

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	November 2, 2020
Action Required:	Adoption of Ordinance, including all related attachments and schedules
Presenter:	Brenda Kelley, Redevelopment Manager Lisa Robertson, Acting City Attorney
Staff Contacts:	John C. Blair, II, Acting City Manager Lisa Robertson, Acting City Attorney Brenda Kelley, Redevelopment Manager
Title:	<b>Ordinance Authorizing a Forgivable Loan to Piedmont Housing Alliance to Support Redevelopment of Friendship Court for the Purpose of Producing New Housing for Low and Moderate Income Persons</b>

At its October 19, 2020 meeting, City Council requested a revision to the attached Ordinance regarding amendments to the Agreement. Please refer to Section 5(J) for the revised language.

**Background:**

Piedmont Housing Alliance (PHA) intends to redevelop the 11.75-acre Friendship Court property in four phases over the next 8-9 years. This \$100+ million project includes the creation of approximately 450 affordable units with tiers of affordability. Additionally, the redevelopment will include commercial and community space, and associated infrastructure and parking. Phase 1 of the project includes the creation of 106 Affordable Units, including the 1:1 replacement of 46 of the existing Project-based Section 8 Rental Affordable Units.

As part of the FY 2020 Budget, City Council approved a total of \$5,545,159 in City Capital Improvements Program funding for Friendship Court Infrastructure Improvements and Friendship Court Redevelopment for Phase 1.

To facilitate the allocation of the approved FY19/20 CIP funding for Phase 1, City staff has been working closely with PHA staff and consultants to develop the attached Ordinance and Affordable Housing Covenant(s) that spell out the agreed-to specifics of how and when the funding will be disbursed, and for what the funding may be expended. These documents further provide protections and guarantees in place to insure that Affordable Units and infrastructure are built in accordance to the agreed upon performance requirements to disburse funding. (Please note: there is an additional [separate] request by PHA, through arrangements with the Charlottesville Economic Development Authority (CEDA), for reimbursement of real estate taxes paid if the Redevelopment achieves certain performance measures; that CEDA Agreement is a separate item on Council's Agenda).

PHA has received a commitment of Low Income Housing Tax Credits (LIHTC) from Virginia Housing (formerly known as VIRGINIA HOUSING) and they are in the process of finalizing the remaining necessary financing. PHA's goal had been to begin construction on Phase 1 in the spring of 2020, but COVID-related matters have temporarily slowed down the LIHTC closing process. PHA continues to try to begin construction as soon as is possible with a goal to start before the end of 2020.

### **Discussion:**

Phase 1 includes 106 Affordable Units spanning the spectrum of affordability from below 30% AMI up to 80% AMI. The City would enter into a forgivable Loan to PHA for costs expended in the construction of Infrastructure, affordable rental units, and relocation assistance in Phase I, over a Loan Period of 40 years.

All Affordable Units will have a Required Affordability Period of 99 years. These affordability terms will also be enforced by the state through Virginia Housing due to the LIHTC (Low Income Housing Tax Credit) award, and also through (i) the terms of the 40-year deferred payment forgivable loan period, and (ii) a 99-year Affordable Housing Covenant.

Years 1-40: If PHA breaches the terms of the Loan (including the Required Affordability provisions) during the initial 40-year Loan Period, the entire amount of the Loan would become payable in full to the City and the City would have all other remedies available—including the ability to obtain injunctive relief in court for specific performance of the Affordability Covenant. If the 40-year Loan Period expires, and the Affordability Covenant has been complied with throughout that time, the entire amount of the Loan will be forgiven (principal and interest).

Years 41 through and 99: the Loan will have been forgiven in Year 40 if all Affordability Requirements were continuously implemented; however, in years 41 through 99 the City will have the ability to file an action in court to obtain an injunction requiring Affordable Units to be provided within the Project throughout the 99-Year Required Affordability Period.

Here are some key elements of the attached documents:

- 100% of the units constructed within the Project will be provided for rental or ownership by low and moderate income persons. All Affordable Units, whether Rental or For-Sale Units, will be and remain affordable for a period of 99 years.
- Within Phase 1 of the Project: (i) 46 Rental Affordable Units shall be provided as 1:1 replacements for 46 existing units with Project-based Section 8 operating subsidy; (ii) an additional 30 Rental Affordable Units will be provided for households with incomes of not more than 60% AMI; (iii) an additional 30 Rental Affordable Units will be provided for households with incomes of not more than 80% AMI.
- A Master Affordable Housing Covenant will be recorded to provide assurances of affordability for the entire site. As each phase (beyond Phase 1) of redevelopment proceeds, a new Affordable Housing Covenant for that phase of development will be approved by City Council and executed and recorded by the parties. In addition, if the City is providing funding to support the redevelopment of subsequent phases, an Ordinance will be approved by City Council to specify the terms of that funding.
- The Phase 1 Affordable Housing Covenant does not incorporate any other scope of the project beyond Phase 1.
- The Project, upon completion, shall be constructed in accordance with the Master Plan developed by PHA/Friendship Court with input from Friendship Court residents.

- Loan proceeds can only be used for: (a) for the installation, construction, or reconstruction of public streets (inclusive of sidewalk, curb and gutter, stormwater, landscaping), utilities, and parks, essential to the Project (Public Infrastructure); (b) to prevent the displacement of low and moderate income resident of the existing property to be redeveloped, and for construction of new Phase 1 housing units for rental by low and moderate income persons (ADU Construction); and (c) to cover “soft costs” associated with the planning and design for construction of infrastructure for the Project and /or construction of Rental Affordable Units within Phase 1 of the Project.
- Prior to the first disbursement of funding, the following documents are required to be provided to the City: (i) a public infrastructure plan; (ii) a Resident Relocation Plan; (iii) a Construction Schedule; (iv) the Budget for the Project; (v) the Affordable Housing Covenant to be executed and recorded in the public records; (vi) an Affordable Marketing Plan;
- Each disbursement of funding is required to provide documentation that such amount(s) have actually been paid to construction contractor(s), subcontractor(s) and/or independent contractors for work or services already completed (In other words: reimbursement for completed work or services).
- The disbursement of City funds shall constitute loan proceeds. The term of the Loan is forty (40) years, commencing on the date of the final disbursement of Loan proceeds by the City. As security for the Loan, the City will be granted as assignment of its subordinate interest in Phase 1. Interest shall accrue on outstanding amounts of the Loan at the annual rate of 3%. If the Project is completed and operated continuously in accordance with all terms, then the Loan and the accrued interest shall be forgiven.
- Beginning with the first occupancy of any Affordable Unit, PHA will be required to provide an annual report, which shall include at a minimum: (a) the number of affordable units that are occupied; (b) the number of affordable units that are vacant; (c) for each unit that is vacant, the manner in which the unit became vacant and the progress in re-leasing the unit; (d) for each occupied unit, current household information; (e) a sworn statement that occupants of the affordable units meeting the eligibility criteria; (f) a copy of each new or revised Certification of Income; (g) a copy of each new or revised Certification of Residency; (h) a copy of each inspection report and Certification of Inspection for each unit; and (i) a copy of all forms, policies, procedures, and other documents reasonably requested related to the affordable rental units.
- Once the Affordable Housing Covenant is recorded, then the Affordability Requirements become binding not only on the current landowner(s), but also upon any third parties to whom the Project may be sold in the future. (In other words: the Affordability Requirements will run with the Land).
- Following the expiration of the LIHTC extended use period, the City will have the exclusive right to lease up to 20% of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four persons having an income of 80% AMI.
- The City shall have the right to purchase a For Sale Affordable Unit in the event of a foreclosure on the unit. The City may designate another agency or other third party to take title to the unit.
- **PHA has requested that the documents contain provisions that specify that (affordability) restrictions on the Project will terminate in the event the Project is foreclosed upon by Virginia Housing (provider of LIHTC). This request is pursuant to certain development policies established by Virginia Housing. We have drafted the documents in a manner that complies with the Virginia Housing policies.**

Here are some key considerations regarding the redevelopment:

- In the event that the Project is foreclosed upon, the affordability restrictions will terminate.
- At some point, in order to maintain affordability, the City may have the opportunity to control affordable units in the Project. However, if the City were to take advantage of this opportunity, there will be a cost to the City associated with this.

**Alignment with Council Vision Areas and Strategic Plan:**

This action aligns with the Council's Vision for quality housing opportunities that offers affordable housing for people of all income levels, racial backgrounds, life stages and abilities. This action aligns with the City Council's Strategic Plan Goal Four: A Strong Diversified Economy and Goal One: An Inclusive Community of Self-Sufficient Residents.

**Budgetary Impact:**

No additional funding is required at this time. Approval of the attached Ordinance will establish the terms and conditions under which the CIP Funding previously approved for FY19/20 can be expended.

**Alternatives:**

City Council can decline to adopt the attached Ordinance.

**Attachments:**

Proposed Ordinance (includes the Proposed Master Affordable Housing Covenant and related attachments/exhibits, and the Proposed Phase 1 Affordable Housing Covenant and related attachments/exhibits)

**ORDINANCE**  
**AUTHORIZING A FORGIVABLE LOAN TO PIEDMONT HOUSING ALLIANCE TO SUPPORT REDEVELOPMENT OF FRIENDSHIP COURT FOR THE PURPOSE OF PRODUCING NEW HOUSING FOR LOW AND MODERATE INCOME PERSONS**

WHEREAS, the production of new housing for persons of low and moderate income is a public purpose and use for which public money may be spent, and such production is a governmental function of concern to the Commonwealth of Virginia; and

WHEREAS, pursuant to Virginia Code §15.2-958 the City of Charlottesville may, by ordinance, make grants or loans to the owners of residential rental property occupied, or to be occupied, following construction, by persons of low or moderate income, for the purpose of producing such property; and

WHEREAS, Piedmont Housing Alliance (“PHA”) is a private, nonprofit 501(c)(3) organization (corporation) organized and operating under the laws of the Commonwealth of Virginia, having as its mission the creation of affordable housing opportunities by developing new housing and by preserving existing affordable housing; and

WHEREAS, PHA and its joint venture partner are planning the redevelopment of Friendship Court in multiple phases, funded by Low Income Housing Tax Credits, private donations, grants, local government funding from the City of Charlottesville, and a mortgage; and

WHEREAS, PHA has requested the City of Charlottesville (the “City”) to award local public funding for the Project, in an amount sufficient to subsidize the projected cost of constructing the required public infrastructure for the Project as well as the construction of for-rent affordable units within Phase 1 (defined below) of the Project (defined below), the City desires to make a Loan to PHA pursuant to and in consideration for PHA’s activities in compliance with this Agreement and the Master Affordable Housing Covenant attached hereto as **Attachment 1**; and

WHEREAS, PHA will make a subordinate loan to the owner of the first phase of the development (“Phase 1 Project Owner”) in an amount not to exceed the loan from the City to PHA (the “Sponsor Loan”), which the Phase 1 Project Owner will use to undertake the improvements described herein (defined below); and

WHEREAS, the Sponsor Loan will be secured by a subordinate interest in the land for Phase 1 of the Project and such subordinate interest shall be assigned to the City as security for this loan; and

**NOW, THEREFORE, BE IT ORDAINED** by the Charlottesville City Council that local public funding is hereby approved for Piedmont Housing Alliance to support the Project, subject to the following terms and conditions, which shall be set forth within a written agreement that shall be executed by duly authorized agents of the City and Piedmont Housing Alliance (“Loan Agreement” or “Agreement”):

**Section 1.      Public purpose of the Loan**

This Loan is provided to Piedmont Housing Alliance (“Recipient”) for the public purposes of providing for construction of streets, utilities, and other site improvements necessary for the Project, and to assist the construction of new for-rental housing units within the property known as Friendship Court, as part of a multi-phased redevelopment of that property (“Subject Property” or “Project”). Phase 1 and subsequent phases of the Project shall be diligently prosecuted by the Recipient, to the end that, upon completion of construction, **one hundred percent (100%) of the dwelling units within the Project will be for rental or for ownership by low and moderate income persons, for a period not less than ninety-nine (99) years.**

## **Section 2. Representations and Warranties by the Recipient**

To induce the City to make the Loan, Recipient makes the following as its representations and warranties to the City:

- (A) Recipient is a corporation organized under the laws of the Commonwealth of Virginia, active and in good standing as of the date of its execution of this Agreement.
- (B) Recipient is a nonprofit 501(c)(3) organization whose 501(c)(3) status remains in effect as of the date of its execution of this Agreement.
- (C) Recipient will use its best efforts to ensure the Loan funds will be used only for the public purposes referenced in Section 1. Recipient may expend the Loan funds itself, or Recipient may loan the funds to a third party who is legally obligated to use the funds only for the public purpose referenced in Section 1. A loan to a third party shall be secured by a lien on the land within Phase 1. Recipient shall execute an assignment of such lien and interests as further security for the Loan from the City to the Recipient, subject to certain requirements of lenders and the investor member of Phase 1 Project Owner, including this Agreement and the Master Affordable Housing Covenant (or any phase-specific replacement covenant) being subordinate and subject to the lien of all lenders to the Project and including the forbearance of certain creditor’s rights and remedies during the applicable federal tax credit “compliance period” when the investor member has an ownership interest in the Phase 1 Project Owner.
- (D) Recipient shall in good faith take all measures necessary to ensure that one hundred percent (100%) of the dwelling units constructed within the Project will be Rental Affordable Units or For Sale Affordable Units for by low and moderate income persons, in accordance with the Master Affordable Housing Covenant attached to this Ordinance and any amendments thereto.
- (E) Recipient will use its best efforts to ensure the number of newly constructed affordable dwelling units constructed within subsequent phases of the development are in accordance with the Master Site Requirements attached as Exhibit E to the Master Affordable Housing Covenant (Attachment 1 to this Ordinance).

At all times within the Subject Property there will be one hundred fifty (150) for-rent affordable dwelling units subject to project-based federal Section 8 operating subsidies,

including a combination of pre-existing and new units. This represents the current number of units existing within the Subject Property as of the date of this Agreement.

- (F) Recipient shall record a Master Affordable Housing Covenant for the Project (the “Covenant”) within the land records of the City, in the format attached hereto as **Attachment 1**.
- (G) To the best of its knowledge, NHTE Piedmont Garrett Square Limited Partnership (the “**Landowner**”) currently owns all right, title and interest in and to the land comprising the development site of the Project, and Recipient has verified that the Landowner does not intend to transfer or convey title to any such land to any third party, other than the Phase 1 Project Owner, until the Affordable Housing Covenant has been recorded in the City’s land records..
- (H) Recipient will use its best efforts to ensure the development of all phases of the Project shall be consistent with the Master Plan developed by the Recipient with public input from the community, a copy of which is depicted in ***Illustration 1***, following below, as may be amended from time to time consistent with the provisions of the Master Affordable Housing Covenant and the public purposes for which this Loan is offered pursuant to Virginia Code §15.2-958.

***Illustration 1.***



- (I) Recipient will execute any and all documents reasonably requested by the City to finalize the Loan authorized by this Ordinance, including, without limitation, any note, deed of trust, security agreement or guaranty.
- (J) The representations set forth within paragraphs (A) through (H) preceding above are material provisions of this Agreement.

**Section 3. Authorized Expenditures; Budget**

- (A) The Project is planned as a multi-phased redevelopment of land currently identified by Tax Parcel Identification No. 280112000, currently assigned the street address of 400-426 Garrett Street, Charlottesville, Virginia. As of the date of this Agreement, only Phase 1 is being designed for construction. As subsequent phases are designed, the parties may amend this Agreement as necessary or desirable to reflect additional public funding for the Project.
- (B) Phase 1 shall include no fewer than one hundred six (106) for-rent affordable dwelling units, of which: (i) forty-six (46) will be subject to project-based federal Section 8 operating subsidies; and **(ii)** a minimum of sixty (60) additional For-Rent dwelling units will be provided for rental to households having incomes from thirty percent (30%) to eighty percent (80%) AMI, as mutually agreed to by the City and the Recipient on or before [any disbursement of Loan funds].
- (C) Loan proceeds may be expended as follows:

- i. Up to **\$1,386,000.00** shall be expended for the installation, construction, or reconstruction of public streets (inclusive of sidewalk, curb and gutter, stormwater, landscaping), utilities, and parks, essential to the Project (“Public Infrastructure” or “Public Infrastructure Construction”), and
  - ii. Up to **\$3,604,159.00** shall be expended to prevent the displacement of low and moderate income residents of the existing property to be redeveloped, and for construction of new Phase 1 housing units for rental by low and moderate income persons (“ADU Construction”).
  - iii. Up to **\$555,000.00** is expected to cover “soft costs” associated with the planning and design for construction of infrastructure for the Project and/or construction of Rental Affordable Units within Phase 1 of the Project. Any portion of this amount not expended for Soft Costs may be expended in accordance with (i) or (ii), above;
- (D) Public Infrastructure Construction will commence within six months following loan closing on Phase 1 of the Project, and be diligently prosecuted by Recipient to completion.
- (E) Phase 1 Project Owner, with consultation from Recipient, shall establish a Budget for Public Infrastructure Construction for the Project and for construction of Rental Affordable Units within Phase 1, and will submit the Budget to the City for approval. Once the Budget is approved by the City, all material changes to the Budget shall be subject to the prior written approval of the City. Whenever any change order is under consideration by Recipient which would materially increase the cost of any aspect of construction, a Budget amendment shall be prepared for the City’s approval prior to execution of the change order.
- (F) [Reserved.]
- (G) The Budget shall establish stand-alone line items for Public Infrastructure Construction. The Budget shall also include line items for a Construction Contingency Amount, soft costs and other reserves acceptable to the City.

#### **Section 4. Disbursement of Loan Proceeds**

(A) **Preconditions, General**

Prior to the first disbursement of any Loan proceeds for expenses incurred pursuant to Section 3(C)(i) or (ii), the Recipient shall furnish all of the following documents to the City for Phase 1 of the Project, in a form acceptable to the City in all respects, for the City’s approval:

- i. A Public Infrastructure Plan: providing for construction of public streets, sidewalks, curb and gutter, utilities, stormwater, landscaping, and street lights (“Public Infrastructure”) for the Project, prior to commencement of construction of any building(s) or structure(s) within Phase 1, or providing for the phased construction

of Public Infrastructure, by (a) delineating sections within the Project in which infrastructure will be constructed in coordination with housing that will be served by that infrastructure, (b) within each delineated section, establishing a schedule for completion of construction of the Public Infrastructure, within that section in relation to the completion of construction and occupancy of dwelling units within that section; (c) providing a Cost Estimate establishing the cost of constructing the Public Infrastructure in each section, and (d) in the event that Public Infrastructure within a delineated section has been substantially constructed but has not met all requirements necessary for final acceptance into the City's public system for maintenance, then Recipient shall provide a maintenance and indemnifying bond, with surety acceptable to the City, in an amount sufficient for and conditioned upon the maintenance of the Public Infrastructure until such time as the Public Infrastructure is accepted into the City's public system for maintenance.

- ii. A Resident Relocation Plan establishing a schedule, consistent with the schedule established within the construction plan referenced in (i) above: (a) identifying how many of the newly constructed units in each section will be occupied by then-current residents of Friendship Court, (ii) establishing a budget for the relocation of Friendship Court residents, and (iii) setting forth how the Recipients will determine what Friendship Court residents will be relocated first, etc. The relocation plan shall demonstrate zero displacement.
- iii. A Construction Schedule that implements construction of the Rental Affordable Units in Phase 1, in all aspects, in accordance with paragraphs (i) – (ii) preceding above.
- iv. The Budget required by Section 3, above.
- v. Master Affordable Housing Covenant, in the form attached hereto as **Attachment 1**, executed by Recipient and recorded within the land records of the Circuit Court for the City of Charlottesville.

If the above-referenced documents demonstrate the adequacy of the Budget to complete the Public Infrastructure and the Rental Affordable Units within Phase 1, and if the Construction Schedule is realistic, then the City's approval shall not unreasonably be withheld.

**(B) Disbursements for Infrastructure**

- i. **Following the date on which the Master Affordable Housing Covenant is recorded within the City's land records**, the Recipient may request disbursements of the Loan funds, and disbursements may be made by the City from time to time during construction of the Public Infrastructure, as such construction progresses, no more frequently than once per calendar month, until the City has disbursed the aggregate amount specified within Section 3(C)(i) above (and upon request, any amount(s) not previously disbursed under Section 3(C)(iii)).

- ii. As a condition precedent to each disbursement of loan proceeds for the Public Infrastructure, the Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City: **(a)** a Disbursement Certification in a form approved in advance by the City; **(b)** copies of payment approval forms, certified by an architect or engineer authorizing payment of specific amount(s), and documentation that such amount(s) have actually been paid to construction contractor(s) and subcontractor(s), for work completed; **(c)** inspection report(s) signed by a City inspector, verifying that the work for which payment is sought was inspected by the City and was installed or completed in accordance with City standards and specifications; **(d)** a budget-to-actual expenditure report for the Public Infrastructure, current through the date of the disbursement request; **(e)** a Construction Schedule report, documenting the actual progress of construction (inclusive of Public Infrastructure and housing) compared with the approved Construction Schedule. In the aggregate, items (a)-(e) shall constitute a “Disbursement Request”.
- iii. Following receipt of a complete Disbursement Request, the City shall issue payment of Loan proceeds to the Recipient for the amounts documented within the Disbursement Request as having actually been paid to construction contractor(s) and subcontractor(s), for completed work. Payment shall be made within 30 days of the City’s receipt of a complete Disbursement Request.

**(C) Disbursements for costs of tenant relocation and construction of affordable housing**

- i. Following the date on which the Master Affordable Housing Covenant is recorded within the City’s land records: the Recipient may request disbursements, and disbursements may be made by the City from time to time during construction of new Rental Affordable Units, as such construction progresses, no more frequently than once per calendar month, until the City has disbursed the aggregate specified within Section 3(C)(ii), above (and, upon request, any amount(s) not previously disbursed under Section 3(C)(iii)).
- ii. As a condition precedent to each disbursement of loan proceeds for relocation and construction of new units of Rental Affordable Housing, the Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City: **(a)** a Disbursement Certification in the form approved in advance by the City; **(b)** copies of payment approval forms, certified by an architect or engineer authorizing payment(s) which have been made by the Phase 1 Project Owner or Recipient, together with documentation of amount(s) actually paid to construction contractor(s) and subcontractor(s), for completed work referenced within such payment approval forms; **(c)** a budget-to-actual expenditure report, current through the date of the disbursement request, for the relocation and housing

construction Budget line items; **(d)** a Construction Schedule report, documenting the actual progress of construction compared with the approved Construction Schedule; **(e)** documentation of amount(s) actually paid by the Phase 1 Project Owner or Recipient to relocate tenants into a new affordable housing unit for which a certificate of occupancy (non-temporary) has been issued. In the aggregate, items (a)-(d) shall constitute a “Disbursement Request” for reimbursement of construction costs, and items (a), (c) and (e) shall constitute a “Disbursement Request” for reimbursement of relocation expenditures.

- iii. Following receipt of a complete Disbursement Request seeking reimbursement for tenant relocation costs, the City shall issue payment to Recipient reimbursing amounts documented within a Disbursement Request as having actually been paid to relocate tenants. Payment shall be made within 30 days of the City’s receipt of a complete Disbursement Request.

**(D) Disbursements for Soft Costs**

Following the date on which the Master Affordable Housing Covenant is recorded within the City’s land records, the Phase 1 Project Owner or Recipient may request disbursements of the Loan funds for the purposes referenced in Section 3(C)(iii), above. As a condition precedent to each disbursement of loan proceeds for Soft Costs, the Phase 1 Project Owner or Recipient shall furnish or cause to be furnished to the City all of the following documents for each disbursement, in form and substance satisfactory to the City (“Disbursement Request”): (i) a Disbursement Certification in a form approved in advance by the City; and (ii) documentation evidencing expenditure of the Soft Costs to one or more independent contractors for work or services associated with the planning or design for construction of the Public Infrastructure or the For Rent Affordable Units within Phase 1 of the Project.

Following receipt of a complete Disbursement Request, the City shall issue payment of Loan proceeds to the Phase 1 Project Owner or Recipient for the amounts documented within the Disbursement Request as having actually been paid to independent contractors. Payment shall be made within 30 days of the City’s receipt of a complete Disbursement Request.

**(E) Execution of Loan Instruments**

This Loan is in the amount of the total disbursements made by the City to the Recipient, pursuant to Section 4(B), 4(C) and 4(D) preceding above. Disbursement shall be made up to the Loan maximum specified in Section 3(C), above. All disbursements shall be added to the principal of the Loan, and interest at the rate of this Loan shall accrue thereon from the date each disbursement is made. The City shall not disburse any loan proceeds to the Recipient unless and until the Recipient has executed and delivered to the City all documents or legal instruments deemed by the City to be necessary to effectuate the Loan and to secure the City’s ability to enforce the requirements of this Loan Agreement. The following terms and conditions are material to the City’s agreement to enter into this Loan Agreement and shall be requirements of this Agreement enforceable in accordance with this Loan Agreement as well as through any documents or legal instruments that effect and secure the Loan of public funds to the Recipient:

- i. Recipient will use commercially available best efforts to negotiate provisions in a subordination agreement with the senior lender for the development of Phase 1 that provide the City with the right to cure a default and exercise rights pursuant

to a collateral assignment of Recipient's interest in Phase 1 under a Deed of Trust securing the Sponsor Loan, with wording acceptable to the City Manager and City Attorney. The income, rent and use restrictions required by this Agreement shall terminate upon a foreclosure of the Sponsor Loan, except: (i) twenty percent (20%) of the units within the Project may remain at sixty percent (60%) of area median income following such a foreclosure, and (ii) Virginia Housing may permit additional units at 60% AMI to survive such a foreclosure, provided that Virginia Housing determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (DCSR) of at least 1.25 while subject to such additional set-aside. The City Manager, after consultation with the City Attorney's Office, is the City official hereby designated as having authority as the agent of City Council to renegotiate income, rent and use restrictions required by this Agreement and the Master Affordable Housing Covenant, and to enter into a binding amendment of this Agreement, if such renegotiation or amendment is necessary to facilitate Recipient's receipt of financing from Virginia Housing, provided that (i) the renegotiated terms are no less than those Virginia Housing itself requires in its own Lending Policy and (ii) in accordance with Virginia Code §15.2-958, a minimum of twenty percent (20%) of the housing units within Phase I shall be Rental Affordable Units for a minimum of ten (10) years.

- ii. Deferred Payment Loan; Payment Date. This Loan shall be a deferred payment loan. The deferral period shall commence on the Commencement Date specified in subparagraph (iii), below, and shall expire at midnight on December 31 of the fortieth (40<sup>th</sup>) calendar year thereafter ("Deferral Period"). Interest shall accrue during the Deferral Period, in the amount specified in subparagraph (iv) following below.
- iii. Each Disbursement of funds made by the City to the Recipient shall constitute loan proceeds (individually and collectively, the "Loan") of the Loan that is the subject of this Agreement. The term of the Loan shall be forty (40) years, commencing on the date of the final disbursement of Loan proceeds by the City to the Recipient pursuant to this Agreement ("Commencement Date"). If the Project is completed and operated continuously in accordance with the requirements of this Agreement and the Master Affordable Housing Covenant throughout the entire Deferral Period (i.e., continuously from the Commencement Date through the expiration of the Deferral Period) then the Loan shall be forgiven. Recipient will grant to the City, as security for the Loan, an assignment of its subordinate interest in Phase 1, which secures its Sponsor Loan to the Phase 1 Project Owner. The assignment shall be subordinate to loans from Virginia Housing or any federal agency.
- iv. Interest shall accrue on outstanding amounts of the Loan, at the annual rate of three percent (3%), beginning on the Commencement Date specified in (iii), above. If the Project is completed and operated continuously in accordance with the requirements of this Agreement and the Master Affordable Housing Covenant throughout the entire Deferral Period referenced in paragraph (ii) preceding above (i.e., continuously from the Commencement Date through the expiration of the Deferral Period) then the accrued interest shall be forgiven.

- v. Payment. All Loan proceeds disbursed to the Recipient shall immediately become due and owing to the City in full, in each case following any applicable notice and cure period:
- a. on the date of any Uncured Event of Default on the Loan;
  - b. upon the insolvency or dissolution of the Recipient;
  - c. on the date of any foreclosure of Phase 1; or
  - d. upon the sale or transfer of the Phase 1 property, or any portion(s) thereof, to any person other than a related entity, or other assignee, who has been approved by the City in advance. For purposes of this Agreement, the term “related entity” means any transferee that is controlled by the Recipient, the Landowner, or both.
- vi. For so long as the City Loan proceeds are subsidizing Phase 1, Recipient, on behalf of itself and its heirs, successors and assigns (collectively, “Owner”) agree that, prior to the first refinancing of the senior lien debt, or prior to the next new tax credit financing (but subject to any senior lender approvals, in their sole discretion, if such new tax credit financing does not include a refinancing of the senior debt) it will propose an Affordability Analysis to the City for the City’s review and approval. The Affordability Analysis will determine and detail if any qualified tenants have incomes permitted under the federal low income housing tax credit program that are in excess of one hundred thousand dollars (\$100,000) and the Owner will agree either (a) to escrow such rents that exceed thirty percent (30%) of such tenants’ income above \$100,000 and to use such reserves when sufficient and with the approval of the City to target deeper income restrictions on future tenancies of the other restricted units by providing a rental subsidy to such tenants, or (b) to propose further income restriction to the other restricted units to the reasonable satisfaction of the City.
- vii. **Default.** If any Event of Default shall occur and is not cured within sixty (60) days from the date that written notice of such Event of Default is given by the City to the Recipient or such longer period as was reasonably necessary for cure, provided the Recipient requested an extension prior the expiration of the 60-day cure period and the City approved the request in writing (“Uncured Event of Default”, the Loan shall immediately become due and payable in full to the City. Each of the following shall constitute an Event of Default:
- a. Use of Loan funds for any purpose(s) other than those articulated within Section One of this Ordinance;
  - b. Failure to comply with the terms and conditions of this Loan Agreement that apply to Phase 1;

- c. Failure to comply with the requirements of the Master Affordable Housing Covenant, as it may be amended, or any phase-specific replacement covenant thereto;
  - d. Failure to perform any of Recipient's obligations under this Loan Agreement with respect to construction of the Public Infrastructure or construction of units of housing within Phase 1;
  - e. Failure to perform any of Recipient's obligations under the Master Affordable Housing Covenant, as it may be amended or any phase-specific replacement covenant thereto;
  - f. A successful legal challenge initiated by the Landowner, PHA, NHT Communities or any Project Owner, asserting that the Master Affordable Housing Covenant or any amendment thereto is invalid or unenforceable, in whole or as applied to such person;
  - g. Failure to perform as required by any document that secures this Loan and relates to Phase 1;
  - h. Failure of Recipient to give the City notice of any anticipated sale of all or any portion of the Project to any person that is not controlled by the Recipient, the Landowner, or both and who will use it for any purpose other than that specified within Section 1 of this Agreement;
- viii. **Remedies for Default.** If Recipient fails to pay the Loan or fails to cure any Event of Default prior to the end of the 30-day notice period, the City may invoke foreclosure of this Loan Agreement or any other remedy allowed by the Loan Agreement, any document related to this Loan, or by the laws of the Commonwealth of Virginia. All of the City's rights and remedies are distinct and cumulative to any other rights and remedies under this Agreement, or otherwise at law, and may be exercised concurrently, independently, or successively.
- ix. **No Waiver.** No forbearance by the City in exercising any right or remedy hereunder, or otherwise afforded by Virginia law, shall constitute a waiver of, nor shall forbearance preclude the exercise of, any right or remedy.

## **Section 5. General Terms and Conditions**

(A) Non-Appropriations Condition: The obligations of the City as to any funding beyond the end of Fiscal Year 2020 (June 30, 2020) are expressly made subject to the availability of and appropriation by the City Council of sufficient public funds to support continued performance of this agreement by the City in succeeding fiscal years. When public funds are not appropriated or are otherwise unavailable to support continuation of payment(s) by the City to Recipient in a subsequent fiscal year, the City's obligations hereunder shall automatically expire, without liability or penalty to the City. Within a reasonable time following City Council's adoption of a budget, the City shall provide the Recipient with

written notice of any non-appropriation or unavailability of funds affecting this Loan agreement.

- (B) Assignments. The City reserves the right to approve in advance any assignment of this Agreement by the Recipient to any individual or entity, and the ownership and membership of any such entity must be disclosed to the City. Any change in the Recipient's organizational structure, and any change in the Recipient's status or Recipient's relationship to either the Landowner, the Project Owner or the Phase 1 Project Owner shall also be subject to approval by the Authority. Any such assignee shall be bound by all the terms and conditions of this Agreement.
- (C) Public Disclosure of Agreement Documents: The Recipient acknowledges and understands that this agreement, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq.) and the Virginia Public Procurement Act (Va. Code §2.2-4300 et seq.) to the extent that either of those laws applies.
- (D) No Waiver of Rights: No failure on the part of the City to enforce any of the terms or conditions set forth in this agreement shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance of the performance of all or any part of this Agreement by the City, for or during any period(s) following a default or failure to perform by the Recipient, shall not be construed as or deemed to be a waiver by the City of any rights hereunder, including, without limitation, the City's right to terminate this Agreement.
- (E) Force Majeure. All dates in this Agreement shall be extended for a period of time equal to the period of any delay directly affecting such date which is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection, pandemic (including COVID-19), disease, work shortages, acts beyond the control of the parties, declared state of emergency or public emergency, government mandated quarantine or travel ban, government shutdown or governmental regulation. All federal extensions permitted due to any pandemic (including COVID-19), declared state of emergency or public emergency, government mandated quarantine or travel ban, or any other similar event, shall also apply to the dates in this Loan Agreement.
- (F) Severability: In the event that any term, provision, or condition of this Agreement, or the application thereof to any person or circumstance shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of any term, provision or condition contained herein to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

- (G) Governing Law: This Agreement shall be governed by the laws of the Commonwealth of Virginia, and, in the event of litigation, jurisdiction and venue shall be in the Circuit Court of the City of Charlottesville, Virginia, and all legal actions involving this Agreement shall be brought only in such court. All parties hereto agree that in the event of any action brought to enforce the terms and provisions hereof, the prevailing party shall be entitled to reimbursement of reasonable attorney's fees and court costs. All parties to this Agreement have standing to enforce any covenants, terms, provisions, and agreements set forth herein
- (H) Entire Agreement: This Agreement is the entire agreement between the parties hereto, sets forth all of promises, agreements, conditions, and understandings between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning such subject matter.
- (I) Authorized City Signature: By its approval of this ordinance, the Charlottesville City Council authorizes the Charlottesville City Manager to execute this Agreement on its behalf.
- (J) Amendments. Except as otherwise specified within Section 5(D) of this Ordinance, the City Manager is hereby authorized to execute a Loan Agreement, or any amendment(s) thereof, that modify(ies) certain terms and conditions set forth within this Ordinance, without Council review and approval, but only if such modification(s) do **not** materially change: **(i)** the number of affordable dwelling units to be provided by Recipient, or the length of the Affordability Period, **(ii)** the requirement that Recipient provide a one-for-one replacement of all of the 150 for-rent, Section 8 subsidized dwelling units existing within Friendship Court as of the date of this Agreement (divided among all phases of the Project), **(iii)** the layout of land uses, or the general or approximate location of the public streets, as depicted in *Illustration 1*, above, within this Agreement, or **(iv)** the dollar amount(s) of the Loan, as set forth within Section 3(c) of this Agreement. Any amendments of the terms referenced in clauses (i) – (iv) preceding above within this paragraph must be approved by ordinance of City Council in the same manner as this Agreement. Upon executing a Loan Agreement, or any amendment thereof, that contains terms and conditions different than those set forth within this Ordinance, the City Manager shall notify City Council, in writing, of the nature of the modifications.
- (K) Notices. All notices required under this Agreement shall be given in writing, and shall be deemed to be received five (5) business days after being mailed by first class mail, postage prepaid, return receipt requested, or one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or upon receipt when delivered by hand, addressed as follows: (i) if given to the City—to the City Manager, with a copy to the City Attorney, each to: 605 East Main Street, Second Floor, City Hall (P.O. Box 911), Charlottesville, Virginia, 22902, or (ii) if given to the Recipient—to Piedmont Housing Alliance, Attention: Executive Director, 682 Berkmar Circle, Charlottesville, Virginia, 22901, with a copy to Erik T. Hoffman, Klein Hornig, LLP, 1325 G Street, N.W., Suite 770,

Washington, DC, 20005 and a copy to the Project Lender at an address provided by the Recipient.

**ATTACHMENT 1**

**MASTER AFFORDABLE HOUSING COVENANT**

**[see attached]**

## **MASTER AFFORDABLE HOUSING COVENANT**

THIS MASTER AFFORDABLE HOUSING COVENANT (this “**Covenant**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”), by NHTE PIEDMONT GARRETT SQUARE LIMITED PARTNERSHIP (“**Landowner**”), having an address of 1101 30<sup>TH</sup> Street, N.W., Suite 400, Washington, District of Columbia, 20007, for the benefit of the City of Charlottesville, a municipal corporation, 605 East Main Street, City Hall, Charlottesville, Virginia, 22902 (the “**City**”).

### **RECITALS**

R-1. Landowner is the fee simple owner of certain real property located in the City of Charlottesville as further described in **Exhibit A** (the “**Property**”) and such real property will be used for the Project, as defined below (the “**Project**”).

R-2. The Property includes an area of land (the “Parcel”) that will be used for construction of the first phase of the Project (“Phase 1”). With respect to the Parcel, Landowner entered into an option to lease dated March 12, 2019 (the “**Option**”) with FC Phase 1 LLC, a Virginia limited liability company (the “**Phase 1 Project Owner**”), whose managing member is controlled by Piedmont Housing Alliance, a Virginia nonprofit corporation (“**PHA**”), and NHT Communities, a District of Columbia nonprofit corporation (“**NHT**”), whereby the Phase 1 Project Owner can exercise the Option and enter into a long-term ground lease with the Landowner or its successors and assigns (the “**Ground Lease**”).

R-3. To further the public purpose of increasing the affordable housing stock within the City of Charlottesville and, in particular, on the Parcel, the City is willing to offer certain public funding to the Project Owner, in accordance with the provisions of Virginia Code §15.2-958, upon the acquisition of the leasehold interest from the Landowner.

R-4. By Ordinance adopted on \_\_\_\_\_, 2020, the City agreed to provide public funding pursuant to the provisions of Va. Code §15.2-958, to subsidize construction of streets, utilities and other site improvements essential to the Project and to support the production of new units of residential rental property within the Project, to be occupied following construction by persons of low and moderate income. The City’s adoption of the City Ordinance was induced by the Landowner’s, PHA’s and NHT’s representation that all of the residential units within the Project will, at Project buildout, be Affordable Units.

R-5. The City and the Landowner mutually acknowledge the value of assistance provided by the City and the value of the considerations rendered by the Landowner in maintaining the dwelling units at reduced rents for persons of low and moderate income.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the City and Landowner hereby declare, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as, the singular.

**Affordability Period:** is ninety-nine (99) years, calculated as set forth within Article X.

**Affordability Requirement:** has the meaning given in Section 2.1

**Affordable Unit:** means housing for occupant(s) at or below 80% of Area Median Income who are paying no more than 30% of income for Gross Housing Costs, including utilities, which housing will be used to satisfy the Affordability Requirement, all of which shall be identified in the Affordable Unit Index. Where the term “Committed Affordable Unit” or “Committed Rental Affordable Unit” is used, said term refers to an Affordable Unit of Rental Affordable Unit committed by means of this Covenant to satisfy the Affordability Requirement throughout the Affordability Period.

**Affordable Unit Marketing Plan:** means Project Owners’ plan(s) for marketing the rental or sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

**Affordable Unit Occupant:** means a Qualified Tenant who lease(s) a Rental Affordable Unit, or, when the term is used in a context that refers to or includes a For Sale Affordable Unit, it means the Qualified Purchaser who owns and occupies a For Sale Affordable Unit.

**Affordable Unit Owner:** means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

**Agency:** means the Office of the Charlottesville City Manager, and any successor department whose mission includes administration of the City’s Affordable Housing Program.

**Area Median Income (AMI):** means Median family income limits as adjusted by the U.S. Department of Housing and Urban Development (HUD) annually by household size.

**Annual Household Income:** means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

**Annual Report:** has the meaning given in Section 4.10.

**Business Day** means Monday through Friday, inclusive, other than holidays recognized by the City of Charlottesville government.

**CAO** means the Office of the City Attorney for the City of Charlottesville, Virginia.

**Certificate of Tenant Eligibility** means a certification by a Household at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Landowner, and the Certifying Authority, representing and warranting the following:

(a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Authority, (b) the Household's Annual Household Income is at or below the maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

**Certification of Income**: means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Tenant, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit and meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

**Certification of Inspection**: means a certification by Landowner that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Landowner's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the Agency approves.

**Certification of Residency**: means a certification made by an Affordable Tenant that states that the Affordable Tenant or Affordable Unit Owner occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

**Certifying Authority**: means PHA or any other entity or entities approved by the Agency pursuant to Section 2.4.

**City Ordinance**: means that certain ordinance adopted by the Charlottesville City Council on \_\_\_\_\_, 2020, pursuant to Virginia Code §15.2-958, and any amendments made thereto, to approve and establish guidelines for the production of new housing for persons of low and moderate income within the Project and to assure that such housing will be occupied following construction by low and moderate income persons throughout the Affordability Period.

**Code**: means the Internal Revenue Code of 1986, as amended.

**Designated Affordability Level (DAL)**: means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's or Qualified Tenant's as applicable, Annual Household Income must fall.

**For Sale Affordable Unit**: means an Affordable Unit that is owned, or is to be owned, by a Qualified Purchaser.

**Landowner**: is identified in the preamble of this Covenant.

**Foreclosure Notice**: is defined in Section 8.4.

**Household(s)**: means all individuals who will occupy the Affordable Unit, including all individuals over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's as applicable, spouse or domestic partner and children under eighteen (18) years of age. A Household may be a single family, one (1) individual living alone, two (2) or more families living together, or any other group of related or unrelated individuals who share living arrangements as allowable by this Covenant.

**Household Size Adjustment Factor (HAF)**: means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household income of an Affordable Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

**Housing Cost**: means (a) the total monthly payments for rent and Utilities for Rental Affordable Units and (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for For Sale Affordable Units.

**HUD**: means the United States Department of Housing and Urban Development.

**Land Records**: means the real property records for the City of Charlottesville located in the Recorder of Deeds.

**Levels of Affordability** refers to the Tiers of Affordable Housing defined in terms of AMI. Families earning: between 120 and 80% AMI are considered “moderate-income”; between 80 and 50% AMI, “low-income”; between 50 and 30% AMI, “very low-income” and below 30% AMI, “extremely low-income.”

**Maximum Allowable Rent**: as defined in Section 4.4.2.

**Maximum Annual Household Income** or **MAXI**: is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to Section 4.5.1 for Rental Affordable Units or Section 5.2.1 for For Sale Affordable Units.

**Maximum Resale Price**: is the maximum resale price of a For-Sale Affordable Unit as determined pursuant to procedures established by the Agency.

**Maximum Sales Price**: as defined in Section 5.1.1. *See also* **Exhibit C**

**Mortgage**: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the City of Charlottesville.

**Mortgagee**: means the holder of a Mortgage.

**Occupancy Standard**: means the minimum and maximum number of individuals permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Unit	Maximum Number of Individuals in Affordable Unit
Studio/Efficiency	1	1
1	1	2
2	2	4
3	4	6
4	6	8

5	8	10
6	10	12

**Occupancy Standard Factor:** means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Allowable Rent or Maximum Allowable or Maximum Sales Price, as applicable, of an Affordable Unit as set forth in the following table:

Size of Affordable Unit	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

**Over-income Tenant:** as defined in Section 4.6.5.

**Owner:** means any individual, nonprofit organization, limited partnership, limited liability company or other legal entity that holds title to any land or building within the Project.

**Parcel:** is defined in the Recitals.

**Person:** means any individual, corporation, limited liability company, trust, partnership, limited partnership, or other legal entity.

**Phase 1:** means the portion of the Project constructed on the Parcel.

**Phase 1 Project Owner:** means FC Phase 1 LLC, a Virginia limited liability company, and any successor(s) in interest.

**Project:** means the structures, landscaping, hardscape and/or site improvements to be constructed or placed on the Property developed and owned by the Landowner and/or the Project Owner, including without limitation the Rental Affordable Units and For Sale Affordable Units referred to within the definition of “**Affordability Requirement**”. The term “Project” includes all phases of the proposed redevelopment—including, without limitation, Phase 1 and all subsequent phases of the redevelopment of the real estate known as “Friendship Court” inclusive of the Parcel as well as other real estate identified, as of the date of this Covenant, by the City real estate parcel identification number 280112000 (currently assigned the street addresses of 400-426 Garret Street, Charlottesville, Virginia).

**Project Owner(s):** means the Phase 1 Project Owner and the owners of any subsequent phases.

**Property:** means the real estate described within Exhibit A, attached to this Covenant.

**Qualified Tenant or Qualified Purchaser:** each term means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Unit as its principal residence, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other individual(s), (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant and (v) shall occupy the Affordable Unit within the Occupancy Standard Factor.

**Rental Affordable Unit:** means an Affordable Unit that shall be leased to a Qualified Tenant.

**Rental Affordable Unit Lease Rider:** is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

**Rental Formula:** is defined in Section 4.4.2.

**Residential Unit:** means a residential dwelling unit constructed as part of the Project.

**Sale:** is defined in Section 5.1.

**Transferee:** is defined in Section 5.8.

**Utilities:** means water, sewer, electricity, and natural gas.

## ARTICLE II

### USE RESTRICTIONS; AFFORDABILITY REQUIREMENT

2.1 **Residential Use of the Property; Affordability of Housing.** In order to assure the integrity of the Project, and to ensure that public funding is used for the public purposes authorized by Virginia Code §15.2-958 in accordance with the City Ordinance, the following land use restrictions are established for the mutual benefit and obligation of all owners of land within the Project:

2.1.1. Except for any lot(s) containing the use referred to within the City Ordinance as the “Phase 1 Early Childhood Center”, and except for land used as common open space, green space, public streets, public sidewalks, parking lots, recreation facilities, utilities, and other similar facilities or amenities, the Property shall be used exclusively for residential purposes consistent with the master development plan referenced within the City Ordinance. For purposes of this paragraph, a mixed-use building that contains any ground-floor retail, office or commercial use, but contains exclusively Residential Units on all other building floors, shall be considered as being used for residential purposes. The use of a portion of any Residential Unit as an office by the occupant thereof shall be considered a part of a residential use, if such office use complies with regulations applicable to “home occupations” prescribed by the zoning ordinance of the City of Charlottesville.

2.1.2. All Residential Units within the Project shall be Rental Affordable Units or For Sale Affordable Units.

2.1.3. All Rental Affordable Units and For Sale Affordable Units are subject to the Affordability Period.

2.1.4. All Rental Affordable Units and For Sale Affordable Units are subject to the income limitations under subsection (g)(1) and the rent restrictions under subsection (g)(2) of Section 42 of the Code.

2.1.5. Rental Affordable Units shall be subject to the following:

**(a)** At any given time within the area of the Property, no fewer than 150 of Residential Units within the Project (including both new and preexisting units) shall be Rental Affordable Units (“Required Rental Affordable Units”) participating in the federal Program-Based Section 8 Program, subject to subparagraph (i) below.

**(i)** The Required Rental Affordable Units shall participate in the federal Program-Based Section 8 Program throughout the Affordability Period, for so long as the federal Program is offered under federal law. In the event that the federal Program-Based Section 8 Program is discontinued by the federal government during the Affordability Period, then the Required Rental Affordable Units shall be maintained throughout the Affordability Period as Rental Affordable Units and shall not be converted to For Sale Affordable Units.

**(b)** 106 Rental Affordable Units shall be provided within Phase 1 of the Project, as follows:

**(i)** no fewer than 46 of the Required Rental Affordable Units will participate in the federal Program-Based Section 8 Program, subject to subparagraph 2.1.4(a)(i);

**(ii)** no fewer than 30 Required Rental Affordable Units shall be rented to Households that meet the Code requirements for the maximum percentage of 60% of Area Median Gross Income (as described in Section 142(d)(2)(B) of the Code); and

**(iii)** no fewer than 30 Required Rental Affordable Units shall be rented to Households that meet the Code requirements for the maximum percentage of 80% Area Median Gross Income (as described in Section 142(d)(2)(B) of the Code).

Rental Affordable Units, in addition to the 106 required above, may be provided within Phase 1.

**(c)** The provisions of 2.1.4(a) and (b), above, are, unless otherwise provided, subject to subsection (g)(1)(C) of Section 42 of the Code and the federal Average Income Test.

**(d)** The provisions of 2.1.1 and of 2.1.5(a) and (b), above may be modified in accordance with the provisions of Article X of this Covenant.

**(e)** Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Office of the Charlottesville City Manager (the “Agency”) or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%)

AMI.

## 2.2 **Affordable Unit Standards and Location.**

2.2.1 *[Reserved]*

2.2.2 *[Reserved]*

2.2.3 *[Reserved]*

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be consistent across tiers of affordability.

2.2.5 *Interior Finishes.* Landowner agrees that the interior base finishes, appliances and equipment in the Affordable Units shall be similar across tiers of affordability.

2.2.6 *Affordable Unit Location.* As allowed within the parameters of LIHTC compliance guidelines or other federal law, Affordable Units of various tiers shall be dispersed throughout the Project, and shall not be concentrated on any one floor within a building, or within a section of the Project.

## 2.3 **Marketing Affordable Units.**

2.3.1 *Marketing Plan.* Landowner shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affordable Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Project Owner may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

2.4 **Certifying Authority.** Project Owner shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned or delayed. Project Owner may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that Household is a Qualified Tenant or Qualified Purchaser, as applicable. If a Household is determined to be a Tenant or Qualified Purchaser, as applicable, the Certifying Authority shall issue a Certification of Income for the subject Household.

## **ARTICLE III**

### **EQUAL USE; MAINTENANCE OF AFFORDABLE UNITS**

3.1 **Use.** Except as provided herein, all Rental Affordable Unit Occupants shall have the same and equal use of all the amenities of the Project and services provided at the Project (except if unique services are required for certain tenants as approved by the Agency). No restrictions, requirements or rules shall be imposed on Rental Affordable Unit Occupants at any tier of affordability that are not imposed equally on the tenants of the Rental Affordable Units within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to Rental Affordable Unit Occupants at any tier of

affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Rental Affordable Unit Occupants of Rental Affordable Units at other tiers of affordability. If there is no cost or fee charged to the tenants of the Rental Affordable Units at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to tenants of Rental Affordable Units at other tiers of affordability. Except as provided herein, all For Sale Affordable Unit Owners shall have the same and equal use of all the amenities of the Project and services provided at the Project (except if unique services are required for certain tenants as approved by the Agency). No restrictions, requirements or rules shall be imposed on For Sale Affordable Unit Owners at any tier of affordability that are not imposed equally on the owners of the For Sale Affordable Units within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to Affordable Unit Owners at any tier of affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Affordable Unit Owners of For Sale Affordable Units at other tiers of affordability. If there is no cost or fee charged to Affordable Unit Owners of the For Sale Affordable Units at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charted to Affordable Unit Owners of For Sale Affordable Units at other tiers of affordability.

**3.2 Demolition/Alteration.** Subject to normal wear and tear, Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry) of each Rental Affordable Unit with interior components of equal or better quality than those interior components being replaced. Affordable Unit Owners shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry). Neither Owner nor Qualified Purchaser shall demolish or otherwise structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance, repair and replacement of equal or better quality without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency or as needed to rebuild after a casualty or condemnation.

## **ARTICLE IV**

### **RENTAL OF AFFORDABLE UNITS**

**4.1 Lease of Rental Affordable Units.** Landowner shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rate paid by the Tenant at or below the Maximum Allowable Rent.

**4.2 Rental Affordable Unit Lease Requirements.**

*4.2.1 Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Project Owner shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider, as may be amended from time to time. The Rental Affordable Unit Lease Rider shall be executed by Project Owner and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.

*4.2.2 Effectiveness of Lease.* The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Lease Rider, a Certification of Income and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the

foregoing shall render the lease null and void *ab initio*.

4.2.3 *Landowner to Maintain Copies.* Project Owner shall maintain or cause to be maintained copies of all initial and renewed leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

#### 4.3 **Rental Affordable Unit Admissions Process.**

4.3.1 *Referrals.* Project Owner may obtain referrals of prospective tenants of Rental Affordable Units from federal and City of Charlottesville agencies, provided such referrals comply with the requirements of this Covenant, Fair Housing laws, and the requirement that units be generally available to the public. In all events, before a prospective tenant leases a Rental Affordable Unit, their Annual Household Income shall be verified by a Certifying Authority.

4.3.2 *Consideration of Applicants.* For the initial occupancy of the Rental Affordable Units, Project Owner shall select Qualified Tenants through a first-come, first-served system, or other system approved by the Agency, as shall be further provided in the Affordable Unit Marketing Plan. Following the initial occupancy of the Affordable Units, Landowner shall consider each applicant in the order in which received by Project Owner, whether received pursuant to the Affordable Unit Marketing Plan or referred pursuant to Section 4.3.1. Tenants of Rental Affordable Units participating in the Project-Based Section 8 Program shall be selected in accordance with requirements of that federal program. Any and all of the provisions contained in this Section 4 shall be consistent with federal Fair Housing laws and regulations and any units financed under the Code (tax credit or tax exempt bond financed projects) must be generally available to the public.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Affordable Unit, Landowner may reject any applicant if, after diligent review of such applicant's application, Landowner determines in good faith that such applicant does not meet Project Owner's criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable City of Charlottesville and federal laws. In the event any rejected applicant raises an objection or challenges Landowner's rejection of such applicant, Landowner shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal or local law. Landowner shall provide the Agency with all documents evidencing Landowner's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to leasing such unit. Housing Choice Vouchers (or vouchers from similar programs) shall be an acceptable source of verifiable household income, for the Rental Affordable Units other than those which are part of the Program-Based Section 8 Program.

#### 4.4 **Initial Rental Affordable Unit Lease Terms.**

4.4.1 *Term.* The term of any new Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent—Rental Formula.* Rents on Rental Affordable Units shall be rent restricted. Maximum Allowable Rent paid by the Tenant shall for the first lease year shall be based on the number of bedrooms and AMI as established annually by HUD. If a household pays for utilities, the maximum rent must be adjusted by the applicable utility allowance.

4.5 **Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease renewals for such Rental Affordable Unit either annually or every two years, at the City's option and as may be permitted by the Code. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating the Maximum Annual Household Income for a Household occupying the Rental Affordable Unit. The Certifying Authority shall verify that the Household's Annual Household Income is not more than the MAXI.

4.5.1 *Maximum Annual Household Income.* The Maximum Annual Household Income is determined through AMI as established annually by HUD.

#### 4.6 **Subsequent Lease Years**

4.6.1 *Use of Rental Formula.* For each lease year after the first lease year, Maximum Allowable Rent shall be determined in the same manner specified within 4.4.2, above.

4.6.2 *Renewal by Affordable Unit Occupant.* For each Affordable Unit Occupant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Project Owner shall obtain the following: (i) a Certification of Residency from each such Affordable Unit Occupant; and (ii) a Certification of Income completed by the Certifying Authority. Project Owner shall not permit a renewal of an Affordable Unit Occupant's lease unless the Affordable Unit Occupant has provided Project Owner with these documents as required herein and the tenant is determined to be a Qualified Tenant or is otherwise protected under applicable State or Federal law. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

4.6.3 *Annual Recertification of Tenants.* Upon receipt of an Affordable Unit Occupant's renewal documents at the time of recertification, Certifying Authority shall determine the Affordable Unit Occupant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Occupant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Occupant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

4.6.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Occupant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose

Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.6.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Occupant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Parcel, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Project Owner shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) may remain at the allowable rent level if protected by applicable State or Federal law.

4.6.6 *Changes to Unit Location.* If applicable, Project Owner may change the designation of a Rental Affordable Unit to a new Designated Affordability Level as necessary to allow an Over-Income Tenant to remain in the unit (i.e., to accommodate an existing tenant). Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level of similar size and location in the property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Parcel in conformity with the Affordability Requirement.

4.6.7 *Rent from Subsidies.* Nothing herein shall be construed to prevent Project Owner from collecting rental subsidy or rental-related payments from any federal, state, or City of Charlottesville agency paid to Project Owner and/or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental-related payment shall not be included in determining Maximum Chargeable Rent or the income of an otherwise Qualified Tenant, all as provided in the Code.

4.7 **No Subleasing of Rental Affordable Units.** An Affordable Unit Occupant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Project Owner shall not knowingly allow such Rental Affordable unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion. No Rental Affordable Unit may be offered or used for any short term rental/ transient occupancy.

4.8 **Representations of Affordable Unit Tenant.** By execution of a lease for a Rental Affordable Unit, each Affordable Unit Occupant shall be deemed to represent and warrant to the Agency and Project Owner, each of whom may rely thereon, that the Affordable Unit Occupant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.9 **Representations of Project Owner.** By execution of a lease for a Rental Affordable Unit, Project Owner shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Authority, and (ii) Project Owner is not collecting more than the Maximum Allowable Rent from the Tenant.

4.10 **Annual Reporting Requirements.** Beginning in the first year that any Affordable Unit is occupied, Project Owner shall provide an annual report (“**Annual Report**”) to the Agency regarding the Rental Affordable Units, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure), the length of vacancy, and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names, ages and ethnicity of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income;

(e) a sworn statement that, to the best of Project Owner’s information and knowledge, the Household occupying each Affordable Rental Unit meets the eligibility criteria of this Covenant;

(f) a copy of each new or revised Certification of Income for each Household renting a Rental Affordable Unit;

(g) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

The Annual reports shall be retained by Project Owner for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that Project Owner provides a report to an agency within the City government with content substantially similar to the content of the Annual Reports described in this section, subject to the Agency’s prior written approval, then the reporting requirements under this section shall be satisfied upon Project Owner’s delivery of such report to the Agency. The Agency may request Project Owner to provide additional information in support of its Annual Report.

4.11 **Confidentiality.** Except as may be required by applicable law, including, without limitation to, the Virginia Freedom of Information Act. Project Owner: the Certifying Authority and the Agency shall not disclose to third parties, other than Project Owner’s investor members, the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.12 **Inspection Rights.** The Agency or its designee shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to the Project Owner and during normal

business hours as provided in the Leases. If Project Owner receives such notice, Project Owner shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

## ARTICLE V

### SALE OF AFFORDABLE UNITS

**5.1. Sale of For Sale Affordable Units.** In the event the Project contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Owner shall not convey all or any part of its fee interest (“Sale”), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser.

**5.1.1. Maximum Sales Price.** The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the “Maximum Sales Price”) that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of their Annual Household Income on Housing Cost. The Agency shall determine the Maximum Sales Price in accordance with **Exhibit C**, attached and incorporated herein by reference, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable. The Agency shall approve the Maximum Sales Price for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit.

**5.1.2. Maximum Resale Price.** The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with **Exhibit D** attached hereto and incorporated herein, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Agency shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

**5.1.3. Housing Purchase Assistance Program and other Subsidized Funding.** The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined by the Agency as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer’s use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Affordable Unit.

**5.1.4. Sale to a Community Land Trust.** Notwithstanding any other provision of this Covenant, for the purposes of this Section 5.1, the sale of a lot and a Residential Unit constructed on such lot to a community land trust will be deemed a sale to a Qualified Purchaser, if the following criteria are met: (i) the community land trust is reasonably expected to be and remain the fee owner of the lot, and (ii) ownership of the Residential Unit shall be held either by the community land trust that owns the lot, or by an

individual(s) who has/have a long term lease for the lot and who is/are a Qualified Purchaser.

**5.2. Procedure for Sales.** The following procedures shall apply with respect to the initial Sale of a For Sale Affordable Unit, and also to each subsequent Sale of a For Sale Affordable Unit.

**5.2.1. Income Eligibility.** For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula:  $MAXI = (AMI * DAL * HAF)$ . The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to entering into the contract.

**5.2.2. Sale.** A Sale of a For Sale Affordable Unit shall only be effective if **(i)** a certificate of purchaser eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneously with the deed conveying the Affordable Unit and **(ii)** a Certification of Income is completed by a Certifying Authority within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

**5.2.3. Resale.** Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall (i) contact the Agency to obtain the Maximum Resale Price and (ii) shall refer the prospective purchaser to the Agency to determine their eligibility to purchase the For Sale Affordable Unit. The Maximum Resale Price shall be determined by the Agency in accordance with **Exhibit D** attached hereto and incorporated by reference, or by such other formula acceptable to the Agency, in its sole discretion.

**5.2.4. Sale to Community Land Trust.** Notwithstanding any other provision of this Covenant, a sale of a For Sale Affordable Unit to a community land trust shall be effective if a Certificate of Purchaser Eligibility is provided by the Agency certifying that the requirements of paragraph 5.1.4 will be satisfied, such certificate is signed and dated within ninety (90) days of the closing of such Sale, and the certificate is recorded prior to or contemporaneously with the deed conveying the Affordable Unit.

**5.3. Closing Procedures and Form of Deed.**

**5.3.1. Owner to Provide Copy of Covenant.** Owner shall provide the Qualified

Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

**5.3.2. Form of Deed.** All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF \_\_\_\_\_, 20\_\_ RECORDED AMONG THE LAND RECORDS OF THE CITY OF CHARLOTTESVILLE, VIRGINIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_ 20\_\_, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

**5.3.3. Deed for a For Sale Affordable Unit.** A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

**5.3.4. Post Closing Obligations.** The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed HUD settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the Certification of Income.

**5.4. Rejection of Applicants.** In connection with the Sale of a For Sale Affordable Unit, the owner of that unit ("Owner") may reject any applicant seeking to acquire a For Sale Affordable Unit who has not obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant's application, background and/or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), such Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable Virginia or federal laws and is the same criteria applicable to Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of state or federal law. Owner shall provide the Agency with all documents evidencing Owner's review and rejection of an applicant, upon the request of the Agency.

**5.5. Representations of Owner.** By execution of a deed for a For Sale Affordable Unit, the owner of the For Sale Affordable Unit Owner shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser by the Certifying Authority at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

**5.6. Annual Certification of Residency.** During the Affordability Period, the Affordable Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted

on or with such form as may be prescribed by Agency.

**5.7. Leasing For Sale Affordable Units.** An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with the Rental Affordable Unit provisions of this Covenant.

**5.8. Transfers.** Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "Transferee"), such Transferee, shall be automatically be bound by all of the terms, obligations and provisions of this Covenant and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

**5.9. Prohibition on Occupancy.** In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

**5.10. Progress Reports.** Until all initial Sales of For Sale Affordable Units are completed, Landowner shall provide Agency with annual progress reports, or more frequently upon request, on the status of its sale or rental of Affordable Units.

## ARTICLE VI

### ENFORCEMENT AND REMEDIES

**6.1 Enforcement.** The City, the Landowner, PHA, and NHT and each of their respective successors and assigns (each, an "Interested Party") shall each have the right to enforce this Covenant against the Landowner, after first giving sixty (60) days' written notice to the Landowner of its noncompliance. If the Landowner fails to cure the noncompliance within the 60-day period, then any Interested Party shall have the right to seek specific performance, injunctive relief and/or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder. In the event such cure cannot reasonably be affected within the above 60-day period, the Landowner may have such additional time as is necessary to cure such default provided the Landowner promptly initiated and diligently pursued such cure.

**6.2 No Waiver.** Any delay by the Agency in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

**6.3 Right to Attorney's Fees.** In any legal action brought by the City or any other Interested Party to enforce any provision(s) of this Covenant, if the Interested Party prevails in such action then the Interested Party shall be entitled to recover its litigation costs and expenses, including reasonable attorney fees. If the CAO is counsel for the City in such legal action, the reasonable attorney fees for the City shall be calculated based on the then applicable hourly rates prevailing within private practice within the City of Charlottesville, Virginia, and the number of hours that employees of the CAO prepared for or participated in any such action.

## ARTICLE VII

### COVENANT BINDING ON LANDOWNER'S SUCCESSORS AND ASSIGNS

The provisions of this Covenant shall run with the land and shall bind the Landowner and all successor(s) in interest as of the Effective Date and throughout the Affordability Period. No sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article X, §10.3.

## ARTICLE VIII

### MORTGAGES

8.1 **Subordination of Mortgages.** The provisions of this Article VIII shall only apply to For Sale Affordable Units, if applicable. All Mortgages placed against the Parcel, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against an Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 **Notice of Default.** The Mortgagee shall provide the Agency written notice of any default and notice of intent to foreclose under the Mortgage on any For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 **Right of Purchase by the City.** The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (i) the amount of the debt secured by all Mortgages recorded against the subject Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable under the terms of the Mortgage or (ii) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another agency or other third party to take title to the For Sale Affordable Unit.

8.3.3 **Termination Upon Foreclosure and Assignment.** In the event title to an For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.4 **Apportionment of Proceeds.** In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the City.

8.3.5 [*Reserved*]

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Affordable Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (i) the Agency's right to purchase, whether or not such right has been triggered, shall automatically expire and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except that upon sale of such unit or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

## ARTICLE IX

### AMENDMENT OF COVENANT

Except as otherwise provided herein, this Covenant, or any part hereof, may be amended, modified or released by an instrument in writing executed by a duly authorized official of the Agency on behalf of the City, and by a duly authorized representative of the Landowner. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective. No amendment shall include any term(s) or condition(s) inconsistent with the Project site requirements set forth in **Exhibit E**, attached. Prior to or at any point during the development of each phase of the Project, the Project Owner of such phase may elect to enter into an affordable housing covenant that provides use restrictions or minimum Affordable Unit counts specific to that phase and consistent with the provisions of **Exhibit E** attached to this Covenant. Any such phase-specific covenant shall be in the same format, and shall include the same content, of this Master Covenant, amended only as to use restrictions or minimum Affordable Unit counts for that phase, and the land within that phase of development shall be released from the obligations of this Covenant upon: (i) execution by the Project Owner(s) of the phase-specific covenant, (ii) execution by the City of the phase-specific covenant, confirming compliance with the requirements of this Article IX and Exhibit D, and (iii) recordation of the fully-executed phase-specific covenant within the land records of the Circuit Court for the City of Charlottesville. Once recorded, any such phase-specific covenant shall be deemed an amendment of this Covenant as to the area of land described therein. In connection with the closing of any sale or other conveyance of all of the Affordable Units within a specific phase by the Project Owner of that phase, the Project Owner may request the City to review the compliance of that phase with the requirements of this Covenant or its replacement phase-specific covenant. If the City provides written verification of the phase's compliance with the covenant, endorsed by the City Attorney, then following the date of such written verification, the City's sole recourse for enforcement of the covenant shall be against the Project Owner's successor(s) in interest.

## ARTICLE X

### AFFORDABILITY PERIOD

10.1. All Affordable Units in the Parcel shall be leased in accordance with the terms of this Covenant for **a period of ninety-nine (99) years (the “Affordability Period”)** which shall commence when the Project construction is complete, the residential buildings are placed in service and ready for occupancy pursuant to certificates of occupancy and shall continue for a period of ninety-nine (99) years thereafter. The Affordability Period for each For-Sale Affordable Unit shall commence on the date of recordation of the deed transferring the initial ownership of the For-Sale Affordable Unit to a Qualified Purchaser and shall continue for a period of 99 years thereafter. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

10.2. Notwithstanding the foregoing, in the event the Project or the interest in the Parcel are foreclosed upon by an institutional or governmental lender following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 10.3.

10.3. Notwithstanding the foregoing Section 10.2, if Virginia Housing (formerly known as Virginia Housing Development Authority) is first lienholder and senior lender, and Virginia Housing is the successful bidder at foreclosure and becomes the successor in interest, then the income, rent or use restrictions required by this Covenant shall terminate, except: (i) twenty percent (20%) of the units within the Project may remain at sixty percent (60%) of area median income following such a foreclosure, and (ii) Virginia Housing may permit additional units at 60% AMI to survive such a foreclosure, provided that Virginia Housing determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (DCSR) of at least 1.25 while subject to such additional set-aside. If such affordability survival materially and adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by Virginia Housing. The City Manager, after consultation with the City Attorney’s Office, is the City official designated within the City Ordinance as having authority to approve an amendment of this Covenant to the extent necessary to facilitate PHA’s receipt of financing from Virginia Housing, provided that the renegotiated terms are no less than those Virginia Housing itself requires in its own Lending Policy and are not otherwise prohibited by the City Ordinance or any provision of this Covenant.

10.4. Notwithstanding any other provisions of this Article X, in accordance with the requirements of Virginia Code §15.2-958 in effect on the date this Covenant is recorded, the Landowner and its successors in interest shall provide a minimum of twenty percent (20%) of the residential units within Phase 1 as Rental Affordable Units, for a period of not less than ten (10) years, and no City official shall have authority to amend this Covenant in a manner that defeats these statutory required minimums.

## ARTICLE XI

### NOTICES

11.1 Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight

commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the City or the Project Owner from time to time. All notices to be sent to the City shall be sent to the following address:

CITY: Charlottesville City Manager  
P.O. Box 911, Charlottesville, Virginia 22902

With a copy to: Charlottesville City Attorney  
P.O. Box 911, Charlottesville, Virginia 22902

11.2 All notices to be sent to Project Owner shall be sent to the address given in the preamble with copies to counsel and to the Landowner and to the investor member of the Project Owner, which may be provided and included in an amendment hereto. All notices to be sent to any Affordable Unit Occupant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the City with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

11.3 Notices shall be deemed delivered as follows: (i) if hand-delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

## ARTICLE XII

### MISCELLANEOUS

12.1 **Applicable Law: Forum for Disputes.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Project Owner, Affordable Unit Occupants and the City irrevocably submit to the jurisdiction of the Circuit Court for the City of Charlottesville, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Project Owner, Affordable Unit Occupants and the City irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Charlottesville and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

12.3 **Time of performance.** All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or City holiday is automatically extended to the next Business Day.

12.4 **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5 **Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.6 **Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

12.7 **Limitation on Liability.** Provided that Project Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, Project Owner shall not be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Project Owner shall be liable if Project Owner has knowledge or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.8 **Agency Limitation on Liability.** Any review or approval by the City or the Agency shall not be deemed to be an approval, warranty, or other certification by the City or the Agency as to compliance of such submissions, the Project, any Affordable Unit or Parcel with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant, or any other covenant granted in favor of the city that is filed among the Land Records; or otherwise contractually required. The City shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.9 **No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.10 **Representations of Project Owner.** As of the date hereof, Project Owner hereby represents and warrants to City as follows:

(a) This Covenant has been duly executed and delivered by Project Owner, and constitutes the legal, valid and binding obligation of Project Owner and Landowner and its successors and assigns, enforceable against Project Owner, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Project Owner of any agreement or order which is binding on Project Owner; and

(c) Project Owner (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the City of Charlottesville. (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.11 **Federal Affordability Restrictions.** In the event the Parcel is encumbered by other affordability restrictions ("Federal Affordability Restrictions") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood such Federal Affordability restrictions, requirements, and provisions shall apply and it is agreed that

in the event the requirements in this Covenant would cause a default of or finding of non-compliance (“Conflict”) with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

**[Signatures on Following Pages]**

**EXHIBIT A to MASTER AFFORDABLE HOUSING COVENANT**

**Legal Description of Property**

[PHA to provide legal description of full property]

## EXHIBIT B TO MASTER AFFORDABLE HOUSING COVENANT

### Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider (“Rider”) is attached to and incorporated into the lease dated (“Lease”) between (“Resident” or “You”) and , as Management Agent (“Manager”) for (“Owner”) for Apartment (“Premises”). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

**AFFORDABLE UNIT:** Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the City of Charlottesville dated \_\_\_\_\_, 20\_\_\_\_, as may be subsequently amended, (the “Affordable Housing Covenant”). The Premises is currently designated as an Affordable Unit, which requires the Resident’s household income to be less than or equal to [\_\_\_\_\_] of the area median income (AMI).

**DEFINED TERMS:** Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

**ELIGIBILITY:** In order for you, as resident, to be eligible to rent an Affordable Unit, you must be and remain an “Affordable Unit Tenant” as defined in the Affordable Housing Covenant.

**INCOME CERTIFICATION/INCOME RECERTIFICATION:** No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease (or at the City’s option, every two years after the first day of the Lease) the Manager shall request that the Resident provide the Certifying Authority with the following:

- (i) an executed Certification of residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident’s household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident’s eligibility for the Affordable Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

Resident shall submit the foregoing listed documentation to the Certifying Authority within fifteen (15) days of Manager’s request. Within ten (10) days of Certifying Authority’s receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Authority will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household’s AMI percentage, and (a) if the Resident is no longer income eligible for the Premise, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income completed by the Certifying

Authority, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household is determined to exceed the Maximum Annual Income for the Affordable Unit with the highest AMI level in the Parcel, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of [ ] AMI or [ ] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a City policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

**PROHIBITION ON SUBLETS AND ASSIGNMENTS:** Resident may not sublease any portion of the Premises or assign its lease to any other person, except with the prior written consent of the City of Charlottesville City Manager's Office, in its sole and absolute discretion.

**LEASE EFFECTIVE:** The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, a Certificate of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the lease agreement.

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

## Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. Condominium Fees, if applicable: Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on unit type:
  - Multi-Family Development
  - Studio—500 SF
  - 1-Bedroom—625 SF
  - 2-Bedroom—900 SF
  - 3-Bedroom—1,050 SF
  
- ii. Homeowner Fees, if applicable: Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on home type.
  - Single-Family Development
  - 2-Bedroom 1,100 SF
  - 3-Bedroom 1,300 SF
  - 4-Bedroom 1,500 SF
  
- iii. Monthly Hazard Insurance, if single family home: Estimated to be \$125.00 per month. If a more recent survey or source is available, the Agency shall instruct Developer to use a different estimate.
  
- iv. Monthly Real Property Taxes: Base monthly real property taxes on the estimated price of the Affordable Unit assuming the current homestead deduction at current local real estate tax rates
  
- v. Mortgage Rate: Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at [www.freddiemac.com](http://www.freddiemac.com) plus a one percent (1%) cushion.
  
- vi. Down payment: Assume a down payment of 5% on the purchase of the Affordable Unit.

## EXHIBIT D to MASTER AFFORDABLE HOUSING COVENANT

### Provisions Governing Calculation of Maximum Resale Price

1. The **Maximum Resale Price** (“MRP”) for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula  $MRP = P \times (F) + V$  (“Formula”), where:

(a) P = the price Owner paid for the Affordable Unit;

(b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and

(c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income (“AMI”) from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed: (1) As the result of the formula  $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) ^ (1/10) -1) + \dots ((AMI \text{ Year } k / AMI \text{ year } k-1) ^ (1/10) -1) / n]) ^ n$ , where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or (2) as otherwise published by the Agency.

2. For the purposes of determining the value of “V” in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property: (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

3. Ineligible costs shall not be included in the determining the value of “V” in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair 32 market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For

Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

**Eligible Capital Improvement:** major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

**Eligible Replacement and Repair Cost:** in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

**Ineligible Costs:** means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters, 33 curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave, stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.

**EXHIBIT E to MASTER AFFORDABLE HOUSING COVENANT**

**Master Site Requirements Chart**

Friendship Court  
Master Site Requirements

The chart below includes the anticipated site requirements for all phases of the Project, but the requirements will be revisited and revised by Piedmont Housing Alliance (the “**Developer**”) and the City of Charlottesville before each phase (the “**City**”). The requirements for each phase will be binding on the entire site except for the early childhood center, community resources building, and commercial spaces built during each phase to provide healthcare, tenant services, and other commercial uses that benefit the tenants (the “**Unencumbered Parcels**”). Each phase of the project will be released from the Master Covenant upon execution of a site-specific covenant with the City at the time it is developed, which covenants will be approved by the City Manager and City Attorney. Any such covenants shall terminate upon foreclosure or deed in lieu of foreclosure. As noted below, Developer will use its best efforts to secure the right for the City to take action to prevent a foreclosure or deed in lieu of foreclosure. All capitalized terms not defined herein shall have the same meaning as defined in the Master Affordable Housing Covenant by and between the NHTE Piedmont Garrett Square Limited Partnership and the City, dated \_\_\_\_\_, 2020.

	<b>SITE REQUIREMENTS FOR ALL PHASES</b>			
<b>Requirement</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>
<b>Minimum Unit Count</b>  <b>Master Covenant Art. II, but see Article X, §10.3</b>	Phase 1 should include a minimum of 106 Rental Units, 46 of which are dedicated Project-Based Section 8 Units.  At a minimum, an additional 300 Affordable Units shall be provided between Phases Two, Three, or Four of the Project. Of these, 104 will be Project-Based Section 8 Units. The Developer may choose the unit count per phase for these additional units.	Phase 2 should include a minimum of 54 Project-Based Section 8 Units.	Phase 3 should include a minimum of 50 Project-Based Section 8 Units. By the end of Phase 3, all 150 of the original Project-Based Section 8 Units will be replaced.	Phase 4 should include a minimum of the number of Affordable Units necessary for the Project to reach between 425 and 475 Affordable Units total when combining Affordable Units from Phases 1, 2, 3, and 4, with a target of approximately 450 Affordable Units.
<b>Affordability</b>  <b>Master</b>	All Affordable Units are reserved for households earning at or below 80% of	All Affordable Units are reserved for households earning at or below 80% AMI	All Affordable Units are reserved for households earning at or below 80% AMI	All Affordable Units are reserved for households earning at or below 80% AMI

	<b>SITE REQUIREMENTS FOR ALL PHASES</b>			
<b>Requirement</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>
<b>Covenant, Article I (definition of Affordable Unit), but see Article X, §10.3</b>	AMI who pay no more than 30% of income for Gross Housing Costs, including utilities.	who pay no more than 30% of their income on Gross Housing Costs, including utilities.	who pay no more than 30% of their income on Gross Housing Costs, including utilities.	who pay no more than 30% of their income on Gross Housing Costs, including utilities.
<b>Affordability Distribution</b>  <b>Master Covenant, Article II, and Article X §10.3</b>	<p>106 Affordable Units include:</p> <ul style="list-style-type: none"> <li>• 46 units are Project-Based Section 8</li> <li>• 30 units will be reserved for households earning at or below 60% AMI</li> <li>• 30 units will be reserved for households earning at or below 80% AMI</li> </ul>	<p>Estimated 103-114 Affordable Units include:</p> <ul style="list-style-type: none"> <li>• 54 units are Project-Based Section 8</li> <li>• Est. 50% of additional units reserved for households earning at or below 60% AMI</li> <li>• Est. 50% of additional units reserved for households earning at or below 80% AMI</li> </ul>	<p>Estimated 88-102 Affordable Units include:</p> <ul style="list-style-type: none"> <li>• 50 units are Project-Based Section 8</li> <li>• Est. 50% of additional units reserved for households earning at or below 60% AMI</li> <li>• Est. 50% of additional units reserved for households earning at or below 80% AMI</li> </ul>	<p>Estimated 128-153 Affordable Units include:</p> <ul style="list-style-type: none"> <li>• Est. 50% of units reserved for households earning at or below 60% AMI</li> <li>• Est. 50% of reserved for households earning at or below 80% AMI</li> </ul>
<b>Affordability Program</b>  <b>Master Covenant, Article II, §2.1.5, but see Article X, §10.3</b>	<p>46 Rental Units should receive Section 8 Project-Based Rental Assistance</p> <p>Section 8 Project-Based Rental Assistance is subject to a HAP Contract being in effect. Developer will take all commercially reasonable steps to ensure the HAP</p>	<p>54 Rental Units should receive Section 8 Project-Based Rental Assistance</p> <p>Section 8 Project-Based Rental Assistance is subject to a HAP Contract being in effect. Developer will take all commercially reasonable steps to ensure the HAP Contract is</p>	<p>50 Rental Units should receive Section 8 Project-Based Rental Assistance</p> <p>Section 8 Project-Based Rental Assistance is subject to a HAP Contract being in effect. Developer will take all commercially reasonable steps to ensure the HAP Contract is</p>	

	<b>SITE REQUIREMENTS FOR ALL PHASES</b>			
<b>Requirement</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>
	Contract is renewed throughout the Affordability Period.	renewed throughout the Affordability Period.	renewed throughout the Affordability Period.	
<b>Affordability Period</b>  <b>Master Covenant, Article X, but see §10.3</b>	Ninety-Nine (99) years	Ninety-Nine (99) years	Ninety-Nine (99) years	Ninety-Nine (99) years
<b>Exclusive Right to Lease</b>  <b>Master Covenant, Article II, §2.1.5, but see Article X, §10.3</b>	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Office of the Charlottesville City Manager (the “Agency”) or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Agency or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Agency or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.	Following the expiration of the LIHTC extended use period and outside of any subsequent LIHTC extended use period entered into with respect to the property pursuant to a recapitalization, the Agency or its designee will have the exclusive right to lease up to twenty percent (20%) of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four (4) persons having an income of eighty percent (80%) AMI.
<b>Amenities</b>	To the extent permitted by	To the extent permitted by	To the extent permitted by	To the extent permitted by

	<b>SITE REQUIREMENTS FOR ALL PHASES</b>			
<b>Requirement</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>
<b>and Services</b>  <b>Master Covenant, Articles II and III</b>	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.	VIRGINIA HOUSING and the tax credit regulations, households in Affordable Units shall have the same and equal use of all the amenities and services provided in all Phases.
<b>Rental of Affordable Units</b>  <b>Master Covenant, Article IV, but see Article X, §10.3</b>	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>	<p>Project Owner may obtain referrals from federal and City of Charlottesville agencies but must select Qualified Tenants for Rental Affordable Units through a first-come, first-served system.</p> <p>Project Owner shall use the lease agreement that is attached to the covenant, incorporate a Rental Affordable Unit Lease Rider (pending approval of HUD) and retain a copy of the lease for a period of no less than 5 years from the expiration or termination of such lease. The lease agreement may be modified at HUD’s direction without the City’s consent.</p> <p>The initial lease term for a Rental Affordable Unit is one</p>

	<b>SITE REQUIREMENTS FOR ALL PHASES</b>			
<b>Requirement</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>
	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>	<p>year at the Maximum Allowable Rent. Leases for subsequent years require income recertification.</p> <p>Rental Affordable Units may not be subleased or assigned or subleased.</p>
<p><b>Sale of Affordable Units</b></p> <p><b>Master Covenant, Article V, but see Article X, §10.3</b></p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its</p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its interest in the Project itself to a community</p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its interest in the Project itself to a community</p>	<p>In the event the Project contains For Sale Affordable Units, Owner shall not convey all or any part of its fee interest in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income and who is a Qualified Purchaser. Any subsequent purchaser of a For Sale Affordable Unit shall also be a Qualified Purchaser who has obtained a Certification of Income. Notwithstanding the foregoing, Owner may also convey all or part of its fee interest in For Sale Affordable Unit(s) or all or any part of its interest in the Project itself to a community</p>

	<b>SITE REQUIREMENTS FOR ALL PHASES</b>			
<b>Requirement</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>
	interest in the Project itself to a community land trust.	land trust.	land trust.	land trust.
<b>Security Default on loan is addressed within the Ordinance and Security Agreement for the Loan</b>	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 1 project and such subordinate interest shall be assigned to the city as security for its loan in the amount of [\$_____] to the Developer.  None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 2 project and such subordinate interest shall be assigned to the city as security for its loan to the Developer.  None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 3 project and such subordinate interest shall be assigned to the city as security for its loan to the Developer.  None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.	Developer shall make a loan to the project in the amount of the city loan. Such developer loan will be secured by a subordinate interest in the Phase 4 project and such subordinate interest shall be assigned to the city as security for its loan to the Developer.  None of the phases shall be cross defaulted or cross collateralized by the City or any lender or investor.
<b>Foreclosure Terms Foreclosure terms shall be addressed within Security Agreement for the Loan Also: see Master Covenant Article X,</b>	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival materially and	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival materially and	The Developer shall use its best efforts to include language in a subordination agreement to be entered into with the senior lender that provides the City with the right to cure a default and prevent a foreclosure. Upon foreclosure or deed in lieu of foreclosure, Affordability Restrictions will terminate; except 20% of the additional units within the Project must remain at 60% AMI. If such affordability survival materially and

	<b>SITE REQUIREMENTS FOR ALL PHASES</b>			
<b>Requirement</b>	<b>Phase 1</b>	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>
<b>§10.3</b>	materially and adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.	adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.	adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.	adversely affects the debt financing for any such phase, the City shall consider reducing such thresholds, but in all events each Phase will be subject to the tax credit Extended Use Agreement required by the Virginia Housing Development Authority. Any restriction related to the Project-Based Section 8 units and related income restriction under the current federal HAP contract.

**EXHIBIT F to MASTER AFFORDABLE HOUSING COVENANT**

**PHASE 1 AFFORDABLE HOUSING COVENANT**

**PHASE 1 AFFORDABLE HOUSING COVENANT**

THIS **PHASE 1 AFFORDABLE HOUSING COVENANT** (this “**Covenant**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”), by NHTE PIEDMONT GARRETT SQUARE LIMITED PARTNERSHIP (“**Landowner**”) having an address of 1101 30<sup>TH</sup> Street, N.W., Suite 400, Washington, District of Columbia, 20007, and FC PHASE 1, LLC, a Virginia limited liability company (“**Phase 1 Project Owner**”), having an address of 682 Berkmar Circle, Charlottesville, Virginia 22901, for the benefit of the City of Charlottesville, a municipal corporation, 605 East Main Street, City Hall, Charlottesville, Virginia, 22902 (the “**City**”).

## RECITALS

R-1. Landowner is the fee simple owner of certain real property located in the City of Charlottesville as further described in **Exhibit A** to the Master Covenant (the “**Property**”) and such real property includes an area of land (the “**Parcel**”) that will be used for Phase 1 of a four-phase redevelopment of the development currently known as Friendship Court.

R-2. The Parcel is the subject of an option to lease dated March 12, 2019 (the “**Option**”) granted by Landowner to FC Phase 1 LLC, a Virginia limited liability company, whose managing member is controlled by Piedmont Housing Alliance, a Virginia nonprofit corporation (“**PHA**”), and NHT Communities, a District of Columbia nonprofit corporation (the “**Phase 1 Project Owner**”). On \_\_\_\_\_, 2020, the Phase 1 Project Owner exercised the Option and has entered into a long-term ground lease, dated \_\_\_\_\_, 2020, for the Parcel (the “**Ground Lease**”).

R-3. To further the public purpose of increasing the affordable housing stock within the City of Charlottesville, the City is willing to loan certain public funding to PHA upon execution of the Ground Lease by Phase 1 Project Owner and Landowner.

R-4. As contemplated by Article IX of the Master Covenant recorded within the land records of the City of Charlottesville, Virginia as Instrument No. [\_\_\_\_\_], the City, Landowner, and Phase 1 Project Owner desire to set forth herein the terms, restrictions and conditions upon which Phase 1 Project Owner will construct, maintain and lease the Affordable Units within Phase 1.

R-5. The Covenant shall be binding upon the entire Property except for the early childhood center, community resources building, and commercial space built to provide healthcare, tenant services, and other commercial tenant benefits, as well as any portions of the Property excluded by subsequent amendments.

R-6. As contemplated by Article IX of the Master Covenant, the parties hereto intend that, upon recordation of this Phase 1 Covenant, this Phase 1 Covenant shall become binding upon the land within Phase 1 of the Project, and the Phase 1 Parcel shall hereby be released from the Master Covenant (defined below).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereby declare, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

For the purposes of this Covenant, the terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

**Affordability Period:** is ninety-nine (99) years, calculated as set forth within Article IX.

**Affordability Requirement:** has the meaning given in Section 2.1

**Affordable Unit:** means a residential dwelling unit for occupancy by a household having household income at or below 80% of Area Median Income who are paying no more than 30% of income for Gross Housing Costs, including utilities.

**Affordable Unit Marketing Plan:** means Landowner's plan for marketing the rental or sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

**Affordable Unit Owner:** means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

**Agency:** means the Office of the Charlottesville City Manager, and any successor department whose mission includes administration of the City's Affordable Housing Program.

**Area Median Income (AMI):** means median family income limits for the City of Charlottesville, Virginia, established and adjusted by the U.S. Department of Housing and Urban Development (HUD) annually by household size.

**Annual Household Income:** means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

**Annual Report:** has the meaning given in Section 4.10.

**Business Day** means Monday through Friday, inclusive, with the exception of any holidays recognized by the City of Charlottesville government.

**Certificate of Tenant Eligibility** means a certification by a Household at its initial occupancy of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Landowner, and the Certifying Authority, representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Authority, (b) the Household's Annual Household Income is at or below the maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) that the Household size is within the occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the Agency.

**Certification of Income**: means a certification made by a Certifying Authority that verifies the Annual Household Income of a Qualified Tenant, as applicable, meets the Designated Affordability Level for an applicable Affordable Unit and meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

**Certification of Inspection**: means a certification by Phase 1 Project Owner that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Landowner's knowledge, such Rental Affordable Unit complies with all applicable statutory and regulatory requirements, in such form as the Agency approves.

**Certification of Residency**: means a certification made by a tenant that states that the tenant occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

**Certifying Authority**: means PHA or any other entity or entities approved by the Agency pursuant to Section 2.4.

**Code**: means Sections 42 and 142 of the Internal Revenue Code of 1986, as amended.

**Designated Affordability Level (DAL)**: means the percentage of AMI assigned to each Affordable Unit, at or below which a Qualified Purchaser's or Qualified Tenant's as applicable, Annual Household Income must fall.

**For Sale Affordable Unit**: means an Affordable Unit that is owned, or is to be owned, by a Qualified Purchaser.

**Household(s)**: means all individuals who will occupy the Affordable Unit, including all individuals over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's, as applicable, spouse or domestic partner and children under eighteen (18) years of age. A Household may be a single family, one (1) individual living alone, two (2) or more families living together, or any other group of related or unrelated individuals who share living arrangements as allowable by this Covenant.

**Household Size Adjustment Factor (HAF)**: means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household income of an Affordable Unit, as set forth in the following table:

<b>Household Size</b>	<b>Household Adjustment Factor</b>
<b>1</b>	<b>0.7</b>
<b>2</b>	<b>0.8</b>
<b>3</b>	<b>0.9</b>
<b>4</b>	<b>1</b>
<b>5</b>	<b>1.1</b>
<b>6</b>	<b>1.2</b>

**Housing Cost**: means (a) the total monthly payments for rent and Utilities for Rental Affordable Units and (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for For Sale Affordable Units.

**HUD**: means the United States Department of Housing and Urban Development.

**Land Records**: means the real estate property records for the City of Charlottesville located in the Circuit Court for the City of Charlottesville.

**Landowner**: means NHTE PIEDMONT GARRETT SQUARE LIMITED PARTNERSHIP .

**Levels of Affordability** refers to the Tiers of Affordable Housing defined in terms of AMI. Families earning: between 120 and 80% AMI are considered “moderate-income”; between 80 and 50% AMI, “low-income”; between 50 and 30% AMI, “very low-income” and below 30% AMI, “extremely low-income.”

**Loan Agreement** means that certain loan agreement by and between PHA and the City to be dated and executed as of the closing of the acquisition of the leasehold interest in the Parcel by the Phase 1 Project Owner, approved by Ordinance adopted by Charlottesville City Council on \_\_\_\_\_, 2020, including the promise to construct the Affordable Units in accordance with this Covenant.

**Market-Rate Unit**: means each Residential Unit that is not an Affordable Unit.

**Master Covenant**: means that Master Affordable Housing Covenant recorded within the land records of the City of Charlottesville, Virginia, as Instrument No. \_\_\_\_\_.

**Maximum Allowable Rent**: as defined in Section 4.4.2.

**MAXI**: is the maximum Annual Household Income of a Household occupying an Affordable Unit as calculated pursuant to Section 4 for Rental Affordable Units or Section 5 for For Sale Affordable Units.

**Maximum Resale Price**: is the maximum resale price of a For-Sale Affordable Unit as determined pursuant to procedures established by the Agency.

**Maximum Sales Price**: as defined in Section 5.1.1.

**MINI** is the Minimum Annual Household Income of a Household occupying an Affordable Unit, as calculated pursuant to Section 5.2.1 for any For Sale Affordable Units.

**Mortgage:** means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the City of Charlottesville.

**Mortgagee:** means the holder of a Mortgage.

**Occupancy Standard:** means the minimum and maximum number of individuals permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Unit	Maximum Number of Individuals in Affordable Unit
Studio/Efficiency	1	1
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10
6	10	12

**Occupancy Standard Factor:** means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Allowable Rent or Maximum Allowable or Maximum Sales Price, as applicable, of an Affordable Unit as set forth in the following table:

Size of Affordable Unit	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

**Over-Income Tenant:** as defined in Section 4.6.5.

**Parcel:** is a portion of the Property on which Phase 1 will be constructed, as set forth on Exhibit A, attached and incorporated herein by reference.

**Person:** means any individual, corporation, limited liability company, trust, partnership, limited partnership, or other legal entity.

**Phase 1:** means the initial phase of construction of the Project to be constructed on the Parcel.

**Phase 1 Project Owner** means the Project Owner that will develop Phase 1 (FC Phase 1 LLC, a Virginia limited liability company), and all of FC Phase 1 LLC’s assignees, transferees, sublessees, subtenants, and successor(s) in interest to the Parcel.

**Project:** means the structures, landscaping, hardscape and/or site improvements to be constructed

or placed on the Property developed and owned by a Project Owner, including without limitation the Rental Affordable Units and For Sale Affordable Units referred to within the definition of “**Affordability Requirement**”. The term “Project” includes all phases of the proposed redevelopment—including, without limitation, Phase 1 and all subsequent phases of the redevelopment of the Property.

**Project Owner** means any person that has an interest in the Property deriving from the Ground Lease described within Recital 2 (“R-2”), including, without limitation: the Phase 1 Project Owner and all of the Phase 1 Project Owner’s assignees, transferees, sublessees, subtenants, and successors in interest.

**Property**: refers to the land described on **Exhibit A** to the Master Covenant, attached and incorporated herein by reference, which includes the Parcel, as well as other real estate identified, as of the date of this Covenant, by the City real estate parcel identification number 280112000 (currently assigned the street addresses of 400-426 Garret Street, Charlottesville, Virginia).

**Qualified Tenant or Qualified Purchaser**: each means a Household that (i) has an Annual Household Income, as certified by the Certifying Authority, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Unit as its principal residence, (iii) shall not permit exclusive occupancy of the Affordable Unit by any other individual(s), (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant and (v) shall occupy the Affordable Unit within the Occupancy Standard.

**Rental Affordable Unit**: means an Affordable Unit that shall be leased to a Qualified Tenant.

**Rental Affordable Unit Lease Rider**: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

**Rental Formula**: is defined in Section 4.4.2.

**Residential Unit**: means a dwelling unit constructed within Phase 1 for residential occupancy by one or more individuals who comprise a household.

**Sale**: is defined in Section 5.1.

**Utilities**: means water, sewer, electricity, and natural gas.

## ARTICLE II

### AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability.** All of the Residential Units within Phase 1 shall be constructed and reserved as either Rental Affordable Units or For Sale Affordable Units, subject to the Affordability

Requirement. For all purposes of this Phase 1 Covenant, the term “Affordability Requirement” means and refers to all of the following:

2.1.1. All Residential Units within Phase 1 shall be Rental Affordable Units or For Sale Affordable Units.

2.1.2. All Rental Affordable Units and For Sale Affordable Units are subject to the Affordability Period.

2.1.3. All Rental Affordable Units and For Sale Affordable Units are subject to the income limitations under subsection (g)(1) and the rent restrictions under subsection (g)(2) of Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”).

2.1.4. Rental Affordable Units shall be subject to the following:

(a) No fewer than 106 of the Residential Units within Phase 1 shall be Rental Affordable Units (“Required Rental Affordable Units”). The Required Rental Affordable Units are further subject to all of the following:

(i) no fewer than 46 Required Rental Affordable Units shall be rented to Households qualifying under the Program-Based Section 8 Program. These Rental Affordable Units shall participate in the federal Program-Based Section 8 Program throughout the Affordability Period, for so long as the federal Program is offered under federal law. In the event that the federal Program-Based Section 8 Program is discontinued by the federal government during the Affordability Period, then the 46 Rental Affordable Units referred to in this paragraph shall be maintained throughout the Affordability Period as Rental Affordable Units;

(ii) no fewer than 30 Required Rental Affordable Units shall be rented to Households with a MAXI of 60% Area Median Gross Income; and

(iii) no fewer than 30 Required Rental Affordable Units shall be rented to Households with a MAXI of 80% Area Median Gross Income.

(b) Additional Rental Affordable Units may be provided within Phase 1.

(c) The provisions of 2.1.4(a) and (b), above, are, unless otherwise provided, subject to subsection (g)(1)(C) of Section 42 of the Code and the federal Average Income Test.

## 2.2 **Affordable Unit Standards and Location.**

2.2.1 *[Reserved]*

2.2.2 *[Reserved]*

2.2.3 *[Reserved]*

2.2.4 *Exterior Finishes.* Exterior finishes of Affordable Units will be consistent across tiers of affordability.

2.2.5 *Interior Finishes.* Interior base finishes, appliances and equipment in the Affordable Units shall be similar across tiers of affordability.

2.2.6 *Affordable Unit Location.* As allowed within the parameters of LIHTC compliance guidelines or other federal law, Affordable Units of various tiers shall be dispersed throughout the Project, and shall not be concentrated on any one floor within a building, or within a section of the Project.

2.3 **Marketing Affordable Units.** Phase 1 Project Owner shall create an Affordable Unit Marketing Plan that sets forth its plan for marketing the Affordable Units to Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affordable Marketing Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Phase 1 Project Owner may contract with the Certifying Authority to implement the Affordable Unit Marketing Plan.

2.4 **Certifying Authority.** Phase 1 Project Owner shall select a Certifying Authority, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned or delayed. Phase 1 Project Owner may contact the Agency with questions and information about the selection of a Certifying Authority. The Certifying Authority shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that Household is a Qualified Tenant or Qualified Purchaser, as applicable. If a Household is determined to be a Qualified Tenant or Qualified Purchaser, as applicable, the Certifying Authority shall issue a Certification of Income for the subject Household.

## ARTICLE III

### USE

3.1 **Use.** Except as provided herein, all occupants of Rental Affordable Units shall have the same and equal use of all the amenities of the Parcel and services provided at the Parcel (except if unique services are required for certain tenants as approved by the Agency). No restrictions, requirements or rules shall be imposed on occupants of Rental Affordable Units at any tier of affordability that are not imposed equally on the occupants of the Rental Affordable Units within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to occupants of the Rental Affordable Units at any tier of affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to occupants of the Rental Affordable Units at other tiers of affordability. If there is no cost or fee charged to occupants of the Rental Affordable Units at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to occupants of Rental Affordable Units at other tiers of affordability. Except as provided herein, all Affordable Unit Owners shall have the same and equal use of all the amenities within the Project and services provided to residents within the Project (except if unique

services are required for certain residents as approved by the Agency). No restrictions, requirements or rules shall be imposed on Affordable Unit Owners at any tier of affordability that are not imposed equally on the Affordable Unit Owners within other tiers of affordability. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option to Affordable Unit Owners at any tier of affordability, such amenities, services, upgrades, or rental of parking and other facilities shall be offered to the Affordable Unit Owners at other tiers of affordability. If there is no cost or fee charged to Affordable Unit Owners at one tier of affordability for such amenities, services, upgrades, or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners at other tiers of affordability.

3.2 **Demolition/Alteration.** Subject to normal wear and tear, Phase 1 Project Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry) of each Rental Affordable Unit with interior components of equal or better quality than those interior components being replaced. Affordable Unit Owners shall maintain, upkeep, repair and replace interior components (including fixtures, appliances flooring and cabinetry). Neither Project Owner nor any Affordable Unit Owner shall demolish or otherwise structurally alter an Affordable Unit, or remove fixtures or appliances installed in an Affordable Unit, other than for maintenance, repair, and replacement of equal or better quality without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency or as needed to rebuild after a casualty or condemnation.

## **ARTICLE IV**

### **RENTAL OF AFFORDABLE UNITS**

4.1 **Lease of Rental Affordable Units.** Project Owner shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rate paid by the Qualified Tenant at or below the Maximum Allowable Rent.

4.2 **Rental Affordable Unit Lease Requirements.**

4.2.1 *Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Phase 1 Project Owner shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider, as may be amended from time to time. The Rental Affordable Unit Lease Rider shall be executed by Phase 1 Project Owner and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.

4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Lease Rider, a Certification of Income and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.2.3 *Requirement to Maintain Copies of Leases of Rental Affordable Units.* Phase 1 Project Owner shall maintain or cause to be maintained copies of all initial and renewed leases executed

with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

#### 4.3 **Rental Affordable Unit Admissions Process.**

4.3.1 *Referrals.* Phase 1 Project Owner may obtain referrals of prospective tenants of Rental Affordable Units from federal and City of Charlottesville agencies, provided such referrals comply with the requirements of this Covenant, Fair Housing laws, and the requirement that units be generally available to the public. In all events, before a prospective tenant leases a Rental Affordable Unit, their Annual Household Income shall be verified by a Certifying Authority.

4.3.2 *Consideration of Applicants.* For the initial occupancy of the Rental Affordable Units, Phase 1 Project Owner shall select Qualified Tenants through a first-come, first-served system, or other system approved by the Agency, as shall be further provided in the Affordable Unit Marketing Plan. Following the initial occupancy of the Affordable Units, Phase 1 Project Owner shall consider each applicant in the order in which received, whether received pursuant to the Affordable Unit Marketing Plan or referred pursuant to Section 4.3.1. Tenants of Rental Affordable Units participating in the Project-Based Section 8 Program shall be selected in accordance with requirements of that federal program. Any and all of the foregoing shall be consistent with federal Fair Housing laws and regulations and any units financed under the Code (tax credit or tax exempt bond financed projects) must be generally available to the public.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Affordable Unit, Phase 1 Project Owner may reject any applicant if, after diligent review of such applicant's application, Phase 1 Project Owner determines in good faith that such applicant does not meet criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable City of Charlottesville and federal laws and is the same criteria used to lease or occupy the Market-Rate Units. In the event any rejected applicant raises an objection or challenges Phase 1 Project Owner's rejection of such applicant, Phase 1 Project Owner shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal or local law. Phase 1 Project Owner shall provide the Agency with all documents evidencing Phase 1 Project Owner's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to leasing such unit. Housing Choice Vouchers (or vouchers from similar programs) shall be an acceptable source of verifiable household income, for the Rental Affordable Units other than those which are part of the Program-Based Section 8 Program.

#### 4.4 **Initial Rental Affordable Unit Lease Terms.**

4.4.1 *Term.* The term of any new Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent—Rental Formula.* Rents on Rental Affordable Units shall

be rent restricted. Maximum Allowable Rent paid by the Tenant shall for the first lease year shall be based on the number of bedrooms and AMI as established annually by HUD. If a household pays for utilities, the maximum rent must be adjusted by the applicable utility allowance.

**4.5 Income Determinations.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease renewals for such Rental Affordable Unit annually. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating the MAXI for a Household occupying the Rental Affordable Unit. The Certifying Authority shall verify that the Household's Annual Household Income is not more than the applicable MAXI.

*4.5.1 Maximum Annual Household Income.* The MAXI is determined through AMI as established annually by HUD, and as specified in Section 2.1, above.

#### **4.6 Subsequent Lease Years**

*4.6.1 Use of Rental Formula.* For each lease year after the first lease year, Maximum Allowable Rent shall be determined in the same manner specified within Section 4.4.2, above.

*4.6.2 Renewal by Tenants of Affordable Units.* For each tenant of a Rental Affordable Unit who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Phase 1 Project Owner shall obtain the following: (i) a Certification of Residency from each such tenant; and (ii) a Certification of Income completed by the Certifying Authority. Phase 1 Project Owner shall not permit a renewal of a lease for a Rental Affordable Unit unless the tenant has provided the documents as required herein and the tenant is determined to be a Qualified Tenant. If the tenant fails to provide such documents, Phase 1 Project Owner shall treat such tenant as an Over-Income Tenant and charge market-rate rent, and Phase 1 Project Owner shall designate another unit as a Rental Affordable Unit in accordance with Section 4.6.6. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

*4.6.3 Annual Recertification of Tenants.* Upon receipt of renewal documents from the tenant of a Rental Affordable Unit at the time of recertification, Certifying Authority shall determine the tenant's household income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify the tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any tenant whose Annual Household Income remains at or below the MAXI for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit. The foregoing Certifications and requirements to be a continuing Qualified Tenant shall be as provided in Section 42 of the Code for any period when the requirements of the Low Income Housing Tax Credits and the Extended Use Agreement are binding on the Parcel.

*4.6.4 Annual Recertification of Under Income Tenants.* Upon annual recertification, any tenant whose Annual Household Income remains at or below the MAXI for the subject Rental

Affordable Unit may elect either to (i) remain in the Rental Affordable Unit up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

*4.6.5 Annual Recertification of Over-Income Tenants.* Upon annual recertification, if a tenant's Annual Household Income is determined to exceed the MAXI for the subject Rental Affordable Unit (such tenant, an "**Over-Income Tenant**"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Parcel, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Phase 1 Project Owner shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.6.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market-Rate Unit, whereupon Phase 1 Project Owner shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.6.6.

*4.6.6 Changes to Unit Location.* If applicable, Owner may change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit (i.e., to accommodate an existing tenant). Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit of similar size and location in the property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Parcel in conformity with the Affordability Requirement.

*4.6.7 Rent from Subsidies.* Nothing herein shall be construed to prevent Phase 1 Project Owner from collecting rental subsidy or rental-related payments from any federal, state, or City of Charlottesville agency paid to Phase 1 Project Owner and/or the tenant of a Rental Affordable Unit, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental-related payment shall not be included in determining Maximum Chargeable Rent or the income of an otherwise Qualified Tenant, all as provided in the Code.

**4.7 No Subleasing of Rental Affordable Units.** The tenant of a Rental Affordable Unit may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household, and Phase 1 Project Owner shall not knowingly allow such Rental Affordable unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion. No Rental Affordable Unit may be offered or used for any short term rental or other transient occupancy.

**4.8 Representations of Affordable Unit Tenant.** By execution of a lease the tenant of a Rental Affordable Unit shall be deemed to represent and warrant to the Agency and Phase 1 Project Owner, each of whom may rely thereon, that the tenant's household meets, and will continue to meet, all eligibility requirements contained in this Covenant for a Qualified Tenant of a Rental Affordable Unit.

**4.9 Representations of Phase 1 Project Owner.** By its execution of a lease for a Rental Affordable Unit, Phase 1 Project Owner shall be deemed to represent and warrant to the Agency, which may rely on

the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Authority, and (ii) Phase 1 Project Owner is not collecting more than the Maximum Allowable Rent from the Tenant.

**4.10 Annual Reporting Requirements.** Beginning in the first year that any Rental Affordable Unit is occupied by a tenant, Phase 1 Project Owner shall provide an annual report (“**Annual Report**”) to the Agency regarding the Rental Affordable Unit, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of Phase 1 Project Owner’s Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of Phase 1 Project Owner’s Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure), the length of vacancy, and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names, ages and ethnicity of all persons in the Qualified Tenant’s Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income;

(e) a sworn statement that, to the best of Phase 1 Project Owner’s information and knowledge, the Household occupying each Affordable Rental Unit meets the eligibility criteria of this Covenant for a Qualified Tenant;

(f) a copy of each new or revised Certification of Income for each Household renting a Rental Affordable Unit;

(g) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

The Annual reports shall be retained by Phase 1 Project Owner for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that Phase 1 Project Owner provides a report to an agency within the City government with content substantially similar to the content of the Annual Reports described in this section, subject to the Agency’s prior written approval, then the reporting requirements under this section shall be satisfied upon Phase 1 Project Owner’s

delivery of such report to the Agency. The Agency may request Phase 1 Project Owner to provide additional information in support of its Annual Report, as necessary for the Phase 1 Project Owner to verify compliance with the requirements of this Covenant.

4.11 **Confidentiality.** Except as may be required by applicable law, including, without limitation, the Virginia Freedom of Information Act. Phase 1 Project Owner, the Certifying Authority and the Agency shall not disclose to third parties, other than Phase 1 Project Owner's Investor Member, the personal information of the Households, including the identity of the members of the Households, submitted as a part of the Annual Report.

4.12 **Inspection Rights.** The Agency or its designee shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to the Phase 1 Project Owner and during normal business hours as provided in the Leases and each Owner shall include notice of the Agency's right of inspection within all Leases of the Rental Affordable Units. If Phase 1 Project Owner receives such notice, Phase 1 Project Owner shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and the provisions of this Covenant. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

## ARTICLE V

### SALE OF AFFORDABLE UNITS

5.1. **Sale of For Sale Affordable Units.** In the event Phase 1 contains For Sale Affordable Units, the Phase 1 Project Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Phase 1 Project Owner shall not transfer or convey all or any part of its fee interest or its interest in the Ground Lease ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any person other than a Qualified Purchaser or to a community land trust. Each owner of a For Sale Affordable Unit shall only sell to a purchaser who has obtained a Certification of Income and who is a Qualified Purchaser or to a community land trust.

5.1.1. **Maximum Sales Price.** The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "Maximum Sales Price") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of its Annual Household Income on Housing Cost. The Agency shall determine the Maximum Sales Price in accordance with **Exhibits C and/or D**, attached and incorporated herein by reference, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable. The Agency shall approve the Maximum Sales Price for each For Sale Affordable Unit prior to the marketing and sale of such For Sale Affordable Unit.

5.1.2. **Maximum Resale Price.** The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with **Exhibits C and/or D** attached and incorporated herein by reference, or by another formula consistent with applicable state or federal laws and acceptable to the Agency in its sole discretion. The Agency shall have the right to approve the Maximum Resale Price for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3. **Housing Purchase Assistance Program and other Subsidized Funding.** The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined by the Agency without regard to the prospective purchaser's use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Affordable Unit, unless otherwise provided by this Covenant.

5.2. **Procedure for Sales.** The following procedures shall apply with respect to the initial sale or other transfer of title of a For Sale Affordable Unit, and also to each subsequent sale or other transfer of title of a For Sale Affordable Unit:

5.2.1. **Income Eligibility.** For any Qualified Purchaser, the Annual Household Income shall be determined as of the effective date of the sales contract for such For Sale Affordable Unit. If settlement for a For Sale Affordable Unit will not occur within 90 days after the effective date of the sales contract for that Unit, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the MAXI for a Household seeking to occupy the For Sale Affordable Unit and the MINI for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula:  $MAXI = (AMI * DAL * HAF)$ . The MINI is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty-one percent (41%). The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income from the Certifying Authority prior to entering into the contract.

5.2.2. **Sale.** A sale or other transfer of title of a For Sale Affordable Unit shall only be effective if **(i)** a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Affordable Unit and **(ii)** a Certification of Income is completed by a Certifying Authority within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.2.3. **Resale.** Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall **(i)** contact the Agency to obtain the Maximum Resale Price and **(ii)** shall refer the prospective purchaser to the Agency to determine

their eligibility to purchase the For Sale Affordable Unit. The Maximum Resale Price shall be determined by the Agency in accordance with **Exhibits C and/or D** attached and incorporated herein by reference, or by such other formula acceptable to the Agency, in its sole discretion.

5.3. Notwithstanding the foregoing provisions, the initial or any subsequent sale or transfer of title of a For Sale Affordable Unit may be to a community land trust rather than a Qualified Purchaser. Following a sale or other transfer of title to a community land trust, the community land trust shall, for each subsequent sale or other transfer of title to the For Sale Affordable Unit, be bound by all of the provisions of this Article.

#### 5.4. Closing Procedures and Form of Deed.

5.4.1. **Owner to Provide Copy of Covenant.** Phase 1 Project Owner or Affordable Unit Owner, as applicable, shall provide the Qualified Purchaser or community land trust with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.4.2. **Form of Deed.** All deeds used to convey or otherwise transfer title to a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, if the sale or other transfer of title is to a Qualified Purchaser. Every deed shall include the following statement in twelve (12) point or larger type, in all capital letters, on the first page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF \_\_\_\_\_, 20\_ RECORDED AMONG THE LAND RECORDS OF THE CITY OF CHARLOTTESVILLE, VIRGINIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_ 20\_\_\_, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.4.3. **Deed for For Sale Affordable Unit.** A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.4.4. **Post Closing Obligations.** The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed HUD settlement statement, a copy of the deed recorded in the Land Records (including the Instrument Number assigned to the deed at recordation, when available), the Certificate of Purchaser Eligibility, and the Certification of Income.

5.5. **Rejection of Applicants.** Phase 1 Project Owner or Affordable Unit Owner may reject a prospective purchaser (“applicant”) who has obtained a Certification of Income or other evidence of eligibility adopted by the Agency, if, based on such applicant’s application, background and/or creditworthiness (including, without limitation, the applicant’s inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), such owner determines in

good faith that such applicant does not meet the criteria to purchase a For Sale Affordable Unit, provided that such criteria does not violate applicable Virginia or federal laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges the owner's rejection of such applicant, Phase 1 Project Owner or Affordable Unit Owner, as applicable, shall be solely responsible for ensuring that its rejection of any applicant is not in violation of state or federal law. Phase 1 Project Owner or Affordable Unit Owner shall provide the Agency with all documents evidencing owner's review and rejection of an applicant, upon the request of the Agency.

**5.6. Representations of Owner.** By its execution of a deed conveying or otherwise transferring legal title to a For Sale Affordable Unit to a Qualified Purchaser, the Phase 1 Project Owner or Affordable Unit Owner shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser by the Certifying Authority at the applicable Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

**5.7. Annual Certification of Residency.** During the Affordability Period, the Affordable Unit Owner shall submit to the Agency annually, on the anniversary of the closing date for the owner's For Sale Affordable Unit, a Certification of Residency by a Qualified Purchaser. The Certification of Residency shall be submitted on or with such form as may be prescribed by Agency.

**5.8. Leasing For Sale Affordable Units.** The Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Unit shall be leased in compliance with the Rental Affordable Unit provisions of this Covenant.

**5.9. Transfers and Conveyances.** This Phase 1 Affordable Housing Covenant shall run with the land identified on **Exhibit A** as the Parcel and shall be binding upon the Landowner and Phase 1 Project Owner and all of their heirs, successors and assigns. Except as otherwise expressly provided in this Covenant, in the event that the right, title and interest of an Affordable Unit Owner is, in whole or in part, transferred to a third party by operation of law (such as, without limitation: by court order, administration of an estate, intestate succession, etc.) (each third party receiving such interest, a "Transferee"), then such Transferee, shall be automatically be bound by all of the terms, obligations and provisions of this Covenant and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Transferee does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

**5.10. Prohibition on Occupancy by Persons who are not Qualified Purchasers.** In no event shall an individual who is not a Qualified Purchaser, or a member of the Household of a Qualified Purchaser, reside in a For Sale Affordable Unit for longer than ninety (90) days.

**5.11. Progress Reports.** Until all initial Sales of For Sale Affordable Units are completed, the Phase 1 Project Owner shall provide Agency with annual progress reports, or more frequently upon request, on the status of its initial sale of the For Sale Affordable Units. Upon the conversion of a Rental Affordable Unit to a For Sale Affordable Unit, then the first sale of that Unit to a Qualified Purchaser, and each subsequent sale of such Unit, and the occupancy of such Unit, shall be governed by this Article V.

## ARTICLE VI

### DEFAULT; ENFORCEMENT AND REMEDIES

6.1 **Default; Remedies.** In the event Phase 1 Project Owner defaults under any term of this Covenant, and Phase 1 Project Owner does not cure such default within sixty (60) days following written notice of such default from the Agency, the City shall have the right to seek specific performance, injunctive relief or other equitable remedies, including compelling the re-sale or leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for any default(s). In the event such cure cannot reasonably be affected within the 60-day period, the Phase 1 Project Owner may request such additional time as may reasonably be necessary to cure such default provided the Project Owner has promptly initiated and diligently pursued such cure. Phase 1 Project Owner shall give notice of any such default to Phase 1 Project Owner's investment member, and any cure provided by such investor member shall be acceptable to the City as if rendered by Phase 1 Project Owner directly.

If Phase 1 Project Owner is in default under the terms of this Covenant, prior to exercising any remedies thereunder, the City shall provide simultaneous written notice of such default to Phase 1 Project Owner's investor member (the "Investor Member") if Phase 1 Project Owner or Investor Member has kept the City informed of the name and contact information for the Investor Member. Investor Member shall have the independent right to cure any defaults within the time periods set forth above. City hereby agrees that any cure of any default made or tendered by the Investor Member shall be (i) deemed to be a cure by Phase 1 Project Owner and (ii) accepted or rejected on the same basis as if made or tendered by Phase 1 Project Owner.

6.2 **No Waiver.** Any delay by the Agency in instituting or prosecuting any actions or proceedings with respect to a default hereunder, or in asserting its rights or pursuing its remedies hereunder, shall not operate as a waiver of such rights.

6.3 **Right to Attorney's Fees.** In any legal action to enforce this Covenant, the non-prevailing party shall pay the prevailing party's reasonable attorney fees and litigation costs incurred in connection with the prevailing party's efforts to enforce this Covenant. If the Charlottesville City Attorney's Office (CAO) serves as counsel for the City in such legal action, the reasonable attorney fees for the City shall be calculated based on the then applicable hourly rates prevailing within private practice within the City of Charlottesville, Virginia, and the number of hours that employees of the CAO prepared for or participated in any such action.

## ARTICLE VII

### COVENANT BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and shall run with the land and any interest therein as of the Effective Date through the Affordability Period. The rights and obligations of City, Phase 1 Project Owner, and any Affordable Unit Owner, shall be binding upon and inure to the benefit of the

said parties and their respective heirs, successors, and assigns; provided however that all rights of City pertaining to the monitoring and/or enforcement of the obligations of Phase 1 Project Owner or any Affordable Unit Owner shall be retained by City, or such designee of the City as the City may so determine. No sale, transfer or foreclosure shall affect the validity of this Covenant, except as otherwise expressly provided within this Covenant.

## **ARTICLE VIII**

### **MORTGAGES**

**8.1 Subordination of Mortgages.** The provisions of this Article VIII shall only apply to For Sale Affordable Units, if applicable. All Mortgages placed against the Parcel, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

**8.2 Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed with respect to an Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such For Sale Affordable Unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for the For Sale Affordable Unit.

**8.3 Default of Mortgage and Foreclosure.**

**8.3.1 Notice of Default.** The Mortgagee shall provide the Agency written notice of any default and notice of intent to foreclose under the Mortgage on any For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

**8.3.2 Right of Purchase by the City.** The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of **(i)** the amount of the debt secured by all Mortgages recorded against the subject Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable under the terms of the Mortgage or **(ii)** the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another agency or other third party to take title to the For Sale Affordable Unit.

**8.3.3 Termination Upon Foreclosure and Assignment.** In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to, a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.4 **Apportionment of Proceeds.** In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the City.

8.3.5 [*Reserved*]

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Affordable Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (i) the Agency's right to purchase, whether or not such right has been triggered, shall automatically expire and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except that upon sale of such unit or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

## ARTICLE IX

### AMENDMENT OF COVENANT

Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified or released, unless such amendment, modification or release is set forth within a written instrument executed by a duly authorized official of the Agency on behalf of the City, and by a duly authorized representative of a Project Owner and recorded in the Land Records. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

## ARTICLE X

### AFFORDABILITY PERIOD

10.1. All Affordable Units in Phase 1 shall be and remain Affordable in accordance with the terms of this Covenant for a **period of ninety-nine (99) years (the "Affordability Period")**. The Affordability Period for each Rental Affordable Unit shall commence upon the issuance of a certificate of occupancy by the City's Building Code Official for that unit, and shall continue for a period of ninety-nine (99) years thereafter. The Affordability Period for each For-Sale Affordable Unit shall commence on the date of recordation of the deed transferring the initial ownership of the For-Sale Affordable Unit to a Qualified Purchaser and shall continue for a period of 99 years thereafter. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

10.2. Notwithstanding the foregoing, in the event the Phase 1 Project, or the Phase 1 Project Owner's interest in the Parcel, is foreclosed upon by an institutional or governmental lender following foreclosure

by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Section 10.3.

10.3. Notwithstanding the foregoing Section 10.2, if Virginia Housing (formerly known as Virginia Housing Development Authority/VHDA) is first lienholder and senior lender, and Virginia Housing is the successful bidder at foreclosure and becomes the successor in interest, then the income, rent or use restrictions required by this Covenant shall terminate, except: (i) twenty percent (20%) of the units within the Project may remain at sixty percent (60%) of area median income following such a foreclosure, and (ii) Virginia Housing may permit additional units at 60% AMI to survive such a foreclosure, provided that Virginia Housing determines, in its sole discretion, that the development will achieve a targeted debt service coverage rate (DCSR) of at least 1.25 while subject to such additional set-aside. The City Manager, with the approval of the City Attorney's Office, shall have authority to renegotiate income, rent and use restrictions required by this Covenant, and to enter into a binding amendment of this Covenant, without the requirement for City Council approval, if necessary to facilitate PHA's receipt of financing from Virginia Housing, provided that the renegotiated terms are no less than those Virginia Housing itself requires in its own Lending Policy.

## ARTICLE XI

### NOTICES

11.1 Any notices given under this Covenant shall be in writing and delivered by United States mail (return receipt requested, postage pre-paid), delivered by hand, or delivered by private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated in writing by the City or the Project Owner from time to time. All notices to be given to the City shall be given to the following address:

CITY: Charlottesville City Manager

By mail to: P.O. Box 911, Charlottesville, Virginia 22902, or

By delivery to: 605 East Main Street, 2<sup>nd</sup> Floor, Charlottesville, Virginia 22902

With a copy to: Charlottesville City Attorney, sent by U.S. mail to:

P.O. Box 911, Charlottesville, Virginia 22902

11.2 All notices to be given to **Phase 1 Project Owner** shall be given by mail or delivery to:

Piedmont Housing Alliance

682 Berkmar Circle

Charlottesville, Virginia, 22901

Attention: Executive Director

With a copy to:

Klein Hornig, LLP

1325 G Street, N.W., Suite 770

Washington, DC, 20005

Attention: Erik T. Hoffman

And to the **Phase 1 Project Owner's Investor Member**, given by mail or delivery to:

Housing Equity Fund of Virginia XXIII, L.L.C.  
Housing Equity Fund of Virginia XXIV, L.L.C.  
c/o Virginia Community Development Corporation  
1840 West Broad Street, Suite 200  
Richmond, VA 23220  
Attention: Executive Director

With a copy to:  
Applegate & Thorne-Thomsen, P.C.  
425 S. Financial Place, Suite 1900  
Chicago, Illinois 60605  
Attn: Diane K. Corbett, Esq.

All notices to be given to the tenant of a Rental Affordable Unit shall be sent to the unit number referenced in its lease. All notices to be given to an Affordable Unit Owner shall be given by mail or delivery to the physical address of the For Sale Affordable Unit. It shall be the responsibility of the applicable person and any successor to give written notice to the City of its mailing and delivery addresses. The failure of the applicable person to keep the City apprised in writing of its mailing and delivery addresses shall constitute a default under this Covenant.

11.3 Notices shall be deemed delivered as follows: (i) if hand-delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (ii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

## ARTICLE XII

### MISCELLANEOUS

12.1 **Applicable Law; Venue.** This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Each of the parties whose signatures are affixed to this Covenant irrevocably agrees, on behalf of itself and each of its heirs, successors in interest and assigns, to submit to the jurisdiction of the Circuit Court for the City of Charlottesville, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Each of the parties whose signatures are affixed to this Covenant, on behalf of itself and each of its heirs, successors in interest and assigns, irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Charlottesville and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts.** This Covenant may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

12.3 **Time of performance.** All dates for performance (including cure of any default) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or City holiday is automatically extended to the next Business Day.

12.4 **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5 **Further Assurances.** Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.6 **Severability.** If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions; all other provisions shall be and remain in effect, and shall be enforceable without reference to the unenforceable or illegal provision.

12.7 **Limitation on Liability.** Provided that Phase 1 Project Owner or Affordable Unit Owner has exercised due diligence in the performance of its obligations and duties herein, Phase 1 Project Owner or Affordable Unit Owner shall not be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Phase 1 Project Owner or Affordable Unit Owner shall be liable if Phase 1 Project Owner or Affordable Unit Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.8 **Agency Limitation on Liability.** Any review or approval by the City or the Agency shall not be deemed to be an approval, warranty, or other certification by the City or the Agency as to compliance of such submissions, the Phase 1 Project, any Affordable Unit or the Parcel with any building codes, regulations, standards, laws, or any requirements contained in this Covenant, or any other covenant granted in favor of the City that is filed among the Land Records or otherwise contractually required. The City shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.9 **No Third Party Beneficiary.** Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.10 **Representations of Phase 1 Project Owner.** As of the date hereof, Phase 1 Project Owner hereby further represents and warrants to City as follows:

(a) This Covenant has been duly executed and delivered by Phase 1 Project Owner, and constitutes the legal, valid and binding obligation of said persons, enforceable against said persons, and their heirs, successors and assigns;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Phase 1 Project Owner of any agreement or order which is binding on Phase 1 Project Owner; and

(c) The Phase 1 Project Owner (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the Commonwealth of Virginia and the City of Charlottesville; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power and authority to execute and deliver this Covenant.

12.11 **Federal Affordability Restrictions.** In the event the Parcel is encumbered by other affordability restrictions (“Federal Affordability Restrictions”) as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood that, to the extent, if any, that such Federal Affordability restrictions, requirements, and provisions conflict with any provision(s) of this Covenant, then in the event the conflicting provision(s) in this Covenant would cause a default of or finding of non-compliance with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the conflict. In all other instances, the requirements of this Covenant shall control.

**[Signatures on Following Pages]**

**[Insert Signature Blocks]**

**EXHIBIT A**  
**TO THE FRIENDSHIP COURT REDEVELOPMENT**  
**PHASE 1 HOUSING COVENANT**

**Legal Description of Parcel**

Phase 1 of Friendship Court Redevelopment is on a parcel of land comprising approximately 3.87 acres, being the easternmost portion (the "Phase 1 Parcel") of a larger tract of real property lying within the City of Charlottesville, Virginia, owned by NHTE Piedmont Garrett Square Limited Partnership ("NHTE Piedmont Garrett Square LP, and described in the tax records of the City of Charlottesville as Tax Parcel 280112000, NHTE Piedmont Garrett Square LP having taken title to the real property by deed recorded in the office of the Clerk of Circuit Court of Charlottesville, Virginia in Deed Book 876 at Page 72, the real property being more particularly described by the following metes and bounds: beginning at a pk nail found along the west line of 6th Street, S.E. north of its intersection with Monticello Avenue, said point being the point of beginning, thence departing 6th Street, S.E. and with the northwest radial arc of its intersection with Monticello Avenue along a curve to the right, with a chord bearing north 85° 35' 39" east 49.68', having a radius of 30.00' and a length of 58.53' to a pk nail found; thence with the north line of Monticello Avenue the following courses: north 38° 30' 49" west 120.51' to an iron rod found; along a curve to the right, with a chord bearing north 30° 09' 56" west 127.22, having a radius of 438.12' and a length of 127.67' to a point; along a curve to the left, with a chord bearing north 30° 09' 56" west 176.00', having a radius of 606.12' and a length of 176.62' to a point; north 38° 30' 49" west 287.33' to an iron rod found; thence departing Monticello Avenue, and with the northeast radial arc of its intersection with 2nd Street, S.E. along a curve to the right, with a chord bearing north 09° 45' 15" west 28.87', having a radius of 30.00' and a length of 30.12' to an iron rod found; thence with the east line of 2nd Street, S.E. the following courses: north 19° 00' 20" east 361.37' to an iron rod found; north 19° 00' 20" east 100.00' to an iron rod found; thence departing 2nd Street, S.E., and with the southeast radial arc of its intersection with Garrett Street, along a curve to the right, with a chord bearing north 64° 55' 52" east 28.74', having a radius of 20.00' and a length of 32.06' to an iron rod found; thence with the south line of Garrett Street the following courses: south 69° 08' 27" east 164.46' to a pk nail found; along a curve to the right, with a chord bearing north 64° 29' 53" east 260.59', having a radius of 1608.89' and a length of 260.87' to a point; south 59° 51' 10" east 356.35' to a pk nail found; thence departing Garrett Street and with the southwest radial arc of its intersection with 6th Street, S.E., along a curve to the right, with a chord bearing south 13° 42' 28" east 28.84', having a radius of 20.00' and a length of 32.22' to an iron rod found; thence with the west line of 6th Street, S.E., the following courses: south 32° 26' 15" west 100.00' to a pk nail found; south 32° 26' 15" west 509.21' to an iron rod found; south 29° 42' 07" west 186.95' to the point of beginning, and containing 11.771 acres, more or less, as shown on a boundary survey exhibit by Timmons Group dated February 27, 2019

## EXHIBIT B

### TO THE FRIENDSHIP COURT REDEVELOPMENT

#### PHASE 1 HOUSING COVENANT

#### Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider (“Rider”) is attached to and incorporated into the lease dated (“Lease”) between \_\_\_\_\_ (“Resident” or “You”) and \_\_\_\_\_, as Management Agent (“Manager”) for \_\_\_\_\_ (“Owner”) for Apartment \_\_\_\_\_ (“Premises”). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

**AFFORDABLE UNIT:** Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the City of Charlottesville dated \_\_\_\_\_, 20\_\_\_\_, as may be subsequently amended, (the “Affordable Housing Covenant”). The Premises is currently designated as an Affordable Unit, which requires the Resident’s household income to be less than or equal to [\_\_\_\_\_] of the area median income (AMI).

**DEFINED TERMS:** Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

**ELIGIBILITY:** In order for you, as resident, to be eligible to rent an Affordable Unit, you must be and remain an “Affordable Unit Tenant” as defined in the Affordable Housing Covenant.

**INCOME CERTIFICATION/INCOME RECERTIFICATION:** No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease (or at the City’s option, every two years after the first day of the Lease) the Manager shall request that the Resident provide the Certifying Authority with the following:

- (i) an executed Certification of residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident’s household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident’s eligibility for the Affordable Unit, as well as how to contact such sources, and

- (iv) any other reasonable and customary representations, information or documents requested by the Certifying Authority.

Resident shall submit the foregoing listed documentation to the Certifying Authority within fifteen (15) days of Manager's request. Within ten (10) days of Certifying Authority's receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Authority will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premise, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income completed by the Certifying Authority, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household is determined to exceed the Maximum Annual Income for the Affordable Unit with the highest AMI level in the Parcel, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of [ ]AMI or [ ] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a City policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

**PROHIBITION ON SUBLETS AND ASSIGNMENTS:** Resident may not sublease any portion of the Premises or assign its lease to any other person, except with the prior written consent of the Agency, in its sole and absolute discretion.

**LEASE EFFECTIVE:** The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, a Certificate of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the lease agreement.

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

**EXHIBIT C**  
**TO THE FRIENDSHIP COURT REDEVELOPMENT**  
**PHASE 1 HOUSING COVENANT**

**(Maximum Sales Prices of For Sale Affordable Units)**

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. Condominium Fees, if applicable: Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on unit type:
  - Multi-Family Development
  - Studio—500 SF
  - 1-Bedroom—625 SF
  - 2-Bedroom—900 SF
  - 3-Bedroom—1,050 SF
  
- ii. Homeowner Fees, if applicable: Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the Affordable Unit is unknown, use the square footage estimated below based on home type.
  - Single-Family Development
  - 2-Bedroom 1,100 SF
  - 3-Bedroom 1,300 SF
  - 4-Bedroom 1,500 SF
  
- iii. Monthly Hazard Insurance, if single family home: Estimated to be \$125.00 per month. If a more recent survey or source is available, the Agency shall instruct Developer to use a different estimate.
  
- iv. Monthly Real Property Taxes: Base monthly real property taxes on the estimated price of the Affordable Unit assuming the current homestead deduction at current local real estate tax rates.
  
- v. Mortgage Rate: Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at [www.freddiemac.com](http://www.freddiemac.com) plus a one percent (1%) cushion.
  
- vi. Down payment: Assume a down payment of 5% on the purchase of the Affordable Unit.

**EXHIBIT D**  
**TO THE FRIENDSHIP COURT REDEVELOPMENT**  
**PHASE 1 HOUSING COVENANT**

**(Provisions Governing Calculation of Maximum Resale Prices)**

1. The **Maximum Resale Price** (“MRP”) for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula  $MRP = P \times (F) + V$  (“Formula”), where:

(a) P = the price Owner paid for the Affordable Unit;

(b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and

(c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income (“AMI”) from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed: (1) As the result of the formula  $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) ^ (1/10) -1) + \dots + ((AMI \text{ Year } k / AMI \text{ year } k-10) ^ (1/10) -1) / n]) ^ n$ , where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or (2) as otherwise published by the Agency.

2. For the purposes of determining the value of “V” in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property: (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

3. Ineligible costs shall not be included in the determining the value of “V” in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair 32 market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request

to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

**Eligible Capital Improvement**: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

**Eligible Replacement and Repair Cost**: in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

**Ineligible Costs**: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters, 33 curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave, stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.