

**AFFORDABLE HOUSING RESTRICTIVE COVENANT  
(10 S, 158 S, and 184 S Waukegan Road – Residences of Deerbrook)**

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT (“*Restrictive Covenant*”) is made as of the 17<sup>th</sup> day of June, 2019, by GATEWAY FAIRVIEW, INC., a Delaware corporation (“*Owner*”) concerning the property described in Exhibit A, located in the Village of Deerfield commonly known as 10 S, 158 S, and 184 S Waukegan Road (“*Property*”).

NOW, THEREFORE, OWNER DECLARES that the Property and all portions thereof are and shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants set forth in this Restrictive Covenant, which covenants are for the purpose of protecting the value and desirability of the Property and other properties in the Village of Deerfield (“*Village*”).

**SECTION 1. Background.**

A. Owner desires to demolish the current improvements on the Property and construct on the Property (i) one residential apartment building consisting of five stories (“*Apartment Building*”) and 186 rental units (collectively, the “*Apartment Units*”) with an attached four-story parking garage; (ii) 60 townhome units in nine buildings of four to 10 units; (iii) a surface off-street parking lot; and (iv) two acres of greenspace, including a dog park, pool with sun deck, and multiple courtyards and garden spaces and related improvements.

B. On June 17, 2019, the Village Board of Trustees approved Ordinance No. O-19-17 (“*Ordinance*”), which approved (i) an amendment to the existing 47.45-acre Deerbrook Shopping Center Commercial Planned Unit Development; (ii) a Final Development Plan for the Property; and (iii) certain zoning exceptions within the approved planned unit development.

C. As required by the Ordinance, Owner entered into a development agreement with the Village (“*Development Agreement*”) in furtherance of the redevelopment of the Property and the construction of the Apartment Building.

D. Owner voluntarily offered to the Village that it would maintain the affordability of 12 one-bedroom Apartment Units in the Apartment Building, with an average size of approximately 710 square feet (“*Affordable One-Bedroom Units*”) and 6 two-bedroom Apartment Units in the Apartment Building, with an average size of approximately 1,000 square feet (“*Affordable Two-Bedroom Units*”) (collectively, the Affordable One-Bedroom Units and the Affordable Two-Bedroom Units are the “*Affordable Residential Units*”).

E. Owner agreed to execute and record this Restrictive Covenant to codify its agreement regarding the Affordable Residential Units.

F. Owner volunteered to restrict the otherwise applicable use regulations for the Property in the manner and to the extent expressly set forth in this Restrictive Covenant, and specifically to maintain and ensure the affordability of the Affordable Residential Units for the term of this Restrictive Covenant.

**SECTION 2. Restrictions.** Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of "The Deerfield Zoning Ordinance 1978," as the same has been, and may be, from time to time, amended, the use and development of the Property shall be subject to the following restrictions:

- A. **Income Limits.** The Affordable Residential Units shall be available first, as such availability is defined in Section 2.C of this Restrictive Covenant, to households ("**Households**") whose annual incomes do not exceed 120 percent of the Chicago-Joliet-Naperville, IL HUD Metro FMR Area Median Income, as established and defined in the annual schedule published by the U.S. Department of Housing and Urban Development, and adjusted for household size ("**Income Requirements**"). The incomes of potential Households of the Affordable Residential Units will be verified as meeting the Income Requirements at the initial application phase. The incomes of Households of the Affordable Residential Units will be verified as meeting the Income Requirements every third year after the initial application.
- B. **Rental Rates.** The initial monthly rental rates for the Affordable Residential Units ("**Initial Rental Rates**") shall be: (i) \$1,500 for Affordable One-Bedroom Units; and (ii) \$2,000 for Affordable Two-Bedroom Units (or such lower amounts as Owner, in the exercise of its discretion, may elect to charge). Owner may increase the Initial Rental Rates annually, but increases may not exceed annual increases in the U.S. Bureau of Labor Statistics Consumer Price Index Chicago-Naperville-Elgin, IL-IN-WI, All Urban Consumers (CPI-U): All Terms, 1982-1984=100. The Initial Rental Rates, as so increased, are hereinafter referred to as an "**Affordable Residential Unit Rental Rate**".
- C. **Availability.** If any single Affordable Residential Unit remains vacant and unrented for more than 60 days, Owner may rent such Affordable Residential Unit at full market rent to any qualified tenant ("**Market Rate Residential Unit**"); provided, however, a similar Apartment Unit must be made available to rent at the Affordable Residential Unit Rental Rate not later than the later to occur of: (i) the date an Apartment Unit becomes available for rent; and (ii) if an Apartment Unit is then available for rent in the Apartment Building, the date which is 30 days after the date such qualified tenant desires to, and enters into, a lease for such available Apartment Unit.
- D. **Management.** Owner shall hire a professional management company ("**Management Company**") to manage the Apartment Building, the duties of which must include the maintenance and operation of the Affordable Residential Units in accordance with the Development Agreement and this Restrictive Covenant.
- E. **Records.** Owner shall require the Management Company to create and maintain records of income qualification for every Household renting an Affordable Residential Unit.

D. **Annual Certification with the Village.** The Village may, upon 30 days' notice to Owner, require Owner, on a form provided by the Village, to certify on an annual basis that the Affordable Residential Units comply with the terms of this Restrictive Covenant.

**SECTION 3. Other Qualifications for Rental.** This Restrictive Covenant shall not require Owner or the Management Company to rent an Affordable Residential Unit to an individual or Household who applies to rent such unit and satisfies the Income Requirements but does not meet or satisfy Owner's other criteria for apartment rental, as set forth in Owner's Tenant Selection Plan. By way of example, Owner may deny such individual or Household the right to rent such Affordable Housing Unit if they: (i) fail to submit or insufficiently complete an application for rental; (ii) submit false information in connection with the application for rental; (iii) have a poor or unsatisfactory credit history; (iv) are unable to establish that they have the financial ability to pay the required monthly rent; (v) have an inappropriate household size; or (vi) are unable to establish that they and all members of their Household do not have criminal records, are not current drug users and are not registered sex offenders.

**SECTION 4. Recordation.** This Restrictive Covenant shall be recorded in the Office of the Cook County Recorder of Deeds. Owner, by the signature of its duly-authorized representative below, hereby consents to and permits such recordation. The Village agrees to execute a release of this Restrictive Covenant in recordable form, at Owner's request and expense, upon the expiration of the term of this Restrictive Covenant or at any earlier time if for any reason this Restrictive Covenant becomes null and void and of no further force or effect.

**SECTION 5. Enforcement.** Owner recognizes and agrees that the Village has a valid interest in ensuring that the restrictions, covenants, and agreements in this Restrictive Covenant are properly performed and, therefore, grants the Village, and only the Village, the right to enforce these restrictions, covenants, and agreements by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, covenant, or agreement contained in this Restrictive Covenant, either to restrain violation, to compel affirmative action, or to recover damages, and against the land to enforce any lien created by the restrictions, covenants, or agreements. This Restrictive Covenant shall not create a private right of action in any individual, Household, organization, corporation or other legal entity, or other governmental body or agency to enforce the provisions of this Restrictive Covenant or seek legal or equitable remedies against either Owner or the Management Company based on an alleged violation of this Restrictive Covenant by Owner or the Management Company or Owner's or the Management Company's refusal to rent an Affordable Residential Unit to any individual or Household notwithstanding the fact that such individual or Household qualifies to rent such unit under the Income Requirements.

**SECTION 6. Exercise of Village Rights; Waiver.** The Village is not required to exercise the rights granted in this Restrictive Covenant, except as it shall determine to be in its best interest. Failure by the Village to exercise any right herein granted shall not be construed as a waiver of that right or any other right. Nothing in this Restrictive Covenant shall be deemed or construed to constitute a dedication of any property to the Village.

**SECTION 7. Notices.** All notices required or permitted to be served by this Restrictive Covenant shall be served in writing and shall be deemed to be served when delivered

personally or three business days following deposit, by certified or registered mail, return receipt requested, in the United States mail, postage prepaid. Notices to Owner shall be sent in care of RREEF Management, LLC, 222 S. Riverside Plaza, 26<sup>th</sup> Floor, Chicago, Illinois 60606 (Attention Tait A. Pinnow) or to such other address or person as Owner may from time to time provide the Village by notice, and to the Village to Village of Deerfield, 850 Waukegan Road, Deerfield, Illinois 60015 (Attention: Village Manager), or to such other address or person as the Village may from time to time provide Owner by notice.

**SECTION 8. Nullification and Amendment.** Except as may be otherwise provided by law, this Restrictive Covenant may be annulled only upon the express, prior written approval of the Village, by resolution duly adopted by the Village Board of Trustees. Notwithstanding the foregoing, this Restrictive Covenant shall automatically and without further act of the Village be and become null and void if for any reason the Development Agreement becomes null and void or if Owner gives notice to the Village that it has elected not to proceed with the construction of the Apartment Building. This Restrictive Covenant may be amended only upon the express, prior written approval of the Village, by resolution duly adopted by the Village Board of Trustees, and by execution of such amendment by Owner.

**SECTION 9. Covenants Running with the Land.** Subject to the provisions hereinabove stated, the restrictions imposed by this Restrictive Covenant shall be restrictions running with the land and shall be binding upon and inure to the benefit of Owner, and their respective successors, assigns, agents, licensees, lessees, invitees, and representatives, including, without limitation, all subsequent owners of that portion of the Property upon which the Apartment Building has been constructed and all persons claiming under them to the extent provided in this Restrictive Covenant. All leases for Affordable Residential Units, and all contracts and deeds of conveyance relating to the portion of the Property upon which the Apartment Building has been constructed, shall be subject to the provisions of this Restrictive Covenant to the extent provided in this Restrictive Covenant.

**SECTION 10. Term.** The covenants imposed by this Restrictive Covenant shall be enforceable for a term of 25 years from the date that this Restrictive Covenant is recorded, after which time this Restrictive Covenant shall no longer be effective.

IN WITNESS WHEREOF, Owner has caused this Restrictive Covenant to be executed by a duly-authorized representative on the date first above written.

GATEWAY FAIRVIEW, INC., a  
Delaware corporation  
By: *Annet Aggarwal*  
Its: *Annet Aggarwal*  
*Vice President*

ACKNOWLEDGEMENTS

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

*See attached*

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of GATEWAY FAIRVIEW, INC., a Delaware corporation, which individual is known to me to be the individual who signed the foregoing instrument on behalf of the corporation for and on behalf of said corporation, and that (s)he executed the same as his/her free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Signature of Notary

My Commission expires: \_\_\_\_\_

SEAL

**CALIFORNIA ACKNOWLEDGMENT**

CIVIL CODE § 1189

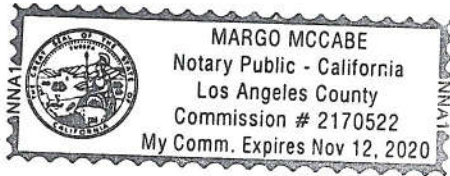
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Los Angeles

On 23 JULY 2019 before me, Margo McCabe, a Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Amit Aggarwal  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature Margo McCabe  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: 23 JULY 2019 Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: n/a

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Amit Aggarwal

- Corporate Officer – Title(s): Vice President
- Partner –  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: Gateway Fairview, Inc.

Signer's Name: \_\_\_\_\_

- Corporate Officer – Title(s): \_\_\_\_\_
- Partner –  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

EXHIBIT A TO AFFORDABLE HOUSING RESTRICTIVE COVENANT

PROPERTY LEGAL DESCRIPTION

THAT PART OF THE NORTHEAST ¼ OF SECTION 4, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID DOWNEY'S COUNTRY HOME ADDITION TO DEERFIELD SUBDIVISION; THENCE SOUTH 10 DEGREES 24 MINUTES 34 SECONDS EAST, A DEISTANCE OF 42.00 FEET; THENCE SOUTH 03 DEGREES 36 MINUTES 04 SECONDS WEST, A DISTANCE OF 133.34 TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY A DISTANCE OF 90.33 FEET ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET AND WHOSE CHORD BEARS SOUTH 10 DEGREES 46 MINUTES 33 SECONDS EAST, A DISTANCE OF 89.39 FEET TO A POINT; THENCE SOUTH 25 DEGREES 09 MINUTES 10 SECONDS WEST, A DISTANCE OF 654.69 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY A DISTANCE OF 120.84 FEET ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET AND WHOSE CHORD BEARS SOUTH 39 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 119.67 FEET TO A POINT; THENCE SOUTH 52 DEGREES 50 MINUTES 50 SECONDS WEST, A DISTANCE OF 50.35 FEET, T O THE INTERSECTION OF THE NORTH LINE OF LOTS 1 AND 2 OF RED ROOD INN SUBDIVISION RECORDED JUNE 27, 1997 AS DOCUMENT 97468188 AND THE NORTHEASTERLY RIGHT OF WAY LINE OF THE NORTHERN ILLINOIS TOLL HIGHWAY; THENCE NORTH 59 DEGREES 00 MINUTES 06 SECONDS WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1260.04 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD; THENCE NORTH 25 DEGREES 05 MINUTES 30 SECONDS WEST, A DISTANCE OF 364.88 FEET TO A POINT ON THE SOUTH LINE OF DOWNEY'S COUNTRY HOME ADDITION TO DEERFIELD AND ALSO A LINE THAT IS 1064 FEET SOUTHERLY OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 89 DEGREES 55 MINUTES 14 SECONDS EAST, A DISTANCE OF 825.20 TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS