

AFFORDABLE HOUSING AGREEMENT AND OPTION TO PURCHASE
(Must be recorded with the deed to the property as an Exhibit)

This AGREEMENT made this _____ day of _____, 201__, by and between The City of Portland, corporation body politic and corporate with a mailing address of 389 Congress Street, Me 04101 (the “City”) and _____, whose mailing address is _____, _____, (the “Owner”).

WITNESSETH:

WHEREAS, the City has established a workforce housing requirement under its land use codes which is intended to encourage production of housing that is affordable for households with moderate income that is in line with the HUD Greater Portland Metropolitan Statistical Area median incomes, in accordance with the City's Zoning Ordinance, as amended from time to time (including Chapter 14, Article VII, §19-7-4, the “Affordable Housing Provision”), and to broaden opportunities for home ownership for such households; and

WHEREAS, Owner has purchased Unit # ___ in the _____ Condominium in the City, which Unit is more particularly described on **Exhibit A**, attached hereto and made a part hereof, being referred to as the “Property”; and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Owner agreed and hereby agrees to certain restrictions on the resale of the Property, including restrictions on the price at which the Property may be sold, the parties who may purchase the Property, an occupancy restriction, and the grant of an option to purchase the Property to the City, all 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, Owner and the City, in consideration of the conveyance of the Property to Owner, and of the mutual undertakings set forth herein, 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 Owner 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 Property by making the Property affordable to moderate income families who, without such provisions, would be unable to afford property in the City similar to the Property.

2. **Transfer to Qualified Moderate Income Buyer.** Except as may be set forth herein, Owner may sell, transfer, or otherwise dispose of the Property only to a Qualified Buyer, as that term is defined herein. Any purported sale, transfer or other disposition to any other person or entity done without following the procedures set forth below, or in violation of the price limitations set forth below,

shall be ***null and void***. For purposes hereof, the parties agree that the term “**Qualified Buyer**” means a moderate income person or household with a gross income not exceeding 120% of the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

3. **Transfer to Owner’s Heirs**. If the Owner should die still owning the Property, then upon receipt of notice from the personal representative of the decedent’s estate given within ninety (90) days of the death of such Owner (or the last surviving co-owner if the Property was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Property to one or more of the following:

- A. the spouse or domestic partner of the deceased Owner (in cases where such spouse was not a joint tenant with Owner); or
- B. the child or children of the deceased Owner; or
- C. member(s) of the deceased Owner’s household who have resided in the Property for at least three years prior to the Owner’s death.

Any subsequent transfer by a transferee under A, B, or C, above, shall be subject to the terms of this Agreement.

4. **Notice to the City; Procedure for Sale; the City’s Option to Purchase**.

A. In each instance that Owner intends to effect a sale, transfer or disposition of the Property to a third party, then prior to listing the Property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the Property, Owner shall first give the City written notice of such intent (the “**Notice of Intent**”) addressed to the City at the address set forth above or at such other address as the City shall provide to Owner by written notice.

B. Within ten (10) days of receiving the Notice of Intent, the City shall determine (1) the qualifications and income guidelines for a Qualified Buyer hereunder, and (2) Owner’s “**Maximum Allowable Price**” as determined under Section 5, below. The City shall communicate the results of such determinations to Owner within said ten (10) day period (the “**Notice of Determination**”).

C. Owner shall market the Property to Qualified Buyers at a price not to exceed the Maximum Allowable Price. The City shall have the right in all cases to determine whether a proposed buyer is a Qualified Buyer, as defined herein. The City shall have ten (10) days from the date it receives the information about a prospective buyer in which to determine if Owner’s prospective buyer is indeed a Qualified Buyer hereunder. Owner shall provide the City with whatever reasonable information the City requests in order to make the determinations required under this subsection. All information provided regarding any prospective Qualified Buyer shall be kept and maintained in confidence by the City. The Qualified Buyer shall agree to be bound by the terms and conditions of this Agreement and, as part of the purchase of the Property, shall assume, in writing, all of the

obligations of the “Owner” hereunder.

D. In the event that Owner is unable to find a ready, willing and able Qualified Buyer for the Property after marketing the property for at least 180 days (such period being the “**Restricted Period**”) following the Notice of Determination, then the Owner shall notify the City that it wants to market the Property to non-qualified buyers. Owner grants to City the option to purchase the Property after the expiration of the Restricted Period on the terms set forth below

(i) Owner must establish, to the City’s reasonable satisfaction, that Owner made good faith efforts to market the Property for the entire Restricted Period for sale to Qualified Buyers at a price not in excess of the Maximum Affordable Price;

(ii) Upon a determination by City of such marketing efforts, which the City shall make within ten days after the last day of the Restricted Period, the City has thirty (30) days to decide if it will exercise its option to purchase the Property for the Maximum Allowable Price.

(iii) If the City decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the “Notice to Exercise”) to the Owner. Failure to provide a Notice to Exercise within thirty (30) days of the determination that good faith efforts have been made to market the Property to Qualified Buyers shall cause the City’s option to expire.

(iv) The City shall consummate its purchase of the Property within thirty (30) days of the date of service of the Notice to Exercise (the “City Closing Period”). Owner shall cooperate fully with in City’s efforts to acquire the Property and shall take all reasonable steps necessary to clear any title defects. If the City fails to close on the Property within the City Closing Period for any reason other than liens voluntarily placed on the Property by Owner, then Owner shall immediately be free to sell the Property to a non-Qualified Buyer.

E. If the City decides not to exercise its option to purchase (including as a result of a failure to give a Notice to Exercise), Owner shall be free to sell the Property to a non-Qualified Buyer at any such agreed sale price ***provided however***, that to the extent the agreed sale price exceeds the Maximum Allowable Price (as determined pursuant to Section 5 below), then any amount between the actual sale price and the Maximum Allowable Price (the “**Excess**”) shall be paid to the City at the time of the closing on the sale of the Property, and such Excess is to be set aside for affordable housing purposes by the City. Upon the payment of the Excess, if any, Owner and Owner’s heirs, successors and assigns, shall thereafter be free to sell the Property free of the terms and conditions of this Agreement, which shall be deemed terminated.

F. At the request of Owner, and provided there has been full compliance by Owner with the terms of this Agreement, the City shall execute a written statement in recordable form

acknowledging such compliance, including compliance with a sale of the Property which results in the release of the Owner and the Property from the terms of this Agreement.

5. **Determination of Maximum Allowable Price.** The Maximum Allowable Price for purposes of this Agreement shall be the highest price affordable to a **moderate** income person or household as determined the definition of “affordable” contained in Section 14-485 of the City’s Code and under the implementing regulations adopted by the Portland Planning Board as of the month in which the Owner signs any purchase and sale agreement with a Qualified Buyer, other buyer (as permitted under this Agreement) or the City (pursuant to the City’s exercise of its option).

6. **Construction and Duration.** The covenants contained herein shall run with the land and shall be perpetual. Owner covenants and agrees for himself, his heirs, personal representatives and 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 Property. Owner and the City agree and intend that this Agreement and the covenants contained herein are to be interpreted as “Affordable Housing Covenants” as defined by 33 M.R.S.A. Sec. 121 and satisfy the provisions of Section 19-7-4 C. (4) of the Affordable Housing Provision of the Zoning Ordinance.

7. **Applicability of This Agreement to Mortgagees.** Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall not apply to the following types of transfers of the Property:

- A. Transfers by the Owner to a mortgagee in lieu of foreclosure;
- B. Transfers by a mortgagee immediately following a transfer to such mortgagee by deed in lieu of foreclosure;
- C. Transfers by a mortgagee of Owner pursuant to and as a result of a foreclosure judgment and sale;
- D. Transfers by a mortgagee immediately following a transfer to such mortgagee as a result of a foreclosure; or
- E. Transfers by the transferee of any transfer described in subsection C above which results from a mortgage servicing relationship between a servicing lender and a governmental entity serving as a secondary market mortgage purchaser;

provided, however, that this Agreement shall apply in full to all subsequent transfers of the Property not described in subsections A through E of this Section 7, and any such subsequent transferees shall own the Property as an “Owner” subject in all respects to all of the terms and conditions of this Agreement. The provisions in this paragraph shall apply in the same manner to all subsequent holders of mortgages on the Property.

8. **Other Requirements Incorporated into this Agreement.** In addition to the above restrictions, the Property shall be subject to the standards set forth in the Ordinance, including without limitation, that preference shall be given first to City residents, and then to employees of the City in regard to any sale of the Property and that all housing units shall be owner-occupied..

9. **Disbursement of Insurance and Eminent Domain Proceeds.** In the event Owner receives proceeds as a result of a complete eminent domain taking of the Property, Owner and the City shall share in such proceeds such that Owner shall receive an amount equal to no more than the Maximum Allowable Price as determined under Section 5 above, with the City receiving the balance of the proceeds, if any. If there occurs a partial eminent domain taking, or if Owner receives any insurance proceeds as a result of any casualty loss to the Property, then the parties shall share in the proceeds on a pro-rata basis, with Owner receiving a percentage of the Maximum Allowable Price based on the diminution of value of the Property, with the City receiving the balance of the proceeds, if any.

10. **Miscellaneous.** Any sale or transfer conducted contrary to the terms and conditions contained herein shall be null and void. All sales or transfers shall be subject to all terms and conditions contained herein. If any portion of this Agreement is declared unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforcement of the remaining provisions hereof. Notices hereunder shall be in writing and sent by first class mail, certified, return receipt requested, addressed to the recipient at the address given above. If the City or its successors or assigns shall change addresses, it shall give notice of the new address in the manner provided in this paragraph.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

WITNESS:

THE CITY OF PORTLAND

By: _____

Name:

Title:

Owner

Print name:

Owner

Print name:

STATE OF MAINE
CUMBERLAND, SS

_____, 200_

Personally appeared the above-named _____, and
acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

Notary Public/Attorney at Law

Print name:

My Commission Expires:

EXHIBIT A

PROPERTY DESCRIPTION