

MCDOWELL POINT AGE RESTRICTION COVENANT

Pursuant to the provisions of Section 9 of the Ordinance Approving a Conditional Use in OCI (Office, Commercial and Institutional District) Zoning District to Allow for an Age-Restricted, Multi-Family Building, a Conditional Use for a Planned Unit Development and a Preliminary Planned Unit Development Plat with Deviations to Section 6-9-3, 6-7F-5, and 6-7F-8 of the Naperville Municipal Code for McDowell Point approved by City of Naperville Ordinance Number 18-092 and recorded with the DuPage County Recorder as R2018-081773, and subject to the requirements of Section 7-3-5:4, and each subpart thereof, of the Naperville Municipal Code, the McDowell Point Apartment Complex development, legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto and made part hereof (the "**Subject Property**"), shall be developed and at all times operated by TWG Development, LLC, the owner of the Subject Property, and by its successors, assigns, and transferees, and assigns, as an age-restricted, residential apartment community (the "**Community**") as set forth in this McDowell Point Age Restriction Covenant (hereinafter "**Covenant**"). Each apartment in the McDowell Point apartment complex shall be leased by Lessor by a written lease agreement ("**Lease Agreement**") and such apartments shall be referenced herein as "**Dwelling Units**". Lessees of any Dwelling Unit, and any other persons who occupy a Dwelling Unit shall hereinafter be cumulatively referenced herein as "**Resident**" or "**Residents**".

This Covenant is integral to the zoning relief granted for the Subject Property described above.

SECTION 1. HOUSING FOR OLDER PERSONS EXEMPTION

- 1.1 The Community shall be developed by TWG Development, LLC and its successors, transferees, and assigns ("**Owner**" or "**Lessor**") as an age-restricted, apartment complex in accordance with the Fair Housing Amendments Act of 1988, as amended from time-to-time ("**FHAA**"), including, but not limited to, the provisions of the "Housing for Older Persons Act of 1995" ("**HOPA**"). Each Dwelling Unit shall be leased by the Owner and such lease shall include the requirements set forth herein. However, in the event that a court of competent jurisdiction determines that any portion of the Covenant violates state or federal law, then Owner shall comply with the applicable state or federal law.
- 1.2 The Regulations, as defined in Section 1.3 below, shall include a requirement that at the time a Lease Agreement is entered into for a Dwelling Unit, the Lessee shall complete the **Age Verification Addendum** an example of which is attached hereto as Exhibit C which shall set forth the age of each Resident in the Dwelling Unit to ensure that the McDowell Point Apartment Complex continues to qualify for the "Housing for Older Persons" Exemption under FHAA. The Lease Agreement shall include a provision that an updated Age Verification Addendum shall be completed within seven (7) calendar days

of a request therefor by the Lessor. Upon written request of the City of Naperville Zoning Administrator, the Owner shall obtain and provide copies of Age Verification Addendums for Dwelling Units identified in such request.

1.3 The Community will be governed by written apartment regulations (“**Regulations**”) developed by the Owner and made part of the Lease Agreement. The Owner shall administer and enforce said Regulations. The Regulations shall contain rules and regulations for the occupancy of Dwelling Units in the Community, including but not limited to a requirement that at all times the Community shall be in compliance with FHAA and HOPA, and specifically at least eighty percent (80%) of the Dwelling Units within the Community shall be occupied by at least one (1) Lessee who is 55 years of age or older (“**Age-Qualified Occupant**”). The Regulations shall further prohibit the occupancy of anyone under the age of twenty-two (22) in any Dwelling Unit. The Regulations shall be provided to the City within five (5) calendar days of a written request therefor by the City of Naperville’s Zoning Administrator. Notwithstanding any other provision herein, and in accordance with HOPA, as amended from time to time, up to twenty percent (20%) of the Dwelling Units may be leased to individuals under the age of fifty-five (55), but older than twenty-two (22).

1.3.1 Nothing contained herein shall be construed as prohibiting a person under the age of twenty-two (22) years from being a guest of a Resident in the Community between May 15 and August 15 of each year; however, during the remainder of the year persons under the age of twenty-two (22) may visit a Resident’s Dwelling Unit for a maximum thirty (30) days of which no more than fourteen (14) may be consecutive.

1.3.2 Additionally, nothing contained herein shall be construed to prohibit any person with disabilities as defined under applicable state or federal law to be a Resident of the Community should this age restriction Covenant conflict with any applicable state or federal laws. Additionally, in the event that a court of competent jurisdiction determines that any portion of the Covenant violates state or federal law relative to housing for disabled individuals, then Owner shall comply with the applicable state or federal law.

1.4 If an Age-Qualified Occupant no longer resides in a Dwelling Unit in the Community, then other occupants of that particular Dwelling Unit who are twenty-two (22) years of age or older, may continue to occupy that Dwelling Unit provided that the requirements of HOPA are satisfied, including, but not limited to, the requirement that at least eighty percent (80%) of all of the occupied Dwelling Units in the Community have at least one occupant who is fifty-five (55) years of age or older.

- 1.5 To the extent that the Regulations permit a Dwelling Unit to be subleased, the Regulations shall require that a written sublease (“Sublease”) be entered into which Sublease shall include a copy of this Covenant. The Regulations shall further require that the Lessor be provided with a copy of said Sublease within seven (7) calendar days of such Sublease occurring.
- 1.6 The Owner shall adopt, implement, monitor and enforce rules, regulations and procedures to ensure that at all times the Community qualifies for the “Housing for Older Persons” exemption under the FHAA, as may be amended from time to time, including, without limitation, rules, regulations and procedures to verify such compliance. The Owner shall maintain appropriate records evidencing such compliance on an ongoing basis and shall maintain said records (on a rolling basis) for a minimum period of ten (10) years. Within seven (7) calendar days of a request by the City’s Zoning Administrator and/or a representative of the School District, the Owner shall provide them with copies of said records and shall verify the number of Dwelling Units within the Community.
- 1.7 The Owner shall ensure that each person leasing a Dwelling Unit in the Community receives a copy of the Regulations and this Covenant.

**SECTION 2. PROHIBITION ON SCHOOL ENROLLMENT; PENALTIES;
ASSOCIATION’S OBLIGATIONS; PENALTIES**

- 2.1 No Resident of any Dwelling Unit shall enroll, attempt to enroll, or assist in any way in enrolling any person in any school in Indian Prairie School District No. 204 (“School District”) at any time. Every Lessee and occupant of any Dwelling Unit in the Community shall comply with this requirement. Notwithstanding the foregoing, the provisions of this Covenant shall not prohibit any Resident from enrolling in non-credit, enrichment, adult education classes offered by the School District.
- 2.2 If any Resident of any Dwelling Unit in the Community enrolls, attempts to enroll, or assists in any way in enrolling any person under the age of twenty-two (22) in any school within the School District (“Student Generator”), then said Student Generator shall immediately cause such person to be withdrawn from enrollment in the School District (hereinafter “Withdrawn” or “Withdrawal”) and shall be liable (i) to the School District for the cost of educating any child or children so enrolled by the Student Generator from the Community prior to such Withdrawal in an amount determined in accordance with Section 10-20.12a of the Illinois School Code (105 ILCS 5/10-20.12a) as amended from time to time; (ii) to pay the School District a fine in the amount of three times the cost of educating any child or children enrolled as provided in (i) above or \$50,000, whichever is greater; and (iii) for all reasonable costs of any enforcement action taken by the School District, or City, including but not limited to pre-litigation expenses, litigation expenses,

title reports and attorneys' fees and costs (whether in-house or outside counsel) incurred as a result of such enforcement. Said payment shall be made within thirty (30) days of an invoice therefor from the School District, or such longer period of time as the School District may agree to in writing. The City shall give Owner notice of any costs and fines not paid in full by the Student Generator within thirty (30) days of an invoice therefor from the School District, or such long period of time as the School District may agree to in writing. If the Student Generator has failed to make timely payment as required herein, then upon ten (10) days' notice to Owner and an opportunity to pay the costs and fees on behalf of the Student Generator the Owner hereby consents to the School District filing a lien against the Property. Said lien shall provide for interest to accrue at the rate of seven percent (7%) percent per annum. At any time Owner may elect to pay the outstanding fines and costs on behalf of the Student Generator at which time the City and School District will cause the said lien to be released within ten (10) day of payment. Additionally, nothing herein shall prohibit the Owner from pursuing all remedies at law or equity to recoup any such fines and costs Owner has paid on behalf of and as a result of any Student Generator.

- 2.3 It shall be the right, obligation, and duty of the Owner to: (i) design and consistently implement a process to monitor and enforce the provisions of this Section 2 so as to prevent enrollment of persons as students in any school within the School District other than the adult education classes referenced in Section 2.1 above; (ii) investigate possible violations of this Section 2; (iii) promptly require any person who is an occupant of any Dwelling Unit within the Community who is under the age of 22 and is enrolled in in any school within the School District to be Withdrawn therefrom; and (v) to commence an enforcement proceeding against the Student Generator, and diligently pursue such proceeding as set forth in Section 2.4 below.
- 2.4 If the Owner is notified, or otherwise becomes aware (is on "Notice") that there is a violation of this Covenant because a person under the age of 22, who is not exempt from the application of this Covenant under state or federal law, has been enrolled in the School District, which violation is not cured within thirty (30) days of the Owner's being on Notice ("Cure Period"), the Owner shall pay the School District a penalty ("Penalty") of \$500 for each day the violation continues after the Cure Period. Said Penalty shall be paid within thirty (30) days of an invoice therefor from the School District, or such longer period of time as the School District may agree to in writing. If the Penalty payment is not paid within said timeframe, the Owner hereby consents to the School District filing a lien against the Property. Said lien shall provide for interest to accrue at the rate of seven percent (7%) percent per annum.
- 2.5 The School District and the City may also enforce the restrictions set forth in Section 2 of this Covenant by any proceeding at law or in equity against any Lessee or occupant of any Dwelling Unit in the Community determined or

suspected of enrolling or attempting to improperly enroll any person under the age of twenty-two (22) in the schools of the School District. The School District's and the City's rights to enforce this Covenant, however, shall not be construed as a limitation or restriction of the Owner's duty and obligation to enforce this Covenant proactively and diligently as set forth herein.

2.6 The Owner's obligation to enforce the provisions of Section 2 of this Covenant, and the rights of the School District and the City to enforce the provisions of Section 2 of this Covenant, are not cumulative. Upon the commencement of an enforcement proceeding hereunder by any one of them, the other entities shall no longer have the right to commence another proceeding against the Student Generator for the same enrollment, or attempted enrollment, event. Notwithstanding the foregoing, should one of the entities commence enforcement, but in the judgment of one or more of the other abandon or fail to adequately pursue such enforcement action, the other entities may take action for the same enrollment event.

SECTION 3. COVENANTS RUNNING WITH THE LAND

3.1 The impositions, obligations, and restrictions set forth and referenced in this Covenant shall constitute covenants running with the Subject Property and inuring to the benefit of the Community, the City of Naperville, and Community Unit School District No. 203, and their respective successors, transferees, and assigns.

SECTION 4. REQUIREMENTS FOR ANY MODIFICATION OF THIS COVENANT

4.1 The provisions of this Covenant may only be modified by the concurrence of all of the following: i) the Owner of the Subject Property; ii) a two-thirds (2/3) majority vote of the corporate authorities then holding office with the City Council of the City of Naperville, and iii) a two-thirds (2/3) majority vote of the School Board of Community Unit School District No. 203, or their respective successors or assigns. The approval of any modification that results in the generation of students from the McDowell Point Subdivision must be conditioned upon the payment of a full school donation fee for McDowell Point in accordance with the applicable Naperville Municipal Code provisions then in effect, unless the School Board approves a Resolution that accepts less than a full fee.

SECTION 5. PAYMENT OF SCHOOL AND PARK DONATIONS.

5.1 By virtue of establishing the Community as age restricted and accepting the benefits of such designation, the Owner, and all owners, transferees, and assignees of the Subject Property waive any right to challenge the requirement

to pay school and park donation fees in accord with the provisions of the Naperville Municipal Code then in effect if payment is ever required.

SECTION 6. GENERAL PROVISIONS

6.1 GOVERNING LAW AND VENUE. This Covenant will be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of law provisions. Venue for all disputes involving this Covenant shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois. For the purposes of determining whether a person is a resident of the Community or general residency requirements, the term "Resident" and the conditions of residency shall have the same meaning as that term is defined in Section 10-20.12b of the Illinois School Code (105 ILCS 5/10-20.12b) and as established case law in the State of Illinois promulgated thereunder, relating to the enrollment of pupils in the public schools.

6.2 SEVERABILITY. If any provision of this Covenant is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed stricken, and adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

6.3 PAYMENT OF COSTS/FINES. When any provision herein calls for a payment to be made for any reason, including but not limited to attorneys' fees, such payment shall be made within thirty (30) days of receipt of an invoice therefor. In the event that such payment is not made in full on a timely basis, the School District or the City, as applicable, may take any action at law or in equity as it deems fit and in addition to such remedies record and enforce a lien against any dwelling unit where a violation of this Covenant has been determined to have occurred.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, TWG Development, LLC, has caused this Covenant to be executed by its legally authorized members, whose signatures are hereunto subscribed on this 26th day of May, 2020.

TWG Development, LLC
An Indiana limited liability corporation

By: John B. Curry
Name: J.B. Curry
Title: VP

State of Illinois)
County of DePue)

The foregoing instrument was acknowledged before me by John B. Curry,
VP, as VICZ PRESIDENT OF TWG DEVELOPMENT, LLC this
25TH day of MAY, 2020.

Vincent Rosanova
Notary Public

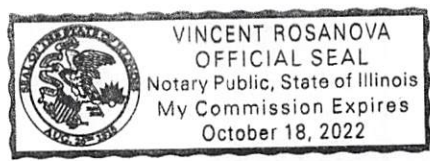


EXHIBIT A

LEGAL DESCRIPTION

Insert Lot & Block Description post recordation of Final Plat of Subdivision.

EXHIBIT B

DEPICTION OF SUBJECT PROPERTY

Insert recorded copy of Final Plat of Subdivision

EXHIBIT C

AGE VERIFICATION ADDENDUM

This addendum (“**Addendum**”) amends and supplements the lease agreement entered into on the ____ day of _____, 20____ (hereinafter “**Agreement**”) between _____ and _____ (hereinafter “**Lessee**”) for the leasing of property located at _____ (hereinafter the “**Property**”). Each capitalized term used but not defined in this Addendum has the meaning given to that term in the Agreement. If there is a conflict between the terms of this Addendum and the Agreement, this Addendum will prevail.

THE MCDOWELL POINT APARTMENT COMPLEX SHALL AT ALL TIMES BE OPERATED AS AN AGE RESTRICTED IN CONFORMANCE WITH FHAA, HOPA AND CITY ORDINANCES. LESSOR IS OBTAINING THIS AGE VERIFICATION IN ACCORDANCE WITH THE HOUSING FOR OLDER PERSONS ACT (HOPA), THE REQUIREMENTS OF THE MCDOWELL POINT AGE RESTRICTION COVENANT, AND APPLICABLE CITY OF NAPERVILLE ORDINANCES AND CODE PROVISIONS.

Acknowledgement of Occupancy Requirements: Lessee declares: (i) Lessee meets the minimum age requirements for McDowell Point and it is Lessee’s motive, purpose, and intent in leasing the property referenced above to use and occupy the property; and (ii) Lessee shall not allow individuals under the age of twenty-two (22) to occupy the premises except as specifically provided for in the McDowell Point Age Restriction Covenant. Lessee acknowledges receipt of a copy of the McDowell Point Age Restriction Covenant, has reviewed the Covenant, and hereby agrees to abide by said Covenant. A copy of this Addendum may be provided to the City of Naperville or other governmental authority to verify compliance with applicable regulations.

Age Certification: Lessee certifies that: (i) the person(s) age fifty-five (55) or older listed below shall occupy the assigned Dwelling Unit; (ii) the ages of the other occupants of the Dwelling Unit are set forth below; and (iii) the documentation listed below which is used to verify the age(s) of the occupants of the Dwelling Unit is valid and correct. Lessee acknowledges that if a Sublease of the Dwelling Unit is allowed, such Sublease shall be in writing and shall include a copy of the Covenant, and shall require that all occupants of the Dwelling Unit must be fifty-five (55) years of age or older. Sublessee shall be required to provide the information below to the Lessor.

Name	Form of Identification	Age

Valid forms of identification include driver's license, birth certificate, passport, immigration card, military identification, or other similar evidence. A copy of the identification document will not be accepted for the purposes of age verification.

The penalties for violations of the Age Restriction Covenant are set forth in the Covenant which is available for your review.

Dated this _____ day of _____, 2_____

LESSEE(S):