

WORKFORCE HOUSING PARTICIPATION AGREEMENT

This Workforce Housing Participation Agreement (“Agreement”) is entered into as of the _____ day of _____, _____, by and between the City of Virginia Beach, A municipal corporation of the Commonwealth of Virginia, (the “City”) and _____, “(Eligible Buyer”).

RECITALS:

A. 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%- 120% of the area median income in the Hampton Roads Area; and

B. In order to implement that ownership of affordable housing, the City has provided incentives to developers to accept less than fair market value for qualifying housing units; and

C. The Workforce Housing Unit described below is a part of that certain development known as _____ (the “Development”). The Development was approved by the City Council on _____, pursuant to the provisions of Article 21 of the City Zoning Ordinance. In accordance with the terms of such approval, the number of dwelling units in the Development is greater than the number otherwise allowed on condition that the Development conforms to the conditions set forth in Section 2106 of the City Zoning Ordinance and in that certain agreement dated _____ and recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach in Deed Book _____, at Page ____; and

D. The City has entered into an agreement with _____ (the “Developer”) entitled “City of Virginia Beach and Developer Workforce Housing Participation Agreement (the “Developer Agreement”) dated as of _____, whereby Developer agrees to sell the Workforce Housing Unit at a price incorporating the Workforce Housing Discount. However, Developer shall not be entitled to receive any payment for the Workforce Housing Discount; and

E As set forth in this Agreement, the City will finance the amount of the difference in value between the Discounted Sales Price and the Fair Market Value to the Eligible Buyer as set forth herein; and

F. **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 and the City agree to the terms

and conditions of the purchase of a Workforce Housing Unit from the City by the Eligible Buyer on the terms and conditions as set forth herein as follows:

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

a. *Affordable.* Housing is generally considered affordable by a household if no more than approximately thirty per cent (30%) of its *Annual Gross Income* is spent on direct housing costs. With respect to home ownership, such costs include mortgage principal, interest, taxes and homeowner's insurance, mortgage insurance premiums, mandatory homeowners' association dues and condominium fees, but not utilities or other related housing costs.

b. *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.

c. *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.

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

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

f. *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.

g. *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.

h. *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.

i. *Household.* One or more persons living in, or intending to live in, the same Workforce Housing Unit.

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

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

l. *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 (in cases where the first mortgage is FHA-insured, the cost of capital improvement shall be used), and (vi) the reasonable and customary sales commission paid by the **Eligible Buyer**.

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. *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 the 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. If the first mortgage is FHA-insured, when the homeowner sells the Workforce Housing Unit, the homeowner must be permitted to recover at least the original purchase price, sales commission, cost of capital improvements, and any accrued negative amortization if the property was financed with a graduated payment mortgage.

p. *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.

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

r. *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*.

s. *Workforce Housing Revolving Fund*. A fund administered by the Department of Housing and Neighborhood Preservation for the recapture of Workforce Housing discounts, fees and shared net appreciation from the sale of Workforce Housing Units. Funds are reinvested in the Workforce Housing Program for the purpose of preserving or creating affordable housing.

t. *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.

u. *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. PURCHASE OF WORKFORCE HOUSING UNIT. Eligible Buyer agrees to purchase the Workforce Housing Unit from the Developer for the Discounted Sales Price plus the Workforce Housing Discount. The Discounted Sales Price will be paid to the Developer and the Workforce Housing Discount shall inure to the benefit of the City. The Workforce Housing Discount shall be evidenced by an Equity Sharing Agreement and Note, and secured by the Workforce Housing Deed of Trust. The sale of the Workforce Housing Unit shall be evidenced by a purchase agreement between Eligible Buyer and Developer in a form reasonably acceptable to the City.

3. FINANCING OF THE WORKFORCE HOUSING UNIT:

a. First Deed of Trust: Eligible Buyer shall obtain financing in the amount of the Initial Sales Price less the Workforce Housing Discount, less any down-payment made by Eligible Buyer, from a lender acceptable to the City (the "Lender"). The lien created by the deed of trust securing this amount shall be of first priority and recorded prior to the Workforce Housing Deed of Trust.

Eligible Buyer shall, within five (5) working days after the date of this Agreement, make diligent and truthful application to the lender and furnish to the City and the lender such information, forms or other materials as may be required by such lender within fifteen (15) working days after the date of this Agreement. If Eligible Buyer has complied with the requirements of this Agreement and for any reason whatsoever is unable to obtain the loan referred to above, either the City or Eligible Buyer shall have the option to terminate this Agreement and the Deposit shall be refunded to Eligible Buyer.

In no event shall the City have any obligations or liabilities to Eligible Buyer due to the lender's refusal to make such loan for any reason whatsoever, except that the City shall cause the deposit to be returned to Eligible Buyer if Eligible Buyer has strictly complied with the terms of the Agreement.

b. Lender's Fees. Except as otherwise agreed Eligible Buyer shall pay all points, loan origination fees, charges and other costs imposed by a lender or otherwise incurred in connection with obtaining and closing the loan or loans.

c. Appraisal/V.A./F.H.A./H.U.D.CONV. If V.A., F.H.A. or CONV. Financing applies, any other provisions of this contract notwithstanding, Eligible Buyer shall not incur any penalty by forfeiture of deposit or any other penalty, or be further obligated under this contract unless there has been delivered to the Eligible Buyer a certificate issued by V.A. or F.H.A. (whichever financing is applicable), setting forth the appraised value of said property (exclusive of closing costs if F.H.A.) of not less than \$_____. It is Eligible Buyer's option to proceed with this contract without regard to said appraised value, and/or the City's option to alter this contract to comply with said appraised value providing one or the other option is exercised in writing within 72 hours of receipt of said certificate of value. No appeal of said appraised value may be made without written mutual consent of both Eligible Buyer and the City. IF VA/ H.U.D./F.H.A./CONV. APPLIES, THE APPRAISED VALUATION IS ARRIVED AT TO DETERMINE THE MAXIMUM MORTGAGE WHICH H.U.D./F.H.A. WILL ENSURE. H.U.D./F.H.A. DOES NOT WARRANT THE VALUE OR THE CONDITION OF SAID PROPERTY. THE ELIGIBLE BUYER SHOULD SATISFY HIMSELF/HERSELF THAT THE PRICE AND CONDITION OF SAID PROPERTY ARE ACCEPTABLE.

d. Workforce Housing Deed of Trust and Promissory Note. The Workforce Housing Deed of Trust carries a zero percent interest rate and shall be 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. Eligible Buyer shall make no payments of principal towards the Workforce Housing Promissory Note or towards the City's Shared Net Appreciation on the sums secured by the Workforce Housing Deed of Trust until Eligible Buyer sells or otherwise divests him or herself of the Workforce Housing Unit. Notwithstanding the foregoing, in the event of a transfer of the Workforce Housing Unit as allowed under the Deed, no payment shall be required or permitted.

4. RESALE OF THE WORKFORCE HOUSING UNIT.

a. Eligible Buyer shall have the right to sell the Workforce Housing Unit at any time. However, prior to any sale or Transfer of the Workforce Housing Unit, Eligible Buyer covenants and agrees that prior to offering a Workforce Housing Unit for resale, the Eligible Buyer shall notify the City in writing of the Eligible Buyer's intent to sell the Workforce Housing Unit. The City shall notify the Eligible Buyer, in writing, of whether it intends to purchase the Workforce Housing Unit within thirty (30) days from the date on which the Eligible Buyer's notice of intent to sell was received by the City. In the event the City determines to purchase the Workforce housing Unit upon resale, it

shall have the right to assign the contract to another Eligible Buyer.

b. The City shall tender to the Eligible Buyer an offer to purchase such Workforce Housing Unit at its Fair Market Value. The Fair Market Value shall be determined as set forth in Section 16-49.1 of the City Code.

c. In the event the City decides not to purchase or assign its right to purchase the Workforce Housing Unit, it shall so notify the Eligible Buyer in writing, who shall thereafter have the right to sell the Workforce Housing Unit to any other person or entity. In such event, the provisions of this section shall not thereafter apply to any subsequent resale of the unit.

d. In the event the City purchases or assigns its right to purchase a Workforce Housing Unit from the Eligible Buyer, it shall make such Workforce Housing Unit available for sale to another Eligible Buyer for a period of at least ninety (90) days. The City shall notify the Eligible Buyer(s) on its pre-screened list of the availability of the Workforce Housing Unit.

e. In the event an Eligible Buyer enters into a contract to purchase the Workforce Housing Unit within the ninety (90) -day period, the City shall determine whether such Eligible Buyer continues to so qualify. If such Eligible Buyer continues to meet the eligibility requirements of Section 16-46 of the City Code, the Eligible Buyer of the Workforce Housing Unit shall enter into a contract with the City and, if applicable, the City's assignee, to purchase the Workforce Housing Unit at the fair market value thereof, as determined pursuant to subsection (b). In the event the City or its assignee has not completed settlement within the ninety (90) day period, then the contract to purchase with the City or its assigns, shall be null and void and the City's right to purchase shall terminate.

f. In the event the Eligible Buyer offers the Workforce Housing Unit for resale at a time when the Eligible Buyer is in default under the terms of the First Deed of Trust, the City shall retain its right of first refusal as set forth herein. However, in the event of a resale while Eligible Buyer is in default under the terms of the First Deed of Trust, within ninety (90) days of the City's receipt of notice of default under the First Deed of Trust the City shall either close on the acquisition of the Workforce Housing Unit, or give written notice of the City's intention not to repurchase the Workforce Housing Unit.

g. Eligible Buyer agrees to contact the City upon receipt of notice from the holder of the first deed of trust, or the Servicing Agent for the holder of the first deed of trust that the loan is in default.

h. The City's right to repurchase the Workforce Housing Unit shall terminate on foreclosure, deed-in-lieu of foreclosure, assignment of a superior deed of trust in favor of the Department of Housing and Urban Development, or other judicial sale of the Workforce Housing Unit. However, the City shall still be entitled to any proceeds from the foreclosure or other judicial sale as provided for by applicable law, including but not limited to the City's Workforce Housing Discount and Shared Net Appreciation.

i. All notices shall be in writing and delivered via certified mail, return receipt

requested, or overnight delivery service:

City of Virginia Beach
Director, Dept. of Housing & Neighborhood Preservation
2424 Courthouse Drive, Building 18A
Virginia Beach VA 23456-9083

j. The City's right to repurchase the Workforce Housing Unit shall be triggered by any sale or transfer of the Workforce Housing Unit except:

(i) The transfer of the Workforce Housing Unit to the surviving joint tenant by devise, descent or operation of the law, on the death of a joint tenant.

(ii) A transfer of the Workforce Housing Unit where the spouse becomes an owner of the Workforce Housing Unit and the transferee is a person who occupies or will occupy the Workforce Housing Unit.

(iii) A transfer of the Workforce Housing Unit resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the Workforce Housing Unit and the transferee is a person who occupies or will occupy the Workforce Housing Unit.

(iv) A transfer to an inter vivos trust in which the Eligible Buyer remains the beneficiary and occupant of the Workforce Housing Unit.

5. REPRESENTATIONS OF ELIGIBLE BUYER:

Unless specified in writing, neither this Agreement nor the financing is dependent or contingent on the sale and settlement or lease of other real property. The Eligible Buyer's acknowledges that the City is relying upon all of the Eligible Buyer's representations including without limitation the accuracy of the financial information given to the City by the Eligible Buyer. If the Eligible Buyer makes any deliberate misrepresentations, material omissions or inaccuracies in such financial information that result in the Eligible Buyer's inability to obtain approved financing, the Eligible Buyer shall be in default. The Eligible Buyer shall immediately notify the City, in writing, of any material adverse changes in the Eligible Buyer's assets, liabilities or income.

Eligible Buyer further represents and covenants to the City that at the time of this Agreement, the foregoing is true and accurate:

a. Eligible Buyer's Household meets the following criteria:

(1) At least one adult, non-dependent member of the Household to be shown on the deed of trust note as a borrower or other obligor shall, at the time of application to the Workforce Housing Program, live or work full-time in the City of Virginia Beach, or must have a bona fide offer of full-time employment within

the City of Virginia Beach commencing within three (3) months of the time of application;

- (2) No member of the Household shall own or have a controlling interest in any other real property (other than the Workforce Housing Unit);
- (3) The Household's combined Annual Gross Income shall, at the time of application, be between eighty per cent (80%) and one hundred twenty per cent (120%) of Area Median Income, adjusted for Household size; and
- (4) The net worth of the Household shall not exceed fifty per cent (50%) of the Initial Sales Price of the Workforce Housing Unit. The following items shall not be included in determining the net worth of a Household:
 - A. The present value of insurance policies, retirement plans, furniture, automobiles or Household goods;
 - B. The portion of the Household's liquid assets used for the down payment and to pay closing costs, up to a maximum of twenty-five per cent (25%) of the Initial Sales Price; and
 - C. Any income-producing assets needed as a source of income to meet the minimum qualifying requirements for Eligible Buyer status.

b. Eligible Buyer's Household shall, in addition to the foregoing requirement, qualify for a mortgage loan from a mortgage lender acceptable to the City. The City may deny Eligible Buyer status to any Household if it determines that such mortgage loan contains deceptive, predatory or abusive terms.

c. Once determined to be an Eligible Buyer, a Household must continue to meet the requirements of subsection (a) through the time of settlement on the Workforce Housing Unit. A Household shall be required to certify its continued qualification as an Eligible Buyer at settlement and at any prior time requested by the City.

6. VIOLATIONS OF THE WORKFORCE HOUSING AGREEMENT. Eligible Buyer agrees to be bound by the provisions of the Workforce Housing Program as set forth in Chapter 16 of the City Code. Eligible Buyer agrees he or she has reviewed the Certain Violations attached hereto and incorporated herein as Exhibit B, and agrees to the penalties set forth on that exhibit.

7. PAYMENT OF FEES TO CITY OF VIRGINIA BEACH. Eligible Buyer hereby acknowledges and agrees to pay the fees charged by the City for the administration of the Workforce Housing Program. The fees are as follows:

- a. A non-refundable application fee in the amount of \$50.00 at the time the Eligible Buyer makes his or her residential loan application to purchase a Workforce Housing Unit.

- b. A program administration fee in the amount of \$510.00 from Eligible Buyer at the time of loan closing. This fee cannot be financed in either the first deed of trust or the City's second deed of trust.
- c. In the event an Eligible Buyer does not close on a loan, City shall only be entitled to the \$50.00 application fee set forth in subsection (a), above, and not the fees set forth in subsection (b), above.
- d. Failure or refusal to pay any of the above fees shall be grounds for termination of this Agreement.

8. SURVIVAL. Unless the context otherwise requires, the provisions of this Agreement, including any indemnification, covenants, agreements, representations, waivers, or warranties, shall survive settlement hereunder and delivery of the deed.

9. SUCCESSORS AND ASSIGNS. The terms and provisions of this Agreement are binding upon and will inure to the benefit of the parties, their respective successors and assigns.

10. NOTICES. All notices to be delivered hereunder shall be sent by U. S. Mail or delivered in person addressed as and to the attention of the respective persons set forth below.

As to the City: City of Virginia Beach
 Director, Dept. of Housing & Neighborhood Preservation
 2424 Courthouse Drive, Building 18A
 Virginia Beach VA 23456-9083

Attn: City Attorney
 Municipal Center, Building 20
 2412 North Landing Road
 Virginia Beach, VA 23456-9084

As to Eligible
 Buyer:

Attn: _____

11. MEGAN'S LAW: Eligible Buyer should exercise whatever due diligence he/she/they deem necessary with respect to information on any sexual offenders registered under Chapter 23 (Sec. 19.2-387 et seq.) of Title 19.2 whether the owner proceeds under subdivision 1 and 2 of subsection A of Sec. 55-519. Such information may be obtained by contacting your local police department or the Department of State Police, Central Criminal Records Exchange.

12. GOVERNING LAW/VENUE. This Agreement shall be deemed to be a Virginia

contract and shall be governed by 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.

13. ENTIRE AGREEMENT AND MODIFICATION. There have been no other promises, consideration or representations made which are not set forth in this Agreement. There may be no modification of this Agreement, except in writing, executed by the authorized representative of Eligible Buyer and the City.

[SIGNATURES ON THE FOLLOWING PAGE]

WITNESS the following signatures and seals:

THE CITY:

The City of Virginia Beach, a municipal corporation of the Commonwealth of Virginia:

By: _____ (SEAL)

Name: _____

Title: _____

Eligible Buyer(s):

Witness: _____

_____ (SEAL)

Print Name: _____

_____ (SEAL)

Print Name: _____

Exhibit A

Legal Description of Workforce Housing Unit

Exhibit B
Certain Violations

(a) The following tables list certain violations of the Workforce Housing ("WFH") Program requirements and the penalties for their violation. Where more than one penalty is prescribed, they shall be deemed cumulative, such that any or all applicable penalties may be imposed:

Table 1 (sale/ownership of workforce housing units):

Program Violation	Penalties
Falsification of eligibility requirements	Permanent ineligibility for the WFH Program.
	Must sell WFH unit to the City.
	Immediate payment of the City's share of net appreciation on the WFH unit at resale.
	Immediate repayment of the Workforce Housing Deed of Trust.
Failure to occupy WFH unit as primary residence	Immediately reoccupy WFH Unit.
	If unable to reoccupy unit, the following penalties apply: <ol style="list-style-type: none"> 1. Permanent ineligibility for the WFH Program. 2. Owner must sell WFH Unit to the City. 3. Immediate payment of the City's share of net appreciation on the WFH unit at resale. 4. Immediate repayment of the Workforce Housing Deed of Trust.
Failure to comply with all City regulations for property maintenance	Immediate correction of code violation.
	If unable to correct code violations in prescribed time period, the following penalties apply: <ol style="list-style-type: none"> 1. Permanent loss of eligibility for the WFH Program. 2. Must sell WFH unit to the City. 3. Immediate payment of the City's share of net appreciation on the WFH unit at resale. 4. Immediate repayment of Workforce Housing Deed of Trust.
Failure to comply with refinancing and home equity loan requirements of WFH Program	Permanent ineligibility for the WFH Program.
	Owner must sell WFH unit to the City.
	Immediate payment of the City's share of net appreciation on the WFH unit at resale.
	Immediate repayment of Workforce Housing Deed of Trust.
Failure to offer the City first right to purchase when desiring to sell WFH unit	Immediate payment of the City's share of net appreciation on the WFH unit at resale.
	Immediate repayment of Workforce Housing Deed of Trust.
	Further legal action as deemed appropriate by the City.

End-user enters into a lease-to-purchase agreement for the WFH unit	Owner must sell WFH unit to the City.
	Immediate payment of the City's share of net appreciation on the WFH unit at resale.
	Immediate repayment of Workforce Housing Deed of Trust.