

WORKFORCE HOUSING EQUITY SHARING AGREEMENT
(CITY'S SHARE OF NET APPRECIATION)

This Agreement is made this ____ day of _____, 20____, by and between the City of Virginia Beach, a municipal corporation of the Commonwealth of Virginia, (the "City"), and _____, ("Eligible Buyer").

W I T N E S S E T H :

WHEREAS, the City has adopted a Workforce Housing Program where it seeks to promote the ownership of affordable housing by residents of the City with median incomes between 80% and 120% of the area median income in the Hampton Roads Area; and

WHEREAS, in order to implement that ownership of affordable housing, the City has agreed to contract for the right to purchase qualifying housing units from developers in the City of Virginia Beach; and

WHEREAS, it is the intention of the City to transfer the right to purchase that qualifying unit, to an Eligible Buyer, as defined in Chapter 16, Article VIII of the City Code of the City of Virginia Beach, Virginia, and allow those Eligible Buyers to finance a portion of the Initial Sales Price (defined below) of the Workforce Housing Units at zero (0%) percent interest, secured by a deed of trust. The amount of financing by the City at zero (0%) percent interest is equal to the Workforce Housing Discount, as defined below, and

WHEREAS, the City has entered into an agreement entitled, "City of Virginia Beach and Developer Workforce Housing Participation Agreement (the "Developer Agreement") dated as of _____ with _____, ("the Developer") wherein Developer agrees to sell the Workforce Housing Unit to an Eligible Buyer at a price incorporating the Workforce Housing Discount; and

WHEREAS, Eligible Buyer has agreed as a condition of the purchase of Workforce Housing Unit to participate in the Workforce Housing Program as set forth in the Workforce Housing Participation Agreement between Eligible Buyer and City; and

WHEREAS, Eligible Buyer has agreed to purchase that certain Workforce Housing Unit from Developer, which unit is more particularly described on Exhibit A, attached hereto, and

WHEREAS, **AS SET FORTH IN THIS AGREEMENT, ELIGIBLE BUYER IS AGREEING TO PARTICIPATE IN A SHARED APPRECIATION PROGRAM WHERE A PORTION OF THE ACCRUED EQUITY IN THE WORKFORCE HOUSING UNIT WILL BELONG TO THE CITY OF VIRGINIA BEACH UPON THE SALE OR TRANSFER OF THE WORKFORCE HOUSING UNIT.**

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, Eligible Buyer agrees to the terms and conditions of the purchase of a Workforce Housing Unit as set forth herein as follows:

1. **DEFINITIONS:** Unless otherwise defined, all terms used in this Agreement shall have the meaning as follows:

a. *Annual Gross Income.* Income from whatever source derived and before taxes and withholdings. Included in the calculation of gross income are base salary, overtime, part-time employment, bonuses, commissions, dividends, interest, royalties, pensions, military housing allowance, Veterans Administration compensation, alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income from trusts, and other income from business activities or investments.

b. *Area Median Income (AMI).* The Area Median Income for the Virginia Beach-Norfolk-Newport News, Virginia Metropolitan Statistical Area (MSA) published annually by the U.S. Department of Housing and Urban Development (HUD) and adjusted for household size. Pricing of Workforce Housing Units and end-user qualifications are partially based on this published data. The initial sales price of Workforce Housing Units is based on the ratio of housing payments relative to the AMI. Additionally, the end user's income qualifications are based on the AMI, adjusted for household size.

c. *City Code.* The City Code of the City of Virginia Beach, Virginia.

d. *Discounted Sales Price.* The consideration paid for the **Workforce Housing Unit** to the Developer. The Discounted Sales Price is \$_____.

e. *Eligible Buyer.* A household whose Workforce Housing Application has been approved, and who meets all the requirements of the Workforce Housing Program for home ownership.

f. *Equity Sharing Agreement.* The Agreement between the City and **Eligible Buyer** whereby **Eligible Buyer** agrees to share the **Net Appreciation** with the City upon the resale of the **Workforce Housing Unit** in accordance with Chapter 16, Article VIII of the City Code.

g. *Fair Market Value.* The value of the Property at the time of a Sale or Transfer as set forth in Section 16-49 of the City Code.

h. *Household.* One or more persons living in, or intending to live in, the same dwelling unit.

i. *Initial Sale.* The original sale of a **Workforce Housing Unit** to an **Eligible Buyer**.

j. *Initial Sales Price.* The consideration paid for the **Workforce Housing Unit** by the **Eligible Buyer**. The Initial Sales Price is \$_____.

k. *Net Appreciation.* The amount of the *Resale Price* of a *Workforce Housing Unit*, less the total amount of: (i) the original principal amount of the first mortgage loan on the unit, (ii) the principal amount of the workforce housing deed of trust note on the unit, (iii) closing costs actually paid by the *Eligible Buyer* in connection with the purchase of the unit, (iv) the *Eligible Buyer's* down payment, (v) the appraised value of any capital improvements approved by the Director of housing and Neighborhood Preservation, and (vi) the reasonable and customary sales commission paid by the *Eligible Buyer*.

l. *Shared Net Appreciation.* The amount of Net Appreciation owed to the City by the Eligible Buyer of a Workforce Housing Unit, which shall be equal to the proportional share represented by the City's investment in the original purchase of the unit as evidenced by this Equity Sharing Agreement. For example, if the amount evidenced by the Equity Sharing Agreement equals twenty-five percent (25%) of the Initial Sales Price of the unit, the amount of the Shared Net Appreciation owed to the City at resale will be twenty-five percent (25%) of the Net Appreciation of the unit. The Shared Net Appreciation is paid, along with the amount equal to the Workforce Housing Discount as evidenced by the Workforce Housing Promissory Note, on the sale or transfer of the unit.

m. *Principal Sum.* The original principal amount owing under the Note.

n. *Resale Price.* The sales price of the Workforce **Housing Unit** that the **Eligible Buyer** receives upon the sale of the **Workforce Housing Unit** to a third-party.

o. *Workforce Housing Application.* An application submitted to the City that provides the necessary information to determine if a household qualifies for the Workforce Housing Program. Participation in the Workforce Housing Program is contingent upon approval of this application.

p. *Workforce Housing Discount.* The difference in sales price between the Fair Market Value of a Workforce Housing Unit and the reduced sale price necessary to make such unit affordable to a household at a targeted income level.

q. *Workforce Housing Promissory Note.* The **Workforce Housing Promissory Note** executed by the **Eligible Buyer** at the time of the original sale to the **Eligible Buyer** and payable to the City in the original principal amount equal to the **City's Workforce Housing Discount**.

r. *Workforce Housing Deed of Trust.* A deed of trust securing the repayment of the loan made by the City to an Eligible Buyer representing the Workforce Housing Discount, plus the Shared Net Appreciation of the Workforce Housing Unit. The sums secured by the deed of trust carries a zero percent (0%) interest rate, requires no monthly payments, is subordinate only to the purchase money first deed of trust or, in the event the property is financed by means of first and second deeds of trust held by the Virginia Housing Development Authority (VHDA), to such deeds of trust, and is due and payable from the proceeds of the resale or transfer of the Workforce Housing Unit.

s. *Workforce Housing Unit.* Dwellings or dwelling units, whether single-family dwellings, duplexes, semi detached dwellings, townhouses or multiple family dwelling units, approved by the City Council pursuant to Article 21 of the City Zoning Ordinance. Such housing is generally affordable to households with working members who live or work in the City of Virginia Beach. With respect to home ownership of Workforce Housing, it includes housing that is priced to be affordable to households with gross annual incomes between eighty per cent (80%) and one hundred and twenty per

cent (120%) of *Area Median Income AMI*, adjusted for household size. The Workforce Housing Unit

subject to this agreement is located at _____, and is further described on the attached Exhibit A.

2. At Settlement of the Workforce Housing Unit, Eligible Buyer will provide the Initial Sales Price in the amount of the _____ (_____) to purchase the above-described property, and of said Initial Sales Price the City will finance the the Workforce Housing Discount in the amount of _____ (_____), at zero (0%) percent interest .

3. The City's Shared Net Appreciation shall be _____ %.

4. At Settlement, Eligible Buyer will provide one hundred (100%) percent of the closing costs and prepaids.

5. Title to the above-described Workforce Housing Unit shall be in the name of the Eligible Buyer.

6. The parties agree that to complete the purchase of the Workforce Housing Unit, Eligible Buyer shall provide financing of the Discounted Sales Price in the amount of _____ (_____), either with a loan from a lending institution of their choice, or a combination of cash and a loan, and said loan shall be secured by a first deed of trust on the Workforce Housing Unit.

7. Eligible Buyer agrees to pay one hundred (100%) percent of the principal and interest payments related to the loan referenced in paragraph 6, above, and Eligible Buyer shall pay one hundred (100%) percent of the real estate taxes related to the land and improvements thereon and one hundred (100%) percent of liability insurance incidental to the Workforce Housing Unit.

8. Any income tax deductions generated by payment of a portion of the required loan, real estate taxes and insurance will be taken by the Eligible Buyer.

9. Eligible Buyer will reside in the Workforce Housing Unit until the Workforce Housing Unit is sold.

10. Eligible Buyer will pay all charges lawfully assessed or imposed during their possession of the property for condominium or homeowner's fees, water, sewage disposal charges (if any), telephone, electricity, heating fuel, gas and any other utility changes, or costs of every kind while the Eligible Buyer resides in the Workforce Housing Unit.

11. Eligible Buyer will pay one hundred (100%) percent of the cost of all repairs and maintenance necessary to maintain the Workforce Housing Unit while the Eligible Buyer resides in the Workforce Housing Unit located on the property.

12. Upon the resale and settlement of the Workforce Housing Unit and payment of all

costs and fees associated with the settlement and the payment and release of all liens against the Workforce Housing Unit, the proceeds of sale shall be divided as follows:

The City shall be paid:

- a) the *City's Workforce Housing Discount* plus
- b) the *City's Shared Net Appreciation*.

The remaining proceeds shall be paid to the Eligible Buyer.

13. *The City's Shared Net Appreciation and the City's Workforce Housing Discount* as described above shall be secured by a *Workforce Housing Deed of Trust* on the Workforce Housing Unit.

14. The principals to this Agreement mutually agree that it shall be binding upon them, and each of their respective heirs, executors, administrators, successors and assigns; that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein; that this contract contains the final and entire agreement between the parties hereto, and that they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

15. This Agreement shall be construed under the laws of the Commonwealth of Virginia, and the parties hereto designate the Circuit Court of the City of Virginia Beach, Virginia, for purposes of all litigation and venue.

16. The parties to this Agreement may alter any of the terms herein only by mutual written Agreement.

[Signatures on following page]

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

**THE CITY OF VIRGINIA BEACH, a
municipal corporation of the Commonwealth
of Virginia:**

By: _____ (SEAL)

Name: _____

Title: _____

ELIGIBLE BUYER:

_____ (SEAL)

Name: _____

_____ (SEAL)

Name: _____

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

Subscribed, sworn to and acknowledged before me this ___ day of _____,
_____, by _____, the _____ of The City of
Virginia Beach, who is personally known to me.

NOTARY PUBLIC

Notary Registration Number: _____

My Commission Expires: _____

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

Subscribed, sworn to and acknowledged before me this ___ day of _____,
_____, by _____ and _____ Eligible Buyer,
who has produced _____ as identification.

NOTARY PUBLIC

Notary Registration Number: _____

My Commission Expires: _____

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Exhibit A

Legal Description of the Workforce Housing Unit