

# **Exhibit M to the Development Agreement**

## **Affordable Housing Covenants**

**EXHIBIT M**

<INSERT RECORDING INFORMATION>

Draft 07/29/19

<TAX MAP PARCEL NUMBER>

**DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS**

This DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS (“Covenant”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by <INSERT>, (“Declarant”), identified for indexing purposes as Grantor and Grantee.

**RECITALS**

R-1. The Declarant is the fee simple owner of certain real property as further described in **Exhibit A** (the "Property").

R-2. The City of Richmond, Virginia (the “City”) has determined to further its public policy of increasing the affordable housing stock in that area of the City bounded by Belvidere Street, the Richmond-Petersburg Turnpike, and the James River (“Downtown Richmond”) and in particular, on the Property.

R-3. The City and The NH District Corporation (the “Developer”) entered into that certain Development Agreement ("Development Agreement") and that certain Purchase and Sale Agreement (“PSA”) whereby the City and the Developer agreed upon the terms under which the City agreed to convey the fee simple interest in various parcels of real property located in Downtown Richmond (“Development Parcels”) and according to the terms of which the Developer agreed, among other things, to directly develop and construct two hundred and eighty (280) Affordable Housing Units dispersed among several of those parcels more particularly identified in the Development Agreement (the “Affordable Housing Parcels”).

R-4. The Property is identified in the Development Agreement as one of the Affordable Housing Parcels.

R-5. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Improvements (as defined in the Development Agreement) on the Property in accordance with the Development Agreement and the PSA, including the Affordable Housing Units (as defined herein).

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on Declarant and on all tenants and purchasers of the Affordable Housing Units and all Transferees (as defined herein) of the Property until expiration of the Affordability Period. For purposes herein, Transferees shall be deemed all persons that may hereafter acquire any interest whatsoever in the Property, or any part thereof, from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation, or any other means of transfer (any and all of the foregoing means of

transfer being herein referred to as “Transfer”), for the Affordability Period. Wherever “Declarant” is used in this Covenant, the term includes any Transferee.

## **ARTICLE I DEFINITIONS**

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

**Affordability Period:** is defined in Article X.

**Affordability Requirement:** is the requirement that Declarant develop and construct \_\_\_\_\_ Affordable Housing Units, subject to the following requirements: (i) no less than forty percent (40%) of the units so constructed and operated on the Property shall be sold or leased for occupancy by households earning up to 60% of Area Median Income, and (ii) the number of Affordable Housing Units on the Property shall be at least ten percent (10%) and no greater than thirty percent (30%) of the number of Residential Units to be developed on the Property.

**Affordable Housing Units:** are dwelling units that are reserved for occupancy by households earning up to 80% of Area Median Income.

**Affordable Unit Owner:** means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

**Affordable Unit Tenant:** means a Qualified Tenant who lease(s) a Rental Affordable Unit.

**Area Median Income or AMI:** means the most recent annually adjusted median income for the Richmond, VA Metropolitan Statistical Area published by the United States Department of Housing and Urban Development.

**Annual Household Income:** means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended.

**Annual Report:** has the meaning given in Section 4.9.

**Business Day:** means Monday through Friday, inclusive, other than holidays recognized by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

**Certificate of Purchaser Eligibility:** means a certification executed by a Household prior to its purchase of an Affordable Housing Unit, in a form approved by the City (such approval not to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant, representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable

Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

**Certificate of Tenant Eligibility:** means a certification by a Household at its initial occupancy of an Affordable Housing Unit, in a form approved by the City (such approval not to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

**Certification of Inspection:** means a certification by Declarant that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Declarant's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the City approves (such approval not to be unreasonably withheld).

**Certification of Residency:** means a certification made by an Affordable Unit Tenant or Affordable Unit Owner that states that the Affordable Unit Tenant or Affordable Unit Owner occupies the Affordable Housing Unit as its principal residence, in such form as the City approves (such approval not to be unreasonably withheld).

**Designated Affordability Level:** means the percentage of AMI assigned to each Affordable Housing Unit, at or below which a Qualified Purchaser's or Qualified Tenant's, as applicable, Annual Household Income must fall.

**Declarant:** is identified in the preamble of this Covenant, and when used herein includes any Transferee.

**For Sale Affordable Unit:** means an Affordable Housing Unit that shall be sold to a Qualified Purchaser.

**Household(s):** means all persons who will occupy the Affordable Housing Unit, including all persons over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's, as applicable, spouse or domestic partner and children under eighteen (18) years of age.

**Household Size Adjustment Factor (HAF):** means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household Income of an Affordable Housing Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
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1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

**Housing Cost:** means (a) the total monthly payments for rent and Utilities for a Rental Affordable Unit, less any rental subsidies paid on behalf of the Qualified Tenant leasing that Rental Affordable Unit, or (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for a For Sale Affordable Unit.

**HUD:** means the United States Department of Housing and Urban Development.

**Land Records:** means the real property records for the City of Richmond, Virginia.

**Market-Rate Unit:** is each Residential Unit that is not an Affordable Housing Unit.

**Maximum Allowable Rent:** is defined in Section 4.3.2.

**Maximum Annual Household Income or MAXI:** is the maximum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.1 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

**Maximum Resale Price:** is the maximum resale price of a For Sale Affordable Unit as described in Section 5.1.2 and determined pursuant to the procedures contained in **Schedule 2** attached hereto.

**Maximum Sales Price:** as defined in Section 5.1.1.

**Minimum Annual Household Income or MINI:** is the minimum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.2 for Rental Affordable Units and (b) Section 5.2.1. for For Sale Affordable Units.

**Mortgage:** means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the Commonwealth of Virginia.

**Mortgagee:** means the holder of a Mortgage.

**Occupancy Standard:** means the minimum number of individuals permitted to occupy any given Affordable Housing Unit, as identified in the following chart:

Affordable Housing Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Housing Unit
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Studio/Efficiency	1
1	1
2	2
3	4
4	6
5	8
6	10

**Occupancy Standard Factor:** means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Sales Price of a For Sale Affordable Unit as set forth in the following table:

Size of For Sale Affordable	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency/Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

**Over-Income Tenant:** as defined in Section 4.5.5.

**Owner:** means, in the context of Rental Affordable Units, Declarant, and in the context of For Sale Affordable Units, Declarant for so long as Declarant owns the applicable For Sale Affordable Unit, and then thereafter, the Affordable Unit Owner that owns such For Sale Affordable Unit.

**Person:** means any individual, corporation, limited liability company, trust, partnership, association, or other legal entity.

**Property:** is defined in the Recitals.

**Qualified Purchaser:** means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit, (ii) shall occupy the Affordable Housing Unit as its principal residence during its ownership of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use, occupy, hold and sell the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Housing Unit to a Qualified Purchaser) and this Covenant.

**Qualified Tenant:** means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Housing Unit as its principal residence during its lease of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use and occupy the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement and this Covenant.

**Rental Affordable Unit:** means an Affordable Housing Unit that shall be leased to a Qualified Tenant.

**Rental Affordable Unit Lease Rider:** is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the City (such approval not to be unreasonably withheld).

**Residential Unit:** is any dwelling unit developed and constructed on the Property to be sold or leased for Residential Use, including all Affordable Housing Units.

**Sale:** is defined in Section 5.1.

**Successor In Interest:** is defined in Section 5.8.

**Utilities:** means water, sewer, electricity, and natural gas.

## **ARTICLE II AFFORDABILITY REQUIREMENT**

2.1 **Requirement of Affordability.** Declarant shall construct, reserve, and either maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Housing Units that are required by the Affordability Requirement. Declarant reserves the right, from time to time, in its sole discretion to change the designation of any Affordable Housing Units initially designated as Rental Affordable Units to For Sale Affordable Units and, prior to the initial sale of any Affordable Housing Units initially designated as For Sale Affordable Units, the designation of any Affordable Housing Units initially designated as For Sale Affordable Units to Rental Affordable Units.

2.2 **Affordable Unit Standards and Location. [SUSAN TO REVIEW]**

2.2.1 *Size.* Each category of Residential Unit (studio, one-bedroom, two-bedrooms, etc.) developed and constructed as an Affordable Housing Unit must be of a size substantially similar to the same category of Residential Unit developed and constructed as Market-Rate Units.

2.2.2 *Exterior Finishes.* Exterior finishes of Affordable Housing Units will be substantially similar to the appearance, finish and durability of the exterior finishes of the Market-Rate Units.

2.2.3 *Interior Finishes.* Interior base finishes, appliances and equipment in the Affordable Housing Units must be equivalent to the Market-Rate Units.

2.2.4 *Affordable Unit Location.* Affordable Housing Units shall be disbursed throughout the Property and shall not be concentrated on any one floor or within a tier or section of the Property and shall float within each residential building.

2.3 **Certification.** The City, or a designee of the City, may review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether the Household is a Qualified Tenant or Qualified Purchaser, as applicable. The City may require, and

may designate a third party to issue, such certifications as it may deem necessary or desirable to memorialize such qualification. Wherever “City” is used in this Covenant with regard to review, administration, or reporting requirements designed to ensure Household eligibility, “City” will include any such designee.

### **ARTICLE III USE**

3.1 **Use.** Except as provided herein, all Affordable Unit Owners and Affordable Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Affordable Unit Owners or Affordable Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners and Affordable Unit Tenants of comparable Affordable Housing Units at the same upfront and or recurring cost or fee charged to the Market-Rate Units. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners or Affordable Unit Tenants of comparable Affordable Housing Units.

3.2 **Demolition/Alteration.** Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances, flooring and cabinetry) of any Affordable Housing Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Affordable Housing Unit or remove fixtures or appliances installed in an Affordable Housing Unit other than for maintenance and repair (and replacement, if necessary, subject to the terms of the preceding sentence) without the prior written approval of the City, which approval shall be in the sole discretion of the City.

### **ARTICLE IV RENTAL OF AFFORDABLE HOUSING UNITS**

4.1 **Lease of Rental Affordable Units.** In the event the Property contains Rental Affordable Units, Declarant shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 **Rental Affordable Unit Lease Requirements.**

4.2.1 *Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Declarant shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider. The Rental Affordable Unit Lease Rider must be executed by Declarant and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.



4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit will only be effective if a Rental Affordable Unit Lease Rider and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.2.3 *Declarant to Maintain Copies.* Declarant shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease, or for such period of time as required by law, whichever is longer.

#### 4.3 **Initial Rental Affordable Unit Lease Terms.**

4.3.1 *Term.* The term of any Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.3.2 *Establishment of Maximum Rent.* The maximum allowable monthly rent ("**Maximum Allowable Rent**" or "**MAR**") for each Rental Affordable Unit shall be an amount equal to the equivalent of the then current Maximum LIHTC Gross Rent for such category of Affordable Housing Unit (studio, one-bedroom, two-bedrooms, etc.) permitted to be charged by the Virginia Housing Development Authority by owners of projects in the City of Richmond, Virginia that are participating in the Federal Low-Income Housing Tax Credit (LIHTC) program, without allowance being provided for Utilities in the determination of such rents.

4.4 **Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease and any lease renewals for such Rental Affordable Unit. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household occupying the Rental Affordable Unit and the Minimum Annual Household Income for a Household occupying the Rental Affordable Unit.

4.4.1 *Maximum Annual Household Income.* The Maximum Annual Household Income is determined through the use of the formula:  $MAXI = (AMI * DAL * HAF)$ .

4.4.2 *Minimum Annual Household Income.* The Minimum Annual Household Income is determined by multiplying the monthly Housing Cost by twelve (12) and dividing this number by thirty-eight percent (38%).

#### 4.5 **Subsequent Lease Years.**

4.5.1 *Establishment of Maximum Rent.* Declarant shall determine the Maximum Allowable Rent in lease years after the first lease year in accordance with Section 4.3.2 above.

4.5.2 *Renewal by Affordable Unit Tenant.* For each Affordable Unit Tenant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Declarant shall request the following: (i) a Certification of Residency from each such Affordable Unit Tenant; and (ii) a

certification of income. Declarant shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Declarant with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Affordable Unit Tenant fails to provide such documents, Declarant shall treat such tenant as an Over-Income Tenant and charge market-rate rent, upon which Developer shall designate another unit as a Rental Affordable Unit, in accordance with Section 4.5.6.

*4.5.3 Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Tenant's renewal documents at annual recertification, Declarant shall determine the Affordable Unit Tenant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew the lease at the then-current lease rate for the particular Rental Affordable Unit.

*4.5.4 Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit paying rent, as established by Owner, up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

*4.5.5 Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Tenant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "Over-Income Tenant"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Developer shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.5.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market Rate Unit, whereupon Declarant shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.5.6.

*4.5.6 Changes to Unit Location.* Declarant may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Declarant shall designate the next available Rental Affordable Unit at that same higher Designated Affordability Level or Market-Rate Unit of the similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

4.5.7 *Rent from Subsidies.* Nothing herein shall be construed to prevent Developer from collecting rental subsidy or rental-related payments from any federal agency paid to Declarant or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental related payment shall be included in the calculation to determine if a tenant is a Qualified Tenant.

4.6 **No Subleasing of Rental Affordable Units.** An Affordable Unit Tenant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Declarant shall not knowingly allow such Rental Affordable Unit to be subleased.

4.7 **Representations of Affordable Unit Tenant.** By execution of a lease for a Rental Affordable Unit, each Affordable Unit Tenant shall be deemed to represent and warrant to the Declarant, whom may rely thereon, that the Affordable Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.8 **Representations of Declarant.** By execution of a lease for a Rental Affordable Unit, Declarant shall be deemed to represent and warrant to the City, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant, and (ii) Declarant is not collecting more than the Maximum Allowable Rent.

4.9 **Annual Reporting Requirements.** Beginning with the first occupancy of any Affordable Housing Unit and on each anniversary date thereafter, Declarant shall provide an annual report ("Annual Report") to the City regarding the Rental Affordable Units. The Annual Report shall include the following:

- (a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;
- (b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;
- (c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;
- (d) for each occupied Rental Affordable Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income;
- (e) a sworn statement that, to the best of Declarant's information and knowledge, the Household occupying each Rental Affordable Unit meets the eligibility criteria of this Covenant;
- (f) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit; and
- (g) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(h) a copy of all forms, policies, procedures, and other documents reasonably requested by the City related to the Rental Affordable Units.

The Annual Reports shall be retained by Declarant for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the City's Chief Administrative Officer or a designee thereof. The City may request Declarant to provide additional information in support of its Annual Report, and the Declarant shall make reasonable efforts to provide such information.

**4.10 Confidentiality.** Except as may be required by applicable law, including, without limitation, the Virginia Freedom of Information Act, Declarant will not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

**4.11 Inspection Rights.** The City's Chief Administrative Officer or a designee thereof shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to Declarant. If Declarant receives such notice, Declarant shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). Subject to the rights of the tenants occupying the applicable Rental Affordable Units, the City's Chief Administrative Officer or a designee thereof shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The City's Chief Administrative Officer or a designee thereof shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

## ARTICLE V

### SALE OF AFFORDABLE UNITS

**5.1 Sale of For Sale Affordable Units.** In the event the Property contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Housing Units. Owner shall not convey all or any part of its fee interest ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Owner shall only sell to a buyer who has provided a certification of income and who is a Qualified Purchaser. Any Sale of a For Sale Affordable Unit to a Person who is not a Qualified Purchaser shall be null and void.

**5.1.1 Maximum Sales Price.** The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "Maximum Sales Price") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of their Annual Household Income on Housing Cost. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable, and shall be calculated in accordance with Schedule 1 attached hereto and incorporated herein. The Declarant shall submit to the City the proposed sales price for each For Sale Affordable Unit for approval

prior to the marketing and sale of such For Sale Affordable Unit, such approval or disapproval not to be unreasonably withheld or delayed.

5.1.2 *Maximum Resale Price.* The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 2 attached hereto and incorporated herein. The City shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3 *Subsidized funding.* The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of any available subsidized funding for the purchase of the For Sale Affordable Unit.

5.2 **Procedures for Sales.** The following procedures shall apply to (i) Declarant with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 *Income Eligibility.* For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula:  $MAXI = (AMI * DAL * HAF)$ . Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty one percent (41%). Examples of the calculation of Minimum Annual Household Income are included in the attached Schedule 1. The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance, if applicable.

5.2.2 *Sale.* A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the For Sale Affordable Unit and (b) a certification of income is completed within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), City and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.2.3 *Resale.* Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall (i) contact the City to obtain the Maximum Resale Price and (ii) shall refer the prospective purchaser to the City to determine their eligibility to purchase the For Sale Affordable Unit.

### 5.3 Closing Procedures and Form of Deed.

5.3.1 *Owner to Provide Copy of Covenant.* Owner shall provide the Qualified Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.3.2 *Form of Deed.* All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS, DATED AS OF 20\_ RECORDED AMONG THE LAND RECORDS OF THE CITY OF RICHMOND, VIRGINIA, AS INSTRUMENT NUMBER ON 20 , WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit.* A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations.* The purchaser of a For Sale Affordable Unit shall submit to the City within thirty (30) days after the closing a copy of the final executed settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the certification of income.

5.4 **Rejection of Applicants.** In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has provided a certification of income or other evidence of eligibility, if, based on such applicant's application, background, or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of law. Owner shall provide the City with all documents evidencing Owner's review and rejection of an applicant, upon the request of the City.

5.5 **Representations of Owner.** By execution of a deed for a For Sale Affordable Unit, Declarant (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to the City and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6 **Annual Certification of Residency.** During the Affordability Period, the Affordable Unit Owner shall submit to the City annually on the anniversary of the closing date for a For Sale

Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form as may be prescribed by City.

5.7 **Leasing For Sale Affordable Units.** An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit.

5.8 **Succession.** Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, or death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "Successor in Interest"), such Successor in Interest, shall automatically be bound by all of the terms, obligations and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Successor in Interest does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.9 **Prohibition on Occupancy.** In no event shall a Successor in Interest who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.10 **Progress Reports.** Until all initial Sales of For Sale Affordable Units are completed, Declarant shall provide City with annual progress reports, or more frequently upon request, on the status of its sale of the For Sale Affordable Units.

## **ARTICLE VI DEFAULT; ENFORCEMENT AND REMEDIES**

6.1 **Default; Remedies.** Except as otherwise provided in Section 6.2, in the event Owner, Affordable Unit Tenant, a Person or a Household defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the City, the City shall have available to it all remedies at law and in equity, including the right to seek specific performance, injunctive relief, or other equitable remedies, including compelling the re-sale or leasing of an Affordable Housing Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for defaults under this Covenant.

6.2 **Right to Cure Period.** Notwithstanding anything contained in Section 6.1 above to the contrary, if a default by the Declarant occurs under this Covenant, the City shall provide the Declarant with written notice setting forth the alleged violation with particularity and shall provide at least forty-five (45) days to cure the alleged violation, prior to exercising its remedies. The City may extend the cure period in its sole discretion, provided that the cure period shall be extended for an additional ninety (90) days if the Declarant commences to cure the alleged violation within the initial forty-five (45) day period and diligently pursues the cure during such period.

6.3 **No Waiver.** Any delay by the City in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.4 **Right to Attorney's Fees.** If the City shall prevail in any such legal action to enforce this Covenant, then Owner, Affordable Unit Tenant, Person or Household against whom the City prevails, shall pay City all of its costs and expenses, including reasonable attorney fees (to include the cost of attorneys employed in the Office of the City Attorney), incurred in connection with City efforts to enforce this Covenant.

## **ARTICLE VII COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**

This Covenant is and shall be binding upon the Property and each Affordable Housing Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of City, Declarant, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of City pertaining to the monitoring and enforcement of the obligations of Declarant or Affordable Unit Owner hereunder shall be retained by City, or such designee of the City as the City may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article VIII.

## **ARTICLE VIII MORTGAGES**

8.1 **Subordination of Mortgages.** All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the City the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 *Notice of Default.* The Mortgagee shall provide to the City written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 *Termination Upon Foreclosure and Assignment.* In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.3.

8.3.3 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.2, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of



the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; and third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer.

8.3.4 *Effect of Foreclosure on this Covenant.* Except as provided in Section 8.3.2. in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and the Mortgagee or any Person who takes title to an Affordable Unit through a foreclosure sale shall become a Successor in Interest in accordance with Section 5.8.

**ARTICLE IX  
AMENDMENT OF COVENANT**

Neither this Covenant, nor any part hereof, can be amended, modified or released other than as provided herein by an instrument in writing duly authorized by the City, and by a duly authorized representative of Owner of such Affordable Housing Unit affected by such amendment. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

**ARTICLE X  
AFFORDABILITY PERIOD**

All Affordable Housing Units on the Property shall be sold or leased in accordance with the terms of this Covenant for a period of twenty (20) years (“the Affordability Period”). The Affordability Period for each For Sale Affordable Unit shall begin on the date of the Sale to the initial Affordable Unit Owner. The Affordability Period for each Rental Affordable Unit shall begin on the commencement date of the initial lease of the Rental Affordable Unit.

**ARTICLE XI**

**NOTICES**

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the City or the Declarant from time to time. All notices shall be sent to the following address:

A. To the City:

Chief Administrative Officer  
City of Richmond, Virginia  
900 East Broad Street, Suite 201  
Richmond, Virginia 23219

with a copy to:

City Attorney

City of Richmond, Virginia  
900 East Broad Street, Suite 400  
Richmond, Virginia 23219

B. To the Developer:

The NH District Corporation  
PO Box 280  
Richmond, Virginia 23218  
Attention: President

C. To the Declarant:

All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the Office of the Assessor of the City of Richmond. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the City with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

## ARTICLE XII MISCELLANEOUS

12.1 **Applicable Law: Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Owner, Affordable Unit Tenants and the Declarant irrevocably submit to the jurisdiction of the Circuit Court of the City of Richmond, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Owner, Affordable Unit Tenants and the Declarant irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Richmond, Virginia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

12.3 **Time of Performance.** All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day other than a Business Day shall automatically be extended to the next Business Day.

12.4 **Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.5 **Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

12.6 **Limitation on Liability.** Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.7 **City Limitation on Liability.** Any review or approval by the City shall not be deemed to be an approval, warranty, or other certification by the City as to compliance of such submissions, the Property, or any Affordable Housing Unit with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or any other covenant granted in favor of the City that is filed among the Land Records; or otherwise contractually required. The City shall incur no liability in connection with the City's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.8 **No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.9 **Representations of Declarant.** As of the date hereof, Declarant hereby represents and warrants as follows:

(a) This Covenant has been duly executed and delivered by Declarant, and constitutes the legal, valid and binding obligation of Declarant, enforceable against Declarant, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Declarant of any agreement or order which is binding on Declarant; and

(c) Declarant (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the

laws of the Commonwealth of Virginia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.10 **Federal Affordability Restrictions.** In the event the Property is encumbered by other affordability restrictions ("**Federal Affordability Restrictions**") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance ("**Conflict**") with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

12.11 **Authorization to Act.** The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof is authorized to act on behalf of the City under this Covenant.

*[Signatures on Following Pages]*

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed, acknowledged and delivered in its name by \_\_\_\_\_, its duly authorized \_\_\_\_\_ and witnessed by \_\_\_\_\_ its \_\_\_\_\_.

WITNESS

DECLARANT [SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

\_\_\_\_\_, a Notary Public in and for the Commonwealth of Virginia, DO HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible witnesses to be) the person named as \_\_\_\_\_ for \_\_\_\_\_ in the foregoing and annexed Declaration of Affordable Dwelling Units Covenants, bearing the date of \_\_\_\_\_ personally appeared before me \_\_\_\_\_ and as \_\_\_\_\_ acting on behalf of \_\_\_\_\_, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_

—

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

APPROVED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20 :

CITY OF RICHMOND,

By: \_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

By: \_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**Legal Description of Property**

**[See attached]**

## EXHIBIT B

### Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider ("Rider") is attached to and incorporated into the lease dated ("Lease") between ("Resident" or "You") and , as Management Agent ("Manager") for ("Owner") for Apartment ("Premises"). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease. The following terms and conditions are material terms of the Lease and your failure to comply with them will be grounds for lease termination:

**AFFORDABLE UNIT:** Resident acknowledges that the Premises is subject to that certain Declaration of Affordable Dwelling Units Covenants dated [date], 20\_, as may be subsequently amended (the "Affordable Housing Covenant"). The Premises is currently designated as an Affordable Housing Unit, which requires the Resident's household income to be less than or equal to \_\_\_\_\_ of the Area Median Income (AMI).

**DEFINED TERMS:** Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

**ELIGIBILITY:** In order for you, as Resident, to be eligible to rent an Affordable Housing Unit, you must be and remain an "Affordable Unit Tenant" as defined in the Affordable Housing Covenant.

**INCOME CERTIFICATION / INCOME RECERTIFICATION:** No more than ninety (90) days and no less than thirty (30) days before each anniversary of the first day of the Lease, Manager will request the Resident to provide the following:

- (i) an executed Certification of Residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident's household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Housing Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Manager.

Resident shall submit the foregoing listed documentation within fifteen (15) days of Manager's request. Within ten (10) days of City's receipt of the foregoing documentation and based on the results of the annual income recertification review, City will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premises, the income category for which the Resident is income eligible to lease a unit in the apartment community, or



(b) if the Resident is income eligible for the Premises, provide a certification of income verifying that the income of the Resident meets income eligibility for the Premises.

Resident's failure to provide such documents shall be grounds for lease termination and eviction. Pending any such termination and eviction, Declarant shall treat the Resident as an Over Income Tenant and charge market rate rent.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew this Lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Housing Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Income for the Affordable Housing Unit with the highest AMI level in the Property, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Housing Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of [ ]AMI or [ ] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

**PROHIBITION ON SUBLETS AND ASSIGNMENTS:** Resident may not sublease any portion of the Premises or assign its Lease to any other person.

**LEASE EFFECTIVE:** The Lease of the Premises shall only be effective if this executed Rider, a certification of income, a Certification of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the Lease.

Resident Signature \_\_\_\_\_

Date \_\_\_\_\_

Resident Signature \_\_\_\_\_

Date \_\_\_\_\_

## SCHEDULE 1

### Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. *Condominium Fees, if applicable:* Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on unit type.

#### Multi-Family Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	900	1,050

- ii. *Homeowner Fees, if applicable:* Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on home type.

#### Single-Family Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

- iii. *Monthly Hazard Insurance, if single family home:* Estimated to be \$125.00 per month. If a more recent survey or source is available, the City shall instruct Declarant to use a different estimate.
- iv. *Monthly Real Property Taxes:* Base monthly real property taxes on the estimated price of the For Sale Affordable Unit at current real estate tax rates (\$1.20 per \$100 in 2019).
- v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at [www.freddiemac.com](http://www.freddiemac.com) plus a one percent (1%) cushion. For this example, assume an average rate of 4.40%. After adding the 1% cushion, the rate for calculation of the Maximum Resale Price would be 5.40%.
- vi. *Down payment:* Assume a down payment of 5% on the purchase of the For Sale Affordable Unit.

## SCHEDULE 2

### Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula  $MRP = P \times (F) + V$  ("Formula"), where:

- (a) P = the price Owner paid for the For Sale Affordable Unit;
- (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the City pursuant to this section; and
- (c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:

As the result of the formula  $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) \wedge (1/10) - 1) + \dots + ((AMI \text{ Year } k / AMI \text{ year } k-10) \wedge (1/10) - 1) / n]) \wedge n$ , where m = the year after the For Sale Affordable Unit was purchased by Owner, k = the year in which the For Sale Affordable Unit is sold by Owner, and n = the number of years the For Sale Affordable Unit is owned by Owner.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the City; and
- (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the City.

3. Ineligible costs shall not be included in the determining the value of "V" in the Formula.

4. The value of improvements may be determined by the City based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the City.

5. The City may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the City finds that the improvement diminished or did not increase the fair market value of the For Sale Affordable Unit or if the improvements make the For Sale Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

6. The City may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.
7. Owner shall permit a representative of the City to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.
8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.
9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.
10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

**Eligible Capital Improvement:** major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of a For Sale Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the City.

**Eligible Replacement and Repair Cost:** in-kind replacement of existing amenities and repairs and general maintenance that keep a For Sale Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (iv) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (v) replacement of window sashes; (vi) fireplace maintenance or in-kind replacement; (vii) heating system maintenance and repairs; and (viii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the City.

**Ineligible Costs:** means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the City.