

APPENDIX C

RESTRICTIVE COVENANT REQUIRED

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

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

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH  
RESTRICTIONS ON RESALE AND REFINANCING**

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, a \_\_\_\_ (State of domicile) \_\_\_\_\_ (corporation, limited partnership, or other entity), having its principal address at \_\_\_\_\_ (“Developer”).

WHEREAS, Developer is the owner of \_\_\_\_\_ units, more fully described on Schedule A attached hereto and made a part hereof (the “Affordable Units” and, individually, an “Affordable Unit” or “Unit”), which are situated within \_\_\_\_\_, a \_\_\_\_\_ (residential development, condominium, or other type of project) consisting of a total of \_\_\_\_ dwelling units located in the Municipality of \_\_\_\_\_, \_\_\_\_\_ County, New Jersey; and

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WHEREAS, municipalities within the State of New Jersey (the “State”) are required by the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the “Act”) 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

WHEREAS, the Act requires that municipalities ensure that such housing remains affordable to very-low-, low-, and moderate-income households for appropriate periods of time; and

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

WHEREAS, the anticipated completion date of construction of the Affordable Units is \_\_\_\_\_ (if applicable); and

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

NOW, THEREFORE, this Declaration is executed and recorded to ensure that appropriate affordability controls are made of record on each of the Affordable Units so as to bind the owners thereof to the covenants, conditions, and restrictions with which they must comply and to notify all future purchasers of an Affordable Unit that the Unit is encumbered with affordability controls.

#### Article 1. Affordable Housing Covenants

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

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The sale and use of each Affordable Unit that is subject to this Declaration are governed by regulations establishing controls on affordability, which regulations are codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the “UHAC Regulations”). Pursuant to the UHAC Regulations, the following covenants (the “Covenants”) run with the land, for each respective Affordable Unit, for the period of time commencing upon the earlier of (a) the date of this Declaration or (b) any prior commencement of the “Control Period,” as determined according to the UHAC Regulations, and terminating upon the expiration or other lawful termination of the Control Period as provided in the UHAC Regulations.

A. The Affordable Unit may be conveyed only to an individual or household who has been approved in advance and, in writing, by the Housing Affordability Service of the New Jersey Housing and Mortgage Finance Agency, or other administrative agent duly appointed pursuant to the UHAC Regulations (the “Administrative Agent”).

B. No sale of the Affordable Unit is lawful unless approved in advance and, in writing, by the Administrative Agent, and no sale may be for a consideration greater than the 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 debt (collectively, “Debt”) secured by the Affordable Unit may be incurred except as approved in advance and, in writing, by the Administrative Agent. The Administrative Agent may not approve any Debt if incurring the Debt would make the total of all Debt exceed Ninety-Five Percent (95%) of the applicable MRP.

D. The owner of the Affordable Unit shall at all times during the Control Period maintain the Unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year.

E. At no time shall the owner of the Affordable Unit lease or rent the Unit to any person or persons, except as set forth in F below or on a short-term hardship basis as approved in advance and, in writing, by the Administrative Agent.

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F. If the Affordable Unit is a two-family home, the owner may lease the rental unit only to income-certified very-low-, low-, or moderate-income households approved in advance and, in writing, by the Administrative Agent; may charge rent no greater than the maximum permitted rent as determined by the Administrative Agent pursuant to the UHAC Regulations; 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 count or configuration unless approved in advance and, in writing, by the Administrative Agent.

H. No improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and, in writing, by the Administrative Agent pursuant to the UHAC Regulations.

## Article 2. Remedies for Breach of Affordable Housing Covenants

A breach of any of the Covenants will cause irreparable harm to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the UHAC Regulations, and by the constitutional obligation for the provision of housing for very-low-, low-, and moderate-income individuals and families. Accordingly, and in accordance with 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, the Municipality, and the State of New Jersey (the "State") shall have all remedies provided at law or in equity, including, but not limited to, the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the Covenants by the Grantee or any successor in interest or other owner of the Affordable Unit, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including, but not limited to, forfeiture, foreclosure, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in violation of the Covenants, divestment of rent proceeds from illegal rentals, injunctive relief to prevent further violation of the Covenants, specific performance, and entry on the premises.

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IN WITNESS WHEREOF, Developer has caused this instrument to be executed by its duly authorized partner(s) or officer(s) this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(DEVELOPER)

By: \_\_\_\_\_  
*Corporate Officer's signature*  
*Sign above and print, stamp, or type name*

State of New Jersey, County of \_\_\_\_\_

I am either (check one) \_\_\_ a Notary Public or \_\_\_\_\_, an officer authorized to take acknowledgements and proofs in the State of New Jersey. On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (the "Witness") appeared before me in person. The Witness was duly sworn by me and under oath stated and proved to my satisfaction that:

1. The Witness is the \_\_\_\_\_ secretary of the corporation that is the Grantor described as such in this document (the "Corporation").
2. \_\_\_\_\_, the officer who signed this document, is the <title> \_\_\_\_\_ of the Corporation (the "Corporate Officer").
3. The making, signing, sealing, and delivery of this document have been duly authorized by a proper resolution of the Board of Directors of the Corporation.
4. The Witness knows the corporate seal affixed to this document by the Corporate Officer is the corporate seal of the Corporation. The Corporate Officer signed and delivered this document as and for the voluntary act and deed of the Corporation. All this was done in the presence of the Witness, who signed this proof to attest to the truth of these facts.

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Sworn and signed before me on the date above written.

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*Witness: Sign above and print or type name below*

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

#### EXHIBIT A

#### Description of Affordable Units