

RESOLUTION NO. 2020- 115

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF THE MEMORANDUM OF UNDERSTANDING (ASHFORD MILLS – AFFORDABLE HOUSING) AND RESTRICTIVE COVENANT PURSUANT TO THE ASHFORD MILLS DEVELOPMENT OF REGIONAL IMPACT, RESOLUTION 2006-64, AS AMENDED.

RECITALS

WHEREAS, WFC Ashford Mills Owner VII, L.L.C, a Delaware limited liability company (“WFC”) is the owner of approximately 1,521 acres located in St. Johns County, Florida (the “Ashford Mills Property”) subject to that certain Ashford Mills Development of Regional Impact (“DRI”) Development Order, approved by the St. Johns County Commission as Resolution No. 2006-64 and as most recently amended by Resolution No. 2019-102 (collectively, the “Ashford Mills DRI DO”);

WHEREAS, the Ashford Mills DRI DO granted WFC, as owner of the Ashford Mills Property and developer of the Ashford Mills DRI, certain development rights for the Ashford Mills Property in exchange for the construction of certain improvements related to mitigation of public facility impacts from such development;

WHEREAS, Special Condition 33 of the Ashford Mills DRI DO requires that in Phase 2, the Ashford Mills project provide 50 multi-family units for sale on a fee simple basis and at a sale price affordable to applicants who earn no more than 120 percent of Area Median Income (“AMI”) according to adopted State Housing Initiatives Program (“SHIP”) limits for St. Johns County (the “Affordable Units”);

WHEREAS, WFC and the County desire to memorialize the Special Condition in a Memorandum of Understanding the process by which WFC will provide the Affordable Units pursuant to the Ashford Mills DRI DO.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as finds of fact.

Section 2. The Board of County Commissioners hereby approves the Chair or the County Administrator, or both, to approve and execute the terms, conditions, provisions, and requirements of the Memorandum of Understanding (Ashford Mills – affordable housing) and the Restrictive Covenant substantially in the form attached hereto and incorporated herein by reference.

Section 3. Upon execution by all parties, the Clerk is instructed to file this Resolution, the Memorandum of Understanding, and Restrictive Covenant in its records of St. Johns County, Florida.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 7th day of April, 2020.

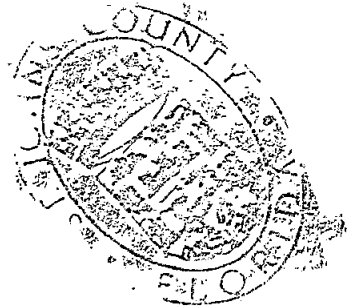
**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: [Signature]
Jeb. S. Smith, Chair

ATTEST: Brandon Patty, Clerk

By: [Signature]
Deputy Clerk

REUNION DATE APR 9 2020



MEMORANDUM OF UNDERSTANDING

(Ashford Mills – Affordable Housing)

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made as of this ____ day of _____, 2020 (“**Effective Date**”), by and between **WFC ASHFORD MILLS OWNER VII, L.L.C.**, a Delaware limited liability company (“**WFC**”), and **ST. JOHNS COUNTY**, a political subdivision of the State of Florida (“**County**”).

WITNESSETH:

WHEREAS, WFC is the owner of approximately 1,521 acres located in St. Johns County, Florida (the “**Ashford Mills Property**”) subject to that certain Ashford Mills Development of Regional Impact (“**DRI**”) Development Order, approved by the St. Johns County Commission as Resolution No. 2006-64 and as most recently amended by Resolution No. 2019-102 (collectively, the “**Ashford Mills DRI DO**”).

WHEREAS, the Ashford Mills DRI DO granted WFC, as owner of the Ashford Mills Property and developer of the Ashford Mills DRI, certain development rights for the Ashford Mills Property in exchange for the construction of certain improvements related to mitigation of public facility impacts from such development.

WHEREAS, Special Condition 33 of the Ashford Mills DRI DO requires that in Phase 2, the Ashford Mills project provide 50 multi-family units for sale on a fee simple basis and at a sale price affordable to applicants who earn no more than 120 percent of Area Median Income (“**AMI**”) according to adopted State Housing Initiatives Program (“**SHIP**”) limits for St. Johns County (the “**Affordable Units**”).

WHEREAS, WFC and the County desire to memorialize in this MOU the process by which WFC will provide the Affordable Units pursuant to the Ashford Mills DRI DO.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this MOU, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. **Findings of Fact.** The foregoing statements are true and correct and incorporated herein by reference as Findings of Fact.

2. **Purpose.** The Purpose of this MOU is to clarify the process set forth in the Ashford Mills DRI DO in which WFC and the County will offer the Affordable Units for sale to income-qualified buyers and, in the event income-qualified buyers do not purchase all of the Affordable Units, to provide for the sale of such units at an price not to exceed the maximum sales price as established in Section 3A.

3. **Affordable Units.** The Ashford Mills DRI DO requires the Affordable Units to be deed restricted so that the units will be owner-occupied and the same limitation on sale price will apply to all subsequent sales of such units for a period of ten (10) years from the recording of a restrictive covenant against title to lots on which Affordable Units are to be constructed. The form of restrictive covenant to be used for the Ashford Mills DRI DO is attached hereto as **Exhibit "A"** and incorporated herein by this reference (the "**Restrictive Covenant**"). The Affordable Units will be scattered throughout the Ashford Mills Property. The Affordable Units must be offered for sale prior to WFC obtaining the County's approval of a plat or multi-family building permit, whichever first occurs, for the 600th multi-family unit within the Ashford Mills Property.

Since the County does not currently have a homebuyer program, the County and WFC have agreed to the following requirements for the sale of Affordable Units within the Ashford Mills Property:

a. WFC will provide the County with all marketing materials for the sale of the Affordable Units to income-qualified buyers. For the purposes of this MOU, an "**Income-Qualified Buyer**" is any person whose median annual gross income for a representative household does not exceed 120 percent of the currently established AMI as published by SHIP at the time of contract which is currently set at \$73,500.

b. For the purposes of this MOU, the "**Maximum Sales Price**" shall be 1.2 times the then-currently listed AMI divided by 0.3, which represents 30 percent of the AMI that will be allocated to housing-associated costs. By way of example, the Year

2019 AMI for St. Johns County is \$73,500, so the calculation of the Maximum Sales Price is 1.2 times \$73,500 (AMI) = \$88,200 divided by 0.3 = \$294,000. The County will have six (6) months from the date the County is provided the marketing materials (the “**Marketing Period**”) to market the Affordable Units to Income-Qualified Buyers. During the Marketing Period, WFC, or an affiliated builder within the Ashford Mills Property, will also market the Affordable Units to Income-Qualified Buyers.

c. Upon the expiration of the Marketing Period, WFC will notify the County that such Marketing Period has expired. The County will have 90 days from the expiration of the Marketing Period to provide WFC with fully executed contracts for the sale of Affordable Units to Income-Qualified Buyers (the “**Contract Period**”).

d. If, following the expiration of the Contract Period, there are unsold Affordable Units or a sold unit fails to timely close on the Purchase of any Affordable Units, WFC or an affiliated builder shall have the right to sell any of the remaining 50 Affordable Units to non-income-qualified buyers as long as the sale price of any such unit does not exceed the Maximum Sales Price. All such sales must be owner-occupied and be subject to the Restrictive Covenant. All information related to the properties and buyers will be provided to the County Housing Division.

4. **Joint Preparation.** Preparation of this MOU has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

5. **Captions or Paragraph Headings.** Captions and paragraphs headings contained in this MOU are for convenience and reference only, and in no way define, describe, extend or limit the scope of intent of this MOU, nor the intent of any provision hereof.

6. **Counterparts.** This MOU may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same MOU.

7. **Effective Date.** This MOU shall become effective the date it is executed by all parties (the “**Effective Date**”).

8. Notices.

Any notices or reports required by this Amended MOU shall be sent to the following:

For the County: County Administrator
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

With a copy to: County Attorney
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

For WFC: Andrew Smith
WFC Ashford Mills Owner VII, L.L.C
322 Paseo Reyes Drive
St. Augustine, Florida 32095

With a copy to: Ellen Avery-Smith, Esq.
Rogers Towers, P.A.
100 Whetstone Place, Suite 200
St. Augustine, Florida 32084

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Memorandum of Understanding on the day(s) and year set forth below.

	<p>ST. JOHNS COUNTY, FLORIDA</p> <p>By: _____ Name: _____ Title: _____ Date: _____</p>
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	<p>WFC ASHFORD MILLS OWNER VII, L.L.C., a Delaware limited liability company</p> <p>By: WFC Ashford Mills Holdings JV VII, L.L.C., a Delaware limited liability company, Its Manager</p> <p>By: FCA Ashford, LLC, a Delaware limited liability company, its Administrative Member</p> <p>By: _____ Name: _____</p> <p>Date: _____</p>
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EXHIBIT "A"

Form of Restrictive Covenant

Prepared By/Return To:
Ellen Avery-Smith, Esq.
Rogers Towers, P.A.
100 Whetstone Place, Suite 200
St. Augustine, Florida 32086

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "**Restrictive Covenant**") is made this ____ day of _____, 2020 (the "**Effective Date**"), by **WFC ASHFORD MILLS OWNER VII, L.L.C.**, a Delaware limited liability company, whose mailing address is 322 Paseo Reyes Drive, St. Augustine, Florida 32095 ("**WFC**").

RECITALS:

A. WFC is the owner and developer of the Ashford Mills Development of Regional Impact ("**DRI**") and is obligated pursuant to the project's Development Order ("**DRI DO**") to provide affordable housing units to certain income-qualified buyers for a maximum sale price, as more fully set forth in Special Condition 33 of the DRI DO.

B. WFC has platted 50 lots within the Ashford Mills project on which affordable housing units are to be constructed, which lots are described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Restricted Lots**").

C. For a period of ten (10) years from the Effective Date hereof, the Restricted Lots shall be conveyed subject to the restrictions set forth in this Restrictive Covenant to ensure they remain affordable for the restriction period.

AGREEMENTS:

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party, the Parties agree as follows:

1. **RECITALS**. The above recitals are true and correct are incorporated herein by reference.

2. **RESTRICTIVE COVENANT**. For the period of ten (10) years from the Effective Date hereof (the "**Restriction Period**"), the Restricted Lots cannot be sold for more than the Maximum Sales Price. For the purposes of this Restrictive Covenant, the "**Maximum Sales Price**" shall be 1.2 times the currently listed Area Median Income ("**AMI**") divided by 0.3, which represents 30 percent of the AMI that will be located to housing-associated costs.

By way of example, the Year 2019 AMI for St. Johns County is \$73,500, so the calculation of the Maximum Sales Price is 1.2 times \$73,500 (AMI) = \$88,200 divided by 0.3 = \$294,000.

3. **NOTICE OF SALE.** During the Restriction Period, prior to the owner of one of the Restricted Lots conveying his or her Lot to a buyer, such owner must provide written notice of the proposed sale of the Lot to St. Johns County. The notice must contain the names of the seller and the buyer, the sale price of the Lot and the date of the Lot conveyance. The notice should be mailed to the St. Johns County Housing and Community Services Division, 200 San Sebastian View, Suite 2300, St. Augustine, Florida 32084.

4. **BINDING EFFECT.** This Restrictive Covenant shall be recorded in the Public Records of St. Johns County, Florida. Any transfer, conveyance, mortgage or other encumbrance of any interest in the Property shall be expressly subject to and be deemed to reference this Restrictive Covenant and its recording data. This Restrictive Covenant is a covenant running with the title to and binding upon the Property.

5. **BENEFIT AND ENFORCEMENT.** This Restrictive Covenant will run with title to the Restricted Lots and shall be binding upon the owners of the Restricted Lots for a period of ten (10) years from the Effective Date hereof. Each time one of the Restricted Lots is sold, conveyed or otherwise disposed of, the applicable lot shall be sold subject to this Restrictive Covenant. St. Johns County shall have the right to enforce the Restrictive Covenant set forth herein.

6. **AUTOMATIC TERMINATION OF RESTRICTION UPON FORECLOSURE.** In the event the holder of a mortgage on one of the Restricted Lots ("Mortgagee") acquires a lot by reason of foreclosure or upon conveyance of the lot in lieu of foreclosure, then the Restrictive Covenant shall automatically terminate with respect to the foreclosed lot.

7. **INHERITANCE.** A transfer of ownership of a Restricted Lot that occurs by virtue of the death of an Owner, and testate or intestate administration of the Owner's estate, shall be deemed a permitted transfer of a Restricted Lot under the terms hereof.

8. **AMENDMENT.** This Restrictive Covenant may be modified only by St. Johns County, and any modification must be recorded in the Public Records of St. Johns County, Florida.

9. **APPLICABLE LAW; VENUE.** Florida law shall govern this Restrictive Covenant, and venue shall be St. Johns County, Florida.

10. **SEVERABILITY.** Invalidation of any one provision or covenant in this Restrictive Covenant by judgment of court in no way shall affect any of the other provisions and/or covenants, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

Signed, sealed and delivered in the presence of:

WFC:

WFC ASHFORD MILLS OWNER VII, L.L.C., a Delaware limited liability company

Witness
Print Name: _____

By: WFC Ashford Mills Holdings JV VII, L.L.C., a Delaware limited liability company, Its Manager

Witness
Print Name: _____

By: FCA Ashford, LLC, a Delaware limited liability company, its Administrative Member

By: _____
Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 20____, by _____, as _____ of WFC Ashford Mills Owner VII, L.L.C., a Delaware limited liability company, who is personally known to me or who has produced a _____ as identification.

Notary Public
Name: _____
Commission Expires: _____

EXHIBIT "A" TO RESTRICTIVE COVENANT

PROPERTY

[Legal description/Plat information to be inserted before recording]