



Doc ID: 020457200005 Type: CRP
Recorded: 10/19/2007 at 03:16:36 PM
Fee Amt: \$26.00 Page 1 of 5
Workflow# 2405492
Buncombe County, NC
Otto W. DeBruhl Register of Deeds
BK 4478 pg 1260-1264

Prepared by and Mail after Recording to: City Attorney's Office; P. O. Box 7148; Asheville, North Carolina 28802.

STATE OF NORTH CAROLINA

**DECLARATION OF RESTRICTIONS
AND COVENANTS**

COUNTY OF BUNCOMBE

THIS DECLARATION OF RESTRICTIONS AND COVENANTS (the "Declaration") made and entered into to be effective the 3rd day of October, 2007, by and between Skyloft Asheville, LLC, a North Carolina Limited Liability Company ("Developer"), and the City of Asheville, a North Carolina Municipal Corporation, (herein "City").

WITNESSETH:

WHEREAS, Developer is the owner of a certain parcel of real estate located in the City of Asheville, Buncombe County, North Carolina as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, ("Property"); and

WHEREAS, Developer desires anticipates developing a sixty-nine (69) unit condominium project on the Property; and

WHEREAS, Developer has agreed to designate seven (7) of the total sixty-nine (69) available units in the Condominium as affordable/workforce units, and the City has considered this commitment by the Developer in approving the Developer's Condominium Project at the anticipated location and for the specified number of units.

NOW, THEREFORE, Developer and the City hereby agree to the following terms and conditions in relation to the seven affordable units within the Condominium:

1. APPLICABILITY AND AFFORDABLE/WORKFORCE UNITS: This Declaration shall apply to the following units within Phase I of the Condominium, once constructed by the Developer:

- (i) Building A: Units 101, 201 and 202

(the "Affordable Units"). It is hereby acknowledged by the parties that the remaining four (4) affordable/workforce units will be located within the additional phases of development of the Condominium, and as such, an amendment to this Declaration will be executed and recorded to add the additional units to these restrictions and covenants once each phase has been completed.

2. RESTRICTIONS: The Affordable Units shall be subject to the following restrictions as to the conveyance of the Affordable Units:

a. *Affordable Sales Price:* Each of the Affordable Units shall be sold at a price at or below the limits established for the City of Asheville's Housing Trust Fund Program (herein "affordable sales price"). To satisfy this requirement, the Developer must provide documentation of price compliance in the form of the signed HUD-1 Settlement Statement or equivalent document.

b. *Income Eligible:* Each of the Affordable Units shall be sold to a buyer with income not exceeding the median for the Asheville metropolitan area, adjusted for family size, as determined annually by the U.S. Department of Housing and Urban Development.

c. *Equity Interest:* The City's equity interest in the Affordable Unit is defined as the amount of equity created by the difference between the fair market value at the time of the sale of the Unit and the actual sales price. Each of the Affordable Units shall be sold subject to the City's equity interest in that Affordable Unit. The City's equity interest shall be secured by a promissory note and deed of trust with the City as the Beneficiary and the City Attorney as the Trustee. Said deed of trust will accrue deferred interest at a rate equal to the rate of appreciation of the Unit, as defined therein. This equity sharing arrangement is to ensure either that the Affordable Units remain affordable or that the City may recapture its equity investment in order to make another unit or dwelling affordable elsewhere.

3. ORIGIN: The City's equity interest derives from the City's policy commitment to encourage and promote affordable/workforce housing by providing a subsidy, monetary or otherwise, and/or a zoning consideration to Developers to construct affordable/workforce housing, and but for such a subsidy or consideration, such affordable/workforce housing would not otherwise be made available at the location and price offered.

4. COVENANTS RUN WITH AFFORDABLE UNITS: The City's equity interest in the designated Affordable Units shall run with the Affordable Units and shall not be diminished, relinquished or terminated by either the unilateral/ joint action of the Developer or the subsequent purchaser of such Units.

5. EQUITY RECAPTURE BY THE CITY: The provisions of this Declaration shall merge with the promissory note and deed of trust that secures the City's equity in the Affordable Units. The City's equity interest herein, shall, in accordance with the deed of trust, be subject to recapture by the City wherever the homebuyer: (a) ceases to occupy the Affordable Unit as his/her primary residence; (b) transfers title to the Affordable Unit; (c) refinances the Affordable Unit; (d) declares bankruptcy; or (e) institutes or causes foreclosure proceedings to be instituted.

6. **PROHIBITION:** Neither the Developer, nor any potential purchaser or transferee of any of the Affordable Units identified herein, shall conduct any closing, be a party to any closing or suffer any closing to occur whereby the Affordable Units identified herein are conveyed without the prior written and dated approval of the City. This provision is to ensure compliance with the terms and conditions of the restrictions noted in paragraph 2 above.

7. **RELEASES:** The City may upon the request of the Developer give written partial releases of any of the Affordable Units identified herein to further promote and advance the provision of affordable/workforce housing.

8. **ENFORCEMENT:** All covenants, restrictions and affirmative obligations set forth herein shall run with the Affordable Units and shall be binding on all parties and persons claiming under them. Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person(s) or entity(ies) violating or attempting to violate or circumvent any covenant or restriction herein contained, either to restrain or enjoin violations or to recover damages or any appropriate proceeding at law or equity against the Affordable Unit(s) to enforce any lien created by this Declaration. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of the City to exercise any or all of the other rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bear of affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover actual attorney fees, not to exceed statutorily defined "reasonable attorney fees," as a part of such action.

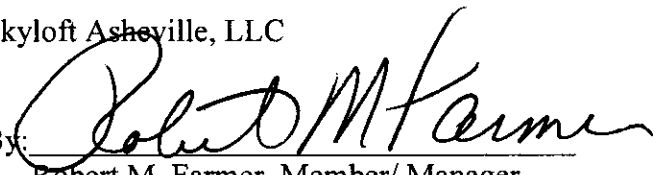
9. **SEVERABILITY:** Should any covenant, restriction, paragraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason, by the application of any court or other tribunal having jurisdiction over the parties and the subject matter hereof, such judgment shall in no way affect any other provision hereof which are hereby declared to be severable and which shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by properly authorized representatives on the date first above written and the City has accepted same.

DEVELOPER:

Skyloft Asheville, LLC

By:



Robert M. Farmer, Member/ Manager

Attest:

Accepted By:
CITY OF ASHEVILLE

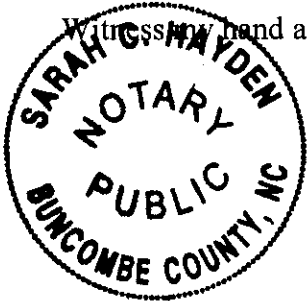
Magdalen Burlison
~~Keisha Lipe, City Clerk~~
(official seal) Magdalen Burlison,
Acting City Clerk

By: [Signature]
~~Gary L. Jackson, City Manager~~

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid certify that Robert M. Farmer, who is a Member/ Manager of Skyloft Asheville, LLC, a North Carolina limited liability company, personally came before me this day and acknowledged that he, as a Member/ Manager, by authority duly given and as the act of the company, the foregoing instrument was signed in its name.

Witness my hand and notarial seal this 3rd day of October, 2007.

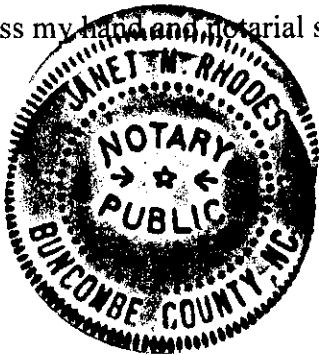


Notary Public: Sarah C. Hayden
Type or print name: Sarah C. Hayden
My Commission Expires: 11-28-2009

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid certify that Magdalen Burlison ~~Keisha Lipe~~, personally came before me this day and acknowledged that she is the ^{Acting} ~~City Clerk~~ of the City of Asheville, 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 its City Manager and attested by herself as its ^{Acting} City Clerk.

Witness my hand and notarial seal this 18th day of October, 2007.



Notary Public: Janet M. Rhodes
Type or print name: Janet M. Rhodes
My Commission Expires: 10-3-2008

R&S 561798-1

EXHIBIT A

LAND

Being all of that 0.66 acre parcel shown as "Phase 1" on a plat entitled "Property Survey for Skyloft Asheville, Phase 1, Skyloft Asheville Condominium" recorded in Plat Book 133 at Page 71, Buncombe County Registry, reference to which is hereby made for a more particular description of said parcel.

R&S 565786-1