

Record and return to:

Woods Oviatt Gilman LLP
677 Broadway, Floor 7
Albany, New York 12207
Attn: John Bohrer-Yardley, Esq.

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "**Agreement**") is entered into this ____ day of _____, 2023 (the "Effective Date") by and between _____, individuals with an address of _____ (collectively, and together their respective successors and/or assigns, the "**Owner**"), and _____ CENTRAL ADIRONDACK PARTNERSHIP FOR THE 21st CENTURY INC. (d/b/a LivingADK), a New York not-for-profit corporation with an address of P.O. Box 642, 108 Codling Street, Old Forge, New York 13420 ("**Agency**") (each individually a "**Party**" and collectively the "**Parties**").

WHEREAS, in exchange for certain consideration (the "**Purchaser Price**") as set forth in that certain Home Restriction Purchase Agreement by and between the Parties, dated as of _____, 2023 (the "**Purchase Agreement**"), Owner desires to place certain restrictions on the ownership, occupancy and use of the Property (as defined herein) for the benefit of the Agency pursuant to the terms and conditions of this Agreement (the "**Transaction**").

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. **Property.** The following real property and improvements situated thereon (the "**Property**") are hereby burdened in perpetuity with the covenants and restrictions specified in this Agreement: _____, as more particularly described in **Exhibit A** attached hereto and made a part hereof.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

- a. **Person** means a natural person, and excludes any type of entity.
- b. **Principal Place of Residence** means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom.
- c. **Qualified Household** means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.
- d. **Qualified Resident** means a Person who has his or her Principal Place of Residence at the Property.

3. Occupancy Restrictions.

a. At least one Qualified Resident shall continuously occupy the Property as his or her Principal Place of Residence.

b. No business activity shall occur on or in such Property, other than as permitted within the zoning district applicable to the Property.

4. Verification. Upon the Agency's written request, Owner shall submit a written statement to the Agency certifying that the following information is true and correct:

a. Evidence to establish that the Property is currently occupied and has continuously been occupied by a Qualified Household;

b. Copies of any leases currently used for the Property; and

c. If applicable, a list of tenants who occupied the Property in the prior calendar year and evidence submitted by each tenant to establish that they were a Qualified Resident.

5. Rental.

a. Owner shall not rent the Property to any person or persons for a term shorter than one (1) year.

b. A Qualified Resident may lease a room or rooms in the Property to one or more persons, provided that the Qualified Resident still continuously occupies the Property as his or her Principal Place of Residence. The term of all leases shall be no less than one (1) year in duration.

6. Notice to and Consent of Lien Holders. Owner hereby represents and warrants to the Agency that Owner has notified every bank, person or other entity holding a mortgage, lien or other encumbrance on the Property (collectively, the "**Superior Mortgages**") of the Transaction, and obtained each of their consent to the recording of this Agreement against the Property. It shall be an Event of Default (as such term is defined below) if Owner fails to obtain any such consent.

7. Owner's Covenants. Owner hereby covenants and agrees with the Agency to:

a. record and maintain this Agreement as an encumbrance on the Property in perpetuity and comply with the Occupancy Restrictions; and

b. own, occupy, use, sell, assign, encumber or otherwise dispose of the Property strictly in accordance with the terms and conditions of this Agreement and the Occupancy Restrictions.

8. Events of Default. Each of the following shall constitute an event of default (each, and "Event of Default") under this Agreement:

(a). Any representation, warranty or statement made or furnished to Agency by Owner or on Owner's behalf in connection with this Agreement is false or misleading in any material

respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter; or

(b) Owner, including Owner's respective successors and/or assigns, fails to comply with or to perform any term, obligation, covenant or condition contained in this Agreement; or

(c) An event of default occurs under the Purchaser Agreement; or

(d) This Agreement is modified, released or terminated without the prior written consent of the Agency; or

(e) This Agreement and/or the Occupancy Restrictions becomes unenforceable, invalid or void, in whole or in part, for any reason at any point in time.

7. Agency's Remedies.

(a) Upon an Event of Default, the Owner shall promptly refund the full Purchase Price to the Agency within 30 days, plus all costs and fees, including reasonable attorneys' fees, incurred by the Agency.

(b) In addition to the above, Owner shall pay as liquidated damages to the Agency an amount equal to one of the following, as applicable:

(i) if a period of less than or equal to five (5) years has elapsed between the Effective Date of this Agreement and the date of such Event of Default, an amount equal to 50% of the Purchase Price; or

(ii) if a period of more than five (5) years has elapsed between the Effective Date of this Agreement and the date of such Event of Default, an amount equal to 100% of the Purchase Price.

8. Indemnification.

The Owner shall, jointly and severally if more than one, defend, indemnify and hold harmless the Agency from any liability, loss, damage, fees, costs and expenses, judgments or amounts paid in settlement incurred by reason of any demands, claims, suits, actions or proceedings arising out of Owner's negligence, misconduct, fraud, breach of fiduciary duty or breach of this Agreement, including without limitation, any breach by Owner of any representation, warranty, covenant or agreement set forth herein this Agreement, including all reasonable legal fees and costs incurred in defending against any claim or liability or the Agency's enforcement of its rights pursuant to Section 7 of this Agreement.

9. Subordination.

This Agreement is subject and subordinate in all respects to the Superior Mortgages of record as of the date hereof and/or to be entered into and recorded contemporaneously herewith.

10. Miscellaneous.

a. Modification. This Agreement may only be amended, modified or terminated by subsequent written agreement of the Parties.

b. Integration. This Agreement and any attached exhibits constitute the entire agreement between Owner and the Agency, superseding any and all prior oral or written communications.

c. Runs with the Land. The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of an ownership interest in the Property. The Owner and any successors in interest shall inform the Agency of any change in ownership of the Property

d. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

e. Governing Law and Venue. This Agreement shall be governed by the laws of the State of New York, and any legal action concerning the provisions hereof shall be brought in Herkimer County, New York.

f. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Owner under this Agreement without the prior written approval of the Agency.

g. Third Parties. There are no intended third-party beneficiaries to this Agreement.

h. No Joint Venture. Notwithstanding any provision hereof, the Agency shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Agency shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

i. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent by email or by pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

j. Recording. This Agreement shall be promptly recorded against the Property in the Herkimer County Clerk's Office at Owner's sole cost and expense.

k. Tax Matters. The funds the Owner receives under the terms of the Purchase Agreement will be reported to the Internal Revenue Service on Form 1099 for the year so received, and Owner agrees to promptly furnish to Agency any tax forms or other information reasonably required by Agency in connection therewith. The Owner should discuss with their tax advisor or legal counsel how to treat the funds on the Owner's tax returns and how the funds affect Owner's tax basis in the Property subject to this Agreement. The Parties acknowledge the Agency has made no current or past representations or warranties with respect to the proper tax treatment of the funds. The Owner hereby acknowledges and agrees that the Agency has made no statements about, and bears no responsibility for, any tax consequences related to the receipt of the funds.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

OWNER:

Name:

and

Name:

AGENCY:

CENTRAL ADIRONDACK PARTNERSHIP FOR
THE 21ST CENTURY INC.

By: _____
Name:
Title:

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

On the ____ day of _____, 2023, before me, the undersigned, a Notary Public in and or said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instruments.

Notary Public

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

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Notary Public

EXHIBIT A
LEGAL DESCRIPTION