

**WORKFORCE HOUSING AGREEMENT,
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND OPTION TO PURCHASE**

This Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions and Option to Purchase (“Agreement”) is entered into by and between the **CITY OF PORTLAND**, a public body corporate and politic with a mailing address of 389 Congress Street, Portland, Maine 04101 (“City”) and **ONEJOY PLACE, LLC**, a Maine Limited Liability Company whose mailing address is c/o Renewal Housing Associates, 2 Union Street, 5th Floor, Portland, ME 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, which is intended to encourage production of housing that is affordable for households with moderate income; and

WHEREAS, Developer owns property located on 1 Joy Place, in the City of Portland, Maine, which property is more particularly described in Exhibit A, attached hereto and made a part hereof (the “Property”); and

WHEREAS, Developer plans to construct a residential condominium project to be known as Onejoy Condominium consisting of twelve home ownership units on the Property (the “Development”); and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Developer has agreed and hereby agrees to certain restrictions on the sale of Unit 1A in the Development (the “Workforce Unit”), including restrictions on the purchase price for the Workforce Unit, the parties who may purchase the Workforce Unit, occupancy restrictions, and the grant of an option to purchase the Workforce Unit to the City, all on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S. § 121 et seq.; and

WHEREAS, on September 26, 2017, the City’s Planning Board approved the Development, on the condition that Developer provide one affordable home ownership unit with a combined total of one bedroom in the Development in accordance with the Workforce Housing Ordinance (the “Workforce Unit”); and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Developer hereby agrees to certain restrictions on the sale of 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 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 Workforce Unit by making the Workforce Unit affordable to moderate income families who, without such provisions, would be unable to afford property in the City similar to the Workforce Unit.

2. **Enforceability of Covenants.** The covenants and restrictions set forth herein are intended to be and shall be considered covenants that run with the Workforce Unit and shall bind all subsequent owners and holders of any interest in the Workforce Unit, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary. Except as may be otherwise provided herein, the covenants set forth herein shall survive a sale, transfer, or other disposition of the Workforce Unit by Developer and shall survive a foreclosure or transfer of title in lieu of foreclosure but shall cease to apply to the Workforce Unit 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.

3. **Transfer to Qualified Buyer.** Except as may be set forth herein, Developer may sell, transfer, or otherwise dispose of the Workforce Unit 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 as calculated by the City and which person or household must intend to and in fact occupy the Workforce Unit as their primary residence on a continuing basis. A Qualified Buyer shall occupy the Workforce Unit as its primary residence. The Workforce Unit may not be rented out by the Developer, or subletted by a Qualified Buyer, for short or long-term periods during the term of this Declaration.

4. **Transfer to Owner's Heirs.** If the Developer or any subsequent owner should die still owning the Workforce Unit, 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 Workforce Unit was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Workforce Unit to one or more of the following:

- A. the spouse 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 Workforce Unit 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.

5. **Notice to the City; Procedure for Sale; City's Option to Purchase.**

A. In each instance that Developer intends to effect a sale, transfer or disposition of the Workforce Unit to a third party, then prior to listing the Workforce Unit for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the Workforce Unit, Developer shall first give the City written notice of such intent (the "**Notice of Intent**") addressed to the City at the address set forth below or at such other address as the City shall provide to Developer 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) Developer's "**Maximum Allowable Price**" as determined under Section 5, below. The City shall communicate the results of such determinations to Developer within said ten (10) day period (the "**Notice of Determination**").

C. Developer shall market the Workforce Unit 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 all information about a prospective buyer necessary to determine if Developer's prospective buyer is indeed a Qualified Buyer hereunder. Developer shall contractually require such potential buyers to provide the City with whatever reasonable information the City requests in order to make the determinations required under this subsection. To the extent permitted by law, all information provided regarding any prospective Qualified Buyer shall be kept and maintained in confidence by the City. The Qualified Buyer shall sign, acknowledge and agree to be bound by the terms and conditions of this Workforce Housing Declaration of Covenants, Conditions, Restrictions and Option to Purchase for Owner Occupied Units in substantially the same form as that attached hereto as **Exhibit B** (the "Buyer's Agreement") and, as part of the purchase of the Workforce Unit, shall assume, in writing, all of the obligations of the "Developer" hereunder with respect to said Workforce Unit. The Buyer's Agreement shall be recorded in the Cumberland County Registry of Deeds concurrently with the deed from the Developer conveying the Workforce Unit. The Developer shall not be liable for the Qualified Buyer's performance of its obligations under the Buyer's Agreement.

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

(i) Developer must establish, to the City’s reasonable satisfaction, that Developer made good faith efforts to market the Workforce Unit 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 Workforce Unit 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 Developer. Failure to provide a Notice to Exercise within thirty (30) days of the determination that good faith efforts have been made to market the Workforce Unit to Qualified Buyers shall cause the City’s option to expire.

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

E. If the City decides not to exercise its option to purchase the Workforce Unit (including as a result of a failure to give a Notice to Exercise), Developer shall be free to sell the Workforce Unit 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 6 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 Workforce unit, and such Excess is to be set aside for affordable housing purposes by the City. Upon the payment of the Excess, if any, Developer and Developer’s heirs, successors and assigns, shall thereafter be free to sell the Workforce Unit free of the terms and conditions of this Agreement, which shall be deemed terminated as to such Workforce Unit.

F. At the request of Developer, and provided there has been full compliance

by Developer 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 Workforce Unit which results in the release of Developer and the Workforce Unit from the terms of this Agreement.

6. **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 by the City pursuant to the definition of “affordable” contained in Division 30 (Section 14-483 et seq.) of the City’s Land Use Ordinance and under the implementing regulations adopted in accordance with such Ordinance by the Portland Planning Board as of the month in which the Developer signs any purchase and sale agreement with a Qualified Buyer, another buyer (as permitted under this Agreement) or the City (pursuant to the City’s exercise of its option).

7. **Construction and Duration.** Except as may otherwise be provided herein, the covenants contained herein shall run with the Workforce Unit and shall be perpetual. Developer covenants and agrees for him/her/its self, his/her/its 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 Workforce Unit. Developer 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. § 121 and satisfy the provisions of Section 14-484 to 488 of the City’s Workforce Housing Ordinance.

8. **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 Workforce Unit:

- A. Transfers by the Developer 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 Developer 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 Workforce Unit not described in subsections A through E of this Section 8, and any such subsequent transferees shall own the Workforce Unit 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.

9. **Other Requirements Incorporated into this Agreement.** In addition to the above restrictions, the Workforce Unit shall be subject to the standards applicable to “Workforce housing unit for sale” set forth in Division 30, Section 14-484 et seq. of the City’s Workforce Housing Ordinance and applicable regulations, including without limitation, that preference shall be given first to individual Qualified Buyers who have not previously owned and occupied a residence, next to current residents of the City of Portland who have lived in Portland as their primary residence for the past two years, next to previous residents of the City of Portland who have been displaced within the past 12 months prior to the Workforce Unit becoming available, next to full time employees of the City, and finally, all others all as designated by the City in regard to the Developer’s sale of the Workforce Unit.

10. **Disbursement of Insurance and Eminent Domain Proceeds.** In the event Developer receives proceeds as a result of a complete eminent domain taking of the Workforce Unit, Developer and the City shall share in such proceeds such that Developer shall receive an amount equal to no more than the Maximum Allowable Price as determined under Section 6 above, with the City receiving the balance of the proceeds, if any.

If a partial eminent domain taking occurs or if Developer receives any insurance proceeds as a result of any casualty loss to the Workforce Unit, then the parties shall share in the proceeds on a pro-rata basis, with Developer receiving a percentage of the Maximum Allowable Price based on the diminution of value of the Workforce Unit, with the City receiving the balance of the proceeds, if any.

11. **Miscellaneous.** Any sale or transfer conducted contrary to the terms and conditions contained herein shall be null and void. All sales or transfers of the Workforce Unit 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, or by nationally recognized overnight courier services addressed to the recipient at the address set forth below:

If to the City at 389 Congress Street, Portland, Maine, 04101
attention Housing and Community Development Office, with a copy to the Office of the Corporation Counsel

If to the Developer, at Renewal Housing Associates, LLC, 2 Union Street, 5th Floor,
Portland, ME 04101

If the Developer shall change addresses, it shall give notice of the new address in the manner provided in this paragraph.

12. **Termination.** Notwithstanding anything to the contrary set forth herein, this Agreement shall automatically terminate and be of no further force and effect in the event that the Developer, its successors or assigns, do not proceed with the Development. In such event, and at the request of either party, the parties shall execute and record a notice in the Cumberland County Registry of Deeds stating that this Agreement has terminated and of no further force and effect.

[End of page. Execution Pages and Exhibits follow.]

IN WITNESS WHEREOF, this Affordability Agreement and Declaration has been duly executed by the Developer and City as of March 26, 2018.

CITY OF PORTLAND

Sonia Bean
Witness

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

APPROVED AS TO FORM:
JLT
CORPORATION COUNSEL'S OFFICE

State of Maine
Cumberland, ss.

March 26, 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,

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

(Print or type name)

DEVELOPER: ONEJOY PLACE, LLC

By West Port Development, LLC
Its Manager

Michelle Handy
Witness

By: Todd M. Alexander
Name: Todd M. Alexander
Its: Manager

State of Maine
Cumberland, ss.

March 23, 2018

Personally appeared the above named Todd M. Alexander, in his capacity as Manager of West Port Development, LLC, and as the Manager of OneJoy Place, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said West Port Development, LLC, in its capacity as Manager of OneJoy Place, LLC.

Before me,

Maureen Valentine
Notary Public/Attorney-at-Law

Maureen Valentine
(Print or type name)

MAUREEN C. VALENTINE
Notary Public, Maine
My Commission Expires July 18, 2020

EXHIBIT A

A certain lot or parcel of land, together with the buildings and improvements thereon, situated easterly of, but not adjacent to, Brackett Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Commencing at a point at the intersection of the easterly sideline of Brackett Street with the northerly sideline of Spring Street;

Thence, N 35°12'30" W along the easterly sideline of said Brackett Street 402.21 feet to a drill hole and the southerly sideline of a private right of way known as Joy Place;

Thence, N 54°47'30" E along the southerly sideline of said Joy Place 92.00 feet to the true point of beginning;

Thence, from the true point of beginning, N 35°12'30" W along the easterly sideline of said Joy Place 87.90 feet to the land now or formerly of Brian R. Chick as described in Deed recorded in the Cumberland County Registry of Deeds (the "Registry") in Book 25236, Page 109;

Thence, N 54°47'30" E along land of said Chick 2.83 feet to a point;

Thence, N 25°54'27" W along land of said Chick 26.85 feet to a point;

Thence, S 54°47'30" W along land of said Chick 2.17 feet to land now or formerly of Kimberly A. Roseberry as described in Deed recorded in said Registry in Book 28025, Page 112;

Thence, N 35°12'30" W along land of said Roseberry 25.86 feet to land now or formerly of Basha LLC as described in Deed recorded in said Registry in Book 29175, Page 300;

Thence, N 55°37'30" E along land of said Basha LLC a distance of 28.71 feet to land now or formerly of David R. Shedd and Susan Shedd as described in Deed recorded in said Registry in Book 31201, Page 5;

Thence, S 35°07'44" E along land of said Shedd 24.51 feet to a point;

Thence, N 56°22'18" E along land of said Shedd 13.68 feet to land now or formerly of Nathan W. Kimble as describe in Deed recorded in said Registry in Book 13439, Page 62;

Thence, S 35°02'54" E along land of said Kimble and land now or formerly of Parkside Properties, LLC as described in Deed recorded in said Registry in Book 16808, Page 29, a distance of 103.09 feet to land now or formerly of Charles L. Morris and Katherine A. Gilbert as described in Deed recorded in said Registry in Book 21909, Page 50;

Thence, S 54°56'21" W along land of said Morris and Gilbert 13.53 feet to a point;

Thence, S 35°07'44" E along land of said Morris and Gilbert 11.90 feet to land now or formerly of the City of Portland;

Thence, S 54°47'30" W along land of said City of Portland 33.51 feet to the easterly sideline of said Joy Place and the point of beginning containing 5,851 sf.

The above described premises are hereinafter referred to as the "Premises".

Reference is made to a plan entitled "Boundary Survey at 1 Joy Place, Portland, Maine made for Onejoy Place LLC" dated August 24, 2016 by Owen Haskell, Inc., and recorded in said Registry of Deeds in Plan Book 216, Page 330 (the "Plan").

The Premises are conveyed together with a right of passageway, in common with others, over a strip of land formerly known as Tinkhams Court, so-called, being approximately twenty-four (24) feet in width and extending from Brackett Street in a northeasterly direction to the Premises, and a right of passageway, in common with others, over a twelve (12) foot wide passageway extending from the most easterly end of said Tinkhams Court in a northwesterly direction along the southwesterly side of the Premises, said Tinkhams Court and said passageway being now known as Joy Place, which Tinkhams Court and said passageway are shown on the Plan as Joy Place and being more particularly bounded and described as follows:

Beginning at a point on the easterly sideline of said Brackett Street, said point of beginning being distant 402.21 feet as measured along said easterly sideline of Brackett Street on a bearing of N 35°-12'-30" W from the northwesterly side of Spring Street;

Thence N 54°-47'-30" E along land of City of Portland 92.00 feet to a point;

Thence N 35°-12'-30" W along land now or formerly of Albert Bresette, being the Premises, 87.90 feet to a point;

Thence S 54°-47'-30" W along land now or formerly of Brian R. Chick 12.00 feet to a point;

Thence S 35°-12'-30" E along lands now or formerly of Hazel G. Boyd et al and Brett Plymale 64.00 feet to a point;

Thence S 54°-47'-30" W along said land of Plymale 80.00 feet to a point;

Thence S 35°-12'-30" E along said Brackett Street 23.90 feet to the point of beginning.

All bearings are magnetic in the year 1967.

Subject to the condition that said Tinkham Court and said passageway, now known as Joy Place, are to be kept open and unobstructed forever.

Also hereby conveying all other right, title, and interest that the Grantor may have in and to said Joy Place as shown on the Plan.

Being the same premises conveyed to the Developer by Quitclaim Deed with Covenant from Albert Bresette dated August 31, 2016 and recorded in the Cumberland County Registry of Deeds at Book 33404, Page 272.

EXHIBIT B

**RECEIPT OF WORKFORCE HOUSING AGREEMENT,
DECLARATION OF COVENANTS, RESTRICTIONS,
AND OPTION TO PURCHASE FOR
Unit 1-A, 1 Joy Place, Portland, Maine**

I/We _____ (insert names) hereby acknowledge and agree that I am/we are in receipt of a copy of the Workforce Housing Agreement, for 1 Joy Place between the City of Portland and Renewal Housing Associates, LLC which was recorded at the Cumberland County Registry of Deeds on _____ (date) at Book _____ and Page _____ (the "Covenants"). I/We acknowledge and agree that the Covenants are binding upon our unit identified as Unit Number 1-A at 1 Joy Place, Portland, Maine (the "Workforce Unit") and that as owner(s) of the Workforce Unit, I am/we are bound by the all of the terms and restrictions on the sale and occupancy as set forth in the Covenants. Such terms and restrictions of the Covenant include but are not limited to: restrictions on; owning other residential real estate; prohibitions on renting out the Workforce Unit for short or long term periods to other households; mandatory certification that the Workforce Unit is the primary residence; and requirements that; the owner(s) is a/are permanent resident(s) of the United States.

ACKNOWLEDGED AND AGREED TO ON THIS _____ DAY OF

_____, 2018.

WITNESS:

OWNER(S):

(Signature)

(Signature)

(Print Name)

(Print Name)

(Signature)

(Signature)

(Print Name)

(Print Name)