

APPENDIX D-4

RESTRICTIVE COVENANT FOR TWO-FAMILY AFFORDABLE HOMEOWNERSHIP UNIT AND
AFFORDABLE RENTAL UNIT, REQUIRED BY N.J.A.C. 5:80-26.6(e)
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Affordability Service

637 South Clinton Avenue

P.O. Box 18550

Trenton, NJ 08650-2085

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

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

TWO FAMILY AFFORDABLE HOMEOWNERSHIP UNIT AND AFFORDABLE RENTAL UNIT
FOR NEW UNITS

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 _____ for sale and _____ rental units, which are situated within
_____, a <condominium or other form of
residential development> consisting of a total of _____ dwelling units more fully described on Exhibit A

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attached hereto and made a part hereof (the “Affordable Units”), which is located in the municipality of _____, _____ County, New Jersey (the “Municipality”), being also known as Lot(s) No. _____, Block No. _____ on the tax map of the Municipality; and

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, and moderate incomes in accordance with the provisions of the Act; and

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

WHEREAS, the affordable units described in Exhibit A attached to this Declaration (the “Affordable Units” or “Units”) have been designated as very-low-, low-, and moderate-income housing as defined by the Act; and

WHEREAS, this Declaration is intended to ensure that the Affordable Units remain affordable to eligible very-low-, low-, and moderate-income households for that period of time described in Article 1.I of this Declaration.

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

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Article 1. Affordable Housing Covenants

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

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

B. No sale of an 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 an 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 an Affordable Unit shall at all times maintain the ownership unit as their principal place of residence, which is defined as living in the Unit at least 260 days out of each calendar year.

E. The owner of an Affordable Unit may not lease or rent the ownership 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. The owner of an Affordable Unit 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; shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent; and

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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 an 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.

I. Each restricted unit remains subject to the Control Period requirements at N.J.A.C. 5:80-26.6 until such time as the municipality in which the unit is located releases the unit from such requirements or the unit is otherwise effectively released pursuant to N.J.A.C. 5:80-26.6(h). Prior to such a release, the restricted unit remains subject to such requirements for at least the period(s) of time provided at N.J.A.C. 5:80-26.6(a).

Article 2. Remedies for Breach of Affordable Housing Covenants

A breach 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 "Act"), the UHAC Regulations, and the constitutional obligation for the provision of very-low-, low-, and moderate-income housing. 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 above Covenants, the Administrative Agent, the Municipality, and the State shall have all remedies provided at law or in equity, including the right to seek injunctive relief and specific performance.

B. Upon the occurrence of a breach of any of the above Covenants, 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

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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.

Article 3. Additional Provisions Applicable to Two-Family Units

A. Description of Property: Each two-family unit is a residence designed to house one very-low-, low-, or moderate-income owner-occupant household (the “ownership unit”) and one very-low-, low-, or moderate-income renter household (the “rental unit”). This Deed establishes affordability controls for the resale of the Property and for the rental of the rental unit. The Property consists of a ____-bedroom ownership unit and a ____-bedroom rental unit. The address of the rental unit is _____.

B. The following definitions are applicable to this Article 3:

“Adjusted Rent” means the Base Rent for the rental unit adjusted by the Index.

“Base Rent” means the charge for an affordable housing rental unit at the time the unit is first restricted, which charge has been calculated to include a credit for those utility costs paid by the tenant using a utility cost schedule approved for statewide use by the U.S. Department of Housing and Urban Development (HUD), or its successor.

“Index” means the measured percentage of change in the median income for a household of four by geographic region using the applicable income guidelines

“Renter” means a household that has been certified to rent an affordable housing unit, subject to signing a lease and the payment of any required security deposit.

1. The following affordability restrictions are applicable for the rental unit for a period of ____ years from the date set forth in Article 1 hereof, Affordable Housing Covenants.

2. The owner of an Affordable Housing rental unit shall not lease the rental unit for an Adjusted Rent that is greater than the established Base Rent plus the allowable percentage of increase as determined by HUD.

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Adjusted Rents are effective as of the lease anniversary date and remain in effect for at least a one-year period.

3. The Owner shall not lease the rental unit other than to a Renter who has been certified utilizing the income verification procedures established by DCA, the Agency, or the Division of Local Planning Services (“DLPS”) in DCA to determine qualified very-low, low-, and moderate-income-eligible households.

4. The Owner of the rental unit shall not sell the unit other than in accordance with and subject to the UHAC Regulations in order to ensure that the rental unit remains affordable to and occupied by very-low, low-, and/or moderate-income households for the duration of the Control Period established pursuant to N.J.A.C. 5:80-26.6.

C. The Covenants set forth herein with regard to the rental unit run with the land and remain in effect for the term of years described above, regardless of any sale or other conveyance of the Property. The continuance of the Covenants may, however, be extended by the Municipality in accordance with N.J.A.C. 5:80-26.6(h).

D. All provisions of the Act and the UHAC Regulations are applicable to the ownership unit and to the rental unit, whether or not so expressed in this Deed.

Article 4. ACKNOWLEDGEMENT

Developer acknowledges receipt of a true copy of this Declaration of Covenants, Restrictions, and Conditions, at no charge.

IN WITNESS WHEREOF, Developer has executed this Declaration of Covenants, Restrictions, and Conditions for the purposes stated herein.

Authorized Signature of Developer

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STATE OF NEW JERSEY)

) ss.:

COUNTY OF _____)

BE IT REMEMBERED, that on this the _____ day of _____, 20__ the subscriber _____ appeared personally before me and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the <authorized signer for the Developer> named in the foregoing Declaration of Covenants, Restrictions, and Conditions and (ii) they executed the Declaration of Covenants, Restrictions, and Conditions 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

CORPORATE PROOF BY SUBSCRIBING WITNESS

State of New Jersey, County of _____

I am either (check one) ___ a Notary Public or ___ a _____, 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").\

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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 document as attesting witness. The Witness signs this proof to attest to the truth of these facts.

The Witness also acknowledges that the full and actual consideration paid or to be paid for the interest in realty evidenced by this document, as such consideration is defined in P.L. 1968, c. 49, sec. 1(c), is \$_____.

Sworn and signed before me on the date above written:

Witness: Sign above and print, stamp, or type name below

Officer’s signature: Sign above, and print, stamp, 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.

Record and return to:

New Jersey Housing and Mortgage Finance Agency

637 South Clinton Avenue

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P.O. Box 18550

Trenton, New Jersey 08650-2085

Attention: Housing Affordability Service