

**CITY OF PORTLAND**  
**Workforce Rental Housing Agreement and**  
**Declaration of Covenants, Conditions and Restrictions**

This Workforce Rental Housing Agreement and Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and Redfern Mews, LLC, a Maine limited liability company with a mailing address of P.O. Box 8816, Portland, Maine 04101 (“Developer”).

**WITNESSETH**

WHEREAS, the City has established a workforce housing requirement (the “Workforce Housing Ordinance”) in the Affordable Housing provisions of its Land Use Ordinance (Portland City Code §§ 14-484 to 488), and related regulations promulgated by the City’s Planning Board (the “Workforce Housing Regulations”), which are intended to encourage production of housing that is affordable for households with moderate income; and

WHEREAS, the Developer plans to construct a multi-family development project consisting of ten (10) rental units on certain property located at 70 Anderson Street, Portland, Maine (the “Development”) which property is more particularly described on **Exhibit A**, attached hereto and made a part hereof; and

WHEREAS, on September 27, 2016, the City’s Planning Board approved the Development, on the condition that the Developer enter into an affordable housing agreement with the City to satisfy the provisions of the Workforce Housing Ordinance by providing one (1) affordable rental unit which is part of the Development (the “Workforce Unit”) which Workforce Unit is a 3-bedroom apartment; and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Developer hereby agrees to certain restrictions on the rental amounts charged for the Workforce Unit on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S.A. Sec. 121 *et seq.*;

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, the City and the Developer hereby agree as follows:

1. **Parties’ Intent.** The terms and conditions contained herein have been freely and voluntarily accepted by the parties, each with the independent and informed advice of legal counsel. The provisions and restrictions contained herein exist to further the mutual purposes and goals of the Developer and the City set forth herein to create and preserve access to decent and affordable housing and home ownership opportunities for moderate-income people in the City of Portland. It is the express understanding and intent of the parties that the terms and conditions hereof will enhance the marketability of the Development by making the Development affordable to moderate income families who, without such provisions, would be unable to afford property in the City similar to the Workforce Unit.

2. **Term.** The term of this Declaration shall be for a period beginning on the date that it is recorded in the Cumberland County Registry of Deeds (the "Effective Date"), and ending on the date that is 99 years from the Effective Date.
3. **Enforceability of Covenants.** The covenants and restrictions set forth herein are intended to be and shall be considered covenants that run with the Development and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary. The covenants set forth herein shall survive a sale, transfer, or other disposition of the Development, a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.
4. **Covenants.** Developer hereby covenants and represents to the City as follows:
  - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of 10 units of rental housing, and related amenities. The Workforce Unit shall be Unit 9 in the Development and shall be of comparable quality and have comparable amenities to the other units in the Development. Developer shall not make any change in the nature, size, number or location of the units in the Development and the facilities in the units without obtaining any necessary approvals from the City.
  - b. **Use.** The Developer shall rent the Workforce Unit only to an "Eligible Household," as that term is defined herein. Any purported lease, transfer or other disposition of the Workforce Unit to any other person or entity done without following the procedures set forth below, or in violation of the rent limitations set forth below, shall be ***null and void***. For purposes hereof, the parties agree that the term "Eligible Household" means a moderate income person or household with a gross income not exceeding 100% of the HUD Greater Portland Metropolitan Statistical Area Median Income (the "AMI") figures for a household of that size.
  - c. **Interior Standards for Workforce Units.** The Workforce Unit shall be constructed such that it includes the basic amenities set forth in the City's "Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing" in effect as of the date hereof.
  - d. **Marketing.** In each instance that the Developer intends to rent the Workforce Unit, the Developer shall give the City's Housing and Community Development Office written notice of such intent (the "Notice of Intent") prior to listing the property for rent or renewing a lease. When listing a Workforce Unit for rent, unless otherwise agreed to by the City, the Developer shall satisfy all requirements of the Workforce Housing Ordinance and the Workforce Housing Regulations then in effect.

- e. **Eligible Household; Income.** For the term of this Declaration, at the time a lease for the Workforce Unit is signed, the tenant must be an Eligible Household. When determining income eligibility, the City will reference the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability applicable to the same geographic area. The City shall determine income eligibility based on a household's adjusted gross income using a process similar to what HUD recommends for its HOME program or another method deemed reasonable by the City. Developer will collect and compile all of the documents and information required by the City to assess a household's eligibility and provide it to the City for the City's final approval. The City shall make the final determination as to whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease. The City may request that the Developer obtain and provide additional information in order for the City to determine a household's eligibility. The City shall make the final determination, in accordance with the terms of this Declaration, as to whether or not a household meets the income or size requirements of the Workforce Unit prior to the signing of the lease, promptly and without undue delay.

The City reserves the right to perform an asset test to help determine a household's income. The City may request documentation for three of the most recent years to help determine a household's income.

Eligible households may not qualify if, at the time of application, any member of the household owns residential real estate.

No employee, agent, stockholder, member, manager, officer or director of Developer, and no family member thereof (related by blood, marriage, or operation of law), and no employee, agent, stockholder, member, manager, officer or director of any entity related to Developer and no family member thereof (related either by blood, marriage, or operation of law) may qualify to rent the Workforce Unit. Employees of the City's Planning Authority will not be eligible to rent the Workforce Unit.

- f. **Household Preference.** Household preference for Workforce Units shall be given, to the extent permitted under law, to Eligible Households in accordance with the Workforce Housing Ordinance and the Workforce Housing Regulations then in effect.
- g. **Maintenance of a Waiting List.** Developer is encouraged to maintain a waiting list of potentially Eligible Households.
- h. **Determination of Affordable Monthly Rent; Security Deposits.** To maintain consistency of Workforce Units within the City, the maximum allowable rent for the Workforce Unit (the "Workforce Rent") will be set by the City and will be based on the minimum household size per bedroom. The Workforce Rent shall be calculated as 30% gross income per month (based on the AMI) of the minimum household size allowed per bedroom less utilities as follows:

0.30 x (annual income based on minimum household size / 12) less utilities =  
Workforce Rent

Developers may choose to include some or all utilities within the total rent. Utilities that effect the Workforce Rent calculation include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Developer in the rent the City shall make reasonable assumptions based on a unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable, the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should the HUD figures be unavailable or a better metric be determined.

The Developer may require first and last month's rent and a security deposit from tenants. Each of these three expenses shall not exceed the value of one month of rent.

If the Developer requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee, then parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

The maximum allowable rent determination is subject to City's final approval, which shall be granted or denied promptly upon request, and which shall be made in accordance with the terms of this Declaration.

**Household Size.**

Household size/composition at the time that a lease for a Workforce Unit is signed should be consistent with the schedules set forth below.

The schedule below indicates the minimum household size for each unit type based on bedroom count:

Minimum Household Size By Bedroom

Studio/One-Bed:	1
Two-Bed:	2
Three-Bed:	3
Four-Bed:	4

Workforce Units are also subject to maximum household sizes based on bedroom counts. The schedule below indicates the maximum number of persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household size:

Maximum Household Size By Bedroom

Studio/One-Bed:	2
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Two-Bed:	4
Three-Bed:	6
Four-Bed:	8

If the Developer finds it difficult to rent a Workforce Unit to an Eligible Household that meets the established minimum size requirements, the Developer may request that the City allow the Developer to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. The Developer must make reasonable marketing efforts, as determined by the City, to find Eligible Households of a qualified size for at least 30 days prior to requesting a household minimum size waiver. Any such waiver is only for a single applicant and that household's recertification. Rent shall be calculated based on the smaller household size. Once the Workforce Unit is again vacant, the minimum household sizes set forth herein shall apply to future tenants. Under no circumstances will households be allowed to exceed the maximum household size.

- i. **Workforce Unit Leases.** All leases for the Workforce Unit shall be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be the Workforce Rent determined at initial application and during any recertification process prior to the renewal of a lease, as set forth below. All leases for the Workforce Unit shall comply with the Workforce Housing Ordinance and the Workforce Housing Regulations in effect at the time of such lease to the extent not inconsistent with the terms of this Declaration. Eligible Households renting Workforce Units must be recertified annually with final approval from the City before renewing a lease. The Developer shall enforce the lease.
  
- j. **Recertification of Workforce Units.** Prior to the renewal of a Workforce Unit's lease, and not more than one per year, the Developer shall require that the tenant recertify that their household meets the eligibility and household size requirements for the Workforce Unit. The same process and documentation will occur as was required with the initial application to lease the Workforce Unit. Unless the Developer can demonstrate that the tenant has violated material terms of the lease, that the tenant is refusing to comply with the requirements of the recertification process, or that the tenant does not wish to renew the lease, no other households may be considered for a lease of a Workforce Unit.

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests for information and documents by the Developer or City within a 60-day period. The City shall make the final determination as to whether Developer has provided sufficient evidence to substantiate a household's failure to participate in the recertification process.

- k. **Loss of Workforce Unit Status.** A unit shall lose its designation as a Workforce Unit when two consecutive recertifications demonstrate that a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants is subject to final review and approval from the City. In this scenario, the Developer may, with 90 days' notice, charge market rent for the unit.

The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit that will substitute for the former Workforce Unit shall be rented to an Eligible Household, so as to restore and maintain the number, unit size, and bedroom count of Workforce Units originally intended under this Declaration. The City shall make the final determination as to whether any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Development.

If no suitable unit becomes available to rent as a Workforce Unit within a year of the time the former Eligible Household begins paying market rent, then the Developer shall not renew or extend the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible Households. The Developer shall cooperate with the City and provide the City with any documentation that it deems reasonably necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Developer shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in this Declaration so long as Developer is making such payments to the City's Housing Trust.

**m. Primary Residence.** An Eligible Household shall occupy the Workforce Unit as its primary residence. An Eligible Household may not sublet the apartment for any reason. An Eligible Household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Eligible Household is absent from the Workforce Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health, or emergency reasons, then, subject to applicable law, the Household's eligibility will be terminated (in the City's reasonable discretion) and their lease term shall not be renewed or extended. Where absences in excess of the above limitations are caused by work obligations, health reasons or other emergency, the City may require verification of the reasons for the tenants' absence. If tenants fail to comply with such requests for verification, their lease shall not be renewed or extended. Incarceration does not constitute a health or other emergency justifying prolonged absence from the Workforce Unit.

1. **Administration & Record Keeping.** Developer shall maintain an Eligible Household's application, recertification forms and all related documentation, and any third party verifications throughout the Eligible Household's occupancy of a Workforce Unit and for a period of at least seven (7) years thereafter. The Developer shall provide copies of these records to the City within ten (10) business days if requested. The Developer shall also keep all Workforce Unit applications and waiting lists for a period of at least seven (7) years or some shorter period of time if deemed reasonable by the City. The Developer will file an annual report to the City within 60

days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information the City requests.

5. **Construction and Duration**. The covenants contained herein shall run with the land for the term of this Declaration. Developer covenants and agrees for itself and its assigns that the rights and restrictions contained herein shall be for the benefit of the City, its successors and assigns, and shall be binding on all future purchasers of the Development. Developer and the City agree and intend that this Declaration and the covenants contained herein are to be interpreted as "Affordable Housing Covenants" as defined by 33 M.R.S. Sec. 121 and satisfy the Workforce Housing Ordinance.
6. **Violation**. Developer shall immediately notify the City if Developer discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under this Declaration and applicable law, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.
7. **Indemnification**. Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under the Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City or for claims arising from Developer's applying a provision of the Declaration that is subsequently deemed unlawful by a court of law. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.
8. **Modifications**. This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
9. **Severability**. The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
10. **Successors and Assigns**. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, transferees, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and

assigns. Developer shall reference this Declaration in any deed or conveyance document that conveys all or part of the Development.

- 11. **Governing Law.** This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
- 12. **Additional Documents.** The Developer shall execute such other documents the City reasonably deems necessary in order to effectuate the intent and purpose of this Declaration and the intent and purpose of the City's Workforce Housing Ordinance in effect as of the date hereof.
- 13. **Notices.** Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided.

**IN WITNESS WHEREOF**, this Declaration has been duly executed by the Developer and City as of May 7, 2018.

**CITY OF PORTLAND**

Sonia Bean  
Witness

By: Jon P. Jennings  
Jon P. Jennings  
Its City Manager

**REDFERN MEWS, LLC**, a Maine limited liability company

Mary Ann Sturgeon  
Witness

By: Jonathan Culley  
Name: Jonathan Culley  
Its: Manager



State of Maine  
Cumberland, ss.

May 7, 2018

Personally appeared the above named Jon P. Jennings, City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

APPROVED AS TO FORM:  
STC  
CORPORATION COUNSEL'S OFFICE

Sonia T. Bean  
Notary Public/Attorney-at-Law

(Print or type name)

**SONIA T. BEAN**  
NOTARY PUBLIC  
State of Maine  
My Commission Expires  
April 8, 2024

State of Maine  
Cumberland, ss.

May 3, 2018

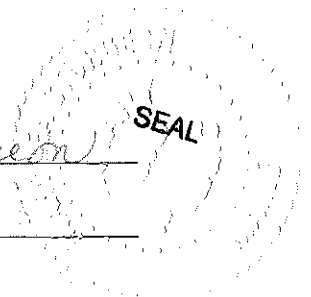
Personally appeared the above named Jonathan Culley, Manager of Redfern Mews, LLC, a Maine limited liability company, and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of said Redfern Mews, LLC.

Before me,

Mary Lea Sturgeon  
Notary Public/Attorney-at-Law

(Print or type name)

**MARY LEA STURGEON**  
NOTARY PUBLIC  
State of Maine  
My Commission Expires  
February 5, 2023



**EXHIBIT A**

70 Anderson Street, Portland, Maine

A certain lot or parcel of land situated on the northerly side line of Lancaster Street, adjoining the westerly side line of Anderson Street, in the City of Portland, County of Cumberland and State of Maine, and being more particularly described as follows:

Beginning at the point of intersection formed by the northerly side line of Lancaster Street and the westerly side line of Anderson Street;

Thence in a generally westerly direction by the northerly side line of Lancaster Street, 105 feet, more or less to land now or formally of the Portland Housing Authority, known as Kennedy Park;

Thence in a general northerly direction by the easterly side line of said land now or formally of the Portland Housing Authority, known as Kennedy Park, 80 feet, more or less, to the southerly side line of Anderson Lane;

Thence in a generally easterly direction by the southerly side line of Anderson Lane, 105 feet, more or less, to the westerly side line of Anderson Street;

Thence in a general southerly direction by the westerly side line of Anderson Street, 80 feet, more or less, to the northerly side line of Lancaster Street and the point of beginning.

SUBJECT TO the covenants and restrictions set forth in a deed from Portland Renewal Authority recorded in the Cumberland County Registry of Deeds in Book 3129, Page 374; as affected by Quitclaim Deed from Portland Renewal Authority to Cecelia M. Bickford dated August 25, 2015 and recorded at said Registry of Deeds in Book 32559, Page 280.

Reference is made to a Warranty Deed from Cecelia M. Bickford f/k/a Cecelia M. Yargeau to Redfern Properties LLC, dated September 1, 2015, and recorded in the Cumberland County Registry of Deeds in Book 32559, Page 282.

TOGETHER WITH the land and interests in land conveyed in a Release Deed from Portland Housing Authority to Redfern Properties, LLC dated June 17, 2016 and recorded in the Cumberland County Registry of Deeds in Book 33698, Page 61, being that portion of the private way known as Anderson Lane located in Portland, Cumberland County, Maine that abuts the property described above at the corner of Lancaster Street and Anderson Street in said Portland.

EXCEPTING from the above described premises the land granted to Timothy A. Lippert and Susan S. Lippert by Redfern Properties, LLC in said Boundary Line Agreement dated October 13, 2017 and recorded in Book 34397, Page 195, and the above described premises are SUBJECT to the easements granted to the said Lipperts in said Agreement.

TOGETHER WITH the land and easements granted by Timothy A. Lippert and Susan S. Lippert to Redfern Properties, LLC in a Boundary Line Agreement dated October 13, 2017 and recorded in the Cumberland County Registry of Deeds in Book 34397, Page 195.

Received  
Recorded Register of Deeds  
Nov 08, 2018 12:27:06P  
Cumberland County  
Nancy A. Lane