

TAB I

RESTRICTIVE COVENANTS

**RESTRICTIVE COVENANTS
AGREEMENT**

Document No.

DOC # 11262670

RECORDED

07/06/2022 06:21 AM

ISRAEL RAMON

REGISTER OF DEEDS

Milwaukee County, WI

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Recording Area

Document Prepared by and Return to:

Derek Taylor, Esq.

Husch Blackwell LLP

511 N. Broadway Street, Suite 1100

Milwaukee, WI 53202

See Exhibit A attached hereto

Parcel Identification Numbers (PINs)

THIS RESTRICTIVE COVENANTS AGREEMENT (this “*Agreement*”) is made as of July 5, 2022, by and between the CITY OF OAK CREEK, an incorporated municipality (the “*City*”), and F STREET OCLV, LLC, a Wisconsin limited liability company, and its successors or assigns (the “*Developer*”).

WITNESSETH:

WHEREAS, by virtue of a conveyance from the City by Special Warranty Deed dated October 6, 2021, recorded with the Milwaukee County Register of Deeds as Document No. 11179123, Developer is the owner of that certain tract of land located in the City of Oak Creek, Milwaukee County, Wisconsin, as further described on Exhibit A attached hereto and made a part hereof, said property being referred to herein as the “*Property*”;

WHEREAS, upon approval and recording of a condominium plat and declaration of condominium, the Developer will submit the Property and improvements as hereafter constructed thereon to the condominium form of use and ownership as provided in the Wisconsin Condominium Ownership Act as currently set forth at Chapter 703 of the Wisconsin Statutes, as may be amended from time to time (the “*Act*”). Upon recording, the Property will become a mixed use condominium consisting of a single for sale residential unit and additional multi-family units (collectively, the “*Master Condominium*”). Such Master Condominium shall be controlled by an association of the Master Condominium unit owners (the “*Master Association*”);

WHEREAS, within the Master Condominium, the Developer may create a residential condominium related solely to the approximately thirty (30) detached single-family units, fifty-six (56) villa-style units, twenty-eight (28) townhome-style units (the “*Residential Condominium*”, together with the Master Condominium, the “*Condominiums*”). Such Residential Condominium shall be controlled by an association of the Residential Condominium unit owners (the “*Residential Association*”, together with the Master Association, the “*Associations*”);

WHEREAS, the parties desire to impose certain restrictions on the Property, and on the subsequent Condominiums, for the benefit of the City and Developer; and

WHEREAS, the restrictions contained herein will be beneficial to the Property and subsequent Condominiums.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each party hereto to the other (including, with respect to Developer, the City’s conveyance to Developer of the Property), the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
RESTRICTIVE COVENANTS

Section I.1. Restrictions on the Property. The Property and subsequent Condominiums shall be owned and used subject to the following restrictive covenants, which shall run with the

land and be binding upon Developer, the Associations, and each Condominium's unit owners, together with their tenants, occupants, and their respective successors and assigns, forever:

(a) Developer has established a master surface drainage plan consistent with the master grading plan on file with the City (the "**Master Grading Plan**") designating the manner in which the Property shall drain. Compliance of all grading to the Master Grading Plan is important to the effective drainage of the Property and affects the value of the Property and all subsequent units within the Condominiums. The Developer and Associations will take such action as is reasonably necessary to maintain the grading and landscaping of the Property and subsequent units within the Condominiums, in accordance with the Master Grading Plan, and shall refrain from taking actions which would cause the grading or landscaping to not conform to the Master Grading Plan without the approval from the City. The City's approval, if granted shall not relieve the Developer or the Associations from the ultimate responsibility for the design, performance, and function of the grade alteration and/or drainage condition, and the Developer and/or the Associations by requesting the alteration, and/or altering the grade, thereby agree to indemnify and hold harmless the City and its agents, employees and independent contractors regarding the same. Despite Developer's efforts to prepare a Master Grading Plan which will achieve the effective and efficient drainage of storm water for the Property and when created, from and within the Condominiums, Declarant does not warrant or represent that the Master Grading Plan will achieve any particular effect. Any deviations to the Master Grading Plan shall require review and approval by the City engineer prior to the issuance of the building permit.

(b) Upon creation of the Master Condominium, notwithstanding anything contained herein, no gardening, farming, regrading that would affect the Master Grading Plan, or other significant landscaping changes shall be permitted whatsoever without the written consent of the Master Association. The Developer and/or the Master Association shall have the right to establish and amend rules and regulations to manage, administer and enforce all of the property in the Master Condominium.

(c) Upon creation of the Residential Condominium, notwithstanding anything contained herein, no gardening, farming, planting, digging, disturbing the soils, or other landscaping of any kind shall be permitted by any unit owner or any other person (other than the Master Association or Residential Association, as set forth in the last sentence of this subsection) whatsoever, whether (a) within any Unit, (b) in, on, or under any common elements or limited common elements, nor (c) in any other space or area in the Residential Condominium or otherwise controlled by the Residential Association. No unit owner shall decorate, landscape, or adorn any Residential Condominium unit, common element, or limited common element, nor permit such activities in any manner that could be construed as constructing or maintaining vegetation, farming, a garden, or other landscaping elements. The Developer and/or the Residential Association shall have the right to establish rules and regulation to administer, enforce, or modify this paragraph and to engage in regular monitoring of all Residential Condominium units to ensure compliance with this paragraph. Any and all landscaping or planting through the Residential Condominium, common elements, limited common elements and outdoor areas of Residential Condominium units, as applicable, shall be strictly performed and maintained by the Residential Association.

(d) The City, Developer and Associations, shall each have the right to enter upon the Property, or at such time as the Condominiums are created, the common elements or limited common elements, at any time for the purpose of inspection, maintenance, correction of any drainage condition, and the violating party shall be responsible for the cost thereof.

(e) Upon creation of the Residential Condominium, all Unit Owners shall comply with all the provisions of the Institutional Controls and the Final Cover Barrier Maintenance Plan dated April, 2014 ("BMP") and the Final Soil Management Plan dated April, 2014 ("SMP"), imposed by the DNR pursuant to the Certificate of Completion dated November 20, 2014 and further imposed pursuant to letters from the DNR to Douglas Fletcher with DuPont Corporate Remediation Group dated October 21, 2014 and to Joe Wiley, Kinder Morgan dated October 21, 2014 either all of which are on file with the DNR under BRRTS #5 02-41-278 988, 02-41-280624, 06-41-554563, 02-41-531534 and 06-4-554566 and copies of which are maintained by the Association, including, but not limited to:

i. adopting rules and regulations for the construction, installation, repair, maintenance, replacement, renovation and remodeling of all Units and Common Elements within the Association;

ii. accessing Common Elements and, with at least 24 hours' notice to a Unit Owner, individual Units, to make any repairs or improvements necessary or required to comply with the BMP and the SMP, and engaging contractors to access such areas and perform such work on behalf of the Association; and

iii. take all steps deemed necessary by the Board of Directors to ensure compliance with the BMP and the SMP.

ARTICLE II MISCELLANEOUS PROVISIONS

Section II.1. Time of the Essence. Time is of the essence of this Agreement.

Section II.2. Amendment. City and Developer hereby agree that, except to the extent otherwise set forth herein, only upon the written consent of the parties hereto may this Agreement be amended, modified or terminated.

Section II.3. Waiver. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge such party from its obligations hereunder. No delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be construed to be a waiver of any succeeding breach or of any other covenants, conditions or agreements contained herein.

Section II.4. Severability. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the real covenants herein valid and enforceable.

If any term, provision, covenant or agreement contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

Section II.5. Binding Effect; Appurtenance. This Agreement shall be binding upon and inure to the benefit of the City and Developer and their respective successors and assigns, including successors in title. The rights and privileges granted and conveyed hereunder shall exist for the benefit of, and be a burden upon, the Property and subsequent Condominiums and shall run with title to, and be appurtenant to, the Property and subsequent Condominium.

Section II.6. Notices. All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, electronic mail (provided that a copy thereof shall be sent concurrently to the intended recipient by one of the other methods provided herein), or United States registered or certified mail, return receipt requested, postage prepaid, addressed follows:

If to Developer: F STREET OCLV, LLC
c/o F Street Development Group, LLC
Attention: Josh Lurie
1134 N. 9th Street, Suite 200
Milwaukee, WI 53233
Telephone: (414) 315-3190
Email: josh@fstreetgroup.com

With a copy to: Husch Blackwell LLP
Attn: Derek Taylor
511 N. Broadway, Suite 1100
Milwaukee, WI 53202
Telephone: (414) 975-5748
Facsimile: (414) 223-5000
Email: derek.taylor@huschblackwell.com

If to the City:

City Clerk
City of Oak Creek
8040 S. 6th Street
Oak Creek, WI 53154
Telephone: (414) 766-7000
Facsimile: (414) 766-7976
Email: croeske@oakcreekwi.gov

With a copy to:

Melissa L. Karls, Esq.
City Attorney
8040 S. 6th Street
Oak Creek, WI 53154
Telephone: (414) 766-7000
Facsimile: (414) 766-7976
Email: cattorney@oakcreekwi.gov

or to such other address as any party may from time to time designate by notice in writing to the other parties. Any such notice, request, demand or communication shall be deemed to have been given on the actual date of delivery. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

Section II.7. Covenants Run With the Land; Enforcement. All the covenants, conditions, restrictions, terms and provisions hereof are and shall be deemed to be covenants running with the property described herein and shall burden and benefit such property as described herein and, with respect to such property, the City, Developer, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering any of such property, any purchaser at a foreclosure sale, any other person or entity acquiring any right, title or interest in such property, including a unit within the Master Condominium and Residential Condominium, and their respective heirs, executors, administrators, representatives, successors and assigns. The City, the Developer, the Master Association, the Residential Association, E. I. Du Pont de Nemours and Company, Kinder Morgan Inc., and/or their respective successors or assigns, may individually or collectively, initiate proceedings at law or in equity against any person or persons who violate or are proposing to violate any provision of this Agreement, to prevent or abate such violation or to recover damages for such violation, including their reasonable costs of enforcement of this Agreement, such costs to include, without limitation, their reasonable attorneys' fees.

Section II.8. Assignment of Developer's Rights. Upon creation of the Master Association and/or the Residential Association, Developer may assign any or all of the rights and benefits conferred on or reserved herein for Developer in its status as such to the Master Association and/or the Residential Association, by an instrument in writing specifically identifying the rights and benefits so assigned which is recorded in the Milwaukee County Register of Deeds Office. Such assignment shall not require the consent of the City.

Section II.9. Continuation Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any party hereto to cancel, rescind or otherwise terminate this Agreement. Such limitation, however, shall not effect in any manner any other rights or remedies which such party may have hereunder by reason of such breach.

Section II.10. Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement between the parties hereto with respect to the subject matter hereto. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and exhibits hereto.

Section II.11. Construction. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party hereto.

Section II.12. Governing Law. This Agreement shall be construed in accordance with the laws of the State in which the Property is located, without regard to conflicts laws or choice of law rules thereof.

Section II.13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY:
CITY OF OAK CREEK,
an incorporated municipality

By: Daniel J. Bukiewicz
Name: Daniel J. Bukiewicz
Title: Mayor

Catherine A. Roeske
Attest: Name: Catherine A. Roeske, City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

On this 29 day of June, 2022, before me the undersigned, a Notary Public in and for the State of Wisconsin, personally appeared Daniel J. Bukiewicz and Catherine A. Roeske, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Oak Creek, executing the foregoing instrument, that they as such municipal officers acknowledged execution of the instrument to be the voluntary act and deed of the City and by them voluntarily executed.

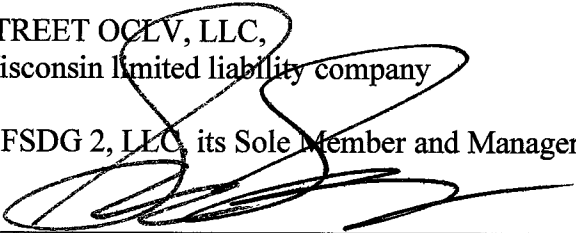


Christa J. Miller
Notary Public, State of Wisconsin
Christa J. Miller
My commission: 1-29-2025

DEVELOPER:

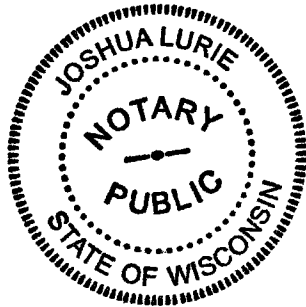
F STREET OCLV, LLC,
a Wisconsin limited liability company

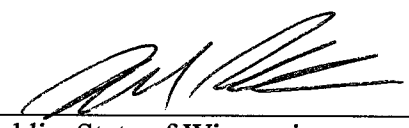
By: FSDG 2, LLC, its Sole Member and Manager

By: 
Name: Scott Lurie
Title: Manager

STATE OF WISCONSIN)
COUNTY OF MILWAUKEE) ss.

On this 5th day of July, 2022, before me the undersigned, a Notary Public in and for the State of Wisconsin, personally appeared Scott Lurie to me personally known, who, being by me duly sworn, did say that he is the Manager of FSDG 2, LLC, a Wisconsin limited liability company, as Sole Member and Manager of F Street OCLV, LLC, a Wisconsin limited liability company, executing the foregoing instrument, that the seal affixed thereto is the seal of the corporation; that he/she as such officer acknowledged execution of the instrument to be the voluntary act and deed of the aforementioned and by him voluntarily executed.




Notary Public, State of Wisconsin

My commission: 15 permanent

EXHIBIT A

LEGAL DESCRIPTION

LOT THREE (3) OF CERTIFIED SURVEY MAP NO. 9355 RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR MILWAUKEE COUNTY, WISCONSIN, ON OCTOBER 14, 2021 AS DOCUMENT NUMBER 11174987, BEING A PART OF GOVERNMENT LOTS 3 & 4, AND THE WEST 1/2 OF THE FRACTIONAL SOUTHWEST 1/4, OF SECTION 24, TOWNSHIP 05 NORTH, RANGE 22 EAST, SITUATED IN THE CITY OF OAK CREEK, MILWAUKEE COUNTY, WISCONSIN.

PARCEL ID NOS: Part of 868-0003-001 and Part of 868-0006-002

[Signature Page – Restrictive Covenants Agreement]