

APPENDIX H

FORM OF MORTGAGE SECURING PAYMENT OF
RECAPTURE AMOUNT FOR A 95/5 UNIT

State of New Jersey

Department of Community Affairs

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

THIS MORTGAGE, made on this the ____ day of _____, 20____ by and between _____, (the “Owner”) and THE STATE OF NEW JERSEY, acting by and through its Commissioner of the Department of Community Affairs (the “State”), in connection with the property described herein (the “Property”);

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, including but not limited to certification by the State for participation in the affordable Housing Program and for release by the State of prior recorded restriction documents, the Owner has signed a Repayment Mortgage Note (the “Note”) dated _____. The Owner promises to pay to the State amounts due under the Repayment Mortgage Note, and to abide by all obligations contained therein.

Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the State as security for the payment required to be paid upon the first non-exempt sale of the Property, which requirement is set forth in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as in effect at the time the Property was first restricted under the Affordable Housing

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program, after the completion of the control period established pursuant to said Rules (the “Control Period”). The amount of any such payment shall be determined by calculating Ninety-Five Percentum (95%) of the difference between (a) the actual sale price and (b) the regulated maximum sales price (“Maximum Resale Price”, or “MRP”) that would be applicable on the date of such sale were the Control Period still in effect.

Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of _____ in the County of _____, State of New Jersey (hereinafter the “Property”), described more specifically as Block No. ___ Lot No. ___, and known by the street address:

Article 4. RIGHTS GIVEN TO STATE

The Owner, by mortgaging the Property to the State, gives the State those rights stated in this Mortgage, and all the rights the law gives to the State under Uniform Housing Affordability Controls, which are found at N.J.A.C. 5:80-26.1 et seq. The rights given to the State are covenants running with the land. The rights, terms, and restrictions in this Mortgage shall bind the Owner and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and this Mortgage, the State will prepare and deliver to the then current owner of record a quitclaim deed or other document of release.

Article 5. DEFAULT

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The State may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner attempts to convey an interest in the Property without giving prior written notice to the State;
2. The ownership of the Property is changed for any reason other than in the course of an exempt sale;
3. The Owner fails to make any payment required by the Note;
4. The holder of any lien on the Property starts foreclosure proceedings; or
5. Bankruptcy, insolvency or receivership proceedings are commenced by or against the Owner.

Article 6. STATE'S RIGHTS UPON DEFAULT

If the State declares that the Note and this Mortgage are in default, the State shall have all of the rights given by law or set forth in this Mortgage.

Article 7. NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.

Article 8. NO WAIVER BY STATE

The State may exercise any right under this Mortgage or under any law, even if the State has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The State does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

Article 9. EACH PERSON LIABLE

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The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents, and designees who succeed to their responsibilities. The State may enforce any of the provisions of the Note and of this Mortgage against any one or more liable individual.

Article 10. SUBORDINATION

This Mortgage will not be subordinate, and will not be subordinated by the State, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the MRP that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute a note and mortgage in the form of the Note and this Mortgage, and the same has been duly recorded.

Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by both parties.

Article 13. SIGNATURES

By executing this Mortgage, the Owner agrees to all of its terms and conditions.

Article 14. ACKNOWLEDGEMENT

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The Owner acknowledges receipt of a true copy of this Mortgage, at no charge.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

Signature of (Owner)

Signature (Co-Owner)

STATE OF NEW JERSEY)

) ss.:

COUNTY OF _____)

BE IT REMEMBERED, that on this the ____ day of _____, 20____ the subscriber _____ appeared personally before me (*If more than one person signed the foregoing mortgage and appeared before me, the words "the subscriber" and "the Owner" shall include all such persons*) and who, being duly sworn by me, deposed and made proof to my satisfaction (i) that he/she is the Owner named in the foregoing mortgage and (ii) that he/she has executed said mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, _____ on the date set forth above.

NOTARY PUBLIC