

APPENDIX C

RESTRICTIVE COVENANT REQUIRED

BY N.J.A.C. 5:80-26.6(d)

Declaration Of Covenants, Conditions

And Restrictions

Implementing Affordable Housing Controls

On State Regulated Property

Fair Housing Act Required Covenants

Restricting Use, Conveyance,

And Mortgage Debt

THIS DECLARATION is made this _____ day of _____, 20__, by _____, a ____ (State of domicile) _____ (corporation, limited partnership or other entity), having its principle address at _____ (hereinafter referred to as “Developer”).

WHEREAS, Developer is the owner of _____ units, more fully described on Schedule A attached hereto and made a part hereof (hereinafter referred to as the “Affordable Units”) which are situated within _____ a (condominium or residential development) ___ consisting of a total of ___ dwelling units located in the Municipality of _____, County of _____, State of New Jersey; and

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c. 222) (hereinafter the “Act”) or other applicable law to provide for their fair share of housing that is affordable to households with very-low-, low-, or moderate-incomes, in accordance with the provisions of the Act; and

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WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to very-low-, low-, and moderate-income households;

WHEREAS, pursuant to the Act, the Affordable Units described in Exhibit A attached to this Agreement have been designated as very-low-, low-, and moderate-income housing as defined by the Act; and

WHEREAS, the purpose of this Declaration is to ensure that the described Affordable Units remain affordable to very-low-, low-, and moderate-income eligible households for that period of time described in Section ____ of this Declaration.

NOW, THEREFORE, it is the intent of this Declaration to ensure that the affordability controls are recorded on each of the affordable units so as to bind the owners of the Affordable Units to the covenants, conditions, and restrictions with which they shall be required to comply and to notify all future purchasers of the affordable units that the housing unit is encumbered with affordability controls.

Article 1. Affordable Housing Covenants

Developer acknowledges and agrees that the restrictions, conditions, and requirements of the within Restrictive Covenant shall be covenants running with the land and shall remain binding on the Developer and all successors in interest.

The sale and use of each Affordable Unit subject to this Declaration is governed by regulations governing controls on affordability, which are found in the New Jersey Administrative Code at chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1 et seq.) (the “Regulations”). Consistent with the Regulations, the following covenants (the “Covenants”) shall run with the land, for each respective Affordable Unit, for the period of time commencing upon the earlier of (a) the date hereof or (b) the prior commencement of the “Control

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Period”, as determined according to the Regulations, and terminating upon the expiration or lawful termination of the Control Period as provided in the Regulations.

- A. The Affordable Unit may be conveyed only to a household who has been approved in advance and, in writing, by the Housing Affordability Service of the New Jersey Department of Community Affairs, or other administrative agent appointed pursuant to the Regulations (hereinafter, collectively, the “Administrative Agent”).
- B. No sale of the Affordable Unit shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price (“Maximum Resale Price”, or “MRP”) as determined by the Administrative Agent.
- C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, “Debt”) secured by the Affordable Unit, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percentum (95%) of the applicable MRP.
- D. The owner of the Affordable Unit shall at all times maintain the Affordable Unit as his or her principal place of residence.
- E. Except as set forth in F, below, at no time shall the owner of the Affordable Unit lease or rent the Affordable Unit to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.
- F. If the Affordable Unit is a two-family home, the owner shall lease the rental unit only to income-certified very-low-, low-, or moderate-income households approved, in writing, by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.
- G. No improvements may be made to the Affordable Unit that would affect its bedroom configuration, and in any event, no improvement made to the Affordable Unit will be taken into consideration to

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increase the MRP, except for improvements approved in advance and, in writing, by the Administrative Agent.

Article 2. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26.1 et seq., and the obligation for the provision of very-low-, low-, and moderate-income housing. Accordingly, and as set forth at N.J.A.C. 5:80-26.19:

- A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest, or other owner of the Affordable Unit, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest, or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under N.J.A.C. 5:80-26.1 et seq., and specific performance.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed by its duly authorized partners and proper officers, respectively, this ____ day of _____, 20 ____ .

ATTEST: _____

(DEVELOPER)

By: _____

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Note: Affix appropriately executed corporate jurat. If the Grantor is a limited liability company or partnership, the above jurat may be adjusted accordingly, whereby the authorized managing member or authorized partner shall be appropriately identified and whose signature must be acknowledged.