

APPENDIX O

FORM OF MORTGAGE SECURING PAYMENT OF  
RECAPTURE NOTE IN FAVOR OF MUNICIPALITY,  
REQUIRED BY N.J.A.C. 5:80-26.6(d)

State of New Jersey

Department of Community Affairs

[name of municipality]

Affordable Housing Program

Repayment Mortgage

To Secure Payment of Amounts Due

Upon First Non-Exempt Sale

After Expiration of Control Period

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

THIS MORTGAGE, made on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (the “Owner”) and \_\_\_\_\_ (the “Municipality”), in connection with the property described in Article 3 below (the “Property”);

Article 1. REPAYMENT MORTGAGE NOTE

In consideration of value received, the Owner has signed a Recapture Mortgage Note dated \_\_\_\_\_ (the “Note”). The Owner promises to pay to the Municipality the recapture amount due under the Note, currently \$ \_\_\_\_\_, which is the difference between \$ \_\_\_\_\_, the restricted price of the Property at the time of initial sale, and to abide by all terms and conditions therein. Pursuant to N.J.A.C. 5:80-26.6(d)iv,

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the final recapture amount will be determined upon exit sale, and will be equal to the difference between the restricted price of the Property at the time of exit sale and the contract price at the exit sale of the Property, minus reasonable real estate broker fees (the “price differential”) minus the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of the Property, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent (the “equity share amount”). At its sole discretion, by ordinance, the Municipality may determine another final recapture amount, which must be less than the price differential minus the equity share amount. The amount due under the Note will be reduced by the cumulative dollar value of capital expenditures made after the date of the Note for improvements and/or upgrades to the Property, as may be approved by the administrative agent for the Municipality, excluding capital improvements paid for by the Municipality.

#### Article 2. MORTGAGE AS SECURITY FOR AMOUNT DUE

This Mortgage is given to the Municipality as security for the payment required to be paid upon the first non-exempt sale of the Property, as provided under the 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”).

#### Article 3. PROPERTY DESCRIPTION

All of the land and improvements thereon located in the municipality of \_\_\_\_\_, \_\_\_\_\_ County, New Jersey, described more specifically as Block No. \_\_\_\_, Lot No. \_\_\_\_, and known by the street address: \_\_\_\_\_.

#### Article 4. RIGHTS GIVEN TO MUNICIPALITY

The Owner, by mortgaging the Property to the Municipality, gives the Municipality those rights stated in this Mortgage, and all the rights given to the Municipality pursuant to the UHAC Regulations. The rights

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given to the Municipality are covenants running with the land. The rights, terms, and restrictions of this Mortgage bind the Owner and all subsequent purchasers and owners of the Property and their heirs, successors, and assigns. Upon performance of the promises contained in the Note and this Mortgage, the Municipality will prepare and deliver to the then current owner of record a discharge or other document of release.

#### Article 5. DEFAULT

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

1. The Owner conveys or attempts to convey an interest in the Property without giving prior written notice to the Municipality;
2. The ownership of the Property or any interest therein is changed for any reason other than through 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. MUNICIPALITY'S RIGHTS UPON DEFAULT

If the Municipality declares that the Note and this Mortgage are in default, the Municipality shall have all of the rights given by law, in equity, or as 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.*

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Article 8. NO WAIVER BY MUNICIPALITY

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

Article 9. EACH PERSON LIABLE

This Mortgage is legally binding upon each Owner individually and all their heirs, successors, and assigns. The Municipality 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 Municipality, to any mortgage, refinancing, equity loan, secured letter of credit, or other obligation secured by the Property, except with respect to (a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

Article 11. SUBSEQUENT OWNERS

This Mortgage will not be released with respect to any subsequent owner who acquires the Property through an exempt transfer unless the transferee executes and delivers to the Municipality a note and mortgage substantially in the form of the Note and this Mortgage, and the mortgage is duly recorded.

Article 12. AMENDMENTS

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No amendment or change to the Note and this Mortgage may be made, except in a written document signed by authorized representatives of both parties and approved by the administrative agent for the Municipality duly appointed pursuant to the UHAC Regulations.

Article 13. SIGNATURES

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

Article 14. ACKNOWLEDGEMENT

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:

By:

\_\_\_\_\_

Signature (Owner)

\_\_\_\_\_

Signature (Owner)

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" include all such persons) and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the Owner named in the foregoing Mortgage and (ii) they executed the Mortgage with respect to the Property and for the purposes set forth therein.

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

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NOTARY PUBLIC