpose of providing such certifications. Said owner of an Affordable Housing Unit offered for rent shall not be required to comply with this provision if the City does not approve or deny the request within thirty (30) days of said owner's request.

5. Amendments. Except as otherwise provided herein, 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 County Commission and City. The appropriate governmental authority of the County and 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. No amendment to this Declaration shall be necessary in the event of a Conversion (as may occur from time to time).

6. Recordation and Effective Date.

- (a) This Declaration shall not become effective ("Effective Date") until the later of (i) Final Approval and (ii) recordation amongst the Public Records of Broward County, Florida. As used herein, "Final Approval" shall mean final approval and adoption of the City plan amendment application and the County plan amendment application, and the expiration of any appeal periods applicable thereto without an appeal having been taken or, if taken, when finally dismissed with no further appeal permitted.
- (b) Once recorded, this Declaration shall run with the Property for the sole benefit of the City and the County 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 Affordable 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 Affordable Housing Unit and such third party purchaser shall be obligated to comply with all of the provisions of this Declaration with respect to said Affordable Housing Unit.

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 thereunder or the terms and provisions of this Declaration.

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

10. Term, Release and Termination. The restrictions, covenants, rights and privileges granted, made and conveyed herein ("Affordable Housing Restrictions") shall be valid for a period of thirty (30) years from the Effective Date ("Term"); thereafter the Affordable Housing Restrictions shall be of no further force and effect and shall automatically terminate without the consent of the City or the County, or the necessity to record any instrument in the Public Records of Broward County, Florida.

11. Remedies for Violation. In the event the Declarant, its successors or assigns, violate any of the covenants and restrictions contained herein, Declarant hereby acknowledges and agrees that the County and/or City, as applicable, may withhold further permits and approvals with respect to the Property. The City and the County are the beneficiaries of these covenants and restrictions, and as such, the City and the County may enforce these covenants and restrictions by action at law or in equity, including without limitation, a decree of specific performance or mandatory or prohibitory injunction, against any person or persons, entity or entities, violating or attempting to violate the terms of these covenants and restrictions.

12. Waiver, Applicable Law, and Venue. Any failure of the City or the County to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter. This document shall be construed in accordance with the laws of Florida and venue shall be Broward County, Florida.

13. Declarant. The term Declarant shall include the Declarant, and its heirs, successors and assigns.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day first above written



SVAP POMPANO CITI CENTRE, L.P.,  
A Delaware limited partnership  
By: SVAP POMPANO CITI CENTRE GP, LLC,  
a Delaware limited liability company, its General  
Partner  
By: SVAP POMPANO CITI CENTRE HOLDINGS,  
L.P., a Delaware limited partnership, its Managing  
Member  
By: SVAP POMPANO CITI CENTRE HOLDINGS  
GP, LLC, a Delaware limited liability company, its  
General Partner  
By: SVAP GP, LLC, a Delaware limited liability  
company, its Manager

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, by \_\_\_\_\_, \_\_\_\_\_ of SVAP GP, LLC, a Delaware limited liability company, Manager of SVAP POMPANO CITI CENTRE HOLDINGS GP, LLC, a Delaware limited liability company, General Partner of SVAP POMPANO CITI CENTRE HOLDINGS, L.P., a Delaware limited partnership, Managing Member of SVAP POMPANO CITI CENTRE GP, LLC, a Delaware limited liability company, General Partner of SVAP POMPANO CITI CENTRE, L.P., a Delaware limited partnership, who is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2022.

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

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

# DRC

PZ21-12000042  
10/19/2022

# DRC

PZ21-12000042  
6/15/2022

MACY'S RETAIL HOLDINGS, LLC,  
an Ohio limited liability company

Shauna Becher  
Printed Name: Shauna Becher  
Sharon Lauer  
Printed Name: SHARON LAUER

By:   
Charles DiGiovanna  
Vice President

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF Hamilton )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, by Charles DiGiovanna, as Vice President of MACY'S RETAIL HOLDINGS, LLC, an Ohio limited liability company, who is personally known to me ~~or who has produced~~ \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 8 day of March, 2022.



ELIZABETH A. RENERG  
Notary Public, State of Ohio  
My Commission Expires  
February 11, 2026  
COMMISSION: 2016-RE-569044

Elizabeth A. Renger  
Notary Public  
\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:

**Mortgagee Consent:**

Mortgagee, being the holder of a mortgage to the parcels(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Declaration.

## WITNESSES:

\_\_\_\_\_  
Signature\_\_\_\_\_  
Print Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Print Name\_\_\_\_\_  
By:\_\_\_\_\_  
Name:\_\_\_\_\_  
Title:\_\_\_\_\_  
Date:

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

My Commission Expires:



**EXHIBIT A  
LEGAL DESCRIPTION  
PROPERTY**

**LEGAL DESCRIPTION: (DEVELOPMENT PARCEL)**

A PORTION OF PARCEL "A", "POMPANNO CITI CENTRE PLAT", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 174, PAGES 45 THRU 52, INCLUSIVE, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE NORTH 07°35'43" EAST ON THE WESTERLY LINE OF SAID PARCEL "A" 768.57 FEET; THENCE SOUTH 83°08'37" EAST 470.80 FEET; THENCE SOUTH 38°08'37" EAST 96.01 FEET; THENCE SOUTH 06°51'23" WEST 354.55 FEET; THENCE SOUTH 38°08'37" EAST 44.46 FEET; THENCE SOUTH 83°08'37" EAST 327.24 FEET; THENCE SOUTH 38°08'37" EAST 40.55 FEET; THENCE SOUTH 06°51'23" WEST 418.45 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL "A"; THENCE NORTH 48°54'35" WEST ON SAID SOUTH LINE 340.83 FEET; THENCE NORTH 88°19'09" WEST ON SAID SOUTH LINE 656.86 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF POMPANNO BEACH, BROWARD COUNTY, FLORIDA, AND CONTAIN 528,390 SQUARE FEET (12.1302 ACRES) MORE OR LESS.